



CHAPTER 1

INTRODUCTION

A. Background Of Research

In islamic law study there are a lot of problems which are not explained in al-Qur'an, hadith, and scholar agereement. One of the problems is about marriage requirements. Marriage can be implimented if the requirements and the pillars of marriage are fulfilled. However, fiqh scholars has diffirent opinion in determining requerements and pillars of marriage. According to clasic scholars the pillars of marriage are four, i.e (1) sighat (ijab and qabul), (2) bride, (3) groom, (4) guardian.¹

¹Khoiruddin Nasution, *Hukum Perkawinan I*, (Yogyakarta: Academia Tazaffa, 2004), h. 34.

In addition, according to Wahbah Zuhaili, contemporary scholar, the pillars of marriage are four: *shîghat*, bride, groom, and guardian. Dowry is like witness in marriage, it is as requirements to undertake marriage.² While, the requirements of marriage are ten. Namely: (1) Bride and groom are permitted to get married, (2) *Sighat* (ijab and qabul), (3) Witnesses, (4) Liberality and desire of spouse, (5) The spouse that will perform marriage is clear, (6) A couple, either wife or husband is not performing hajj or umrah, (7) Dowry, (8) Marriage is not hidden, (9) A couple, either wife or husband could not have dangerous disease, (10) Guardian.³

To choose a healthy spouse is important in Islam. It is in line with purpose of marriage, one of purpose of marriage is to preserve good and health descent. Healthy descent is born from a healthy spouse. Therefore, in marriage implementation is suggested to know and to examine a spouse first, such as behavior, family, and healthy, in order to have harmonious marriage. One of the way to know a healthy spouse status by doing healthy test before marriage.

In some countries HIV test has become requirement of marriage registration. One of countries is Malaysia. Since 2009 State Religious Department of Malaysia mandatory HIV test to bride and groom before marriage. This effort made to reduce the number of HIV-AIDS cases on Moslem spouse and their descendent. This program can be imitated to anticipate the spread of HIV-AIDS for Muslim spouse who will marry.

²Wahbah al-Zuhaylî, *al-Fiqh al-Islâmî wa Adillatuh* (Damaskus: Dâr al-Fikr, 2004), vol. 9, h. 6521

³Khoiruddin Nasution, *Hukum Perkawinan I*, h. 35.

This programme has been mandatory for all Muslims in Malaysia. Especially in Selangor state, this state already mandatory HIV test before marry to all moslem spouse since 1st of september 2005. In Islamic family law of State Religious Department of Selangor No. 1 in 2005 article 17 explain that "Moslem spouse both bride and groom are obligated to take HIV test before married, because it is as requirements of marriage registration".

Obligation of HIV test is caused increasing of HIV cases for women from 5,02% in 1997 become 16,7% in 2007.⁴ According to accurate data from minister for public health of Malaysia since 1986-2007 there were 80,938 people were HIV/AIDS (Acquired Immuno Deficiency Syndrome) positive and there were 10,334 died. In 2007 there were 4,549 cases of HIV were reported and there were 1.179 people died. Four of ten of HIV cases were 13-29 age.⁵

On Desember 2013 there were 101, 672 people living with HIV including 1.076 children under 13 years. The trend of HIV infection in Malaysia is in fact mainly attributed by injecting drug users and free sex. However, the trend has presently changed. Women are now the vulnerable population on contracting the HIV infection through their spouse. Most HIV infections among women in Malaysia have occurred through heterosexual activities, a large number of whom are housewives.

⁴Muslim di Malaysia Wajib Tes HIV Sebelum Nikah, <http://www.republika.co.id/berita/breaking-news/internasional/08/12/19/21335-muslim-di-malaysia-wajib-tes-hiv-sebelum-nikah>, diakses pada tanggal 31 Agustus 2014, pukul 09.17 wib.

⁵Nur syakirin husnal, *HIV-AIDS: setiap anak dilindungi*, (malaysia: unicef, 2005) h. 7, http://www.unicef.org/malaysia/unicef_AIDS_media_guide_malay.pdf, diakses pada tanggal 31 Agustus 2014, pukul 09.30 wib.

Women living with HIV, could be discriminated and marginalised by their communities.⁶ Their fear of marginalisation could result in women not seeking information and take HIV test. It would also prevent them from disclosing their status and obtain appropriate counselling and treatment. With increasing numbers of affected families whose parents become infected HIV, the number of children living with HIV will also rise. Furthermore, deprivation of information and refusing to talk openly about the disease among mothers caused their children infected through vertical transmission. The statistics show that the number of women reported to be infected with HIV in 2011 were 735. Seriously, more than 70 per cent of People live with HIV/AIDS (PLHIV) and they were currently Muslims.

Discrimination against pregnant women living with HIV is a major barrier to prevention of mother to-child transmission (MTCT) services uptake. For example, a study in India (Mumbia and Sumerpur) found that a high proportion of pregnant women who were screened for HIV at antenatal clinics were discriminated against in the form of abuse, beatings and even abandonment by their husbands. Pre-test counselling is critical in this context, It is not only for couples but also pregnant mother, alongside HIV screening.⁷

Government, religious agencies and non-governmental organizations face many challenges to continue prevention of HIV cases. Prevention of HIV programe is not only for Muslim society but also for all Malaysian society.

⁶ Azrul Moh. Khalid, *Women And Girls Confronting HIV And AIDS In Malaysia* ,(Malaysia: Unicef, 2008), h. 12

⁷ Alience H, 62

While waiting for the breakthrough of vaccines for HIV/AIDS, the Minister of Health, State Religious Departments and the Malaysian AIDS Council have worked together to provide applicable strategies and intervention programmes for Malaysia to combat HIV infection. One of the holistic plans or programmes that help the community of Muslim government to reduce HIV/AIDS cases development among the population is Premarital HIV Screening Programme.

The premarital HIV screening programme, ideally, is enacted for Muslim couples who want to marry. Virtually, the prevailing of premarital HIV screening programme is to allow early detection on HIV infection then make HIV/AIDS education with emphasis on safety precautions after marriage. How to minimize the risk of spouse or other people contracted the disease. However, before and during the programme tracked, a lot of reprobation of human rights and people's confidentiality was heard from the public, and still many cases of HIV that attack Muslims in Malaysia. This posed as an extreme challenge to both the Ministry of Health and State Religious Departments to sustain the implementation of this program and their effort for the continuation of this program in order to reduce HIV cases among Muslims.

HIV test is obligated to every Moslem spouse before married. This regulation is established by State Religious Department in Malaysia. Moslem spouse just can take this test in empire hospital and empire clinic, This test is not accepted if they take in private hospital and private clinic. The result of this test is taken in State Religious Department.

In obligation of HIV test must consider Human Rights aspect. It is influence component for implementation HIV test program. Human Rights should be protected and be respected by everyone and government. Therefore, the government must consider Human Rights aspect. A lot of reprobation of Human Rights such as right to get honor protection, right to marry and found a family. Because many people living with HIV are frequently alienated from their own society.

In islamic Fiqh, scholars agree that the pillars and requirements of marriage are five, such as: bride, groom, guardians, two fair witness and ijab-qabul. marriage is valid if the spouse fullfilled the requirements. However, in Malaysia everyone who will marry is obgated to take HIV test. Moreover, it is as a requirment of marriage registration. A couple cannot register to marry if they do not have HIV test certificate. Whereas, in fiqh Munakahat, everyone who wants to marry is not obligated to take this test. Therefore, what are Malaysian society responses about regulation of obligation of HIV test before marriage.

This problem need to be studied. Therefore, the writer undertakes research with the tittle "Malaysian Moslem Society Responses About Human immunodeficiency virus Test As a Requirement of Marriage Registration in the Human Right Perspective (Study of Hulu Langat Selangor Darul Ehsan Society).

B. Statement of Problem

1. How do Hulu Langat Selangor Darul Ehsan society respond to HIV test as requirement of marriage registration?
2. How do Hulu Langat Selangor Darul Ehsan society respond to human rights about obligation of HIV test as requirement of marriage registration?

C. The Objective of Research

1. To explain Hulu Langat Selangor Darul Ehsan society responses of HIV test as requirement of marriage registration.
2. To explain Hulu Langat Selangor Darul Ehsan society responses of human rights about mandatory of HIV test as requirement of marriage registration.

D. The Benefite of Research

1. Theoretical Benefits
 - a. To Enrich Islamic legal thought and scientific contribution in the field of jurisprudence, especially in the study of Islamic family jurisprudence.
 - b. To clarify the law in society and this research will provide a theoretical contribution in the design of renewal of Islamic law.
 - c. This research exposes the dynamics of Islamic family law in society.

2. Practical Benefits

- a. This research useful for education development. Useful for society particularly in family and also for bride and groom in order that they take a care of their healthy and preparation for marriage well.
- b. The results of this research can be used by the *Majlis* of Islamic religion or the Indonesian Council with the fatwa and laws can make policy in order to improve services that related to the study of Islamic law.

E. THE ORGANIZATION OF DISCUSSION

So that this research can be focused and its discussion comprehensively discussion, so the discussion is structured as follows:

CHAPTER I : Introduction. In this chapter describes the framework of research. Like building a house, this chapter is its foundation. Therefore, this chapter contains a discussion of the background of the problem, formulation of the problem, the purpose and usefulness of discussion, the theoretical framework, methods and systematic discussion. Research methods, sources of data, processing and data analysis techniques.

CHAPTER II : The theoretical framework of research is needed to make more obvious. Theoretical framework explains or describes the title to makes the reader easy in understanding this research. Theoretical framework of research, describes the Definition of Marriage, Pillars and Requirements of Marriage, Human Right, definition HIV Test, HIV Test

before Marriage in Islam.

CHAPTER III : In this chapter writer analyzes the data by using research methods. Research methods will be used in this research as an analytical device in a scientific paper. The type of research that will be used in this research is Field Research (fieldwork) by using qualitative methods, this research focused on data collection (interview) from informants that were determined in this research. The writer also use secondary data source as supporting data and complement of data to get more explanation about mandatory of HIV test in Selangor Darul Ehsan. The secondary source in this research uses literature study. After the Data are collected, the writer will process and analyze the data by editing, classifying, verifying, analyzing, and concluding.

CHAPTER IV : Results of research and discussion. After all the data are collected the writer analyzes the data in discussion to achieve maximum results.

CHAPTER V : Conclusions and suggestions. Conclusions should be matched with the formulation of the problem, because the conclusion is the answer of formulation of the problem. Suggestions follows the results of research.