

PENALTIES FOR UNREGISTERED MARRIAGE AND POLYGAMY

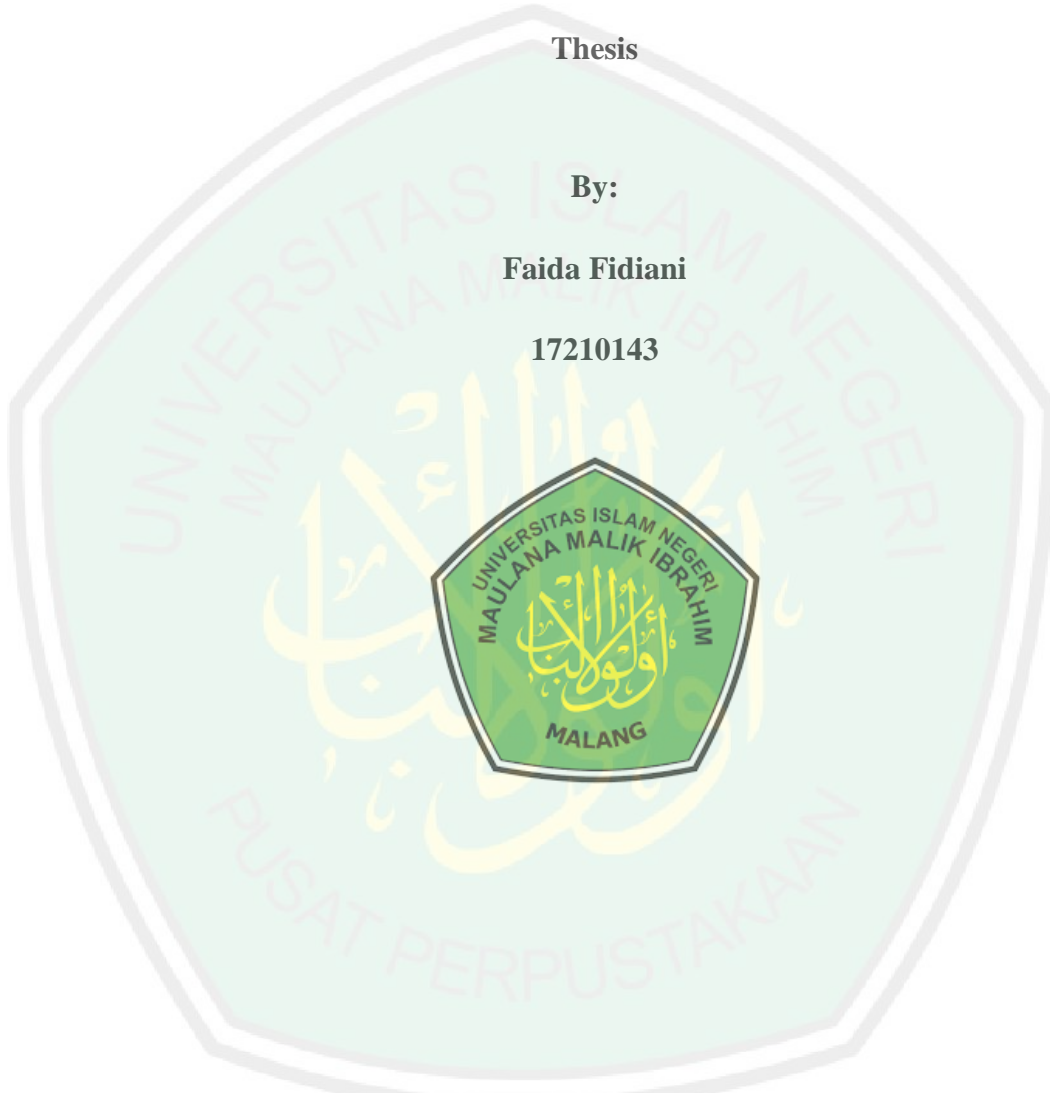
(Comparative Study of Indonesia, Pakistan and Tunisia)

Thesis

By:

Faida Fidiani

17210143



ISLAMIC FAMILY LAW DEPARTMENT

SYARI'AH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM MALANG

2020

PENALTIES FOR UNREGISTERED MARRIAGE AND POLYGAMY

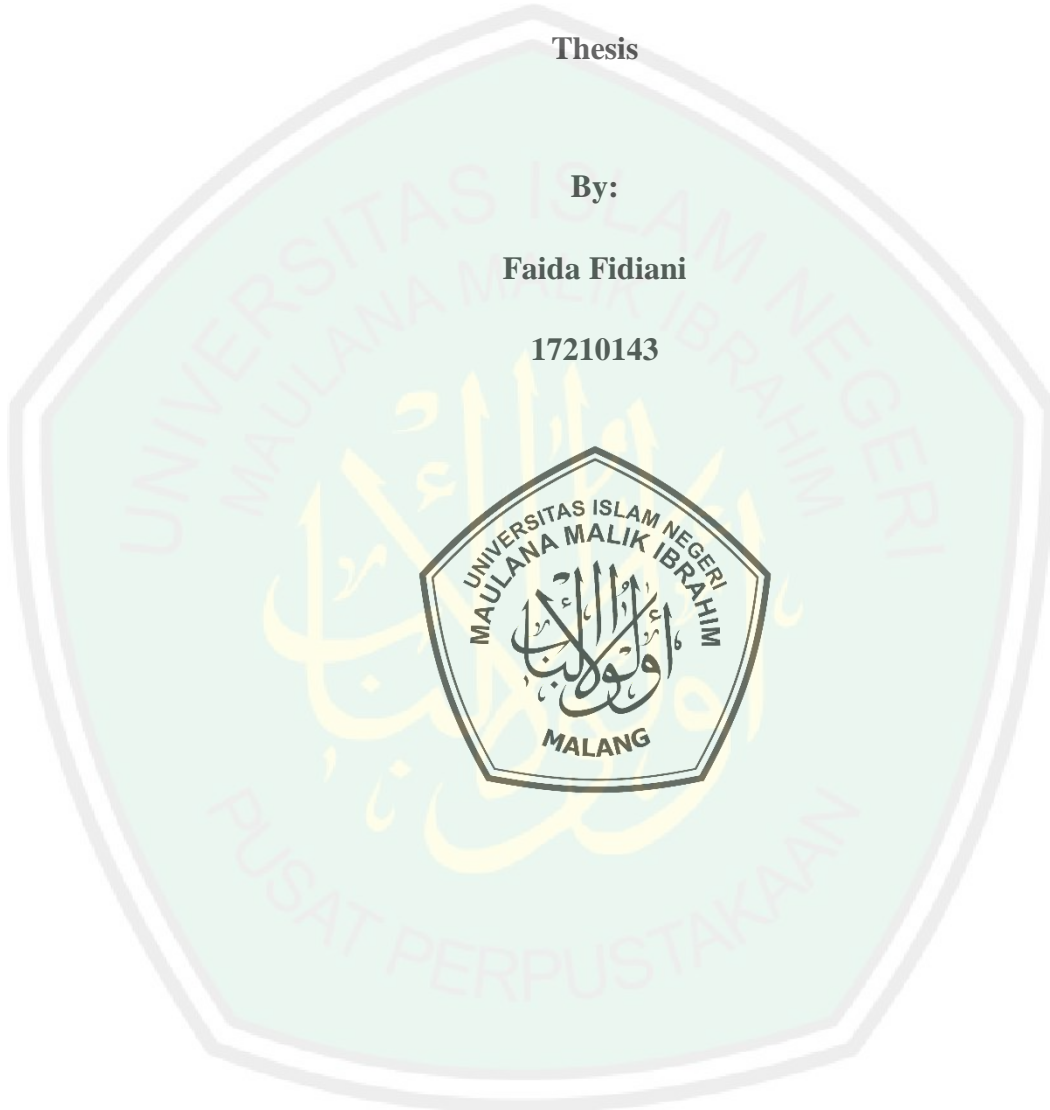
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2020

STATEMENT OF THE AUNTENTICITY

In the name of Allah SWT,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**PENALTIES FOR UNREGISTERED MARRIAGE AND POLYGAMY
(COMPARATIVE STUDY OF INDONESIA, PAKISTAN AND
TUNISIA)**

It is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 30th of November 2020

Writer,



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APPROVAL SHEET

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**PENALTIES FOR UNREGISTERED MARRIAGE AND POLYGAMY
(COMPARATIVE STUDY OF INDONESIA, PAKISTAN AND
TUNISIA)**

The supervisor stated that this thesis has met the scientific requirements to be proposed and has been examined on the Assembly Board of Examiners.

Malang, 29th of December 2020

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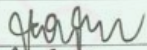
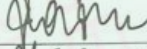
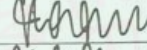
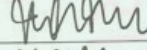
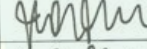
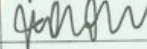
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MOTTO

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَّةَ وَرُبْعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا

“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of (other) women, two or three or four. But if you fear that you will not be just, then (marry only) one or those your right hands possess. That is more suitable that you may not incline (to injustice).”

(An-Nisaa: 3)

ACKNOWLEDGMENT

All praises due to Allah SWT who has given His grace and guidance to the author, so that the author can complete this thesis properly whose title is “Penalties for Unregistered Marriage and Polygamy (Comparative Study of Indonesia, Pakistan and Tunisia)”. Shalawat and greetings are always poured out to Rasulullah SAW who had brought us from the darkness into the brightness in this life.

This research certainly cannot be separated from the support of various parties. For all the helps, supports, directions in completing this thesis, the author would like to thank profusely to:

1. Prof. Dr. Abdul Haris, M.Ag. as the Rector of the State Islamic University Maulana Malik Ibrahim of Malang.
2. Dr. H. Saifullah, S.H, M.Hum., as the Dean of Syariah Faculty of the State Islamic University Maulana Malik Ibrahim of Malang.
3. Dr. Sudirman, M.A. as the Head of Islamic Family Law (Ahwal Syakhshiyah) Department of Syariah Faculty of the State Islamic University Maulana Malik Ibrahim of Malang
4. Raden Cecep Lukman Yasin, M.A., Ph.D., as my thesis supervisor. The writer expresses her gratitude for the guidance, suggestion, and directional motivation which were given sincerely and patiently to finish writing this thesis. The writer hopes that he and his family will be blessed by Allah.
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6. All lecturers at Syariah Faculty of the State Islamic University of Maulana Malik Ibrahim Malang who have provided learning to all of us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.

7. Staff of Syariah Faculty of the State Islamic University Maulana Malik Ibrahim of Malang
8. My beloved family, especially my mother, father and sister who always pray and support me to be patient and keep trying in completing this thesis.

Hopefully, all the knowledge which had been learned during study in Syariah Faculty of the State Islamic University Maulana Malik Ibrahim of Malang can be useful for the readers and the writer's self. The writer realizes that this thesis is still far from perfection. Therefore, the writer hopes all kinds of suggestions, advices and constructive criticism from various parties so this thesis can be a better improvement.

Malang, 5th of December 2020

Faida Fidiani

17210143

TRANSLITERATION GUIDENCE

A. General

Transliteration is the transfer of Arabic script into Indonesian (Latin) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic names from nations other than Arabic are written as spelling of the national language, or as written in the reference book. Writing the title of book in the footnote and bibliography, still use the provisions of this transliteration.

B. Consonant

ا = Not symbolized	ض = dl
ب = b	ط = th
ت = t	ظ = dh
ث = ts	ع = ‘
ج = j	غ = gh
ح = h	ف = f
خ = kh	ق = q
د = d	ك = k
ذ = dz	ل = l
ر = r	م = m
ز = z	ن = n

س = s

ه = h

ش = sy

و = w

ص = sh

ي = y

Hamzah (ء) which is often symbolized by alif, if it is located at the beginning of a word, then in its transliteration follows the vowel, it is not symbolized, but if it is located in the middle or end of a word, it is symbolized by the comma above (‘), turning around with a comma (‘) to substitute for the “ع” symbol.

C. Vocal, Long-pronounce and Diphthong

Every Arabic writing in the form of Latin fathah vowels is written with “a”, kasrah with “i”, dlommah with “u”, while long readings are each written in the following way;

Vocal (a) long-pronounce = â for example قال becomes qâla

Vocal (i) long-pronounce = î for example قل becomes qîla

Vocal (u) long-pronounce = û for example دون becomes dûna

Specifically for reading ya’ nisbat, it should not be replaced with “i” but it should still be written by “iy” in order to describe the ya’ nisbat at the end. Likewise for the diphthong, wawu and ya’ after fathah is written with “aw” and “ay”. Look the following example:

Diphthong (aw) = او for example قول becomes qawlun

Diphthong (ay) = اِي for example خَيْر becomes khayrun

D. Ta' marbûthah (ة)

Ta' marbûthah is transliterated with “t” if it is in the middle of a sentence, but if *ta' marbûthah* is at the end of a sentence, it is transliterated using “h” for example الرسالة للمدرسة becomes *al-risalat li al-mudarrisah*, or if it is in the middle of sentence. Sentences consisting of the composition of *mudlaf* dan *mudlaf ilayh*, then transliterated using t which is connected with the next sentence, for example في رحمة الله becomes *fi rahmatillâh*.

E. Auxiliary Verb and Lafadh al-Jalâlah

Auxiliary verb “al” (ال) written with lowercase form, except if it located at the first position, and “al” in lafadh jalâlah which located in the middle of two (*idhafah*) it remove from writing. Look the following examples:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy in muqaddimah of his book said ...
3. *Masyâ Allâh kâna wa mâ lam yasya' lam yakun.*
4. *Billâh 'azza wa jalla.*

F. Name and Indonesianized Arabic Word

In principle, every word that comes from Arabic must be written using a transliteration system. If the word is an Indonesian Arabic name or an Indonesianized

Arabic language, it does not need to be written using a transliteration system. Consider the following example:

“... Abdurrahman Wahid, the former Indonesian President, and Amin Rais, former Chair of the MPR at the same time, have made an agreement to eridicate nepotism, collusion and corruption from the face of Indonesian earth, one way through intensifying prayers in various government offices, but ...”

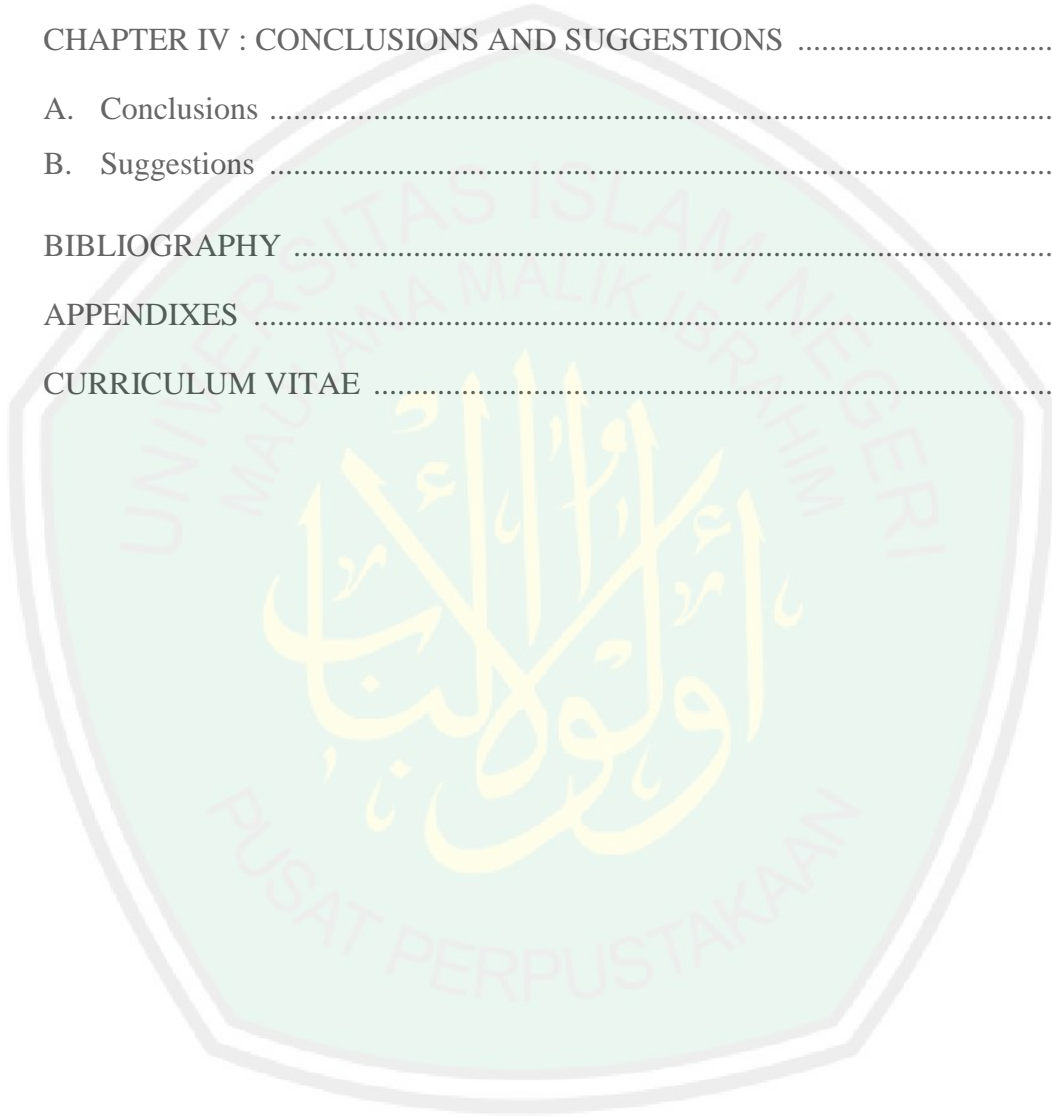
Look at the writing of the name “Abdurrahman Wahid”, “Amin Rais” and te word “salat” written using Indonesian language procedures that are tailored to the writing of his name. Even if these words come from Arabic, they are Indonesian names and are Indonesianized, therefore they are not written by “Abd al-Rahman Wahid”, “Amîn Raîs”, and not written with “shalat”.

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ABSTRAK

Faida Fidiani, 17210143. **Sanksi Hukuman Perkawinan Tidak Dicatat dan Poligami (Studi Komparatif Indonesia, Pakistan dan Tunisia)**. Skripsi. Jurusan Hukum Keluarga Islam. Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Raden Cecep Lukman Yasin, M.A., Ph.D

Kata Kunci: Pencatatan Perkawinan, Poligami, Sanksi Hukuman

Indonesia, Pakistan dan Tunisia merupakan negara dengan mayoritas penduduk muslim. Negara-negara di dunia memiliki aturan masing-masing dalam mengatur hal yang berkaitan dengan hukum keluarga Islam, seperti dalam hal batas usia perkawinan, wali nikah, poligami, pencatatan perkawinan, talak dan hukum keluarga lainnya. Beberapa negara juga memberlakukan sanksi mengenai hal-hal yang berhubungan dengan hukum keluarga terutama perkawinan.

Dalam penelitian ini terdapat ada tiga rumusan masalah, yaitu: 1) Bagaimana perbandingan sanksi hukuman dalam perkawinan yang tidak tercatat dan poligami di Indonesia, Pakistan dan Tunisia? 2) Bagaimana implementasi sanksi hukuman dalam perkawinan yang tidak tercatat dan Poligami di Indonesia, Pakistan dan Tunisia?

Penelitian ini merupakan jenis penelitian normatif atau secara khususnya penelitian kepustakaan (*library research*) yang mengandalkan penelusuran, pencarian dan penelaahan bahan yang berupa buku, undang-undang, jurnal, dan sumber teks lainnya. Pengumpulan data menggunakan bahan hukum primer, sekunder dan tersier, sementara pendekatan penelitian menggunakan pendekatan komparatif.

Hasil dari penelitian ini adalah: 1) Di Indonesia sanksi hukuman perkawinan tidak dicatat dalam PP berupa denda, dan dalam KUHP dapat dikenakan hukuman penjara apabila melakukan poligami secara sirri, sedangkan di Pakistan sanksi hukuman perkawinan yang tidak dicatat dan poligami berupa denda atau penjara atau keduanya dan di Tunisia sanksi hukuman perkawinan yang tidak dicatat berupa penjara, sedangkan poligami berupa denda dan kurungan. 2) Di Indonesia sanksi hukuman berupa denda diterapkan apabila tidak memberitahukan kehendak perkawinan kepada PPN, sedangkan poligami tidak diatur mengenai sanksi hukuman sehingga tidak diterapkan namun diperbolehkan dengan alasan dan situasi tertentu serta memenuhi syarat. Di Pakistan sanksi yang berupa denda atau penjara atau keduanya diterapkan apabila perkawinan tidak melakukan dihadapan pencatat dan melakukan poligami tanpa meminta persetujuan istri maupun pengadilan. Sedangkan di Tunisia hukuman penjara diterapkan apabila melakukan perkawinan tanpa 2 saksi atau 2 saksi dan pencatat, dan apabila melakukan poligami akan dikenakan sanksi hukuman berupa denda dan kurungan.

ABSTRACT

Faida Fidiani, 17210143. **Penalties for Unregistered Marriage and Polygamy (Comparative Study of Indonesia, Pakistan and Tunisia)**. Skripsi. Jurusan Hukum Keluarga Islam. Faculty of Shariah. State Islamic University of Maulana Malik Ibrahim Malang. Supervisor: Raden Cecep Lukman Yasin, M.A., Ph.D

Kata Kunci: Registration of Marriage, Polygamy, Penalties

Indonesia, Pakistan and Tunisia are countries with the majority of Muslim citizens. Countries in the world have their respective rules in regulating matters relating to Islamic family law, such as terms of age limits for marriage, guardianship, polygamy, marriage registration, divorce and other family laws. Several countries also impose sanctions on matters related to family law, especially marriage.

In this research, there are three problem formulations, namely: 1) How is the comparison of penalties in the rules for unregistered marriage and polygamy in Indonesia, Pakistan and Tunisia? 2) How is the implementation of penalties for unregistered marriage and polygamy in Indonesia, Pakistan and Tunisia?

This research is a type of normative research or in particular library research by tracing, searching, and examining materials from books, laws, journals, and other sources. Data collection uses primary, secondary and tertiary legal materials. The research approach uses a comparative approach.

The results of this research are 1) In Indonesia The sanction for unregistered marriage the Government Regulations is a fine and in the Criminal Code, imprisonment sentence can be imposed if polygamy is carried out in sirri. Meanwhile in Pakistan penalties for unregistered marriage and polygamy are in the form of fines or imprisonment or both and in Tunisia penalty for unregistered marriage is the form of fine, meanwhile in polygamy the penalties are fine and imprisonment. 2) In Indonesia, penalty is in the form of a fine which is applied if does not inform the will of marriage to the PPN, whereas polygamy is not regulated regarding penalty so that it is not applied but polygamy is allowed for certain reasons and certain conditions. In Pakistan, penalties are in the form of fines or imprisonment or both applied if marriage is implemented if the marriage is not done in front of a registrar and do polygamy without wife's approval and ask the Arbitration Council for permission. The same applies to polygamy without the consent of wife or the court in the form of fines and imprisonment. In Tunisia the penalty of imprisonment applied if marriage without 2 witnesses or 2 witnesses and a registrar, and if do polygamy will be subject to penalties in the form of fine and imprisonment.

ملخص البحث

فائدة فدياني، ١٧٢١٠١٤٣، العقوبة للزواج غير مسجل و تعدد الزوجة (الدراسة المقارنة اندونيسيا باكستان و تونس) البحث الرسالة. قسم الأحوال الشخصية. كلية الشريعة. جامعة الإسلامية الحكومية مولانا مالك إبراهيم مالانج. مشريف: رادين جيحيق لقمان يس الما جستير

الكلمات الرئيسية: تسجيل الواج، تعدد الزوجة، عقوبة

دولة إندونيسيا وباكستان وتونس دول أغلبية سكانها مسلمة. دول العالم لديها نظم خاصة في تنظيم الأمور المتعلقة بقانون الأسرة الإسلامي. على سبيل المثال، من حيث حدود السن للزواج والوصاية وتعدد الزوجات وتسجيل الزواج والطلاق وقوانين الأسرة الأخرى. نظم بعض دول عقوبات على الأمور المتعلقة بقانون الأسرة، وخاصة الزواج.

و في هذا البحث ثلاث مشكلات البحث وهي: (1) كيف مقارنة عقوبات الزواج غير المسجل وتعدد الزوجات في إندونيسيا وباكستان وتونس؟ (2) كيف تطبيق العقوبة في الزواج غير المسجل وتعدد الزوجات في إندونيسيا وباكستان وتونس؟

هذا البحث هو نوع من البحث المعياري أو البحث المكتبتي خاصة من خلال تتبع المواد والبحث عنها وفحصها في مصادر وهي كتب وقوانين ومجلات ومصادر أخرى. استخدم في جمع بيانات مواد القانونية الأولية والثانوية والثالثية. أما نهج البحث نهج مقارنة.

نتائج هذه البحث هي: (1) في إندونيسيا، تنظيم عقوبة الزواج التي لم يتم تسجيلها في PP في شكل غرامة، وفي القانون KUHP، عقوبة السجن لممارسة تعدد الزوجات السيري، أما في باكستان عقوبة الزواج غير مسجل وتعدد الزوجات في شكل غرامة أو السجن أو كليهما وفي تونس تكون عقوبة الزواج غير المسجل في شكل السجن، وتكون عقوبة تعدد الزوجات في شكل غرامة وسجن. (2) في إندونيسيا، تطبيق عقوبات على شكل غرامات لعدم الإخبار بنية الزواج إلى PPN، و عدم تنظيم عقوبات تعدد الزوجات لذلك ليس فيه تطبيقها ولكن يُسمح بتعدد الزوجات لأسباب وحالات معينة. في باكستان، تُطبَّق عقوبات على شكل غرامة أو سجن أو كليهما على عدم عقد الزواج أمام المسجل و تعدد الزوجات دون طلب موافقة الزوجة أو المحكمة. أما في تونس، فيه تطبيق عقوبة السجن على الزواج بدون شاهدين أو شاهدين ومسجل، وأما تعدد الزوجات، فعقوباته في شكل غرامات وسجن.



CHAPTER I INTRODUCTION

A. Background of Research

Countries in the world have their respective rules in regulating matters relating to Islamic family law, such as terms of age limits for marriage, guardianship, polygamy, marriage registration, divorce and other family laws. Several countries also impose sanctions on matters related to family law, especially marriage. Pakistan and Tunisia are countries that have sanctions regulations related to polygamy.

Marriage is a part of civil law that unites men and women by starting a marriage contract so as to form kinship relationships that give rise to the rights and

obligations of each as husband and wife.¹ In this case, after the marriage contract between a man and a woman, both of them will automatically have their respective responsibilities to each other.

According to Law no. 1/1974 about Marriage, “marriage is a physical and spiritual bond between a man and a woman as a wife with the aim of forming a family or a happy and eternal household based on the Supreme Lordship.”²

Marriage registration is carried out by the Marriage Registration Officer (PPN, Petugas Pencatat Nikah). In PMA number 20 of 2019, it is explained that PPN is a civil servant assigned by the Minister of Religion or an employee appointed to record the marriage of the Muslim community.³ This Marriage Registration Officer records the contract of the marriage to prevent bad things in the future, such as child status, inheritance, etc.

In order to maintain orderliness in the marriage, the KHI and the Marriage Law state that a marriage is valid if it is carried out based on the provisions of Islamic Law and is recorded by a Marriage Registration Officer.⁴ Marriage registration that is registered will be considered as something that is recognized by the state and is religiously valid so that it can provide certainty in marriage.

¹ Aulia Muthiah, *Hukum Islam: Dinamika Seputar Keluarga Islam* (Yogyakarta: Pustaka Baru Press, 2017), 58.

² Article 1 Law Number 1 Year 1974 about Marriage

³ PMA Number 20 of 2019

⁴ Aulia Muthiah, *Hukum Islam: Dinamika Seputar Keluarga Islam*, 40.

Marriage registration is also an important thing in a marriage, because a marriage that is unregistered by a civil registry employee is tantamount to a sirri marriage. Sirri marriage will certainly result in Islamic family law such as obstacles to marriage guardians, inheritance, wills, and so on.

Polygamy is a marriage between a man and 2, 3, or 4 women. Actually, Indonesian adheres to the principle of monogamy, namely that men can only have one wife and vice versa. However, in Law no. 1 of 1974 states that if a husband wants to remarry, he must have permission from his wife to remarry by fulfilling the requirements in the law. The wife's permission is also a condition of allowing a husband to practice polygamy by the court.

Indonesia, Pakistan and Tunisia are countries with the majority of Muslim citizens. Indonesia regulates for the registration of marriage and polygamy in Law no. 1 of 1974 about Marriage. Then it also clarifies the registration of marriage in PMA number 20 of 2019 and polygamy in KHI for those who are Muslims. Nevertheless, sanctions can also be imposed on people who ignore them as well as officers who violate the provisions against marriage registration. This is explained in *CHAPTER IX Article 45 in Government Regulation Number 9 Year 1975*.

In Pakistan, the registration of marriage and polygamy that does not have the wife's and court's permission can be subject to criminal penalties with imprisonment or paying a fine or both. This is regulated in *the Muslim Family Laws Ordinance 1961*.

Meanwhile in Tunisia, the rules that explain violations of marriage registration and the prohibition of polygamy are regulated in The Code of Personal Status in Tunisia/Majallah Akhwal Syakhshiyah and Tunisian Law Number 3 of 1957.

The reason why the author chose Indonesia, Tunisia and Pakistan is because these three countries have diverse regions and different schools of thoughts. However, all these three countries have something in common, namely that they are developing countries.

So in this case, the author will elaborate more deeply on the concept of registration of marriage and polygamy, comparison of penalties regarding the rules for registration of marriage and polygamy in Indonesia, Pakistan and Tunisia, and the implementation of penal sanctions from each of these countries.

B. Statement of Problem

1. How is the comparison of penalties in the rules for unregistered marriage and polygamy in Indonesia, Pakistan and Tunisia?
2. How is the implementation of penalties for unregistered marriage and polygamy in Indonesia, Pakistan and Tunisia?

C. Aims of the Research

1. To analyze the comparison of penalties in the rules for unregistered marriage and polygamy in Indonesia, Pakistan and Tunisia

2. To determine the implementation penal sanctions in the rules of unregistered marriage and polygamy in Indonesia, Pakistan and Tunisia

D. Benefits of Research

The author hopes that this research can be useful in theoretically and practically:

1. Theoretical Benefits

The author hopes that this research can be useful and add scientific insight, especially Islamic family law, Indonesian civil law and Islamic law both formally and materially.

2. Practical Benefits

The author hopes this research can provide insight and knowledge for readers, such as:

- a. Researchers

By conducting this research, researchers can find out about the rules of unregistered marriage and polygamy in Indonesia, Pakistan, and Tunisia and the sanctions dropped in each country.

- b. Society

The author hopes that this research can provide information to the public about the regulations in marriage law and can understand the rules that have been set.

c. **Government**

The author hopes that this research can provide information to the government to review and examine the regulations regarding punishment in marriage law.

E. Operational Definition

Sanctions : dependents, actions, penalties to force people to keep agreements or comply with statutory provisions.⁵

Marriage Registration : an administrative act based on statutory regulations by the competent authority.⁶

Polygamy : a marriage that is carried out by a man in which in his household life there is more than one wife.⁷

F. Research Method

Methodology in generally is something that becomes a principle in scientific research in a logical and systematic manner. The research methodology is a sequence of conducting research using appropriate tools, materials and procedures.⁸

⁵ Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Yogyakarta: Sinar Grafika, 2011), 193.

⁶ Siska Lis Sulistiani, *Hukum Perdata Islam (Penerapan Hukum Keluarga dan Hukum Bisnis Islam di Indonesia)* (Jakarta: Sinar Grafika, 2018), 59.

⁷ Aulia Muthiah, *Hukum Islam: Dinamika Seputar Keluarga Islam*, 40.

⁸ Restu Kartiko Widi, *Asas Metodologi Penelitian* (Yogyakarta: Graha Ilmu, 2010), 68.

1. Type of Research

This research is a type of normative research or library research, which examines problems by looking, searching, reviewing the literature in books, journals, law or other sources related to the research title.⁹

2. Research Approach

The approach in this study uses a comparative approach. The comparative approach is to compare laws between two or more countries on similar matters.¹⁰

Comparability in this case is comparing the application of sanctions and penalties to the unregistered marriage and polygamy between Indonesia, Pakistan and Tunisia.

3. Data Source

Data source in this research are the sources where the data is found. In this study the authors only use secondary data sources in the form of legal materials. There are three legal materials that the author use, namely primary, secondary and tertiary.

⁹ Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT. Remaja Rosda Karya, 2007), 9.

¹⁰ Peter Mahmud, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana, 2005), 135.

a. Primary Legal Materials

Primary legal material is research data that is the main material in research such as laws, government regulations, or Al-Qur'an, and hadith.

The primary legal materials for this research are:

- 1) *Law Number 1 of 1974,*
- 2) *Compilation of Islamic Law,*
- 3) *Government Regulation of the Republic of Indonesia Number 9 of 1975,*
- 4) *The Tunisian Law of Personal Status / Majallah Al-Akhwial Al-Syakhshiyah 1956-2010,*
- 5) *Muslim Family Law Ordinance 1961,*
- 6) *Tunisian Law Number 3 of 1957.*

b. Secondary Legal Materials

Secondary legal materials are supporting materials for research, for example, books that explain the interpretation of laws or verses of the Qur'an. Secondary Legal Materials that researchers use are books, previous theses, scientific journals, and papers related to issues, such as:

- 1) *Hukum Perdata Islam: Penerapan Hukum Keluarga dan Hukum Bisnis Islam di Indonesia* by Siska Lis Sulistiani,
- 2) *Islam Menggugat Poligami* by Siti Musdah Mulia,

- 3) *Perbandingan Hukum Perkawinan di Dunia Islam* by Dedi Supriyadi and Mustofa,
 - 4) *Personal Law in Islamic Countries (History, Text, and Comparative Analysis)* by Tahir Mahmood,
 - 5) *Family Law Reform in The Muslim World* by Tahir Mahmood,
 - 6) *Hukum Keluarga Islam di Dunia Islam* by Muhammad Amin Summa,
 - 7) *Hukum Perkawinan Islam di Indonesia* by Amir Syarifuddin,
 - 8) *Hukum Keluarga di Dunia Islam Modern: Studi Perbandingan dan Keberangkatan UU Modern dari Kitab-Kitab Fikih* by Atho' Mudzar and Khoiruddin Nasution,
 - 9) *Hukum Perkawinan Islam di Dunia Islam Modern* by Mardani,
 - 10) *Hukum Perkawinan di Indonesia Masalah-Masalah Krusial* by Anshry MK and other books related to the author's theme.
- c. Tertiary Legal Materials

Tertiary legal material is supporting research data, such as dictionaries and encyclopedias. The legal material used by the author is a *Kamus Besar Bahasa Indonesia*.

4. Data Collection Methods

The first time doing literature study research is to find and examine books or other sources related to the predetermined thesis title. Relating in this case does not have to have the same title, but has a discussion and content that can support.¹¹ Therefore, the author of this paper uses type of research by data collection method together with literature studies, which the researcher gathers all forms of valid data from various forms of data that support to achieve research objectives and suitable with the topics discussed in this scientific research paper that discusses criminalization, the marriage laws of Indonesia, Pakistan and Tunisia, as well as sanctions for perpetrators who do not follow the rules of marriage registration and practice polygamy according to the family law laws in Indonesia, Pakistan and Tunisia.

a. Editing

In this stage, the data is collected and reviewed to specify whether they fit the focus of the researcher's discussion. And then, data will be collected and re-selected whether it is in accordance with the topic researched by the author. The focus of the researcher is on the registration rules for marriage and polygamy in Indonesia, Pakistan and Tunisia. As well as the form of sanctions for perpetrators who do not follow the rules

¹¹ Deni Darmawan, *Metode Penelitian Kualitatif*, (Bandung: Remaja Rosdakarya, 2013), 163.

of marriage registration and practice polygamy according to the family law laws in Indonesia, Pakistan and Tunisia.

b. Classifying

After checking the data, then classified based on the discussion under study. Reference in this writing with Laws, books, journals, articles and other materials that appropriate.

c. Verifying

Classified data is checked for author information, year, and other information regarding the writing. In this case, the researchers prioritize materials that are suitable, correct, and up to date relating to the registration rules of marriage and polygamy in Indonesia, Pakistan, and Tunisia.

d. Analyzing

After the required data was collected, it was analyzed using qualitative descriptive techniques, namely by describing the existing problems in accordance with the facts with qualitative data. Which then concluded based on existing data.

e. Concluding

Researchers in this stage conclude based on the results of the analysis and find conclusions regarding the registration rules for marriage and

polygamy according to family law in Indonesia, Pakistan and Tunisia. As well as the form of sanctions for perpetrators who are not registered in marriage and are polygamous according to family law in Indonesia, Pakistan and Tunisia.

G. Previous Research

This following are the results of the author's search for previous works which are used as a reference in the related research process with penalties regarding the rules of marriage registration and polygamy in Indonesia, Pakistan and Tunisia, so that this research can run smoothly and correctly:

1. Regulatory Sanctions on Polygamy and Marriage Registration Rules in Indonesia, Malaysia, and Negara Brunei Darussalam by Fajar Devan Afrizon from the Faculty of Sharia and Law UIN Syarif Hidayatullah Jakarta focuses on research on differences and similarities as well as factors that influence differences in polygamy sanctions and marriage registration between Indonesia, Malaysia and Brunei Darussalam. The approach used in this research is normative juridical and analyzed qualitatively. In his research findings, Fajar was concluded that the factors that influence the differences in regulations in sanctions on polygamy and marriage registration, are caused by the location of the regions of each country which affect differences in regulations in the sanctions on polygamy and unregistered of marriage, due to the location of the regions of each country. The similarity with this research

is that both discuss the punishment for polygamy and the unregistration of marriage. And the difference is that this study discusses the comparison between Indonesia, Pakistan and Tunisia.¹²

2. Criminalization of Polygamy in Family Law in the Islamic World (Comparative Study of Law - Indonesian-Tunisian Family Law) by Dinda Choerul Ummah from the Faculty of Sharia and Law UIN Syarif Hidayatullah Jakarta focuses on the form of sanctions as well as the differences and similarities in polygamy sanctions between Indonesia and Tunisia. The approach used in this research is a philosophical approach. While the method used is the library method. In his research findings, Dinda concluded that polygamy in the rule of law in Indonesia is strictly restricted, while in Tunisia, polygamy is absolutely prohibited. The similarity of this research is that both discuss the criminalization of polygamy. And the difference is that this study only discusses the sanctions around polygamy.¹³
3. Comparative Analysis of Laws on Polygamy in Muslim Countries Saudi Arabia, Indonesia and Tunisia by Fithrotul Khasanah from the Faculty of Syari'ah and Law of UIN Sunan Kalijaga Yogyakarta in his thesis focused on the processes and methods used by each country in shaping the laws. The

¹² Fajar Devan Afrizon, *Sanksi Peraturan terhadap Aturan Poligami dan Pencatatan Perkawinan di Indonesia, Malaysia, dan Negara Brunei Darussalam*, Skripsi (Jakarta: Universitas Islam Negeri Syarif Hidayatullah, 2016)

¹³ Dinda Choerul Ummah, *Kriminalisasi Poligami dalam Hukum Keluarga di Dunia Islam (Studi Komparatif Undang-Undang Hukum Keluarga Indonesia-Tunisia)*, Skripsi, (Jakarta: Universitas Islam Negeri Syarif Hidayatullah, 2014)

approach used in this research is language and maqasid. While the method used is the comparative method in this study, Fithrotul concluded that the process of extracting laws carried out by each country was in accordance with the Al-Qur'an and Hadith and could not be separated from the influence of socio-historical and contemporary thinkers. The similarities with this study are the same as comparing regarding polygamy between 3 countries. And the difference is that this study only discusses polygamy.¹⁴

4. Family Law Criminal Sanctions (The View of Islamic Law Experts in Banda Aceh City) by Dedi Iskandar from the Al-Ahwal Al-Syakhsiyah Master Program at UIN Maulana Malik Ibrahim Malang focuses on the views of Islamic law experts in Banda Aceh City about punishment in marriage law, and punishment contained in the HMPA (Legal Material for Religious Courts) according to outlook of Islamic jurists in the city of Banda Aceh. The approach used in this study is a qualitative approach. While the method used is the field method. Dedi concluded that Islamic law experts in Banda Aceh City strongly agreed if there were punishment in family law because this was in accordance with maqashid sharia. What this research has in common is that both of them discuss the family law criminal sanctions. And what distinguishes this research is based on the views of Islamic jurists in the city of Banda Aceh.¹⁵

¹⁴ Fithrotul Khasanah, *Analisis Perbandingan Undang-Undang tentang Poligami di Negara Muslim Arab Saudi, Indonesia dan Tunisia*, Tesis (Yogyakarta: Universitas Islam Negeri Sunan Kalijaga, 2018)

¹⁵ Dedi Iskandar, *Sanksi Pidana dalam Hukum Keluarga (Pandangan Pakar Hukum Islam di Kota Banda Aceh)*, Tesis, (Malang: Universitas Islam Negeri Maulana Malik Ibrahim, 2013)

Name	Title	Similarities	Differences	Writing
Fajar Devan Afrizon (2016)	<i>Regulatory Sanctions on Polygamy and Marriage Registration Rules in Indonesia, Malaysia, and Negara Brunei Darussalam</i>	Discusses the penalties for polygamy and marriage registration	This research discusses the comparison between Indonesia, Malaysia and Brunei Darussalam	Ungraduate Thesis
Dinda Choerul Ummah (2014)	<i>Criminalization of Polygamy in Family Law in the Islamic World (Comparative Study of Law - Indonesian-Tunisian Family Law</i>	Discusses the criminalization of polygamy	This study only discusses the sanctions around polygamy	Ungraduate Thesis
Fithrotul Khasanah (2018)	<i>Comparative Analysis of Laws on Polygamy in Muslim Countries Saudi Arabia, Indonesia and Tunisia</i>	Comparing about polygamy between 3 countries	This research only discusses polygamy	Thesis
Dedi Iskandar (2013)	<i>Family Law Criminal Sanctions (The View of Islamic Law Experts in Banda Aceh City)</i>	Discusses the family law criminal sanctions	This research is based on the outlook of Islamic law experts in the city of Banda Aceh	Thesis

H. Discussion Structure

The first chapter is an introduction that covers the main aspects of research, namely: background of research, statement of problem, research objectives and research benefits, technical terms, research methods, previous research and discussion structure. This chapter is important because it is a chapter that describes the initial stages in order to understand the next chapter better.

The second chapter is containing a literature review and supporting theories to provide understanding and description of the family law in Indonesia, Pakistan and Tunisia, registration of marriage, polygamy, the concepts and forms of punishment certainty to make it easier for readers to understand the next chapter.

The third chapter is an analysis conducted by the author in answering the problem formulation that the author has written clearly which contains an analysis of penalties in unregistered marriage and polygamy in Indonesia, Pakistan and Tunisia and also the comparison of penalties for unregistered marriage and polygamy in Indonesia, Pakistan, and Tunisia. And then the implementation of penalties for unregistered marriage and polygamy in Indonesia, Pakistan and Tunisia.

The fourth chapter is the closing chapter which contains conclusions and suggestions. The conclusion here is related to the research that has been conducted by the author briefly and answers the problem formulation. And for

suggestions, coming from the author to several parties like researcher, public and government concerned this thesis so they can review again.





CHAPTER II

ISLAMIC FAMILY LAW IN INDONESIA, PAKISTAN AND TUNISIA

A. Islamic Family Law in Indonesia

The State of Indonesia is a unitary republic whose people are sovereign and implemented in accordance with the Constitution. Pancasila is the ideal foundation of the state, and Indonesia is a country that upholds religious life. This is stated in the 1945 Constitution, namely the structural foundation which is used by Indonesia.¹⁶

Historically, the emergence of Islamic family law began during the Religious Courts in Article 10 of Law no. 14 of 1970 was designated as one of the

¹⁶ Dedi Supriyadi dan Mustofa, *Perbandingan Hukum Perkawinan* (Bandung: Pustaka Al-Fikriis, 2009), 183.

“judicial power.” Law No. 7 of 1989 has stipulated that the Religious Courts has the authority to adjudicates cases in the areas of: (1) marriage, (2) inheritance, (3) will, (4) grant, (5) waqf, (6) infaq, (7) shadaqah, (8) zakat, (9) Islamic economy, for those who are Muslims.¹⁷

Before the existence of the KHI, judges did not have uniformity in determining legal decisions. Then the Compilation of Islamic Law (KHI) was issued 2 years after the Law no. 7 of 1989 concerning Religious Courts.¹⁸

1. Registration of Marriage in Indonesia

Marriage registration is an action taken by a state official on every marriage event. In this case the marriage registrar employee who keeps the record, when going to enter into a marriage contract between the prospective bride and groom.¹⁹

Marriage will have legal consequences between husband and wife. Therefore, to obtain legal benefits and certainty, marriage registration must be carried out. Marriage registration will help protect the rights of each party, and at the same time can be used as concrete evidence in a disputed or unsafe situation.²⁰

¹⁷ Eko Setiawan, “Dinamika Pembaharuan Hukum Keluarga Islam di Indonesia”, *Syariah dan Hukum*, no. 2(2014): 141

¹⁸ Mardani, *Hukum Perkawinan Islam di Dunia Islam Modern* (Yogyakarta: Graha Ilmu, 2011), 61.

¹⁹ Muhammad Zein dan Mukhtar Alshodiq, *Membangun Keluarga Humanis* (Jakarta: Graha Cipta, 2005), 36.

²⁰ Itsnaatul Lathifah, “Pencatatan Perkawinan: Melacak Akar Budaya Hukum dan Respon Masyarakat Indonesia terhadap Pencatatan Perkawinan”, *Al-mazahib*, no. 1(2015): 48.

In Article 5 in Compilation of Islamic Law, it is stated that:²¹

- (1) Every marriage must be recorded to in order to ensure orderliness of marriage for the Muslim community
- (2) In Law No. 22/1946 in conjunction with Law No. 32 of 1954. As regulated, the Registrar of Marriages should administer of such marriages as referred in to paragraph (1).

In this case, marriage registration aims to guarantee marriage order for the community. Marriage registration is also carried out by the Marriage Registration Officer.

2. Polygamy in Indonesia

Polygamy is allowed to husbands for certain reasons and certain conditions. Certain reasons and conditions have been explained in the KHI and the law of marriage. The Compilation of Islamic Law in Article 56 states that:²²

- 1) Husband who wants to have more than one wife must obtain permission from the Religious Court
- 2) The application for a license as referred to in paragraph (1) shall be made according to the procedure as stipulated in Chapter VIII of Government Regulation No. 9 of 1975
- 3) A marriage that is carried out with a second, third or fourth wife without permission from the Religious Court, has no legal force.

²¹ Compilation of Islamic Law

²² Compilation of Islamic Law

According to Abdurrahman, the conditions allowed for polygamy were as follows:²³

- The wife has a disease that is dangerous and difficult to cure
- The wife is proven to be infertile and medically unable to give birth
- The wife has a memory problem
- An elderly wife so that she cannot carry out her duties as a wife
- The wife has bad qualities
- The wife ran away from home
- The needs of a husband with more than one wife, and if it is not met, it will cause *mudharat*.

The reasons for polygamy in Article 4 of Law no. 1 of 1974 states that:²⁴

- (1) In the event that a husband will marry more than one wife, as mentioned in Article 3 paragraph (2) of this Law, then he is obliged to submit an application to the Court in the area where he lives.
- (2) The court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if:
 - a. The wife cannot carry out her obligations as a wife;
 - b. The wife has a disability or incurable disease;
 - c. The wife cannot bear offspring.

²³ Siska Lis Sulistiani, *Hukum Perdata Islam :Penerapan Hukum Keluarga dan Hukum Bisnis Islam di Indonesia*, 97.

²⁴ Article 1 Paragraph 1-2 Law Number 1 Year 1974 about Marriage

Matters regulated in Law No. 1 of 1974 includes:²⁵

1. Basis of marriage (Articles 1-5)
 2. Conditions for marriage (Articles 6-12)
 3. Prevention of marriage (Articles 13-21)
 4. Cancellation of Marriage (Articles 22-28)
 5. Marriage Agreement (Article 29)
 6. Rights and obligations of husband and wife (Article 30-34)
 7. Property in marriage (Articles 35-37)
 8. Termination of marriage and its consequences (Articles 38-41)
 9. Status of children (Articles 42-44)
 10. Rights and obligations between parents and children (Articles 45-49)
 11. Trusteeship (Articles 50-54)
 12. Other provisions (Articles 55-63)
- 3. Regulation of Marriage Registration and Polygamy in Indonesia**

Marriage registration is regulated in CHAPTER IX PP No. 9/1975 Article 2. It explains the procedures for registration of marriage and penalties for parties who conduct unregistered marriage. Meanwhile, the requirements to do polygamy are described in Law No. 1 year 1974 about Marriage.

²⁵ Law Number 1 Year 1974 about Marriage

B. Islamic Family Law in Pakistan

Pakistan is located in South Asia bordered by Iran to the west, Afghanistan to the northwest, India to the southeast, and Kashmir to the northeast. According to 1993 statistics, the population was 122.8 million. Pakistan is the second largest Muslim country in the world. All groups coexist peacefully under the banner of various religions. Islam is recorded as the largest religion followed by 97% of the population of Pakistan, so Islam is the majority religion.²⁶ In Pakistan, Muslim follow various schools of thought, the majority of which are Hanafi schools while Syafi'i and Hanbali are minority schools. Nevertheless, tolerance between each other is well-established.²⁷

1. Registration of Marriage in Pakistan

Marriages in Pakistan must be registered by an official appointed by the government. In the event of a marriage outside Pakistan, a copy of the one sheet of registration shall be submitted to the marriage registrar in the area where the bride resides. Although marriage registration does not affect the legality of marriage in Islam, if someone is negligent in registering the

²⁶ Moh Khusen, *Pembaruan Hukum Keluarga di Negara Muslim*, (Salatiga: STAIN Salatiga Press, 2012), 49

²⁷ Moh Khusen, *Pembaruan Hukum Keluarga di Negara Muslim*, 52

marriage, the groom can be sentenced to three months in prison and/or a maximum fine of 1000 Rupees.²⁸

The registration rules of marriage in Pakistan were used as an administrative requirement by the former group, whereas contemporary groups consider it a legal requirement. This is based on the agreement between the two groups.²⁹

2. Polygamy in Pakistan

The husband who intends to remarry another woman, asks the wife's approval and then asks the Arbitration Council for permission. When requesting permission from the arbitration board, include the reasons along with the wife's approval letter and pay amount of money. The arbitration council requires representatives of the husband's and wife's family to become members of the arbitration committee. Then, if accompanied by clear, necessary and reasonable reasons, the permission will be granted by the Arbitration Council. For those who violate, namely carrying out the contract without the permission of the wife and the Arbitration Council, they are bound

²⁸ Atho' Mudzar, "Hukum Keluarga Di Pakistan (Antara Islamisasi dan Tekanan Adat)", *Al-'adalah*, no. 1(2014): 16

²⁹ Moh Khusein, *Pembaruan Hukum Keluarga di Negara Muslim*, 55

to paying the entire dowry that has not been paid and a maximum prison sentence of 1 year or a maximum fine of 5,000 rupees or both.³⁰

3. Regulation of Marriage Registration and Polygamy in Pakistan

Registration of Marriage in Pakistan regulated in Section 5 Muslim Family Law Ordinance. Meanwhile, Polygamy in Pakistan regulated in Section 6 Muslim Family Law Ordinance.

C. Islamic Family Law in Tunisia

Tunisia is a Muslim Arab country in North Africa located on the coast of the Mediterranean Sea or the Mediterranean Valley. Tunisia is bordered by Algeria to the west and Libya to the east. The capital city of Tunisia is Tunis. The official language of the country is Arabic. Zine El-Abidin en Ali as President with prime minister Mohamed Ghannauchi.³¹

Tunisia, at first, was an autonomous region from the Turkish Ottoman Government. Later, Tunisia became a commonwealth of France under the *La Marsa Convention* in 1883. On March 20th 1956, Tunisia was officially recognized as independence by France. This year also appeared new rules that had never been implemented before by the French and opposed some traditional Muslim practices.

³⁰ Atho' Mudzar, "Hukum Keluarga Di Pakistan (Antara Islamisasi dan Tekanan Adat", *Al-'adalah*, no. 1(2014): 21

³¹ Dedi Supriyadi dan Mustofa, *Perbandingan Hukum Perkawinan*, 107.

This rule is called the personal status code which is used as a substitute for the law of the Qur'an in the fields of marriage, divorce and *hadhanah*.³²

The majority of people in Tunisia are followers of the Maliki school of thought and some are Hanafi.³³ However, if we look at history, Islamic law based on the Hanafi school of thought was in effect when the Ottoman Turkish government brought it to Tunisia.³⁴ Then since 1883, Tunisia was influenced by France in matters of civil law, criminal law, commercial law and procedural law until 1956. However, Tunisia has modified pre-independence and set the new laws both civil and criminal after independence.³⁵

Majallah Al-Ahwal Al-Syakhshiyah (Code of Personal Status) contains twelve parts, which are follows:³⁶

- a. Chapter 1 about Marriage (Articles 1-28)
- b. Chapter 2 about Divorce (Articles 29-33)
- c. Chapter 3 about 'Iddah (Articles 34-36)
- d. Chapter 4 about Living (Articles 37-53)

³² Atho' Mudzar dan Khairuddin Nasution, *Hukum Keluarga di Dunia Islam Modern: Studi Perbandingan dan Keberanjakan UU Modern dari Kitab-Kitab Fikih* (Jakarta: Ciputat Press, 2003), 85.

³³ Mardani, *Hukum Perkawinan Islam di Dunia Islam Modern*, 50.

³⁴ Atho' Mudzar dan Khairuddin Nasution, *Hukum Keluarga di Dunia Islam Modern: Studi Perbandingan dan Keberanjakan UU Modern dari Kitab-Kitab Fikih*, 84.

³⁵ Tahir Mahmood, *Personal Law in Islamic Countries: History, Text and Comparative Analysis* (New Delhi: Academy of Law and Religion, 1987), 151.

³⁶ Mustofa Sakhri, *Majallah al-Akhwat al-Syakhshiyah* (Tunisia: Pemerintah Republik Tunisia, 2013), 10-195.

- e. Chapter 5 about Maintenance (Articles 54-67)
- f. Chapter 6 about Offspring (Articles 68-76)
- g. Chapter 7 about Adopting Children (Articles 77-80)
- h. Chapter 8 about Missing people (Articles 81-84)
- i. Chapter 9 about Inheritance (Articles 85-152)
- j. Chapter 10 about Person Who is Prohibited or Allowed Transactions (Articles 153-170)
- k. Chapter 11 about Will (Articles 171-199)
- l. Chapter 12 about Grant (Articles 200-213)

1. Registration of Marriage in Tunisia

Marriage can only be proven with an official document from the government according to Tunisian family law, according to Tunisian Law No. 40 of 1957, then updated in 1962, 1964, and 1981, article 4 which reads:

“Marriage should be proven by official document. Marriages carried out outside the court should be proven in the manner applicable in Tunisia, namely in accordance with the regulations concerning the marriage akad.”³⁷

It means every marriage should be proved with official document from state.

³⁷ Lilik Andaryani, “Relasi Gender dalam Pembaruan Hukum Keluarga Muslim”, *Diskursus Islam*, no. 2(2014): 259

2. Polygamy in Tunisia

The principle of marriage in Tunisia, according to Tunisian reformers is monogamy, not polygamy. According to the reformers, polygamy will lead to a bad life for women and neglected children. So Tunisia strictly prohibits and punishes the perpetrator with imprisonment or a fine.³⁸ So in this case, anyone who practices polygamy can be subject to punishment.

3. Regulation of Marriage Registration and Polygamy in Tunisia

Marriage in Tunisia can only be proven using an official document from the government in accordance with *Majallah Al-Ahwal Al-Syakhshiyah* Article 4. In article 31 of Law no. 3 of 1975 explained that marriage can be legalized if it is carried out in front of 2 fair witnesses or in front of a marriage registrar in the presence of 2 fair witnesses.

And if the marriage is not carried out in the presence of 2 witnesses and a marriage registrar, the husband and wife can be subject to criminal penalties under Law no. 3 of 1975 article 36. Such a marriage cannot be accounted for either religion or state.

Meanwhile, Polygamy in Tunisia uses the principle of monogamy, where polygamy is absolutely prohibited. If a husband commits polygamy,

³⁸ Dedi Supriyadi dan Mustofa, *Perbandingan Hukum Perkawinan*, 110.

then he can be subject to punishment. This is in accordance with Majallah Al-Ahwal Al-Syakhshiyah Article 18.

D. Registration of Marriage

Marriage registration is an activity carried out because of the occurrence of a very important event by the couple. Marriage registration is in the form of authentic evidence that shows the validity of marriage which is called the marriage book. The marriage book is used as proof of legal descent and rights as heirs.³⁹

Marriage registration does not determine whether a marriage is legal or not. Registers are administrative in nature, which states that the marriage event did exist and occurred. With this registration, the marriage becomes clear, both for the person concerned and for the other parties. A marriage that is not registered in the Marriage Certificate is considered non-existent by the state and does not receive legal certainty. Likewise, all the consequences arising from marriage are not registered.⁴⁰

In the principles of Islamic law, registration of marriage with a marriage book brings benefits. In line with the following rules:

دَرُّ الْمَفَا سِيدٍ مُقَدَّمٌ عَلَى حَلْبِ الْمَصْلِحِ

³⁹ Siska Lis Sulistiani, *Hukum Perdata Islam :Penerapan Hukum Keluarga dan Hukum Bisnis Islam di Indonesia*, 59.

⁴⁰ Abdurrahman dan Riduan Syahrani, *Masalah-masalah Hukum Perkawinan di Indonesia* (Bandung: Alumni, 1986), 16.

“*Avoiding damage takes precedence over obtaining benefit*”

In the KHI Article 5 it is stated that:⁴¹

- (1) Every marriage must be recorded to in order to ensure orderliness of marriage for the Muslim community
- (2) In Law No. 22/1946 in conjunction with Law No. 32 of 1954. As regulated, the Registrar of Marriages should administer of such marriages as referred in to paragraph (1).

So in this case, marriage registration aims to ensure the orderliness of the marriage between the two brides and is carried out by the Marriage Registration Officer.

Juridically, the benefits of marriage registration are.⁴²

1. Providing legal certainty to all parties, both husband and wife who are married
2. A husband cannot do anything to his wife
3. Become a guide for husband and wife in living household life
4. As a means of government to create social order
5. Evidence against the community that the marriage was carried out legally.

According to Abdul Manan, there is a *mafsadat* on guardianship that is not registered, namely that husband and wife do not have a marriage certificate which shows evidence that they are legally married according to religion and state.

The absence of a marriage certificate makes the children unable to have birth

⁴¹ Compilation of Islamic Law

⁴² Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2000), 117.

certificates later. And in the future, these children also cannot be the heirs of both parents because they do not have authentic evidence.⁴³

E. Polygamy

Polygamy (*ta'addud az-zaujiyat*) in English “Polygamy” which means a man who has more than one wife.⁴⁴

Polygamy consists of the words “poly” and “gami.” Etymologically, “poly” means a lot, and “gami” means wife. So that polygamy means many wives. In terminology, polygamy means a man has more than one wife, but is limited to a maximum of four people.⁴⁵ In the *Kamus Besar Bahasa Indonesia*, polygamy is defined as a marriage system in which one party has or marries several opposite sexes at the same time.

The basis for the permissibility of polygamy is found in Q.S Al-Nisa [4]: 3

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِثْنَىٰ وَثَلَاثَ وَرُبْعَ فَإِنْ

خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ آدْنَىٰ أَلَّا تَعُولُوا

If you are worried about your right to treat an orphan girl fairly (if you marry her), then marry the (other) woman you like; then, if you are worried that you

⁴³ Fadil SJ dan Nor Salam, *Pembaruan Hukum Keluarga di Indonesia* (Malang: UIN Maliki Press, 2013), 59.

⁴⁴ Cholil Nafis, *Fikih Keluarga: Menuju Keluarga Sakinah, Mawaddah, Wa Rahmah Keluarga Sehat, Sejahtera, dan Berkualitas* (Jakarta: Mitra Abadi Press, 2009), 44.

⁴⁵ Siska Lis Sulistiani, *Hukum Perdata Islam: Penerapan Hukum Keluarga dan Hukum Bisnis Islam di Indonesia*, 93.

*will not be able to get justice, then just can (marry) a person or a slave you own. Something close to not persecuted.*⁴⁶

The reasons for polygamy in Article 4 of Law no. 1 of 1974 stated that:⁴⁷

(1) if a husband will marry more than one wife as referred to in Article 3 paragraph (2) of this Law, then he must submit an application to the court in the area where he lives.

(2) The court as referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if:

- a. The wife cannot carry out her obligations as a wife;
- b. The wife has a permanent disability or illness;
- c. The wife cannot produce offspring.

Meanwhile, according to Abdurrahman, the conditions allowed for polygamy were:⁴⁸

- The wife has a disease that is dangerous and difficult to cure
- The wife is proven to be infertile and medically unable to give birth
- The wife has a memory problem
- An elderly wife so that she cannot perform her duties as a wife
- The wife has bad qualities
- The wife ran away from home

⁴⁶ Translation Team, *Al-Qur'an Cordoba*, (Bandung: Cordoba Internasional Indonesia, 2014), 77.

⁴⁷ Article 4 Paragraph 1-2 Law Number 1 Year 1974 about Marriage

⁴⁸ Siska Lis Sulistiani, *Hukum Perdata Islam :Penerapan Hukum Keluarga dan Hukum Bisnis Islam di Indonesia*, 97.

- The needs of a husband with more than one wife, and if it is not met, it will cause mudharat.

F. Concepts and Forms of Punishment

The punishment in the Criminal Code generally provides an alternative between imprisonment and fines. Based on Article 10 of the Criminal Code, the main penalties consist of death penalty, prison criminal, criminal cage, fines and imprisonment.⁴⁹

1. Death Penalty

Mors dicitur ultimum supplicium: the death penalty is the harshest punishment. The death penalty is imposed to cruel crimes carried out by the state for perpetrators who have bad morals. Capital punishment is retribution or retaliation and defamation.⁵⁰ Article 11 of the Criminal Code also states that “Death penalty is carried out by the executioner in a hanger by tying a rope tied to gallows on the neck of the convict then dropping the board on which the convict stands.”⁵¹

⁴⁹ Article 10 Criminal Code

⁵⁰ Eddy Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2014), 387.

⁵¹ Article 11 Criminal Code

2. Criminal Prison

Criminal Prison which may only be imposed by a judge through a court decision as a crime of deprivation of liberty.⁵² According to Article 12 of the Criminal Code:

- (1) The punishment for imprisonment is life or for a specified period.
- (2) The imprisonment for a specified period is a minimum of one day and a maximum of fifteen consecutive years.
- (3) The imprisonment for a specified period of time may be imposed for twenty consecutive years in the case of crimes in which the judge may choose between death penalty, life imprisonment and imprisonment for a specified period of time, or between life imprisonment and imprisonment for a period of time. certain time; Likewise, in the case that fifteen years limit is exceeded because of additional penalties due to concurrency, repetition or because Article 52 is determined.
- (4) The sentence of imprisonment for a specified period may not exceed twenty years.⁵³

3. Criminal Cage

The punishment of criminal cage is carried out because of a crime in the form of an offense or negligence.⁵⁴ Article 16 of the Criminal Code reads:⁵⁵

- (1) The punishment of criminal cage is at least one day and a maximum of one year.
- (2) If there is a crime due to concurrency or repetition or because of the provisions of Article 52, criminal cage sentence may be increased to one year and four months.

⁵² Eddy Hiariej, *Prinsip-Prinsip Hukum Pidana*, 396.

⁵³ Article 12 Paragraph 1-4 Criminal Code

⁵⁴ Eddy Hiariej, *Prinsip-Prinsip Hukum Pidana*, 399.

⁵⁵ Article 18 Paragraph 1-3 Criminal Code

- (3) The punishment of criminal cage must not exceed one year and four months.

4. Fines

Objection to a crime for a short period of time is one of the reasons for a fine. In the context of the Criminal Code, the minimum fine is three rupiah and seventy-five cents. If the sentence is not paid, it can be replaced by imprisonment.⁵⁶

5. Imprisonment

The closure penalty is reserved for political criminals. In Indonesia, this is based on Law Number 20 of 1946 about the Imprisonment Penalty.⁵⁷

⁵⁶ Eddy Hiariej, *Prinsip-Prinsip Hukum Pidana*, 402.

⁵⁷ Eddy Hiariej, *Prinsip-Prinsip Hukum Pidana*, 403.

CHAPTER III

COMPARISON OF PENALTIES FOR UNREGISTERED MARRIAGE AND POLYGAMY

A. The Differences and Similarities of Rules and Penalties for Unregistered Marriage and Polygamy

1. Ruling about Penalties for Unregistered Marriage and Polygamy

a. Indonesia

In Indonesia, Registration of Marriage regulated in Law No. 1 year 1974. In Article 2 of Law No. 1 year 1974 about Marriage states that:⁵⁸

(1) Marriage is legal if it is carried out according to the law of each religion and its trust.

(2) Every marriage is registered according to the prevailing laws and regulations

⁵⁸ Article 2 Paragraph 1-2 Law Number 1 Year 1974 about Marriage

This article explains that a marriage is valid in accordance with the law according to each religion and belief, where every marriage is registered according to the applicable laws. So that in Indonesia, the couple who is doing the marriage need to register their marriage.

Furthermore, regulation about registration of marriage contained in Government Regulation Number 9 of 1975 about Implementation of Law Number 1 year 1974 about Marriage. In article 2 states that:⁵⁹

- (1) *Marriage registration of those who entered into their marriage according to Islam, it is carried out by a Registrar as referred to referred to in Law Number 32 of 1954 concerning Registration of Marriage, Divorce and Reconciliation.*
- (2) *Registration of marriage of those who are married according to his religion and belief other than Islam, it is done by the Marriage Registry Officer at the civil registry office as referred to referred to in various laws regarding registration of marriage.*
- (3) *Without prejudice to the provisions that specifically apply to marriage registration procedures based on various regulations applies, the procedure for registration of marriage is carried out as stipulated in Article 3 through Article 9 Government Regulations this.*

Couple who are getting married, carry out marriage registration which are registered by the registrar. This register is based on applicable regulations. Marriage registration is intended as authentic evidence to show that the marriage is legal in religion and legally state, creating benefits such as clarity of status in offspring, legal certainty between the couple that the

⁵⁹ Article 2 Paragraph 1-3 Government Regulation Number 9 Year 1975 about Marriage

marriage has occurred, and legal force in the event of a dispute between the couple in the future.

In Article 5 in Compilation of Islamic Law, it is stated that:⁶⁰

- (1) Every marriage must be recorded to in order to ensure orderliness of marriage for the Muslim community
- (2) In Law No. 22/1946 in conjunction with Law No. 32 of 1954. As regulated, the Registrar of Marriages should administer of such marriages as referred in to paragraph (1).

In Article 5, it is explained that in order to guarantee the orderliness of a marriage, a marriage must be recorded by a Marriage Registration Officer.

Compilation of Islamic Law Article 6 also states that:

- 1) To comply with the provisions in Article 5, every marriage must be conducted before and under the supervision of a Marriage Registration Officer.
- 2) Marriage which is conducted outside the supervision of a Marriage Registry Officer has no legal force.

So that in this case it can be concluded that it is important to register marriages by marriage registration officer. A marriage does not have legal force, if it is carried out outside the supervision of a Marriage Registration Officer.

⁶⁰ Compilation of Islamic Law

The legal basis for marriage registration is regulated in the following rules:⁶¹

1. Law of the Republic of Indonesia Number 22 of 1946 Juncto of Law of the Republic of Indonesia Number 32 of 1945 about the Registration of NTCR
2. Law of the Republic of Indonesia Number 1 of 1974 juncto PP Number 9 of 1975 about Marriage
3. Presidential Instruction 1 of 1991 about Compilation of Islamic Law
4. Decree of the Minister of Religion of the Republic of Indonesia Number 298 of 2003 in conjunction with Regulation of the Minister of Religion of the Republic of Indonesia Number 477 of 2004 in conjunction with Regulation of the Minister of Religion of the Republic of Indonesia Number 11 of 2007 about Marriage Registration.

Penalties for unregistered marriage are explained in Government Regulations No. 9 year 1975 Article 45 which states:

- (1) *Except the requirements stipulated otherwise in the applicable laws.*
 - a. *Whoever violates the provisions stipulated in Article 3, 10 paragraph (3), 40 Government Regulations acting by law, the amount of Rp. 7.500, - (seven thousand five hundred rupiah);*

⁶¹ Siska Lis Sulistiani, *Hukum Perdata Islam :Penerapan Hukum Keluarga dan Hukum Bisnis Islam di Indonesia*, 62.

- b. Registering Employees who violate the provisions stipulated in Articles 6, 7, 8, 9, 10 paragraph (1), 11, 13, 44 This Government Regulation shall act with a prohibition of imprisonment for a maximum of 3 (three) months or a maximum fine of Rp. 7.500, - (seven thousand five hundred rupiah).*
- (2) The criminal act referred to in paragraph (1) above is a mistake.*

In this article, it is explained that if entering a marriage without notifying the staff of the marriage registrar, a maximum fine of 7.500 rupiah will be imposed.

Article 3 Regulation of the Supreme Court of the Republic of Indonesia No. 2 Year 2012 reads:⁶²

Each of the maximum number of fines threatened in the Criminal Code, except for article 303 paragraph 1 and paragraph 2, 303 bis paragraph 1 and 2, is multiplied to 1000 (one thousand) times.

Based on Supreme Court Regulations Number 2 Year 2012, the punishment from Rp. 7.500 multiplied to 1000 (one thousand) times. So the fine will be Rp. 7.500.000.

Meanwhile, polygamy in Indonesia is allowed, regulated in Law No. 1 year 1974 about Marriage Article 3 Paragraph (2) states that:

⁶² Article 3 Supreme Court Regulations Number 2 Year 2012 about Adjustments to The Limits of Minor Crimes and The Amount of Fines in The Criminal Code

(2) The court may give permission for a husband to have wife more than one if desired by the parties concerned.

The conditions for husband who will polygamy are regulated in Law no. 1 year 1974 concerning Marriage Article 4, which reads:

- (1) In the event that a husband will marry more than one wife, as mentioned in Article 3 paragraph (2) of this Law, then he is obliged to submit an application to the Court in his area of residence.*
- (2) The court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if:

 - a. the wife cannot fulfill her obligations as a wife;*
 - b. the wife has a disability or incurable disease;*
 - c. the wife cannot bear offspring.**

Based on this article, a husband who will do polygamy is obliged to apply for an application permit to the court in the area where he lives. The court can grant polygamy permission to a husband whose wife cannot fulfill her obligations, the wife has a physical disability/disease that cannot be cured and the wife cannot have children.

Article 4 is a requirement that is facultative. It means that one of the three requirements, if submitted by the husband as a reason for request for polygamy, can be granted by the judge if the reason is proven in court.⁶³

⁶³ Anshary MK, *Hukum Perkawinan di Indonesia* (Yogyakarta: Pustaka Pelajar, 2010), 103.

According to Abdurrahman, the conditions allowed for polygamy were:⁶⁴

- The wife has a disease that is dangerous and difficult to cure
- The wife is proven to be infertile and medically unable to give birth
- The wife has a memory problem
- An elderly wife so that she cannot perform her duties as a wife
- The wife has bad qualities
- The wife ran away from home
- The needs of a husband with more than one wife, and if it is not met, it will cause mudharat

The requirements for a husband who will practice polygamy are described in Law no. 1 of 1974 concerning Marriage described in Law no. 1 of 1974 concerning Marriage Article 5, which reads:⁶⁵

- (1) in order to submit an application to the court as meant in Article 4 paragraph (1) of this Law, it must meet the requirements, namely:
 - a. there is agreement from the wife/wives;
 - b. there is certainty that the husband is able to ensure the necessities of life of the wife and their children.
 - c. there is a guarantee that the husband will treat his wives and children fairly.

⁶⁴ Siska Lis Sulistiani, *Hukum Perdata Islam :Penerapan Hukum Keluarga dan Hukum Bisnis Islam di Indonesia*, 97.

⁶⁵ Article 5 Paragraph 1 Law Number 1 Year 1974 about Marriage

Based on Article 5, that is an imperative cumulative requirement. This means that all requirements must be fulfilled when request for polygamy. So that if one requirement is not fulfilled, the polygamy application can be rejected by the judge.⁶⁶

Article 279 of the Criminal Code states that:⁶⁷

(1) Threatened by a maximum imprisonment of five years:

1. any person who enters into a marriage knowing that his existing marriages or marriages are a legal barrier to this;

2. any person who engages in a marriage knowing that the marriages or marriages of other parties are an obstacle to this.

(2) If the person who commits an act under paragraph 1 point 1 conceals to another party that the existing marriage is a legal barrier to this, he shall be punished by a maximum imprisonment of seven years.

(3) Revocation of rights based on article No. 1 - 5 can be stated.

Based on this article, if someone remarries, even though it was prevented, the previous marriage can be subject to punishment. The obstacle in question is something that prevents marriage from being carried out. Criminal action is carried out if a person who remarries and

⁶⁶ Anshary MK, *Hukum Perkawinan di Indonesia*, 103-104.

⁶⁷ Article 279

is still obstructed by their previous marriage, but he or she hides it from his new spouse can be subject to criminal weighting.⁶⁸

According to the criminal expert Chairul Huda in Article 279 of the Criminal Code there are 2 different interpretations. The first interpretation is that a person who engages in a polygamous marriage and a sirri can be subject to punishment under Article 279 of the Criminal Code, that his marriage was hindered by his previous marriage because he did not get permission from his previous wife. Meanwhile, the second interpretation is that polygamy and sirri marriages cannot be subject to punishment if we look back at the contents of Article 279 of the Criminal Code which explains that the obstruction of a marriage is due to a previous marriage. However, the marriage is considered valid according to their respective beliefs and religions, because a legal marriage is not a marriage that must be registered. So that it cannot be subject to punishment as in Article 279 of the Criminal Code.⁶⁹

⁶⁸ Rochxy & Bayu Lesmana, "Pemidanaan Terhadap Pelaku Perkawinan Di Bawah Tangan Tanpa Izin Istri Pertama Kajian Putusan Nomor 35/Pid.B/2012/PN.MRS", *Jurnal Yudisial*, no. 3(2013): 258

⁶⁹ Anonim, "Penerapan Pasal 279 KUHP Untuk Kawin Sirri Dinilai Belum Konsisten," *Hukumonline*, 17 November 2016 diakses 24 Desember 2020, <https://www.hukumonline.com/berita/baca/lt582d55b1095d2/penerapan-pasal-279-kuhp-untuk-kawin-siri-dinilai-belum-konsisten/>

b. Pakistan

In Pakistan, regulation of marriage registration in Section 5 Muslim Family Law Ordinance, which reads as follows:⁷⁰

- (1) *Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.*
- (3) *Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance be reported to him by the person who has solemnized such marriage.*
- (4) *Whoever contravenes the provisions of such-section (3) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.*

Article 5 states that every marriage must be registered based on the applicable regulations. Marriages that are not carried out by the marriage registrar must be reported to the registrar of marriage. Anyone who does not follow these rules is sentenced to a maximum imprisonment term of three months or a maximum fine of one thousand rupees, or both.

Meanwhile, Polygamy in Pakistan is regulated in Section 6 Muslim Family Law Ordinance, which reads as follow:⁷¹

- (1) *No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any*

⁷⁰ Muslim Family Law Ordinance 1961

⁷¹ Muslim Family Law Ordinance 1961

such marriage contracted without such permission be registered under this Ordinance.

- (2) *An application for permission under Sub-section (1) shall be submitted to the Chairman in the prescribed manner together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.*
- (3) *On receipt of the application under Sub-section (2), Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such condition if any, as may be deemed fit, the permission applied for.*
- (4) *An application for revision, to the Collector concerned and his decision shall be final and shall not be called in question in any Court.*
- (5) *Any man who contracts another marriage without the permission of the Arbitration Council shall,*
 - i. *pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and*
 - ii. *on conviction upon complaint be punishable with the simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.*

Based on the explanation of the article, a husband who asks to do polygamy must obtain permission first from his wife. After obtaining permission, the husband brings the wife's consent form with reasons to the Arbitration Board by paying a fee. The Arbitration Council requires the applicant and his previous wife to be a representative. If the applicant's reasons are appropriate, the applicant will get permission. And then, if a person practice polygamy without permission from the

Arbitration Council must pay the entire dowry in cash or be suspended and a complaint is punishable by a simple prison sentence of up to 1 year or a fine of up to 5,000 rupees, or both.

c. Tunisia

Marriage in Tunisia can only be proven using an official document from the government in accordance with Majallah Al-Ahwal Al-Syakhshiyah Article 4. In Article 4 Majallah Al Ahwal Al Syakhshiyah explains about registration of marriage which reads:⁷²

لا يثبت الزواج إلا بحجة رسمية يضبتها قانون خاص. أما بالنسبة للزواج المنعقد خارج المملكة فإنه يثبت بما تعتمده قوانين البلاد التي تم فيها العقد

A legal marriage is proven by official evidence that is regulated in a specific law. As with regard to legal marriages abroad, the marriage is legal based on the Law of the country where the contract takes place.

In this article it is explained that a legal marriage can only be proven by official evidence as regulated in a specific law.

Penalties for unregistered marriage in Tunisia regulated in Law No. 3 year 1957. In Article 31, explain that if a husband and wife marry not attended 2 fair witnesses and in front of a marriage registrar, it may

⁷² Mustofa Sakhri, *Majallah al-Akhwat al-Syakhshiyah* (Tunisia: Pemerintah Republik Tunisia, 2013), 10-195

get punishment under Law No. 3 year 1957 Article 36. Because the marriage was not attended by 2 witnesses and a marriage registrar employee, it cannot be accounted for religion and state. Regulation about penalties for unregistered marriage in Article 36 of Law No. 3 year 1957, states that:

يعتبر الزواج المبرم خلافاً لأحكام الفصل 31 أعلاه باطلاً ويعاقب الزوجان زيادة على ذلك بالسجن مدة ثلاثة أشهر. وإذا وقعت تبعات جزائية بمقتضى أحكام الفقرة السابقة يقع البت بحكم واحد في الجريمة وإبطال الزواج. وإذا أستأ نف أو استمر الزوجان على المعاشرة رغم التصريح بإبطال زواجهما يعاقبان بالسجن مدة ستة أشهر.

The marriage that is contrary to article 31 is canceled and the couple will be sentenced to imprisonment sentence of 3 months. if there is a series of penalties related to the previous laws, then one sentence in criminal and cancellation of marriage. If the married couple continues or lives together, they will be sentenced to imprisonment for 6 months.

Based on that article, if husband and wife carry out a marriage without two witnesses or two registrars of marriage in the presence of two witnesses, he may be subject to an imprisonment of 3 months.

The prohibition against practicing polygamy is described in article 18, stating that:⁷³

⁷³ Mustofa Sakhri, *Majallah al-Akhwat al-Syakhsiyah* (Tunisia: Pemerintah Republik Tunisia, 2013), 10-195

تعدد الزوجات ممنوع. كل من تزوج وهو في حالة الزوجية وقبل فك عصمة الزواج السابق يعاقب بالسجن لمدة عام وبخطية قدرها مائتان وأربعون ألف فرنك أو بإحدى العقوبتين ولو أن الزواج الجديد لم يبرم طبق أحكام القانون

Plurality of wives is forbidden. A person who already got married and before the marriage is law-fully ended, then get married again, shall be punished to confinement for one year or for a fine of 240.000 Franch, or to both, even if the second marriage is in contravention of any regulation of this Code.

This article explains that polygamy is absolutely prohibited. A husband who wants to remarry even though his previous marriage has not ended can be subject to criminal law. Whoever do unregistered polygamy shall be punished to confinement and fine.

There are 2 reasons for the prohibition of polygamy in Tunisia, namely based on internal and external factors:⁷⁴

- 1) Internal Factor
 - a) Reinterpretation of the verse polygamy

Adrien Kathrine Wing argues that Tunisia prohibits polygamy based on the Al-Qur'an Surat an-Nisa` verses 3 and 129 which mean:

"And if you are afraid that you will not be able to do justice to (the rights) of an orphaned woman (if you marry her), then

⁷⁴ Ali Trigiyo, "Poligami di Tunisia: Studi Alasab Pelarangan Poligami", *Hikmatuna*, no. 1(2017): 48-53

marry the (other) women you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) just one person, or the slaves you have. That which is closer to not doing persecution "

Whereas in verse 129 of the same letter it reads:

"And you will never be able to do justice among (your) wives, even though you are eager to do so."

In the view of Tunisian law, polygamy is impossible to give justice by the husband to his wives. Because despite trying to be fair, inner justice like the feeling of love for wives cannot be the same.

b) Desire to elevate the dignity of women

In this case, Tunisia wants to uplift the dignity of women who are generally number two in this part of the world.

2) External Factors

a) French influence and its legal system

law in western regions, such as France, considers polygamy as an illegal act and the perpetrator needs to be punished

b) The influence of the Bourguiba figure

Bourguiba was president of Tunisia from 1957-1987. Bourguiba, who was influenced by the teachings of Jamaluddin Al-Afghani, believed that polygamy could make women fall behind men. So that he

plays a very important role in defending and protecting the rights of women under the Code of Personal Status / Majallah Al-Ahwal As-Syakhshiyah.

b. Amount of Penalties

In Indonesia, anyone who does not notify the intention of marriage to the Registrar violating the provisions stipulated in Article 3 will be punished and subject to a maximum fine of Rp. 7,500, - (seven thousand five hundred rupiah).

In Pakistan, any marriage which is not performed by a Marriage Registry Officer is liable to criminal sanctions. This is regulated in the Muslim Family Law Ordinance 1961 Section 5, that every marriage that is not carried out by a Marriage Registrar can be punished with a simple imprisonment sentence of up to 3 months or a maximum fine of 1,000 rupees, or both. Meanwhile, polygamy without prior written permission from the Arbitration Council and previous wife/wives may be subject to imprisonment or fines. Those who do not receive permission from the arbitration board must pay the entire dowry to their wife or wives and face a simple prison sentence extending up to 1 year or a fine of up to 5,000 rupees or both. This is regulated in the Muslim Family Law Ordinance 1961 Section 6.

In Tunisia, a person who carries out a marriage without 2 witnesses or 2 witnesses and a marriage registrar can be subject to punishment. This is in

accordance with Article 36 Law No. 3 year 1957, that a marriage that is contrary to Article 31 is canceled, and a husband and wife can be subject to imprisonment for 3 months. If a husband and wife continue their marriage or continue to live together, they will be sentenced to imprisonment for 6 months. Meanwhile, polygamy in Tunisia is absolutely prohibited and can be subject to punishment if it violates. This is contained in Article 18 of Majallah Al-Ahwal Al-Syakhshiyah, that polygamy is absolutely prohibited. Anyone who married when the previous marriage ended, will be subject to a year imprisonment sentence and a fine of 240,000 Franch.

Table I

Differences Unregistered Marriage in Indonesia, Pakistan and Tunisia

No	Comparison	Indonesia	Pakistan	Tunisia
1	Unregistered Marriage	Banned but rarely	Banned	Banned
2	Regulation	Government Regulation Number 9 Year 1975	Muslim Family Law Ordinance 1961	Law No. 3 Year 1957

3	Amount of Penalty	A maximum fine of 7,500 rupiah	Simple imprisonment sentence of up to 3 months or a maximum fine of 1000 rupees, or both	Imprisonment for 3 months
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Table II

Differences Polygamy in Indonesia, Pakistan and Tunisia

No	Comparison	Indonesia	Pakistan	Tunisia
1	Polygamy	Allowed with requirements	Banned	Banned
2	Regulation	Not regulated	Muslim Family Law Ordinance 1961	Majallah Al-Ahwal Al-Syakhshiyah
3	Amount of Penalty	No punishment	Simple imprisonment sentence extending up to a year or a fine of up to 5,000 rupees or both	A year imprisonment sentence and a fine of 240,000 Franch

Table III**Similarities in Indonesia, Pakistan and Tunisia**

No	Comparison	Indonesia	Pakistan	Tunisia
1	Form of Countries	Republic	Republic	Republic
2	Form of Penalties in Unregistered Marriage	Fine	Fine	Fine

B. Implementation of Penalties for Unregistered Marriage and Polygamy in Indonesia, Pakistan and Tunisia

1. Indonesia

Based on the Law No. 1 year 1974, in Indonesia every marriage must be registered according to the prevailing laws and regulations. And marriage is legal if it is carried out according to the laws of each religion and trust.

Marriage registration is administrative in nature, but the marriage certificate in the registration is authentic evidence that the marriage is a legal marriage.⁷⁵ In this case, authentic evidence in the form of a marriage certificate will be a strong foundation in a marriage and will have an effect on future household life if there is a dispute.

⁷⁵ Anshary MK, *Hukum Perkawinan di Indonesia*, 24

Announcement and registration are important for benefit and legal certainty in society and avoid the legal consequences of an underhand marriage, such as validity of children, guardian of marriage, and inheritance.⁷⁶ Registration of marriage based on General Explanation Law Number 1 year 1974 number 4 letters b is “important events” in someone’s life, not “legal events”. Examples such as birth, death, in letters and certificates.⁷⁷

According on Article 45 Government Regulations No. 9 year 1975, penalties for unregistered marriage is shall act with a prohibition of imprisonment for a maximum of 3 (three) months or a maximum fine of Rp. 7.500.⁷⁸ And if look to Article 279 of the Criminal Code state that will be subject to imprisonment 5 years if do polygamy is carried out in sirri. But, polygamy in Indonesia is allowed provided that it fulfills the requirements and has a suitable reason based on Law Number 1 year 1974. The reasons and conditions that must be fulfill include, the wife cannot fulfill her obligations as a wife, the wife has a disability or an incurable disease and the wife cannot have children. And for condition is the approval of the wife or

⁷⁶ Idris Ramulyo, *Hukum Perkawinan, Hukum Kewarisan, Hukum Acara Peradilan Agama dan Zakat Menurut Hukum Islam* (Jakarta: Sinar Grafika, 2004), 22.

⁷⁷ Neng Djubaidah, *Pencatatan Perkawinan & Perkawinan Tidak Dicatat: Menurut Hukum Tertulis di Indonesia dan Hukum Islam* (Jakarta: Sinar Grafika, 2010), 216.

⁷⁸ Government Regulations Number 9 Year 1975 about Implementation of Law Number 1 Year 1974 about Marriage

previous wives, the husband guarantees that he is able to meet the needs of his wives and children, and the husband guarantees to treat his wives and children fairly.

2. Pakistan

Based on the Muslim Family Law Ordinance, in Pakistan marriages must be registered and reported to a Nikah Registrar. As described in Section 5 Muslim Family Law Ordinance 1961⁷⁹ are as follows:

- (1) *Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.*
- (2) *For the purpose of registration of marriage under this Ordinance, the Union Council shall grant licenses to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one Ward.*
- (3) *Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance be reported to him by the person who has solemnized such marriage.*
- (4) *Whoever contravenes the provisions of such-section (3) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.*
- (5) *The form of nikahnama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriage shall be registered and copies of nikhanama shall be supplied to parties, and the fees to be charged thereof, shall be such as may be prescribed.*
- (6) *Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.*

⁷⁹ Muslim Family Law Ordinance 1961

According to the Muslim Family Law Ordinance 1961 it was explained that It is explained that the married parties will receive a nikahnama form which will be maintained by the Nikah Registrar then will be recorded by the union Council. After that the parties will be given a copy of the marriage certificate.

Meanwhile polygamy in Pakistan have rules that no one is allowed to do polygamy except with the prior permission of the Arbitration Council, and also requires the consent of his wife or wives. This is explained in Section 6 Muslim Family Law Ordinance 1961, which reads:⁸⁰

- 3) *During the maintenance of an existing marriage, a person shall not enter into another marriage unless the prior written permission of the Arbitration Commission is obtained, and any marriage concluded without such permission shall not be registered under this Ordinance.*
- 4) *An application for permission under paragraph (1) shall be submitted to the chairman of the board together with the prescribed fee in the prescribed manner, and shall state the reason for the proposed marriage and whether the consent of the existing wife or wife has been obtained. Obtain*
- 5) *After receiving an application under paragraph (3), the chairman shall require the applicant and his current wife or wife to nominate a representative each, and the arbitration committee thus constituted shall, after being satisfied with the necessity of marriage, can be fair and permitted, but must meet the conditions deemed appropriate (if any).*
- 6) *When deciding on the application, the Arbitration Commission shall record the reasons for its decision. Any party can claim the change to the relevant collector in a prescribed manner, within a prescribed time limit, and after*

⁸⁰ Muslim Family Law Ordinance 1961

paying the prescribed fee. Application. Its decision is final and cannot be challenged in any court.

- 7) *Whoever enters into another marriage without the permission of the Arbitration Commission,*
- a. *Immediately pay all past or deferred dowry fees because his wife or wife, if not paid, will be recovered as arrears of land income; and*
 - b. *Upon conviction, a simple prison sentence of not more than one year, a fine of 5,000 rupees, or both may be imposed.*

It explains that after husband obtaining the permit, the Chairman asks the applicant and his wife or old wives to appoint representatives. The Arbitration Council must record the reasons, if it considered appropriate then permission can be granted and the party makes a payment of a predetermined fee. In this case, the implementation in Pakistan is if the permission of the previous wife or the Arbitration Council has been obtained.

As long as the registration is not carried out, the legality of the marriage will not be affected. From a religious point of view, registration cannot be denied from a religious perspective.⁸¹

3. Tunisia

In Tunisia, registration of marriage regulated in Majallah Al-Ahwal Al-Syakhshiyah and Law No. 3 year 1957. Legal marriage can only be proven by official evidence as regulated in a specific law.

⁸¹ Tahir Mahmood, *Family Law Reform in The Muslim World* (New Delhi: The Indian Law Institute, 1972), 249

Based on Law No. 3 year 1957, if a husband and wife marry not attended 2 fair witnesses and in front of a marriage registrar, it may get punishment under Law No. 3 year 1957 Article 36. Polygamy in Tunisia is absolutely prohibited. According to YUSDANI, the prohibition on polygamy in Tunisia aims to uplift the dignity of women.⁸² Because polygamy can allow unfair behavior to the wives and neglect of their children. Punishments were set for those who practiced polygamy, the penalty in *Majallah Al-Ahwal Al-Syakhshiyah* reads:

The marriage that is contrary to article 31 is canceled and the couple will be sentenced to imprisonment sentence of 3 months. if there is a series of penalties related to the previous laws, then one sentence in criminal and cancellation of marriage. If the married couple continues or lives together, they will be sentenced to imprisonment for 6 months.

And for polygamy absolutely prohibited based on Article 18 in

Majallah Al-Ahwal Al-Syakhshiyah which read:

Plurality of wives is forbidden. A person who already got married and before the marriage is law-fully ended, then get married again, shall be punished to confinement for one year or for a fine of 240.000 Franch, or to both, even if the second marriage is in contravention of any regulation of this Code.

⁸² YUSDANI, *Menuju Fiqh Keluarga Progresif* (Yogyakarta: Kaukaba, 2011), 37.

Table IV**Implementation of Penalties Unregistered Marriage in Indonesia, Pakistan and Tunisia**

No	Comparison	Indonesia	Pakistan	Tunisia
1	Application	Not effectively applied	Carried out	Carried out
2	Requirements	Notify the intention of marriage to the Marriage Registrar	Registered and reported to a Nikah Registrar	Do in front of 2 witnesses or 2 witnesses and a Marriage Registrar

Table V**Implementation of Penalties Polygamy in Indonesia, Pakistan and Tunisia**

No	Comparison	Indonesia	Pakistan	Tunisia
1	Application	Not regulated and not applied	Carried out	Carried out
2	Requirements	With the reasons and certain conditions	Ask the wife's approval and ask the Arbitration Council for permission	Do polygamy



CHAPTER IV

CONCLUSIONS AND SUGGESTIONS

A. Conclusions

1. In Indonesia, anyone who does not notify the intention of marriage to the Marriage Registrar violating the provisions stipulated in Article 3 Government Regulations will be punished and subject to a maximum fine up to Rp. 7,500 or 7.500.000. And for polygamy is not regulated for penalties but in Criminal Code will be subject to imprisonment 5 years if do polygamy is carried out in sirri. In Pakistan, every marriage that is not carried out by a Marriage Registrar can be punished with a simple imprisonment sentence of up to 3 months or a maximum fine of 1000

rupees, or both. For polygamy in Pakistan, who not receive permission from the arbitration board must pay the entire dowry to their wife or wives and face a simple prison sentence extending up to 1 year or a fine of up to 5,000 rupees or both. In Tunisia who carries out a marriage without 2 witnesses or 2 witnesses and a marriage registrar, a husband and wife can be subject to imprisonment for 3 months. For polygamy in Tunisia who married when the previous marriage ended, will be subject to punishment year imprisonment and a fine of 240,000 Franch.

2. In Indonesia, implementation of penalty for unregistered marriage is carried out if does not notify the intention of marriage to the Marriage Registrar. For polygamy, penalties which are not regulated so not applied and only with the reasons and certain conditions. Whereas in Pakistan, implementation of penalty carried out marriage if is not registered and reported to a Nikah Registrar. For polygamy, penalties carried out if does not ask the wife's approval and ask the Arbitration Council for permission. In Tunisia implementation of penalties carried out if the marriage did not carry out in front of 2 witnesses or 2 witnesses and a Marriage Registrar. For polygamy, implementation of penalties carried out if do polygamy because polygamy absolutely prohibited.

B. Suggestions

1. Researcher

This research can be used for reference and subsequent research material in a comparison regarding the same theme.

2. Public

As citizens, they must obey the existing regulations in order to become good and obedient citizens.

3. Government

For the government, provides more detailed regulations and benefit the entire community. The Indonesian government can see examples from Tunisia and Pakistan regarding the application of Islamic family law regulations.

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Muslim Family Laws Ordinance, 1961

(VIII OF 1961)

An Ordinance to give effect to certain recommendations of the commission on marriage and Family Laws.

Whereas it is expedient to give effect to certain recommendation of the commission on Marriage and Family Laws.

Now, therefore in pursuance of the proclamation of the seventh day of October 1958, and in exercise of all powers enabling him in this behalf, the President is pleased to make and promulgate the following Ordinance: -

1. Short title, extent, application and commencement

- (1) This Ordinance may be called the Muslim Family Laws Ordinance, 1961.
- (2) It extends to whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be.
- (3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint in this behalf.

2. Definition

(a) "**Arbitration Council**" means a body consisting of the Chairman and a representative of each of the parties to a matter dealt with this Ordinance:

Provided that where any party fails to nominate a representative within the prescribed time, the body formed without such representative shall be the Arbitration Council.

(b) "**Chairman**" means the Chairman of the Union Council or a person appointed by the Federal Government in the Cantonment areas or by the Provincial Government in other areas or by an Officer authorised in that behalf by any such Government to discharge the functions of chairman under Ordinance: **Provided** that where the Chairman of the Union Council is a non-Muslim, or he himself wishes to make an application to the Arbitration Council, or is, owing to illness or any other reason, unable to discharge the functions of Chairman, the Council shall elect one of its Muslim members as Chairman for the purposes of this Ordinance.

(c) "**Prescribed**" means prescribed by rules made under Sch. II.

(d) "**Union Council**" means the Union Council or the Town or Union Committee constituted under the Basic Democracies Order, 1959 and having jurisdiction in the matter as prescribed.

(e) "**Ward**" means a ward within a Union or Town as defined in the aforesaid Order.

3. Ordinance to override other laws, etc.

(1) The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage, and the registration of Muslim marriages shall take place only in accordance with these provisions.

(2) For the removal of doubt, it is hereby declared that the provisions of the Arbitration Act, 1940 (X of 1940), the Code of Civil Procedure 1908 (Act V of 1908), and any other law regulating the procedure of Courts shall not apply to any Arbitration Council.

4. Succession.

In the event of death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes, receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.

5. Registration of marriage.

(1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.

(2) For the purpose of registration of marriage under this Ordinance, the Union Council shall grant licenses to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one Ward.

(3) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance be reported to him by the person who has solemnized such marriage.

(4) Whoever contravenes the provisions of such-section (3) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(5) The form of nikahnama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriage shall be registered and copies of nikahnama shall be supplied to parties, and the fees to be charged thereof, shall be such as may be prescribed.

(6) Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.

6. Polygamy.

(1) No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.

(2) An application for permission under Sub-section (1) shall be submitted to the Chairman in the prescribed manner together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.

(3) On receipt of the application under Sub-section (3), Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such condition if any, as may be deemed fit, the permission applied for.

(4) In deciding the application the Arbitration Council shall record its reasons for the decision and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, to the Collector concerned and his decision shall be final and shall not be called in question in any Court.

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall,

(a) pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and

(b) on conviction upon complaint be punishable with the simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

7. Talaq.

(1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in sub-section (5) talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under Sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

مصطفى صخري

مجلة الأحوال الشخصية

(منقحة بالقانون عدد 39 لسنة 2010 المؤرخ في 26 جويلية 2010)

معلق عليها بأحدث القرارات التعقيبية

إلى جانب النصوص القانونية التالية :

1. تنظيم الحالة المدنية (معلق عليه بقرارات)
2. الشهادة الطبية السابقة للزواج
3. نظام الاشتراك في الاملاك بين الزوجين
4. النولاية والتبني
5. تنظيم التقاديم (معلق عليه بقرارات)
6. صندوق ضمان النفقة وجراية الطلاق
7. قانون عدد 53 لسنة 1959 المؤرخ في 26 ماي 1959 المتعلق بان يكون لكل تونسي لقب عائلي وجوبا
8. السماح لبعض التونسيين بتغيير اللقب او الاسم
9. اللقب العائلي للأطفال المهملين او مجهولي النسب
10. شهادة تطابق بين اللقب الاصلي واللقب المستند
11. مجلة الجنسية المنقحة بالقانون عدد 55 لسنة 2010 المؤرخ في 1 ديسمبر 2010.
12. مجلة حماية الطفل
13. مجلة القانون الدولي الخاص
14. المنشائر والأوامر المتعلقة بالأحوال الشخصية (زواج المسلمة بغير المسلم . واعتناق الاسلام)
(معلق عليها بقرارات)

2013

صفة المقبوض : هدية هوام مهر حسب عرف الجهة عند انعدام البينة دون الاقتصار على ما جاء برسم الصداق .

ن 1986 ج 2 ص 214 و منشور ايضا بدم ق ت عدد 5 لسنة 1988 ص 89 .

(18) قرار تعقيبي مدني عدد 23997 مؤرخ في 22 ماي 2003

ان الخلوة بين الزوجين تؤكد الدخول وعلى من يدعي خلاف ذلك اثباته ومعنى الخلوة ان يجتمع الزوجان في مكان يمانان فيه اطلاع الغير ولم يوجب المشرع الاشهاد على الدخول وانما اوجب عند عقد الزواج .

ن 2003 ج 2 ص 422 .

(19) قرار تعقيبي مدني عدد 2005.147 مؤرخ في 28 افريل 2005

بالرجوع الى اوراق الملف وتفحص المؤيدات واسانيد الطعن يلاحظ عدم انطباق الفصل 31 من م اش المتعلق بفك العصمة الزوجية القائمة على زواج صحيح خاصة ان دعوى الطالب قائمة على بطلان الزواج لتعيب رضاه بمقولة انه لم يكن يعلم حين الزواج ان زوجته مريضة وقد تم اخفاء هذا الامر عليه مما يؤدي الى تعيب رضاه وهي مناط احكام الفصول 21 و 3 و 22 من م اش .
(قرار غير منشور)

(20) قرار تعقيبي مدني عدد 27651 مؤرخ في 4 ديسمبر 2008

لئن لم يعرف المشرع البناء او الدخول وهو المصطلح المستعمل في مجلة الاحوال الشخصية فقد استقر فقه القضاء على تعريف الدخول بان تكون الزوجة قد التحقت بمحل الزوجية حسبما يقتضيه العرف والعادة مما يستوجب توفر الخلوة بين الزوجين وهو ما عبر عنه فقه قضاء محكمة التعقيب بارضاء السائر في حين ان عقد الزواج يستوجب الاشهار وهو ما يؤمنه المشرع باشتراط شهادة شاهدين من اهل الثقة لانعقاد الزواج .

ن 2008 ج 2 ص 275 .

(21) قرار تعقيبي مدني عدد 31885 مؤرخ في 26 مارس 2009

لم يحدّد المشرع مفهوم الدخول بل اقتبس من التشريع الاسلامي .
ان المفهوم المادي للدخول هو اول المفاهيم التي استنبطتها محكمة التعقيب منذ سنة 1968 وهو لا يحتاج الى ركن الاشهار ضرورة ان المشرع اشترط الاشهار عند ابرام الزواج وهو ما امنه المشرع باشتراط شاهدين لصحة عقد الزواج على معنى الفصل 3 من م اش .
يكفي اعتبار ان الدخول والبناء بالزوجة قد تم بحصول الخلوة بين الزوجين وهو ما كرسته محكمة التعقيب في العديد من قراراتها .

ن 2009 ج 1 ص 295 .

الفصل 4

لا يثبت الزواج إلا بحجة رسمية يضبطها قانون خاص.
أما بالنسبة للزواج المنعقد خارج المملكة فإنه يثبت بما تعتمده قوانين البلاد التي تم فيها العقد.

(22) قرار تعقيبي مدني عدد 3538 مؤرخ في 23 فيفري 1965

الزوجية لا تثبت قانونا الا بحجة رسمية حسب الفصل 31 من القانون المؤرخ في غرة اوت 1957 والنظر فيها خارج عن اختصاصات محاكم النواحي . ثبوت النسب لا يتوقف على ثبوت قيام الزوجية بالصفة التي اشترطها هذا النص القانوني .
ن 1965 ص 9 .

الفصل 18 (نصح بالقانون عدد 70 لسنة 1958 المؤرخ في 4 جويلية 1958 وأضيفت إليه الفقرات 3 و4 و5 بالمرمور عدد 1 لسنة 1964 المؤرخ في 20 فيفري 1964 المصادق عليه بالقانون عدد 1 لسنة 1964 المؤرخ في 21 أبريل 1964).

تعدد الزوجات ممنوع.

كل من تزوج وهو في حالة الزوجية وقبل فك عصمة الزواج السابق يعاقب بالسجن لمدة عام وبخطية قدرها مائتان وأربعون ألف فرنك أو بإحدى العقوبتين ولو أن الزواج الجديد لم يبرم طبق أحكام القانون.

ويعاقب بنفس العقوبات كل من كان متزوجا على خلاف الصيغ الواردة بالقانون عدد 3 لسنة 1957 المؤرخ في 4 محرم 1377 (أول أوت 1957) والمتعلق بتنظيم الحالة المدنية ويبرم عقد زواج ثان ويستمر على معاشرة زوجه الأول.

ويعاقب بنفس العقوبات الزوج الذي يتعمد إبرام عقد زواج مع شخص مستهدف للعقوبات المقررة بالفقرتين السابقتين.

ولا ينطبق الفصل 53 من القانون الجنائي على الإجراءات المقررة بهذا الفصل.

الفصل 19

يحجر على الرجل أن يتزوج مطلقته ثلاثا.

(43) قرار تعقيبي مدني عدد 4969 مؤرخ في 7 أكتوبر 1981
 طلاق الزوج زوجته واحدة تلفظ فيها بالثلاث لا تحرم بها المطلقة عنه لأن ذلك الطلاق يعتبر طلاقة واحدة بآنية يمكن معها للزوج في مراجعة مفارقتها ولو لم تتزوج من غيره ويكون عقد المراجعة صحيحا وبذلك فإن الحكم بصحته في طريقه ولا وجه لنقضه .
 ن 1981 ج 3 ص 143 .

الفصل 20

يحجر التزوج بزوجة الغير أو معتدته قبل انقضاء عدتها

بمنطقتهم إعلام زواج مطابق للمثال الملحق بهذا القانون قبل أن يسلموا نسخة من عقد الزواج لمن يهمهم الأمر.
وتعاقب كل مخالفة لأحكام الفقرة السابقة بخطية مقدارها عشرة آلاف فرنك.

الفصل 34

يرسم ضابط الحالة المدنية بمكان تحرير العقد محتوى الإعلام بالزواج بالدفتري المعد لذلك بمجرد اتصاله بالإعلام ويعلم بالزواج ضابط الحالة المدنية بمكان ولادة كل من الزوجين.

الفصل 35

على ضابط الحالة المدنية بمكان ولادة كل من الزوجين أن يلاحظ على عقد الزواج يرسم ولادة كل من الزوجين.

الفصل 36 - (نقح بالمرسوم عدد 2 لسنة 1964 المؤرخ في 20 فيفري 1964 المصادق عليه بالقانون عدد 2 لسنة 1964 المؤرخ في 21 أفريل 1964).

يعتبر الزواج المبرم خلافا لأحكام الفصل 31 أعلاه باطلا ويعاقب الزوجان زيادة على ذلك بالسجن مدة ثلاثة أشهر.

وإذا وقعت تتبعات جزائية بمقتضى أحكام الفقرة السابقة يقع البت بحكم واحد في الجريمة وإبطال الزواج.

وإذا استأنف أو استمر الزوجان على المعاشرة رغم التصريح بإبطال زواجهما يعاقبان بالسجن مدة ستة أشهر.

ولا ينطبق الفصل 53 من المجلة الجنائية على المخالفات المقررة بهذا الفصل.

الفصل 36 مكرر. (أضيف بالمرسوم عدد 2 لسنة 1964 المؤرخ في 20 فيفري 1964 المصادق عليه بالقانون عدد 2 لسنة 1964 المؤرخ في 21 أفريل 1964).

لا ينجز عن الزواج المصرح بإبطاله بمقتضى أحكام الفصل السابق إلا النتائج الآتية :

- (1) ثبوت النسب.
- (2) وجوب العدة على الزوجة وتبتدئ هذه العدة من تاريخ صدور الحكم.
- (3) موانع الزواج الناتجة عن المصاهرة.

قرار تعقيبي مدني عدد 7900 مؤرخ في 14 ديسمبر 1972
وان كان عدم وجود عقد الصداق يجعل الزواج غير صحيح لكن يترتب عنه ثبوت النسب حسب احكام الفصل 36 من القانون عدد 3 لسنة 1957 المؤرخ في غرة اوت 1957 .
ن 1972 ص 153

الفصل 37

يجب ترسيم كل عقد زواج للتونسيين حرر بالخارج طبق قوانين البلد المحرر به الرسم بدفتري الزواج للقتنصلية التونسية الأقرب من غيرها وذلك في ظرف الثلاثة أشهر التي تلي تاريخ تحريره بسعي من الزوجين وتعاقب كل مخالفة لهذا الالتزام بخطية قدرها عشرة آلاف فرنك.

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