

**REGULATION OF MARRIAGE REGISTRATION IN INDONESIA AND
MALAYSIA IN WOMAN'S RIGHTS PERSPECTIVE**

**Comparative Studies between Ministry of Religious Affair's Regulation Number 11
Year 2007 Indonesia and Enactment of Islamic Family Law in Pulau Pinang
Number 3 Year 2004 Malaysia**

Thesis

By:

Khoirun Nisak

Student ID Number 11210055



AL-AHWAL AL-SYAKHSHIYYAH DEPARTMENT

SHARIA FACULTY

MAULANA MALIK IBRAHIM

STATE ISLAMIC UNIVERSITY

MALANG

2015

STATEMENT OF THE AUTENTICITY

In the name of Allah (swt),

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**REGULATION OF MARRIAGE REGISTRATION IN INDONESIA AND
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Malang, 10th June 2015
Author,

Khoirun Nisak
Student ID Number 11210055

APPROVAL SHEET

After examining and verifying the thesis of Khoirun Nisak, Student ID Number 11210055, Al Ahwal Al Syakhshiyah Departement, Sharia Faculty. State Islamic University Maulana Malik Ibrahim of Malang entitled:

**REGULATION OF MARRIAGE REGISTRATION IN INDONESIA AND
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The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

Malang, 10th June 2015

Acknowledged by,
The Head of Al Ahwal Al Syakhshiyah
Departement

Supervisor,

Dr. Sudirman, MA
NIP. 19770822 200501 1 003

Erik Sabti Rahmawati, MA, M.Ag
NIP.19751108 200901 2 003

CONSULTATION PROOF

Nama : Khoirun Nisak
Student ID Number : 11210055
Departement : Al Ahwal Al Syakhshiyah
Supervisor : Erik Sabti Rahmawati, MA., M.Ag
Thesis Title : Regulation of Marriage Registration In Indonesia and Malaysia
Woman's Rights Perspective Comparative Studies between
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2007 Indonesia And Enactment of Islamic Family Law in Pulau
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8	Monday, 15 June 2015	ACC	

Malang, 01th June 2015

Acknowledged by:

Head of Al Ahwal Al Syakhshiyah

Department

Dr. Sudirman, M.A

NIP 19770822200501 1 003

LEGITIMATION SHEET

The Thesis Board of Examiner states that Khoirun Nisak, Student ID Number 11210055, student of Al Ahwal Al Syakhshiyah Department, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim Malang, her thesis entitled:

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Year 2007 Indonesia and Enactment of Islamic Family Law in Pulau Pinang
Number 3 Year 2004 Malaysia**

Have certified with grade A (excellent)

The Board of Examiners:

- | | |
|---|----------------------------|
| 1. Dr. Sudirman, M.A
NIP. 19770822 2005011001 | (_____)
Chairman |
| 2. Erik Sabti Rahmawati, MA., M.Ag
NIP 19751108 2009011018 | (_____)
Secretary |
| 3. Dr. Zaenul Mahmudi, MA
NIP 197306031999031001 | (_____)
Main Examiner |

Malang, 30th June 2015

Dean,

Dr. Roibin, M.H.I
NIP 19681218 199903 1 002

MOTTO

مالا يتم الواجب الا به فهو واجب

“If obligation is not perfect without followed by other action so this action is obligated too”

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All the praise due to Allah, the Cherisher and Cherisher of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled “Regulation of Marriage Registration In Indonesia and Malaysia in Woman’s Rights Prespective Comparative Studies between Ministry of Religion Affair’s Regulation Number 11 Year 2007 Indonesia And Enactment of Islamic Family Law in Pulau Pinang 3 Year 2004 Malaysia” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought as from darkness into the light, in this life. May we be together with those who believe and receive intercession from Him in the day of Judgement. Amin

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Malang, 01th June 2015

Author,

Khoirun Nisak
Student ID Number 11210055

TRANSLITERATION GUIDANCE

A. Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dza	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	ء	'
ص	SH	ي	Y
ض	DL		

B. Vocal, long-pronounce and diphthong

Vocal *fathah* = A

Vocal *kasrah* = I

Vocal *dlommah*=U

Long-vocal (a) = Â e.g. قال become Qâla

Long-vocal (i) = Î e.g. قيل become Qîla

Long-vocal (u)= Ū e.g. دون become Dûna

Diphthong (aw)= و e.g. قول become Qawlun

Diphthong (ay)= ي e.g. خير Become Khayrun

C. Ta' marbûthah)ة

Transliterated as “t” in the middle of word, but if *Ta' marbûthah* in the end of word, it transliterated as “h” e.g. للمدرسة الرسالة become *al-risalat li al-mudarrisah*, or in the standing among two word that in the form of *mudlaf* and *mudlaf ilayh*, it transliterated as *t* and connected to the next word, e.g. في الله رحمة become *fi rahmatillâh*.

D. Auxiliary Verb dan Lafdh al-Jalâlah

Auxiliary verb “al” (ال) written with lowercase form, except if it located it the first position, and “al” in lafadh jalâlah which located in the middle of two word or being or become *idhafah*, it remove from writing.

- a. Al-Imâm al-Bukhâriy said ...
- b. Al-Bukhâriy in muqaddimah of his book said ...
- c. *Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*

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ABSTRACT

Khoirun Nisak, 11210055, *Regulation Of Marriage Registration In Indonesia And Malaysia In Woman's Rights Perspective Comparative Studies between Ministry of Religion Affairs Regulation Number 11 Year 2007 Indonesia and Enactment Of Islamic Family Law in Pulau Pinang Number 3 Year 2004 Malaysia*, Thesis, Al-Ahwal Al-Syakhshiyah Department, Shariah Faculty, State Islamic University Maulana Malik Ibrahim Malang. Supervisor : Erik Sabti Rahmawati, MA., M.Ag

Keywords: Marriage Registration ,Woman's Rights.

In Indonesia Regulation of Marriage Registration explained in the act as stated in marriage law No1 year 1974, Islamic Law Compilation, Government legislation no 5 year 1975, the act number 22 year 1946, however after amendment the legislation used now is the Ministry of Religious Affairs's legislation number 11 year 2007. In Indonesia, as well as in Malaysia, this country also has specific legislation about Regulation of Marriage Registration explained in enactment 3 Pulau Pinang Country year 2004. In both regulation's countries, there are similarities and differences which can be analyzed using any kind of perspectives, one of them is by using woman's rights. Based on this basis, then raising the study problem of this research: 1) How do Marriage Registration Number 11 Year 2007 Indonesia and Enactment of Islamic Family Law in Pulau Pinang Number 3 Year 2004 Malaysia? 2) What is the of Marriage Registration Regulation In Indonesia and Malaysia based on Woman's Rights Perspective?

This study is normative research using library data or library research. The approach of the research used comparative study. Moreover, the data collection method used documentation method starting from law material determination, law material documentation, reviewing law comprehensively and systematically.

From this research it can be concluded that Regulation of Marriage Registration In Indonesia and Malaysia have similarities and differences, the similarity is to obligate marriage regulation, meanwhile the difference is in Indonesia there is not regulation for society to report illegal marriage whereas in Malaysia there is regulation to report illegal marriage. Indonesia possessed better techniques in the scope of marriage registration, while in terms of the implementation, Malaysia has more effective compare than in Indonesia as the provision in Malaysia is stricter. In addition, the impact of Regulation of Marriage Registration based on Woman's Rights Perspective is children right and wife can be saved because it can be proofed by agreement marriage, a child can obtain the official document of birth, and the heir right for wife, not easy to polygamy because the wife should permits to the earlier wife and obtains her permission. This aspect of woman right protection is accordance with Asghar Ali Engineer's perspective.

ملخص البحث

خير النساء، رقم القيد ١١٢١٠٠٥٥. نظام كتابة الزواج (دراسة مقابلة من نظام الوزير الدينية رقم ٧ سنة ٢٠١١ و أحكام الأسرة الإسلامي *enactment* ٣ سنة ٢٠٠٤ فولو فينانق بملازيا وجه حق المرأة. بحث جامعي. قسم الأحوال الشخصية. كلية الشريعة. جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانق. المشرفة: إيريك سبتي رحماواتي، الماجستير

الكلمة الأساسية: تسجيل الزواج، وحقوق المرأة.

في اندونيسيا النظام على تسجيل الزواج قد بين في التشريعات في قانون الزواج رقم ١ لسنة ١٩٧٤، مجموعة من الشريعة الإسلامية، النظام رقم ٥ لسنة ١٩٧٥، والقانون رقم ٢٢ لسنة ١٩٤٦، ولكن بعد إدخال تعديل على الأنظمة المستخدمة اليوم هي نظام الوزير الدينية رقم ١١ لسنة ٢٠٠٧. وكما الحال في أندونيسيا، في دولة ماليزيا لديها أيضا قواعد محددة حول تسجيل الزواج هو موضح في بلد نمرة ثالث *enactment* ٣ فولو بينانج في سنة ٢٠٠٤. وفي نظام هذين البلدين التشابه والاختلاف التي يمكن تحليلها باستخدام نظر أوجه، أحدها منظور حقوق المرأة. على هذا الأساس يبدو صياغة المشكلة التي تناولتها هذه الدراسة: (١) كيف يتم تنظيم تسجيل الزواج في اندونيسيا وماليزيا؟ كيف تسجيل الزواج في اندونيسيا وماليزيا وفقا لحقوق المرأة؟

هذا البحث من بحث المعيارية التي تستخدم مكتبة البيانات أو البحث في المكتبة. المدخل المستخدم مدخل دراسة مقارنة. و طريقة جمع البيانات من خلال طريقة الوثائق بدءا من تحديد المواد القانونية، والمخزون من المواد القانونية، والمواد التقييم في قانونية شاملة ومنهجية وتنظيما.

من هذه البحث يمكن استنتاج أن تسجيل الزواج في اندونيسيا وماليزيا يكون الاختلاف والتشابه، والتشابه هو وجوب تسجيل الزواج، والفرق بينهما أن في اندونيسيا لا توجد النظام للمواطنين للإبلاغ عن الزواج غير قانوني ولكن توجد عقوبات على الزواج غير المسجلة. وفي ماليزيا نظم عليها في المادة عن وجوب كل شخص أن يقدم الزواج غير الشرعي أو الزواج التي لم يتم تسجيلها. هذا هو وفقا للقوانين و النظام في ماليزيا أكثر فعلا مما كانت عليه في إندونيسيا. هذا يدل على وجود قواعد ثابتة على تسجيل الزواج. أما الأثر من تسجيل الزواج وفقا لحقوق المرأة هو حماية حقوق الأطفال والزوجة، لأن هذا بوجود شهادة الزواج، يمكن للطفل نيل شهادة الميلاد والميراث لزوجته بشهادة زواجهما، وتعدد الزوجات ليست سهلة، لأن الرجل الذي يريد تعدد الزوجات يجب أن تحصل على إذن زوجة الأولى والرجل لا يمكن ممارسة تعدد الزوجات بحرية. هذا جانب من جوانب حماية حقوق المرأة وفقا لآراء أصغر علي إنكينير.

ABSTRAK

Khoirun Nisak, NIM 11210055, *Regulasi Tentang Pencatatan Perkawinan Perspektif Hak-Hak Perempuan. Study Perbandingan PMA (Peraturan Menteri Agama) Nomor 7 Tahun 2011 dan Hukum Keluarga Islam Enakmen Nomor 3 Tahun 2004 Pulau Pinang di Malaysia)* Skripsi. Jurusan Al-Ahwal Al-Syakhshiyah. Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Erik Sabti Rahmawati, MA., M.Ag

Kata Kunci: Pencatatan Perkawinan, Hak-Hak Perempuan.

Di Indonesia peraturan tentang pencatatan perkawinan dijelaskan dalam Undang-Undang Perkawinan Nomor 1 Tahun 1974, Kompilasi Hukum Islam, PP nomor 5 Tahun 1975, Undang-Undang nomor 22 Tahun 1946, namun setelah mengalami amandemen peraturan yang digunakan saat ini adalah PMA (Peraturan Menteri Agama) Nomor 11 Tahun 2007. Sebagaimana di Indonesia, di Negara Malaysia juga mempunyai aturan khusus tentang pencatatan perkawinan yang dijelaskan pada enakmen nomor 3 negeri Pulau Pinang tahun 2004. Dalam peraturan dua negara tersebut ada persamaan dan perbedaan yang bisa dianalisis dengan menggunakan perspektif woman's rights. Atas dasar ini maka muncul rumusan masalah yang dikaji dalam penelitian ini : 1) Bagaimana regulasi pencatatan perkawinan di Indonesia dan Malaysia? 2) Bagaimana pencatatan perkawinan di Indonesia dan Malaysia menurut hak-hak perempuan?

Penelitian ini merupakan penelitian normatif yang menggunakan data kepustakaan atau library research. Pendekatan yang digunakan adalah pendekatan study comparativ. Adapun metode pengumpulan data dilakukan dengan metode dokumentasi mulai dari penentuan bahan hukum, inventarisasi bahan hukum, dan pengkajian bahan hukum secara komprehensif, sistematis, dan terstruktur.

Dari penelitian ini dapat ditarik kesimpulan bahwa pencatatan perkawinan di Indonesia dan Malaysia mempunyai perbedaan dan persamaan, persamaannya adalah mewajibkan pencatatan perkawinan, sedangkan perbedaannya adalah di Indonesia tidak ada peraturan bagi warga negara untuk melaporkan bagi perkawinan yang ilegal akan tetapi ada sanksi bagi perkawinan yang tidak dicatat sedangkan di Malaysia adanya aturan tentang kewajiban setiap orang untuk melaporkan perkawinan yang ilegal atau perkawinan yang tidak dicatatkan namun dari segi teknis di Indonesia lebih baik akan tetapi dari segi pelaksanaan di Malaysia lebih efektif. Adapun dampak dari pencatatan perkawinan menurut hak-hak perempuan adalah hak anak dan istri terlindungi, hal ini dibuktikan seorang anak bisa mendapatkan akta kelahiran dan hak waris, bagi istri adanya akta nikah, kemudian seorang laki-laki tidak bisa melakukan praktik bebas berpoligami dengan tanpa izin istri pertamanya. Aspek perlindungan hak perempuan ini sesuai dengan pandangan Asghar Ali Engineer.