

## 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

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**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 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.

## A. Background of Research

Based on article 2 chapter II in book I the compilation of Islamic law (KHI), "according to the Islamic law of marriage that marriage is great agreement or mitsaqon gholidhan to obey God's command and to implement it is worship.

Marriage is legal if it is done according to islamic family law based on article 2 paragraph 1 Act No.1 of 1974.

The recording of the marriage are regulated in article 5 KHI that:

(1) to order that guaranteed marriage ordirliness for Islamic society every marriage must be registered.

(2) the recording of the marriage mention (1), is done by employees of the Register of marriages, as set forth in Act No. 22 year 1946 jo Act No. 32 year 1954.

In article 5 paragraph (1) is said that marriage should be registered, this is an concrete of the common explanation number 4 letter b of Act Number 1 year 1974 about marriage as cited above. Therefore, the term must be registered in article 5 paragraph (1) KHI also look only to ensure the order of marriage for the community.

Chapter 6 explain that :

(1) to comply with the provisions of article 5, each marriage must take place before and under the supervision of an employee's marriage.

(2) a marriage conducted outside the supervision of the employees of the Registrar of marriages have no legal force

Within Government Regulation number 9 of 1975 about implementation Act Number 1 of 1974 about marriage organizes about marriage system and registration. Furthermore the birth of PMA (Ministry of Religious Affairs Regulation) Number 11 year 2007 about marriage registration is one of legislation forms which are more detail, this is legislated in the news of Indonesia Country Number 5 in Jakarta June 25, 2007.

As in Indonesia, Malaysia had issued the marriage legislation under Court of Law Melayu, Serawak which illustrated about marriage and divorce. The first law is related to

Islamic law by English law in Malaysia namely the Muslim Marriage Ordinance, No. V in 1880. Therefore, marriage and divorce law had been introduced in the strain countries for the first time including Pulau Pinang, Malacca and Singapore. Before achieving the freedom, the content of the Muslim Marriage Ordinance is:

1. Compelling marriage and divorce registration for Muslims.
2. The staff who is appropriate to register is judge in religious court (Kadi).

#### A. The Statement of the Problem

1. How is the regulation of marriage registration in PMA Ministry of Religion Affairs Regulation Number 11 year 2007 Indonesia and Enactment Islamic Law of Pulau Pinang Number 3 year 2004 Malaysia?
2. What is the impact of the marriage registration regulation in Indonesia and Malaysia from a woman's rights perspective?

#### B. Research Method

##### 1. Type of Research

Based on the background presented by the researcher, this research is a study in the field of law. This research uses normative research or study on literature (*library research*), by Amiruddin, in other words, this study is also called doctrinal legal research. This study will conceptualize what is written against the norms of society as a standard. Then, the data used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

##### 2. Research Approach

The type of research used is normative research, and as a consequence of the problems, so an approach that can be used by the researcher is a comparative approach.

#### C. Hierarchy Regulation In Indonesia and Malaysia

In a law system, the law regulations will contradict to each other. The disagreement existed between the regulations as it is not improbable is due to the various interests in society. The law system will apply consistently the principles of law, such as

the *lex specialis derogat legi generali*, *lex posterior derogat legi priori*, or *lex superior derogat legi inferiori*. In accordance with the theories law hierarchy, the principle of law regulations state that a lower legal regulation must not contradict with laws and regulations which are higher on it. This law principle discussed that, when there is a conflict between higher legislations and lower legislation, then based on the hierarchy, the higher rules should be predominant and the lower one should be aside. What is meant by "hierarchy" is the leveling of every kind of Laws and regulations are based on the principle that laws and regulations should not be lower odds with higher Legislations.

In the law system in Indonesia, the legislation hierarchy has been set in the No. 12 of 2011 (which replaced Law No. 10/2004) on the establishment of Regulation Legislation in article 7 states:

- a. The Law of the Republic of Indonesia Year 1945
  - b. Stipulation of the People's Consultative Council
  - c. Government Regulation of Law
  - d. Government Regulations
  - e. Presidential Decree
  - f. Provincial Regulation, and
  - g. Regency / City Regulation
- b. The Hierarchy of Regulation in Malaysia

Malaysia is a country with democratic system in practicing the parliament system with Majesty as the Chairman of the State. Parliament is the highest legislative institution in the country. Malaysia Parliament comprised of His Majesty, the State Council and the People's Council. Sessions of the Council of State has been unveiled for the first time on 11 September 1959.<sup>1</sup>

1. The Constitution (the Federation and the State)
2. Legal
3. The decision of Justice
4. Common Law and Rules executive

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<sup>1</sup><http://www.lawnet.com.my/lawnetpublic/LegalInformation/LegalAwareness/FamilyLawandYouPart2/tabid/74/Default.aspx>. Accessed of 05 December 2014

5. Customary Law
6. Islamic law.

#### **D. Marriage Registration In Indonesia**

Based on Act No. 1 of 1974, it is a new era for Muslims in particular and the people of Indonesia in general. Legislation referred to is the codification and unification of a national marriage law that shown the own existence of Islamic law, without impregnated by customary law. It is very reasonable when there is an opinion which revealed that the Marriage Act is receptive theory (the term of Hazarin) pioneered by Cristian Snouck Hourgronje. Registration of marriage as set out in Article 2 paragraph (2) although it has been socialized for 26 years, it is still perceived constraints. These efforts need to be undertaken by Muslims on an ongoing basis in the Republic of Indonesia.<sup>2</sup>

This notification is not regulated in the Law no. 1-1974, but in PP no.9-1975 Article 3 (1) which states " Every person who enters into a marriage shall notify the employee wishes it to the Registrar in a marriage to take place ". Notification shall be made orally or in writing by the bride or by parents or his representative '(Article 4 PP no.9-1975). Notification contains the name, age, religion / belief, occupation, place of residence if the bride and one or both have been married, also mentioned earlier the name of the wife or husband. (Article 5 PP no.9-1975).<sup>3</sup>

##### 1. Regulation of Marriage Registration in Indonesia

- a. Marriage Registration Act No 1 year 1974 in Indonesia about Marriage Indonesia was Regulate marriage registration of Marriage Act on Regulation No. 1 of 1974 on paragraphs 1 and 2. Paragraph 1 and 2 said.<sup>4</sup>

- 1) Marriage is legal if carried out according to the laws of each religion and belief it.
- 2) Every marriage is recorded in accordance with the legislation in force.

- b. Regulation No. 9 of 1975 Article 2 paragraph 1

"Registration of marriage of those who hold marriage according to Islam, carried out by the Registrar Officer referred to in Act Number 32 of 1954 on Registration of Marriage, Divorce and Refer "<sup>5</sup>

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<sup>2</sup> BW..pdf

<sup>3</sup> Hilman Hadikusuma, *Hukum Perkawinan Indonesia* .Bandung: Mandar Maju, 2007. P.82

<sup>4</sup>UU No. 1 of 1974, LNRI No 1 of 1974

- c. Compilation of Islamic Law concerning the provisions of registration of marriages

Article 6: (1) To comply with the provisions in article 5, every marriage should take place in the presence and under the supervision of the Registrar of Marriage Employees

(2) Marriages performed outside the supervision of the Registrar of Marriage Employees do not have the force of law.

- d. PMA Number 11 Year 2007 about Marriage Registration

Article 2

1. Registrar hereinafter referred to as the Officer of Marriage Registration is an official examination requirements, monitoring and recording of events marriage / reconciliation, divorce registration divorce, contested divorce, and perform marriage counseling.
2. Officer of Marriage Registration chaired by the Head of KUA.
3. The Head of KUA referred to in paragraph (2) sign the marriage certificate, deed of reconciliation, marriage book (excerpts marriage certificate) and / or citations refer deed.
4. Notice who will marry.

### **E. Marriage Registration in Malaysia**

In Malaysia Marriage Law requires the registration or registration of marriages. The process of recording is done after the completion of the ceremony. For example the text of article 25 of Law 1985 Pinang; "Marriage after specified dates each person in the country who settled the island and the marriage of each person who lives abroad. For people who are not registered their marriages are offense and can be punished by a fine or imprisonment, but there are laws of Malaysia also stated that registration is carried out at least 7 days before the wedding."<sup>6</sup>

### **F. The Similarities and Differences of Marriage Registration in Indonesia and Malaysia**

The Similarities of Marriage Registration in Indonesia and Malaysia

- a. Indonesia's marriage registration is regulated by Marriage Act No. 1 of 1974 on paragraphs 1 and 2. Paragraph 1 and 2 elucidated that:

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<sup>5</sup>PP Number 9 of 1975 pdf.

<sup>6</sup>[http://www2.esyariah.gov.my/esyariah/mal/portalv1/enactment2011/Eng\\_enactment\\_Ori\\_lib.nsf/f831ccdd195843f48256fc600141e84/8a3accb491fc77c7482576c10031ed2b?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enactment2011/Eng_enactment_Ori_lib.nsf/f831ccdd195843f48256fc600141e84/8a3accb491fc77c7482576c10031ed2b?OpenDocument) 15 april 2015

Marriage shall have according to the laws of each religion under Article 2 paragraph 1 of the " legal event ". Legal events cannot be annulled by the presence of " significant events " are defined in Article 2, paragraph 2, that " every marriage shall be recorded in accordance with the legislation in force ".

With the formulation in Article 2 paragraph (1) of this, there is no legal marriage outside of each religion and that, in accordance with the Constitution of 1945, the law of each religion shall include provisions that apply to religious groups and her belief. This extent shall not inconsistent or not otherwise provided in this Act. Thus, it is clear that the 'registration of marriage' 'according to Law No. 1 of 1974 is a recording of' significant , 'illegal event' '.

While in Malaysia every marriage conducted after the appointed date by the resident in the State of Penang shall be registered in accordance with this Enactment. Besides, every person living abroad who is resident in the State of Penang shall reviews their marriage registered under this Enactment.

The both article explained that, on the regulations oblige or require registration of marriages based on article 2, paragraph 2 of Act Number 3 Enactment 1974 and section 25.

PMA (Regulation of the Minister of Religion) No. 11 year 2007

Article 26

1. Officer of Marriage Registration marriage record events in the marriage certificate.
2. The marriage deed was signed by the husband, wife, marriage guardian, witnesses and Officer of Marriage Registration.
3. Deed of marriage is made in 2 (two), each of which is stored in the local KUA and the Court.

Article 26 illustrated on the registration of marriage. The Officer of Marriage Registration duty is to record the events of marriage in the form of a marriage certificate. The marriage certificate must be signed by the husband, wife, marriage guardian, witnesses and Officer of Marriage Registration. Marriage certificate shall made in two copies then delivered and stored in their local KUA and the Court.

While in Malaysia, the matters on the book of wedlock are described in Section 30. Copies of entries to be sent to the Chief Registrar on enactment 3 2004 Islamic Family Law of Pulau Pinang:

- (1) Every Registrar shall, as soon as practicable after the end of each month, deliver to the Chief Registrar a true copy certified under his hand of every entry made in the Marriage Registrar.
- (2) All such copies shall be kept by the Chief Registrar in such manner as may be prescribed and shall constitute the Marriage Registrar of the Chief Registrar.

The Registrar has the duty to deliver the certified true copy of the entry made in Marriage Registrar to the Chief Registrar after the end of each month. Then, the copies of the entry shall be kept by the Chief Registrar and shall constitute the Marriage Registrar of the Chief Registrar.

The second explanation illustrated that the officer of Marriage Registration clerk shall records the events of marriage or marriage implementation process in the form of a marriage certificate. Marriage certificate shall made in 2 copies, then stored in the KUA and the Court. In the context of Malaysia, there should be a copy of the marriage certificate kept by the Chief Registrar of Marriage and the Officer of Marriage Registration.

## 2. The Differences of Marriage Registration in Indonesia and Malaysia

### a. Indonesian context

In Indonesia, the registration of marriages is important. It is characterized by the existence of a mechanism for setting clear about the process of registration of marriages. In addition, there are also legal consequences behind the establishment of this rule. In Indonesia, the provisions regarding the registration of marriages in general, regulated in Law No. 1 of 1974. In Article 2, paragraph 2 of the law which states that every marriage shall record in accordance with the legislation in force. Although in the marriage law, marriage documentation problem is only stated in one paragraph, but the problem of recording is very dominant.

### b. Malaysian context

Registration of marriages in Malaysia is important which shall be required. Although each state in Malaysia has a separate law governing the administration of Islamic law, but the provision is enforced by registration of marriages statewide Malaysia. Although the registration sounds compulsory, however, the registration of marriages in Malaysia does not specify valid or cancellation of a marriage. Provisions legitimate or cancellation of marriage is based on Islamic law. However, register of marriages considered as a violation in most countries in Malaysia. According to the



Family Law legislation, the person can act as registrar of marriage and divorce are *Kadi Besar*, *Kadi-kadi*, and priest-faith in every mosque that was given Commission (authorized) by the Sultan.

#### G. The Impact of Marriage Registration In Woman's Rights Perspective

Siti Lestari from the Legal Aid Association of Women for Justice or LBH, which in providing legal services to the community, especially women, stated that *siri* marriage caused many disadvantages to women. According to him, anything that impacts from *siri* marriage shall not be recognized legally. If the pair want to seek for a divorce, then divorce is only acted with the agreement, but the woman has no right to sue against the man on the right living, child custody, especially when the husband rejected to do so. Difficulty in getting child's birth certificate. Birth certificate is a very important tool; especially it serves as a condition for the student to study. It will cause adverse effects to the children in the future.

Several points on the importance of a marriage contract are listed:

1. As mentioned in the marriage Recording destination, with their marriage certificate, the person has a valid evidence in proving their marriage by the State. If there is any conflict, then the State has the authority to prosecute. In the Islamic *Sharia* provisions, legitimate child can only be done by a pledge or proving the presence of two witnesses. However, if it cannot be done so, then the marriage registration will becomes representative to reach the goal *maslahah*.
2. The evidence is important for a marriage as the Prophet will never affirmed a marriage without witnesses synonymous with fornication. Prophet can only hold *walimah* or *i'lan* for such marriage.

In the view of *Asghar Ali Engineer*, there are three levels of fair treatment requirement which must be met: first; guarantees to the use the wealth of orphans and widows correctly, second; guarantees to give justice to all wives in material things, third; give love and affection to all wives equally. *Asghar's* opinion is very relevant to the laws and regulations on registration of marriages. It is used to avoid the practice of polygamy freely among this modern society. With the registration of marriages, the children's rights will be protected with the proof of marriage certificate as the children can get birth certificate. Thus, the inheritance rights of children can be protected. In the event of a

dispute between the child and the family on the issue of inheritance then the children could be demanded by the evidence of a marriage certificate and birth certificates of parents.

Based on the results of the study as described in previous chapters, and according to the purpose and objectives of this thesis, the conclusions are:

1. Regulation of Marriage Registration in Indonesia and Malaysia have similarities and differences. Indonesia regulates that the marriage must be registered based on Ministry of Religious Affairs Regulation (PMA) and Malaysia must be registered but only serve as administration purpose. In Indonesia and Malaysia, both country also regulation the punishment if the marriage is not registered. The difference is Indonesian have no obligation to report unregistered marriage but there is regulation in the marriage is not registered. Whereas in Malaysia, the residents have obligation to report on those who had failed to register his marriage. A comparison based on the regulations concerning the registration of a marriage had been made. Indonesia possessed better techniques in the scope of registration of marriage, while in terms of the implementation, Malaysia has more effective compare than in Indonesia as the provision in Malaysia is stricter.
2. The impact of Marriage registration in woman's rights perspective, in Asghar Ali Engineer opinion's is recording of marriage will covered and the rights of women and children rights are protected with the evidence of a marriage certificate so that the children can get a birth certificate in protecting the heirs of children rights. If there is problem happened between a child and family on the children and heirs, the assertion can be demanding with the evidence of a marriage certificate parents and a birth certificate. Asghar opinion's on the regulations about regulation of marriage registration is to avoid the practice of polygamy free community with this modern is relevant.