



## CHAPTER I

### INTRODUCTION

#### A. Background of Research

Marriage is an internal-external relationship between a man and woman as the couple aiming to create a happy and eternal family based on belief in the one and only God.<sup>1</sup> Marriage is legal, if it is done based on law and faith of each person. Marriage in Islam has its own religious values, as stated under Section 2 Compilation of Islamic Law, in which a marriage is a strong agreement (*mitsaqon gholidhan*) to obey Allah commands, and implement it as worship. Therefore marriage aims to create a peaceful, loving and merciful family and to form a happy and eternal family.

Moreover, according to religious law, marriage is a holy deed (*sakramen, samskara*), namely as a relationship between a man and woman to obey God's commands and advices, in order family and neighbor life continues well based on faith of each person.<sup>2</sup> Therefore, the marriage, if viewed from religion, is physical and spiritual

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<sup>1</sup>Article 1 Act Number 1 of 1974

<sup>2</sup>Hilman Hadikusuma. *Hukum Perkawinan Indonesia*. Bandung: Mandar Maju, 2007. P.10

relation that brings law consequence toward religion followed by both brides can date as well as their family.

In Islam, marriage legality determines the beginning of a genital organ relation between a man and woman permitted. That rule influences moral attitude and society law standard. In Islamic Law Compilation section 4 namely: Marriage is legal, if it is done based on Islamic section 2 verse (1) Act No. 1 year 1974 about marriage.

Marriage which carried out based on religion is a law event that cannot be cancelled by section 2 verse (2) Law Number 1 year 1974 about marriage, as if it is not done marriage registry. Thus, it can be stated that formula section 4 Compilation of Islamic Law (KHI) confirmed that a legal marriage is marriage based on KHI accordance with Section 2 verse (1) Law Number 1, 1974 about marriage. It explains that marriage is legal if it is implemented accordance with law of religion and faith each person and thus every marriage is registered based on valid legislation.

Meanwhile, the marriage registration is arranged within Section 5 and 6 in Islamic Law Compilation:

Section 5 :

1. In order that guaranteed marriage orderliness for Islamic society every marriage should be registered.
2. The marriage registration in section (1), is done by marriage registration staff in the same as arranged within Act No.22 year 1946 Law No. 32 in 1954.<sup>3</sup>

Section 6 :

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<sup>3</sup>Compilation of Islamic Law pdf.

1. To fulfill regulation in section 5, every marriage must be carried out in front of and under monitoring marriage registration staff.
2. Marriage that is done outside marriage registration staff does not have law power.<sup>4</sup>

Within Section 5 verse (1) KHI stated that marriage must be registered, it is an implementation of general description number 4 letter b law Number 1 in 1974 about marriage in the same as quoted above. Therefore, the term must be noted within Section 5 verse (1) KHI also aims to guarantee marriage orderliness in the society only.<sup>5</sup> Section 6 verse 2 KHI which determines that marriage that is not registered yet, it does not have law power, seems become a bridge for those agree toward Section 2 Law arrangement about marriage in 1973 its description that stated, “ Marriage is legal if it is carried out in front of marriage registration Staff, registered in marriage jotter list by the staff, and continued to be carried accordance with this legislation and/or marriage law legislation among those who marry, as long as it does not in contradiction with this legislation.” The legality of marriage in line with Section 12 Marriage Law Arrangement in 1973 must be based on marriage registration, without leaving Religious Law.

In accordance to Act No.22 year 1946, it stated that the purpose of jotting marriage is to obtain Law and orderliness Certainty. Within the description Section 1 verse (1) that legislation described that: “the meaning of this Section is that, marriage, divorce and reconciliation accordance with Islam religion noted in order to obtain certainty law. In a well-ordered country, everything about in habitant or people

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<sup>4</sup>Kompilasi Hukum Islam pdf

<sup>5</sup>Neng, Djubaedah. *Pencatatan Perkawinan dan Perkawinan*. Jakarta : Sinar Grafika, 2010. P. 219

must be noted, as birth, marriage, death and so on. Furthermore, the marriage goes along with heir so that marriage should be registered to avoid disorder<sup>6</sup>.

Within Government Regulation number 9 year 1975 about implementation Act Number 1 of 1974 stated that the marriage organizes is about the marriage system and registration. There are several sections that are assumed important to be expressed, namely section 2 legislation Number 9 in 1975 verse 1 that determines the marriage registration for Moslem who is carried out by marriage registration staff in the same as within legislation Number 22 in 1946 legislation number 32 in 1954.

Furthermore, the implementation of PMA Peraturan Menteri Agama (Religion Ministry Legislation) Number 11 in 2007 on the marriage registration is one of legislation forms which are more detail. This section had been legislated in the news of Indonesia Country Number 5 in Jakarta June 25, 2007. The implementation of this legislation is to fulfill the demand of government order and to increase the society service to review Religion Ministry Decision Number 477 in 2004 as it described about the same matter. The birth of Religion Ministry legislation number 11 in 2007 describes about marriage registration process that covers:

- Chapter I : General Regulation (section 1)
- Chapter II : Marriage Legislation Staff (section 2to 4)
- Chapter III : Marriage wishing Announcement (section 5to 8)
- Chapter IV : Agreement and marriage age dispensation (section 7to 8)

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

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<sup>6</sup>Khoirudin Nasution, *Hukum Perdata (keluarga) Islam Indoensia dan Perbandingan Hukum Perkawinan di Dunia Muslim*, Yogyakarta: ACAdEMIA + TAZZAFA, 2009. P. 336.

Islamic law by English law in Malaysia namely the Muhammad Marriage Ordinance, No. V in 1880. Malaysia Family Law is the first country in Southeast Asia in issuing the renewed Family law, by implementing the Muhammad Marriage Ordinance, no. V in 1880 in these countries. Therefore, marriage and divorce law had been introduced in these countries for the first time including Pulau Pinang, Malacca and Singapore. Before achieving the freedom, the content of the Muhammad 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)

Besides, the formula from the Muhammad Marriage Ordinance are:<sup>7</sup>

Chapter I : Marriage and Divorce Registration ( Section 1 to 23)

Chapter II : Inauguration of Judge in Religious Court ( Section 24 to 26)

Chapter III : Property in Marriage (section 27)

Chapter IV : General Regulation ( section 28 s.d 33)

Meanwhile, as for the federation states in Malaysia, which are Perak, Selangor, Negeri Sembilan, and Pahang, had acted Registration of Muhammad and Marriages and Divorces Enactment 1885. Then, for non-federation states, Kelantan, Terengganu, Perlis, Kedah and Johor, applied The Divorce Regulation year 1907.<sup>8</sup>

After achieving its freedom, Malaysia had enacted the law about marriage in each country in Malaysia that was decided in Enactment or Islam Management. From the substance in Enactment, it can be known that Malaysia country renews not only in marriage and divorce but also in the matter of monetary, baitul mal, zakat, wakaf,

<sup>7</sup>Khoiruddin Nasution , *Status Wanita di Asia Tenggara, Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia*. Jakarta : INIS, 2002.P. 62-65.

<sup>8</sup>Khoiruddin Nasution , *Hukum Keluarga di Dunia Islam Modern, Studi Perbandingan dan Keberlanjutan UU Modern dari Kitab-Kitab Fiqih*, Jakarta : Ciputat Press, 2003. P. 20

mosque, religion shift, household expenses, nazar, mandate and khairat picking. As a result, Islamic law legislation (Family Law) is legal in Malaysia as a role of federal country legislation.

There has been ever an effort toward Islam family legislation in Malaysia led by Tengku Zaid. However, after the legislation draft was issued in the federal countries, the content of whole draft was not accepted. Consequently, Islamic family legislation in Malaysia is not aligned with each other.<sup>9</sup>For example, registration process is principally carried out after marriage contract.

Based on the stated background, the writer is interested to conduct a research between both Indonesia and Malaysia about marriage registration. As a comparative and learning study to find out the similarity and difference that occurred in the marriage law matters. Therefore, the writer entitles this research “Regulation of Marriage Registration in Indonesia and Malaysia in Woman’s Rights Perspective Comparative Studies between Ministry of Religious Affair’s Regulation (PMA) Number 11 Year 2007 Indonesia and Enactment of Islamic Family Law in Pulau Pinang Number 3 Year 2004 Malaysia”.

### **B. Scope and Limitation In this research**

This research needs to outline about the scope and limitation. Limitation is focusing on the problem discussed. This research only discusses about Regulation of Marriage Registration in Indonesia and Malaysia in Woman’s Rights Perspective Comparative Studies between Ministry of Religious Affair’s Regulation (PMA) Number 11 Year 2007 Indonesia and Enactment of Islamic Family Law in Pulau Pinang Number 3 Year 2004 Malaysia. This research is carried out as this is assumed as a comparative study between Indonesia and Malaysia. The woman perspective used in this research is

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<sup>9</sup>Abdul Karim Barakatullah, dkk, Hukum Islam: .....P. 128-129

based on Asghar Ali Engineer view on the woman rights which are related to the topic discussed in this research.

### **C. The Statement of Problem**

Based on the background above, this research will illustrated on the two problem statements below:

1. How do marriage registration in Ministry of Religious Affair's Regulation (PMA) Number 11 year 2007 Indonesia and Enacment Islamic Law of Pulau Pinang Number 3 year 2004 Malaysia?
2. What is the the marriage registration regulation in Indonesia and Malaysia woman's rights perspective?

### **D. The Objective of Research**

1. To analyze the regulation of Ministry of Religion Affair's Regulation (PMA) Number 11 year 2007 Indonesia and Enactment Islamic Law Pulau Pinang Number 3 year 2004 Malaysia.
2. To describe the marriage registration regulation in Indonesia and Malaysia woman's rights perspective.

### **E. Significance of Research**

The result of this research is expected to be a useful reference, both theoretically and practically.

1. Theoretically, the results of this research are expected to be useful in developing a corpus of scientific knowledge and forethought especially in

terms of marriage registration, legal Implication of marriage registration and how women's rights prespective aspect in marriage registration in Malaysia.

2. Practically, the results of this research are expected to serve as a material reference for reflection and thinking for readers, among academics, practitioners and for the community in understanding the problem that described in this study is about marriage registration, its legal implication and women's rights perspective in Malaysia.

## **F. Research Method**

### **1. Type of Research**

Based on the background presented by researcher, this research is study on the field of law. This research uses normative research or study on literature (*library research*), by Amiruddin, in other name, this study also called as doctrinal legal research. This study will conceptualizes on what is written against the norms of society behaves 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 the normative research, and as the consequence of the problems, so an approach used by researcher is comparative approach. The meaning of this approach is the scientific view that used to understand data. The comparative approach means the approach that is performed by reviewing the law for comparing the similarities legislation of the other countries.<sup>10</sup>

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<sup>10</sup>Pedoman Penulisan Karya Ilmiah Tahun 2012 Fakultas Syariah UIN Maulana Malik Ibrahim Malang, p. 21



Thus, the researcher will identify the problems that arise in the community, legislation, document or other literature about the title. This research is intended to understand the problems that arise from the marriage registration.

### 3. Data Sources

According to Marzuki, the data sources used in the normative research is secondary data, which consists of primary legal materials; secondary legal materials, and tertiary legal materials.<sup>11</sup>

Therefore, the research literature will use the data to help research in the form of secondary data which divided into primary legal materials, secondary legal materials, and tertiary legal materials.

#### a. Primary Legal Sources

Primary legal material is the law as an authority material does have the authority. PMA Ministry of Religion affair's Regulation (Peraturan Menteri Agama) Nomor 11 Tahun 2007 Indonesia and Islamic Family Law of Pulau Pinang year 2004 of Malaysia will serve as the primary legal materials in this research.

#### b. Secondary Legal Sources

Secondary legal research is the material in helping or supporting the primary legal research. It will strengthen the explanation in it. Among the secondary law materials in this research are books, thesis, journals and documents about aspect Regulation of Marriage Registration in Indonesia and Malaysia (Comparative Studies Between PMA

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<sup>11</sup>Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana. 2010. p.118

Ministry of Religion Affairs Regulation (Peraturan Menteri Agama) Number 11 Year 2007 of Indonesia and Enactment of Islamic Family Law of Pulau Pinang 3 Year 2004 of Malaysia) in Woman's Rights Perspective. Among the secondary law Materials used in this research are:

- ✓ Ahmad Ibrahim : Undang- Undang Keluarga Islam di Malaysia.
- ✓ Ahmad Ibrahim : Family Law in Malaysia and Singapore.
- ✓ Compilation of Islamic law as the comparison settings about marriage registration in Indonesia and Malaysia.
- ✓ Act Number 1 Year 1974, Peraturan Pemerintah (PP) Number 9 Year 1975 and Peraturan Menteri Agama (PMA) Number 11 Year 2007.
- ✓ Asghar Ali Engineer : The Rights of Women in Islam.
- ✓ Musawa Journal in UIN Sunan Kalijogo Yogyakarta and other books that are still relevant to the study discussed.

c. Tertiary Legal Material

Tertiary legal material is a material that gives the instructions inform or explanation of the material law of primary and secondary law materials such as dictionaries, encyclopedias and inform others.

Tertiary law materials in this research are:

- ✓ Legal Dictionary
- ✓ Malay Dictionary
- ✓ Encyclopedia of Islamic law

d. Data Collecting Technique

The collection legal materials in the library legal research is the documentary technique that is collected and review archive or library studies such as books, papers, articles, magazine, journal, newspaper or paper experts. In addition, the interview was also one of the 11 collection techniques of the material support documentary technique used in this research.

e. Data processing techniques

The first step is editing, i.e. inspection of the returned materials inform obtained primarily from the completeness, clarity of meaning, appropriateness, and relevance to the group. The next step is coding, in giving a record or a sign stating what type of material law (literature, legislation or document). The next step is reconstruction material (reconstructing) i.e. reorder materials inform regularly, sequential, logical, so easily understood and interpreted. And the last step is, systematizing the law ordered by material puts systematic framework discussion based on sequence problem.

f. Data Analysis Technique

After the legal material is collected and analyzed in obtaining the conclusion, the form of legal materials analysis techniques will be used for content analysis.

## G. Previous Research

Research of Marriage Registration has been done by several researchers, such as: journal written by Ruhdiya, dkk, (2013) Student of Magister Ilmu Hukum Pascasarjana Universitas Syiah Kuala Banda Aceh, under the title “ *Kewajiban Pencatatan Perkawinan Bagi Pasangan yang Telah Menikah Beserta Konsekuensi Yuridisnya*”.<sup>12</sup>In

<sup>12</sup> Jurnal Ilmu Hukum, Ruhdiya, dkk. Magister Ilmu Hukum Pascasarjana Universitas Syiah Kuala Banda Aceh, Fakultas Hukum Universitas Syiah Kuala (2013).

this journal, writer used writing method of juridical normatif, conducted by checking the references and secondary data. Furthermore, it will be used to check the cases happening in the society as addition. This research aimed to investigate and find out law concepts for husband-wife couple, however they do not do marriage registration.

This research focused on the descriptive study that tried to describe law, law system, and learn it systematically. The research result showed the consequences of marriage law in the absence of marriage document, husband/wife in the relation of marriage does not have power law in the marriage relationship and the children birth does not obtain the birth document service and power law as family member.

A thesis written by Adib Bahari, thesis (2010) Faculty of Shariah and law student of State Islamic University Sunan Kalijaga of Yogyakarta entitled "*Analisis Atas Ketentuan Hukum Pencatatan Perkawinan Dalam Rancangan Undang-Undang Perkawinan 1973 Dan Undang-Undang No.1 Tahun 1974 Tentang Perkawinan.*"<sup>13</sup>

The problem of this research is how law legislation and the framework of marriage registration legislation within marriage law arrangement year 1973, UU Number 1 year 1974 and Islamic law perspective. Moreover, the factors influencing on the change within law legislation of marriage registration in the marriage law arrangement year 1973 had also been discussed. This study was conducted using library research by learning legislation, Islamic law references, books, journal and articles related to the problem of this study. The result of this study showed that marriage legislation Number 1 year 1974 as fictive administrative legislation. This is very different from legislation marriage law

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<sup>13</sup>Adib Bahari, *Analisis Atas Ketentuan Hukum Pencatatan Perkawinan Dalam Rancangan Undang-Undang Perkawinan 1973 Dan Undang-Undang No.1 Tahun 1974 Tentang Perkawinan*, Skripsi (Yogyakarta: UIN Sunan Kalijaga, 2010).

arrangement year 1973 which is very strict and clear stated as legal requirement of a marriage.

The last research is under the title of '*Fungsi Pencatatan Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 (Studi Kasus di Pengadilan Agama Medan)*'<sup>14</sup>. This research uses the method of descriptive in analytical which is a data analysis within the scope of sample. The theory of general law is applied as to explain about a set of data or comparison data in showing the relationship with a set of other data. The field of research is on the religious court. The speakers are the court judge in the field of religion. Based on respondents purposive from sampling method used, a total of 20 people had been collected. Data collection on the study documents from a tool, interview and questionnaire. All the data analyzed qualitatively.

The main issues in this research are firstly, how can the function of marriage registration according to the law number 1 of 1974. Secondly, how the law as a result of a marriage is not registered according to the law number 1 of 1974. Thirdly, how is the attitude of religious court judge Medan about the status of matrimonial law that is not recorded. This research result indicates that: the first, the function of marriage registration according to the law number 1 of 1974 is to meet of state administration. It serves as a hard evidence in determining the score at law somebody to keep realized the existence of a legal certainty order law and protection laws against the second marriage which is not registered according to the law number 1 of 1974. Although in religion or customs, the marriage is legal but in matrimonial law was not legitimate and not having the force of law. Thirdly, the attitude on the status of religious court judge field judge marriage

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<sup>14</sup>[Mega Magdalena](#), ''*Fungsi Pencatatan Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974*'' ,Skripsi, (Medan :Universitas Sumatra Utara,2008).

was: if the registered marriage has been meeting requirements marriage unit according to islamic law and in accordance with article 4 a compilation islamic law jo article 2 paragraph ( 1 ) law number 1 of 1974 , then the marriage be valid

From the research above, researcher has drawn the similarity and difference in his research in using comparative study. The writer compared the marriage registration in Indonesia and Malaysia in the perspective of woman's rights. Meanwhile the similarity is categorized as normative research (*library research* ).

#### **H. Structure of Discussion**

This thesis will be written using systematic procedure covered in four chapters. Each chapter discusses as follows:

Chapter I is on the introduction. This chapter covers: the research background that gives a base to think of research problem, statement of problem, problem purpose, research significance, research method, aims in order to the discussion can focus and be systematic, the previous study, and the last is discussion structure. It is aimed to make the readers have global view of the research.

Chapter II is to review basic theory and concept to analyze this research. It states the concepts: Hierarchy Regulation in Indonesia and Malaysia, woman's rights in Islamic Perspective. This chapter aims to be used as research analysis base.

Chapter III is about the research and discussion of the result. This chapter will describe on the law substance that has been obtained from research literature. The data is obtained from reading and studying literature which is then been edited, classified, verified and analyzed. This chapter is a part that is used as base to give a conclusion in the fourth chapter.

Chapter IV is illustrated on the conclusion. This last chapter is presented on the conclusion from research discussion as the answer from problem statement and stating several suggestions as scientific idea contributions. This chapter is to enable the readers understand on this research.

