



**CHAPTER III**  
**COMPARATIVE STUDIES OF MARRIAGE REGISTRATION IN INDONESIA**  
**AND MALAYSIA**

**A. 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>1</sup>

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<sup>1</sup>Ali,Zainuddin.*Hukum Perdata Islam di Indonesia*.Jakarta :Sinar Grafika, 2006. P. 27

In the Civil Code (BW) about the events that preceded the marriage stipulated in section article 50-58, in implementing a marriage arranged in chapters 71-82. Article 50 of the Civil Code (BW) states that " everyone who wants to marry he/she will have to notify it to the Registrar of Civil Servants in place one of the parties of both sides ". This notification must be made, either alone or with the letters with sufficient certainty that both will show the prospective husband and wife, and of this notice by the Civil Servants must be made a deed '(Article 51).<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>

Whoever engages in the marriage contract or marriage with a woman which not under the supervision of employees marriage registrar or his deputy, shall be sentenced to a fine of up to Rp 50, - (fifty rupiahs). Article 3 [1] no.22-1946 Law on Registration of Marriage, Divorce, and Refer to Java and Madura, and which has been valid for the whole of Indonesia based on Law no.32-1954.

In the provisions of Article 3 (1) of the Act no.22-1946, it means that the marriage performed according to customary law or Islamic law, but is not under the supervision of employees marriage registrar, though legal under customary law or religious law become

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

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

invalid according to the Law no.1 1974 jo , PP no.9-1975. According to Article 2 of Regulation no. 9-1975 said of " Registration of marriages of those who marry according to the Islamic religion, carried out by the Registrar of Marriage Employees are considered by the Minister of Religion or employee pointed by it as set forth in the Act no.32-1954 about the recording of Marriage, Divorce and Refer (Article 2 [1]).

Marriage Registration of those who hold marriage according to their religion and belief besides Islam, carried out by the Officer of Marriage Registration at the Civil Registry Office as stipulated in various laws regarding registration of marriages (article 2 [2] PP no.9-1975. The notice shall be sent to each the person who enters into a marriage will occur at least ten (10) working days before the marriage took place, except for an important reason marriage notices can be less than 10 (ten) days referred to above approval on behalf of the Head of the Regent / Local Regional Head (article 3 [ 2-3]) PP no.9-1975. Practically as author knows, normally the notice in the execution of Muslim marriage is less than 10days until Head sufficient to approval by the Registrar employee concerned. The notification by name, age, religion / belief, occupation, place of residence bride and if ever marriage also mentions the name of the husband / wife earlier (Article 5).

After The Officer of Marriage Registration examines whether the conditions have been met and whether the marriage there is no impediment of marriage for the bride, then the well-researched as follows: (article 6, paragraph 2).

1. The Definition of Marriage Registration in Indonesia

In the course of life, humans have several important events include: birth, marriage, divorce, death and others. This is especially important if all the above incidents obtain, get clarity and gain certainty as it will bring legal consequences for the life of the person concerned and also against another person or a third party.

Thus, it is understood that, any important events (such as marriage) shall absolutely be registered at the Religious Affairs Office (KUA). For those who are Muslim and the non-Muslims, they shall register at the registry office. If there is problem arose in the later days which was not easy in the settlement, except with some authentic evidence that is provided to it.

Civil registration, by Lie Oen Hock, interpreted as an institution that aims to hold a registration, jotting as well as complete bookkeeping and clearly and provide legal certainty, as much as possible on the events of birth, recognition, marriage and death. Meanwhile, according to R. Soetojo Prawirohamidjo and Aziz Safroeddin found, institute civil registry is an organization that aims to enable as complete and clearly provide maximum certainty about events such as birth, marriage, death and so on.<sup>4</sup>

It means that, the event of registration in recording the marriage to the officer or authorized officer will be listed as proof that the marriage actually occurred. Besides from being a marriage registrar, the officers also have obligations as a watchdog against marriage. The officer will oversee within the meaning in avoid the marriage violates the provisions of the law including both Islamic law and the laws in force. It is to ensure that the mating occurs is a valid marriage in accordance to both Islamic law and recognized by applicable law.

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<sup>4</sup>Nico Ngani dan I.Nyoman Budi Jaya, *Seri Hukum Perdata Barat Cara untuk Memperoleh Akta-akta Catatan Sipil*, Cet. Ke-1 Yogyakarta: Liberty, 1984. P. 6

According to Jaih Mubarak, in general, the not registered marriage is a marriage that is not accounted for by Officer of Marriage Registration or marriages performed by Indonesian Muslims, by fulfilling both pillars as well as the terms of the marriage, and registered with the official registrar marriage. The marriage is a marriage record recorded by Officer of Marriage Registration.<sup>5</sup> Marriage which is not under the supervision of Officer of Marriage Registration deemed to be legitimate religion but it does not have the force of law because it did not have evidence of a valid marriage under the laws in force. Idris expressed the same sense as Ramulyo, where the not recorded marriage is a marriage conducted by Indonesian Muslims, fulfilling both pillars as well as the terms of the marriage, but it is not registered on the official marriage registrar.

## 2. The Purpose and Function of Marriage Registration In Indonesia

Al-Quran and *hadits* do not regulate in detail regarding the marriage registration. But, it is perceived by the public about the importance of it, so it had arranged according to the legislation, Act No. 1974, Regulation No. 9 of 1975 and the Compilation of Islamic Law. Registration of marriages aims to realize the order of marriage in society. A good marriage shall conduct based on Islamic law and the marriage is carried out by people who are not based on Islamic law. Registration of marriages is an attempt to maintain the sanctity *mitsaqon gholidzon* legal aspects arising out of wedlock. Realization of recording is by giving birth Marriage Certificate to husband and wife with a copy for each. These will, it can be used by each party if anyone feels aggrieved from the bonds of marriage is to be eligible.<sup>6</sup>

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<sup>5</sup>Mukhlisin, Muzarie. *Kontroversi Perkawinan Wanita Hamil*. Yogyakarta: Pustaka Dinamika, 2002. P. 110

<sup>6</sup>A. Mukti Arto, *Masalah Pencatatan Perkawinan dan Sahnya Perkawinan dalam Iskandar Ritonga, Hak-hak Wanita dalam Undang-undang Perkawinan dan Kompilasi Hukum Islam*. Jakarta : Nuansa Madani, 1999. P. 64-65

In marriage law, it does not described in detail on the definition of marriage documentation, but just in general explanation in stating that every marriage is the same as in one's life, such as birth, death stated in the paperwork an official certificate that is also contained in recording list. In order to understand what is contained in the general explanation, it can be said that the registration of marriages is an effort that aims to realize the order of marriage in society. It is with the intention to use as evidence of authenticity at any necessary time.

It does not set out clear whether the marriage should be recorded or not. However, by looking at the purpose of registration of marriages as mentioned above, the actual registration of marriage brought a lot of advantages for both parties to implement *Balah* marriage both in personal life and in the life of society, for example by having a written marriage certificate as authentic and prove that there has been a marriage event. Besides, with the marriage certificate, a Registrar may require a variety of benefits, such as allowances wife, child support or other benefits associated with marriage.<sup>7</sup>

Registration of marriage is an urgent thing as it is an administrative requirement which must be done. The aim of the registration is to makes the marriage clear and becomes proof that the marriage has taken place involving both concerned, both sides of the family, other people, and for society as marriage events that can be read in a letter that is officially. It shall be done in a list that deliberately prepared for it, so that at any time can be used, particularly as written evidence authentic. With the letter of such evidence, then the law can be prevented occurrence of other acts. Thus, it can be said that despite the provisions of registration of marriages only an administrative requirement, this

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<sup>7</sup>Jaih Mubarak, *Modernisasi Hukum Perkawinan di Indonesia*, Bandung: Pustaka Bani Quraisy, 2005, P. 87

provision also has a considerable influence on other administrative provisions, particularly in relation to the events and legal acts.

As noted, a marriage certificate is basically served as valid evidence. In this regard, in the fourth book, Chapter I, Article 1865 Code of Civil Law states that the purpose of the evidence is:

- a. As the proposition that a person has the right
- b. To reinforce and strengthen that someone has the right
- c. To deny or assert the untruth that the other person has the right
- d. To demonstrate and declare that there has been a situation or an event has occurred.

### 3. 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>8</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>9</sup>

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

Article 5 : (1) To guarantee the order of marriage for Muslims every marriage should be recorded.

<sup>8</sup>UU No. 1 of 1974, LNRI No 1 of 1974

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

Article 5 : (2) The registration of marriages in paragraph (1) conducted by the Employee Registrar of Marriage as stipulated in Law No. 22/1946 jo. UU no. 32/1954.<sup>10</sup>

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

Civil Registration recorded the important events experienced by a person in the register at the Civil Registration Executing Agency. The civil registration system is important in the administration of residence within a State law, because whatever is deemed legally valid if it can be proved by the existence of an official document issued by the Implementing Agencies as authentically produced evidence of service of Population and Civil Registration. Important events are events experienced by a person include birth, death, stillbirth, marriage, divorce, child recognition, validation child, and adoption, change of name and change of citizenship status.<sup>11</sup>

As for the procedure or the implementation process of marriage stipulated in the Regulation of the Minister of Religion of the Republic of Indonesia Number 11 Year 2007 on Marriage Registration, it shall include a notice of marriage, marital examination, the announcement of the will of marriage, marriage ceremony, signing the marriage certificate, marriage certificate and the making of quotations. This is explained in the following, which reads:

Article 2

<sup>10</sup>Compilation of Islamic Law pdf

<sup>11</sup>Ismail Hasani & Prof. Dr. A. Gani Abdullah, SH. *Pengantar Ilmu Perundang-undangan*, FSH UIN Syarif Hidayatullah Jakarta, 2006. P.78



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.

The functional officials (civil servants) who are assigned responsibilities, and authority to conduct surveillance of marriage. According to Islam and activities. The Head was a representative of the in this Head KUA to perform the implementation of the marriage and the CF in the field so that it can run the authority of Officer of Marriage Registration , namely: conducting the inspection requirements, monitoring and recording the events of marriage/divorce registration, c. divorce, , and performs marriage guidance.

#### Article 3

1. Notification will marry submitted to VAT, in the districts where the candidate's wife lived.
2. Notification of marriage will be done in writing by filling Notification Form and include the following requirements:
  - a. Certificate for the marriage of the village chief / headman or any other name.
  - b. Excerpt of birth certificate or birth recognition letter or certificate of origin bride village chief / headman or any other name.
  - c. Approval of the bride;
  - d. The certificate of the parents (mother and father) of the head of the village / level officials;
  - e. Written permission of parents or guardians for the bride has not reached the age of 21 years.
  - f. The permission of the court, in the case of both parents or guardian referred to in the above paragraph e does not exist.
  - g. Dispensation of justice for prospective husband who has not attained the age of 19 years and for prospective wives who have not attained the age of 16 years;
  - h. Permits from superiors / unity if the bride member of the TNI / police;
  - i. Court decisions in the form of a permit for a husband who wanted more wives than one;
  - j. registration book excerpts divorce / divorce registration book for those who divorce occurred Before the enactment of Law No. 7 of 1989 on the Religious Courts;

- k. Death certificate or death certificate of husband / wife created by the village chief / headman or level officials for the widow / widower;
- l. Permission to marry from the embassies / country representative office for foreign citizens.

Article 3 paragraph 1 of PMA will strange if used as the basis the prince may signed a marriage certificate / marriage book and deed / reconciliation quote reconciliation certificate for not in accordance with the practice of recording marriage during this work because clearly mentioned: vat as referred to in article 2 paragraph 1 of their duties can be represented by the prince of vat or maid . clearly visible authority representing vat defined by this article not only priest, but also the maid .This verse clear give equation between the authority and maid priest vat in terms of representing the task of vat in the field. Whereas in the practice of recording marriage during this work that no longer be denied by anybody that the maid vat has no authority at all signed a marriage certificate /marriage book and deed reconciliation certificate quote reconciliation.

### **Marriage examination**

#### Article 9

1. Examination of marriage made by Officer of Marriage Registration or officer referred to in Article 3, paragraph (1) of the prospective husband, the candidate's wife, and the guardian of marriage on the presence or absence of an obstacle to marry according to Islamic law and the completeness of the requirements referred to in Article 5
2. Paragraph (2).
3. The results of the examination of marriage is written in the Minutes of Examination of Marriage, signed by Officer of Marriage Registration or officer referred to in paragraph (1), the candidate's wife, the prospective husband and guardian married by Maid Officer of Marriage Registration.
4. If the prospective husband, the candidate's wife, and / or guardians of marriage can't read / write the signature can be replaced with a thumbprint left hand.
5. Examination marriage performed by the Vice Officer of Marriage Registration, made two (2) copies, the first strands together with the necessary papers submitted to the KUA and second strands are kept by the inspectors concerned.

This article explain about marriage examination that must be done by Officer of Marriage Registration and must followed by society.

### **Marriage announcement**

#### Article 13

1. If the marriage requirements referred to in Article 5 (2) have been met, The Officer of Marriage Registration will announce the marriage.
2. Announcement of the marriage will be done at a particular place at KUA districts or other convenient place known to the public in the village where each bride. Announcement referred to in paragraph (1) and (2) performed for 10 (ten) days.

The announcement of marriage will put in 10 days working . If in the time was not there any objections and marriage agreement can be implemented in the day to eleven since the announcement posted . ( ps .10 paragraph 1 pp.9 ) / 1975 .

### **Marriage agreement**

#### Article 16

1. Marriage Agreement is not executed prior to the announcement as referred to in Article 13 ends.
2. Exclusion of the period referred to in paragraph (1) can be done because the existence of an important reason, with the recommendation of the district head in the area concerned.

The Planning of marriage registry employees not permitted to undertake ongoing or help were continuing marriage if he knew any violation of the provisions in article 7 paragraph 1, article 8, article 9, article 10, and article 12 of the marriage laws this although there is no prevention of marriage .1 in the time of marriage agreement , the candidate husband and the guardian must come to vat own or maid vat ( .23 paragraph 1 PMA 2 / 1990 ) .2.the marriage agreement be implemented to vat residence his wife .17 paragraph 1 PMA 11 2007 ) 3.the agreement marriage conducted by the guardian .(paragraph 1 of 11 foreign investment in 2007 4) marriage agreement be implemented in the .The request of prospective brides and over the approval of the vat marriage

agreement can be implemented outside the KUA paragraph 1 and 2 of 11 foreign investment in 2007.

### **Listing marriage**

#### Article 26

1. The 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.
4. Each wedding events reported to the population administration office in the region where implementation of the marriage contract.
5. Book a marriage is valid if signed by the Officer of Marriage Registration.
6. The book of wedlock given to the husband and wife soon after the marriage ceremony is completed.

### **Listing marriage to Indonesian citizens abroad**

#### Article 28

Marriage recording for Indonesian citizens who are outside the country carried out as stipulated in the Decree of the Minister of Religion of the Republic of Indonesia and the Minister of Foreign Affairs. Indonesia number 589 of 1999 and No. 182 / OT / X / 99/01 of 1999 regarding Implementation Guidelines Marital Indonesian citizens abroad.

This article explain about foreign if do marriageb in this country must be registered based on Indonesia number 589 of 1999 and No. 182 / OT / X / 99/01 of 1999 regarding Implementation Guidelines Marital Indonesian citizens abroad.

### **Listing Refer**

#### Article 29

1. The husband and wife who will carry out reconciliation, notify in writing the Officer of Marriage Registration include divorce certificate / divorce.
2. The Officer of Marriage Registration or officer referred to in Article 2 paragraph (1) and Article 3 (1) inspect, examine and assess the terms of reference.
3. Husband refer oath in the presence of Officer of Marriage Registration or prince or Vice Officer of Marriage Registration.
4. The Officer of Marriage Registration recorded events refer to the reconciliation deed signed by the husband, wife, witnesses, and Officer of Marriage Registration.

#### Article 30

1. Excerpts books refer recording is valid if signed by the Head of KUA as Officer of Marriage Registration.
2. Excerpts refer logbook immediately given to the husband and wife after the deed of reconciliation passed.
3. KUA give notice refer to the court for making a marriage certificate.

### **Divorce Registration**

#### Article 31

1. According to a copy of the court order, the Officer of Marriage Registration's.
2. office which administers residence wives are obliged to register / record every event of divorce in the divorce registration book divorce or contested divorce registration book and the Marriage Certificate concerned.
3. List or records referred to in paragraph (1) include the place and date of occurrence of divorce and the date and number determination / court decision.
4. Each list / event records divorce and / or contested divorce as referred to in paragraph (10) unknown / signed by the Head of KUA as Officer of Marriage Registration.

The officer of Marriage Registration is check, watch and noted that a marriage performed according to the islamic religion. A paragraph 1 and 2 of act no..1946 / 22 ). those who do work meant in paragraph 2 of article 1 with no rights, 3 months imprisonment sentenced to everlasting or a maximum fine of rp.100, - ( paragraph 3 of article 2 of act no..1946 / 22 ). ( b ) the aide added. deliver and assist people will get married from the house to the examples in wedlock ( Investment 9 paragraph 1 / 2 of 1990 ). A guarantee of being prospective bride . A maid vat not paid by state, the cost of the trip to be the responsibility of the bride.

### **B. 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>12</sup>

Principally, the recording process should carry out after the agreement marriage. There are three types as a process of recording: *Firstly*: For a living in their respective countries, basically it will record the performance immediately after the completion of the ceremony, except Kelantan which sets seven days after the registration of the marriage ceremony, and it shall be witnessed by a guardian and two witnesses and the registrar. As in Penang Enactment Act 3 of 2004 Article 22 Paragraph 1 states: "After the marriage ceremony something done, then the Applicant noted the items specified and defined *Ta'liq* or other *Ta'liq* for marriage in the list of marriage."<sup>13</sup>

*Second*: People who are not Malaysia's native, marriage shall do in their embassy. For this case the recording process is as same with the people of Malaysia who perform marriages in the country. The difference existed is only on the clerk registrant, ie: not by the original registrant list in Malaysia, but the applicants were appointed at the Malaysian embassy or consul in the country concerned. As in *Pulau Pinang*, Law Article 24 Paragraph 1 states: "(1) the marriage must follow the law done by registrars appointed under Section’’

*Third*: Malaysian People who live abroad and do not marriage at the embassy or consul of Malaysia which exist in the State concerned. The man who marriage, shall in the first six months after the marriage ceremony, submitted to the registrar who pointed

<sup>12</sup>[http://www2.esyariah.gov.my/esyariah/mal/portalv1/enactment2011/Eng\\_enactment\\_Ori\\_lib.nsf/f831ccd195843f48256fc600141e84/8a3accb491fc77c7482576c10031ed2b?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enactment2011/Eng_enactment_Ori_lib.nsf/f831ccd195843f48256fc600141e84/8a3accb491fc77c7482576c10031ed2b?OpenDocument) 15 april 2015

<sup>13</sup> Khoiruddin Nasution,. *Status Wanita di Asia Tenggara, Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia*. Jakarta : INIS, 2002. P.29

by embassies and consuls nearby. If the person concerned return to Malaysia before the expiration of the six months, it may also enroll in Malaysia. This provision is based on the Sarawak Law article 29 paragraph 1, Kelantan Law and the Law on State nine. For people who perform marriages outside Malaysia and not in accordance with the existing rules are actions prohibiting by the law. It can be punished with a fine of one thousand ringgit or imprisonment up to six months or both.

Marital in Malaysia legislation in regards to the age limitation is limiting the minimum marriage age of 16 years for brides and 18 for grooms. This provision is based on the Law of Malaysia, which reads: the justified marriage age for women is not less than 16 years and men not less than 18 years. If only one or both of the couples who want to marry aged less than the stipulated age, then it is necessary to get the permission from sharia judge beforehand.

Administration pattern of Islamic law applied in Malaysia, followed by the Sultanate of Brunei. Several articles in Brunei family law is in common with the principles contained in Malaysia. The Enactment family law in force in Malaysia which similar with other countries, for example in the state enactment Johor, Pahang, Terengganu, Malacca, Kedah etc.

Before going to the substance of our research, it is important for us to deal with the requirements of marriage under this enactment in regard to the Malaysia's position. There are six elements that need to be fulfilled by the applicant roommates are:<sup>14</sup>

- a. The man and woman must be at least 18 years old
- b. There must be full consent and acceptance from both male and female to the marriage;

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<sup>14</sup>Marriage syariah law pdf

- c. Males and females who are above 18 but below 21 years of age must Obtain consent from their parents; and
- d. Females who are above 16 years but below 18 years must get special permission in writing from the Sharia judge.
- e. There must be two Witnesses to the marriage;
- f. There must be a marriage gift given by the male to the female.
- g. However, it is pertinent to note that, marriages between certain family relationships are prohibited such as grandparents, parents, children, grandchildren and siblings.
- h. The procedure for marriage Easily can be seen through the below information:
  - 1. Obtain the marriage application forms from the District Religious office.
  - 2. The marriage application form must be certified by two Officials from the mosque together with the official stamp for confirmation of the applicants status.
  - 3. The application form together with your relevant documents must be signed and stamped by the Assistant Registrar of marriages of the respective zones.
  - 4. The signed and stamped application form together with a fee of RM5.00 must be then submitted to the District Religious office in order to register for a marriage permit. (Application forms can be sent 90 days in advance or 7 days before the solemnization).
  - 5. The applicants will then receive a Marriage permit from the District of religious office after 7 working days of submission of the which must then be submitted to the Assistant Registrar of marriages of the respective zones.



6. The solemnization will then be conducted in accordance with the date and venue that had been agreed upon by the applicants.
  7. After the solemnization of the marriage the groom is requested to read sign the Particulars of Marriage letter and make-payment of RM20.00 for the 2 Witnesses and RM100.00 to the Assistant Registrar.
  8. The groom is then issued with the Particulars of the marriage letter and he is required to register the marriage with the relevant District Religious Office, the marriage must be registered within 14 days after the date of the wedding.
  9. The applicant then receives the Marriage Certificate from the District Religious Office after 7 working days from the date of registration.
- b. Regulation of Marriage Registration In Malaysia

a. Enactment Number 3 of Islamic Family Laws (Pulau Pinang) 2004<sup>15</sup>

Section 25.Registration .

The marriage after the appointed date of every person resident in the State of Penang and of every person living abroad who is resident in the State of Penang shall be registered in accordance with this Enactment.

Section 26.Marriage certificate and *ta'liq* certificate.

- 1) Upon registering any marriage and upon payment to him of the prescribed fees, the Registrar shall issue marriage certificates in the prescribed form to both parties to the marriage.
- 2) The Registrar shall also, upon payment of the prescribed fees, issue a *ta'liq* certificate in the prescribed form to each of the parties to the marriage.

The Registrar shall issue marriage certificates to both parties to the marriage upon the registration of marriage and payment made to him accordance to prescribed fees. The Registrar shall dealt with this application administratively but not discretionary. At the

<sup>15</sup><http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BM/Portal%20E-Syariah%20Carian%20Bahan%20Rujukan/Portal%20E-Syariah%20Undang-Undang>

same time, the registrar shall issue a *ta'liq* certificate to each of the parties to the marriage upon the payment.

Section 27. Reporting of void or illegal marriages.

It shall be duty of every person to report to the Registrar the circumstances of any case in which it appears to him that any alleged marriage was void or that any registrable marriage was solemnized in contravention of this Enactment.

Every person has the duty to report to the Registrar in relate to the circumstances that had caused the alleged marriage turn out to be void or any solemnization of marriage not in accordance with the Enactment.

Section 28. Appointment of Chief Registrar, Registrars Deputy Registrars, and Assistant Registrars of Muslim Marriage, Divorces and *Ruju'*.

- (1) The *Yang di-Pertuan Agong* may appoint any qualified public offer to be the Chief Registrar of Muslim Marriages, Divorces and *Ruju'* for the purposes of this Enactment, who shall have general supervision and control over Registrars and the registration of marriages, divorces and *ruju'* under this Enactment.
- (2) The *Yang di-Pertuan Agong* may appoint so many qualified persons as may be necessary, to be Registrars, Deputy Registrars or Assistant Registrars of Muslim Marriages, Divorces and *Ruju'* for such *kariah masjid* in the State of Penang as may be specified in the appointment.
- (3) The *Yang di-Pertuan Agong* may, by notification in the Gazette, appoint any member of the diplomatic staff of Malaysia in any country to be Registrar of Muslim Marriages, Divorces and *Ruju'* for the purposes of this Enactment in that country.
- (4) Every person appointed under subsection (2) who is not a public officer shall be deemed to be a public officer for the purposes of the Penal Code [F.M.S Cap. 45]<sup>16</sup>.

*The Yang di-pertuan Agong* has the power under this enactment to appoint any qualified public to be the Chief Registrar of Muslim Marriages, Divorces and *Ruju*. The person appointed shall have general supervision and control over Registrar and any

<sup>16</sup><http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BM/Portal%20E-Syariah%20Carian%20Bahan%20Rujukan/Portal%20E-Syariah%20Undang-Undang/Portal%20E-Syariah%20Undang2%20P.Pinang>

registration of marriages, divorces and *ruju'* under Penang Enactment. Besides, the *Yang di-Pertuan Agong* has discretion too appoint as many qualified person to be the Registrar, Deputy Registrar or Assistant Registrar of Muslim Marriages, Divorce and *Ruju* if he deemed necessary in the State of Penang. The person appointed shall be deemed to be a public officer in accordance with Penal Code Malaysia. The *Yang di-Pertuan Agong* can gazette any member of diplomatic staff of Malaysia in any country to be the Registrar of Muslim Marriages, Divorces and *Ruju'*

Section 29. Book and Registrars to be kept of all marriages.

Every Registrar shall keep a Marriage Register and such books as are prescribed by this Enactment or rules made under this Enactment, and every marriage solemnized in the State of Penang shall be duly registered by the Registrar in his Marriage Register.

Every marriage solemnized in state of Penang shall be duly registered by the Registrar in Marriage Register. Such book must be complied with this Enactment.

Section 30. Copies of entries to be sent to Chief Registrar.

- 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 true copy certified of 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 Chief Registrar and shall constitute the Marriage Registrar of Chief Registrar

Section 31. Registration of foreign marriage of a person resident in the State of Penang.

- 1) Where any person who is a resident of the State of Penang has contracted a valid marriage according to Hukum Syara' abroad, not being a marriage registered under section 24, the person shall, within

six months after the date of the marriage, appear before the nearest or most conveniently available Registrar of Muslim Marriages, Divorces and *Ruju'* abroad in order to register the marriage, and the marriage, upon being registered, shall be deemed to be registered under this Enactment.

- 2) Where, before the expiry of the period of six months, the return of either or both parties to the State of Penang is contemplated and the marriage has not been registered abroad, registration of the marriage shall be effected within six months of the first arrival of either or both of the parties in the State of Penang by the party or both parties appearing before any Registrar in the State of Penang and-
- 3) producing to the Registrar the certificate of marriage or such evidence, either oral or documentary, as may satisfy the Registrar that the marriage did take place;
- 4) furnishing such particulars as may be required by the Registrar for the due registration of the marriage; and
- 5) applying in the prescribed form for the registration of the marriage and subscribing the declaration therein.

Any resident of State of Penang, shall within 6months after the date of marriage in accordance to sharia law abroad, appear before the available Registrar of Muslim Marriages, Divorces and *Ruju'* abroad to register the marriage. Upon the registration, this marriage shall be deemed to be registered and valid under this Enactment. If the parties failed to appear before a Registrar within the period, then the marriage may be registered later on penalty, only upon the application of Registrar.

However, if before the expiry of the period of six month, either or both parties returned to the State of Penang is contemplated, but the marriage has not been registered abroad, the parties may appear before Registrar in state of Penang to register their marriage. During the application, the party shall produce certificate of marriage to the Registrar, either oral or documentary, furthermore, they are required to furnish the Registrar with particular for the due registration of marriage. The prescribed form shall be filled and subscribe the declaration for the marriage. The registrar may dispense the

appearance of one parties if there is good and sufficient reason for the absence of another party. But, the statement of the reason shall be included in the Marriage Register.

A certified copy of the entry in Marriage Register, after signed by Registrar shall be delivered to the husband, and a copy of such document to the wife after registration. Another certified copy shall sent to Chief Registrar within the prescribed period and thus, the Foreign Muslim Marriages Register is consider to be registered

**Section 32. Unlawful registers.**

No person other than a Registrar appointed under this Enactment shall-

- a. keep any book that is or purports to be a register kept in accordance with this Enactment; or
- b. issue to any person any document that is or purports to be copy of a certificate of a marriage or a certificate of marriage registered by the Registrar.

Only Registrar under this enactment can keep the book that is purport to be register and issue to any person copy of certificate of marriage or certificate of marriage registered by Registrar.

**Section 33. Voluntary registration of Muslim Marriages previously solemnized under any law.**

- 1) Notwithstanding sections 6 and 31, the parties to any marriage according to sharia law solemnized under law prior to or after the appointed date may, if the marriage has not been registered, apply at any time to a Registrar in the prescribed form for registration of the marriage.
- 2) The Registrar may require the parties to the marriage to appear before him and to produce such evidence of the marriage, either oral or documentary, and to furnish such other particulars as may be required by him.
- 3) The Registrar may, on being satisfied of the truth of the statements contained in the application, register the marriage by entering the particulars thereof in the Marriage Register prescribed for this purpose.
- 4) The entry of the marriage in the Marriage Register shall be signed by the Registrar making the entry and by both parties to the marriage, if available, or, otherwise, by whichever party who appears before the Registrar.
- 5) Upon the registration of the marriage, a certified copy of the entry in the Marriage Register signed by the Registrar and sealed with his seal

of office shall be delivered or sent to the husband and another copy to the wife and a third shall be sent to the Chief Registrar.

- 6) The Registrar shall not register a marriage under this section if he is satisfied that the marriage is void under this Enactment.

Any marriage that had been solemnized in accordance to sharia law prior to or after the appointed date may apply at any time and register the marriage to a Registrar in the prescribed form. The Registrar has the power to require the parties to marriage appear before him and produce evidence of marriage either oral or documentary form. Then the registrar may register the marriage by entering the particular in Marriage Register if he satisfied to the truth of the statement made in relate to the marriage.

The Registrar must signed the entry of marriage in Marriage Register, in the present of both parties to the marriage or either one. After the mentioned conditions had been fulfilled, a certified copy of the entry in Marriage Register shall be signed by Registrar, sealed with his seal. This certified copy will be delivered to the husband and the copy will send to the wife, and thirdly, the copy shall send to Chief Registrar. Any void marriage under this Enactment shall not be registered by the Registrar.

#### Section 34. Legal effect of registration.

Nothing in this Enactment or rules made under this Enactment shall be construed to render valid or invalid any marriage that otherwise is invalid or valid, merely by reason of its having been or not having been registered.

Only the Marriage Register that had been registered under this Enactment shall be construed as a valid one. Any registered marriage not in accordance with this Enactment shall not be recognized as a valid marriage.

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

## 1. 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:

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.

b. Regulation No. 9 Year 1975 Article 2 paragraph 1

With the existence of these provisions in this article, the registration of marriages can only perform by the two institutions, namely the Employees Registrar of Marriage,

Divorce and Refer, and the Civil Registry Office or the agency / officer who helped him." Without prejudice to the specific provisions applicable to the procedure for registration of marriages based on various regulations, the procedure for registration of marriages performed as specified in Article 3 to Article 9 of this Government Regulation "

Thus, the matter relating to the procedure for registration of marriages is basically carried out in accordance with the provisions of Article 3 to Article 9 of this Government Regulation, whereas the specific provisions relating to the procedure for registration of marriages are arranged in various regulations, is complementary for this Government Regulation. On the other hand, the process of registration of marriages in Malaysia are described in

Both articles have similarities and differences in terms of registration of marriage as Married, Divorce and Refer must be recorded while the difference is that the PP number 9 of 1975 officers registration marriage is Officer of Marriage Registration while in Malaysia is lordship *Agung* or *Qodi*. There is some compilation of Islamic Law concerning the provisions of registration of marriages.

#### c. Compilation of Islamic Law

In Article 5, paragraph (1) KHI mentioned that marriage should be noted. This is a manifestation of a general explanation point 4 letter b Act Number 1 of 1974 on marriage as quoted above. Therefore, the term must be noted in article 5, paragraph (1) KHI also simply aims to ensure the orderly marriage for society. Article 6, paragraph 2 KHI which specifies that, marriage which is not listed in shall have no force of law " appears to be a bridge for those who agree to article 2 Marriage Bill 1973. Its explanation stating that "Marriage is legal if carried out before recording marriage employees, listed



in the list of recording marriages by the employee, and carried out in accordance with the provisions of this law and / or statutory marriage parties who perform marriages, provided they do not conflict with this law. " While in Malaysia, under enactment Number 3 2004 islamic family law of Section Pulau Pinang. Nothing in this Enactment or rules made under this Enactment shall be construed to render invalid or otherwise invalid any marriage that is invalid or valid, merely by reason of its having been or not having been registered. Only the Marriage Register that had been registered under this Enactment shall be construed as a valid one. Any registered marriage not in accordance with this Enactment shall not be recognized as a valid marriage.

Both articles show that, the marriage equality will have the force of law if listed as described in chapters 5-6 and enactment KHI section 34 of Pulau Pinang in Malaysia.

d. 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.

#### Article 28 of PMA

Marriage recording for Indonesian citizens who are reseding outside the country should have carry out as stipulated in the Decree of the Minister of Religion of the Republic of Indonesia and the Minister of Foreign Affairs Indonesia number 589 of 1999. As in No. 182 / OT / X / 99/01 of 1999, it is regarding to the Implementation Guidelines Marital Indonesian citizens abroad.

The article is failed to explain in detail about the recording of Marriage for foreign citizens which set in Joint Ministerial Decree of Religion of the Republic of Indonesia and the Minister of Foreign Affairs. While in Malaysia, it is clearly described in enactment 3 year 2004 Islamic Family Law of Penang Section 31. Registration of foreign marriage by a resident in the State of Penang

Any resident of the State of Penang shall within six months after the date of marriage, in accordance to sharia law abroad, appear before the available Registrar of Muslim Marriages, Divorces and *Ruju* 'abroad to register the marriage. Upon the registration, this marriage shall be deemed to be registered and valid under this Enactment. If the parties failed to appear before a Registrar within the period, then the marriage may be registered later on a penalty, only upon the application of the Registrar.

However, if before the expiry of the period of six month, either or both parties returned to the State of Penang is contemplated, but the marriage has not been registered abroad, the parties may appear before the Registrar in the state of Penang to register Reviews their marriage. During the application, the party shall produce a certificate of marriage to the Registrar, either oral or documentary; furthermore, they are required to furnish the Registrar with particular diligence for the registration of marriage. The prescribed form shall be filled and subscribe to the declaration for the marriage. The Registrar may dispense the appearance of one parties if there is good and sufficient reason for the absence of another party. But, the statement of the reason shall be included in the Marriage Register.

A certified copy of the entry in Marriage Registers, after signed by the Registrar shall be delivered to the husband and a copy of such document to the wife after registration t. Another certified copy shall send to the Chief Registrar within the prescribed period and thus, the Foreign Muslim Marriages Register is Consider to be registered. Both articles have in common as there is no rule in explaining on the foreign nationals who are married in the area in Indonesia as well as described in article 28 that includes explaining that the rules governing about marriage to foreign nationals is set on

the Minister together. While in Malaysia, it is described in detailed rules for foreigners who marry outside the country of betel nut island nation.

## 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.

It is crystal in regards to the way of marriage, as every step is all related to the recording. Furthermore, in the PP No. 9 of 1975 on the implementation of the law of marriage in article 3 paragraph 1 states: "Every person who enters into a marriage shall notify the employee wishes Registrar in a marriage to take place". Especially for the Muslims in Indonesia, registration of marriages shall arrange separately in the Compilation of Islamic Law Article 5, which states:<sup>17</sup>

Of several provisions that have been put forward, it appears that registration of marriages is a requirement for formal validity of a marriage. These requirements are procedural and administrative. Mukti Arto explained that a marriage is considered valid if it meets two requirements. First, it meets the provisions of material law which done by

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<sup>17</sup>Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, Jakarta : Akademika Pressindo, 1992. P. 114

qualified and pillars according to Islamic law. Second, it meets formal legal requirements, which have been listed on the authorized employee Marriage of Registrar. Forms of marriage are only eligible material, deemed never existed or not recognized. The marriage which is only meets the formal requirement, can be canceled. Thus, the new marriage is considered perfect, if it has qualified and pillars of Islamic law and has been recorded by an authorized employee of Marriage Registrar.<sup>18</sup>

The provisions concerning criminal sanctions, both for those who do not heed the recording of the marriage, as well as for the Registrar Employees who violate the provisions are also contained in Chapter IX of Article 45 of Government Regulation Number 9 of 1975:

(1) Unless otherwise specified in the legislation in force, then:

- a. Anyone who violates the provisions of article 3, paragraph 10 (3), 40 government regulation is punishable by a maximum fine of Rp. 7.500, -
- b. Registrar employees who violate the provisions laid down in Article 6, 7, 8, 9, 10 paragraph (1), 11, 13, 44 of this Government Regulation punished with imprisonment for a maximum 3 (three) months or a maximum fine of Rp. 7.500, -

(2) The criminal acts referred to in paragraph (1) above are an offense. Nevertheless, this does not mean that the marriage is void because of any irregularity in the implementation of the marriage.

In fact, after examined, the condition is closely linked to the existence of differences of opinion on registration of marriages. Some people argue that the

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<sup>18</sup> A. Mukti Arto, *Masalah Pencatatan Perkawinan dan Sahnya Perkawinan dalam Iskandar Ritonga, Hak-hak Wanita dalam Undang-undang Perkawinan dan Kompilasi Hukum Islam*. Jakarta : Nuansa Madani, 1999.P.64-65

registration of marriages is only serve as administrative requirements and not a legitimate requirement of a marriage. The reason is that, these provisions are not stipulated in the texts and jurisprudence. On the other hand, there is several views stating that, registration of marriages is a prerequisite for a valid marriage. Their argument is based on the provisions contained in Regulation No. 9 of 1975 and also the substance of Law No. 1 of 1974. In addition, it is also supported by the legal practice of public bodies.<sup>19</sup>

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, negligence register 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. Furthermore, in relating to the registration of marriages, the regulation specifies that, it is only serving as administrative requirements. Wedding that does not follow this provision, still considered valid according to the rules of Islamic law. Invalid marriage is defined as a marriage that does not follow the law schools embraced by both parties.

Malaysia is the first country in Southeast Asia experienced family law reform and resulted Malaysia in having its own rules, especially in the regulation of marriage

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<sup>19</sup> Marriage syariah law pdf

documentation using enactment in every state in Malaysia like Johor, Terengganu, Malacca, and also the *pulau pinang state*. Although there is different section varily to the states on registration of marriages but the content is the same as the only difference is the area and years.

The rules on sanctions for those who violate or not register the marriages in Malaysia are enacted under special rules for illegal marriage. It means that the residents are obliged to report to someone who does marriage unauthorized and illegal marriages due to someone who does not keep records of marriage. Rules in Malaysia described in detail are not existed in Indonesia when we were comparing the rules of law in Indonesia and Malaysia Enactment.

In Malaysia, there are various provisions governing the registration of marriages. Each kingdom has its own enactment on the enactment of Islamic law. In this enactment, it can be seen that, the way of registration of marriages must take place as well as the conditions that need to be obey by, whether each bride before the ceremony took place.

As from the explanation above, there are KHI and PMA, in supporting Regulation of Regulation No. 1 Of 1974 About Marriage, but both of the hierarchy is different, so do in the power of regulation. If the KHI and PMA have made into regulation as power like Regulation No. 1 Of 1974 About Marriage then it might be the same for marriage registration in Indonesia with Malaysia.

Based on the above explanation, the two countries can draw the conclusion that, the regulation governing the registration of marriages in Indonesia when viewed in terms of the rules is better than Malaysia because in Indonesia, there are special rules governing the registration of marriages as well as PMA No. 7 in 2011, while in terms of

implementation, Malaysia is more effective as according to the enactment 3 of pulau pinang year 2003 of rules for citizens which illustrated that, who do not implement the rules mention shall report to a husband who did not register the marriage.

This is evidenced in the 32-34 section Penang Enactment 2004 explicitly explained the rules of reporting for citizens who do not keep records of marriage and there are no rules when marriages registered then have the force of law while in Indonesia there are no such rules. But in Indonesia, there is rules of sanctions for prospective husband and wife who do not register marriages.

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

Basically, the function of recording marriages in the civil registration agency is to serve as an evidence to prove that he really has done weddings with others. Therefore, evidence considered valid as evidence when it is an official document issued by the state. When the marriage is registered at civil registration agency, then, the person has to have an official document that can be used as evidence in the presence of the judicial council. When there are disputes relating to marriage and the dispute was born as a result of marriage, such as inheritance, custody children, divorce, livelihood, and so forth.

Besides mentioning in Act 2 of 1946, the registration purpose of marriage is to have certainty of law and order. In the explanation of Article 1, paragraph (1) of the Act explained that: "The purpose of this article is for marriage, divorce and reconciliation according to Islam are recorded in order to get legal certainty. In a country, it regulates all things to do with the population that should be noted, as birth, marriage, death and so on. Besides holding meetings with the beneficiary, the marriage must be kept from chaos. Furthermore, these are also the Law Compilation Islam mentioned that, the purpose of the



recording is to do in front of and under the supervision of the Registrar of Marriage Officer in guarantee the order of marriage. It affirmed that, the marriage performed outside the Registrar of Marriage will not have the force of law, and such a marriage can only be proven with the Marriage Certificate made by the Registrar of Marriage Officer. There are some negative consequences caused to the marriage contract which are:

Based on the previous explanation, the purpose of marriage is for the recording of legal certainty. Thus, if there is any dispute occurred in a marriage, it will be difficult to solve the problems in court. In relate to *siri* marriage (marriage unrecorded state), it is absent of the Marriage Certificate which will cause many disadvantages to the wife.

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 become 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 dealing with the registration of marriage, if we analyze it in terms of women's rights, in the opinion of Asghar Ali Engineer, it has a connection point where Ali Asghar asghar opinion about polygamy as follows:

To understand the true essence of the letter Annisa verse 3 ', which reads as follows.<sup>20</sup>

وَأِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ  
وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا (3)

*‘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 hand possesses. That is more suitable that you may not incline to injustice’.*

Based on Asghar Ali Engineer, we should consider the relation among the verses both before and afterwards (paragraphs 2 and 127) in the same letter. From these verses, it is obvious that, polygamy is allowed only in the context of orphans and wives, or if the person who becomes the guardian to marry more than one. If we analyze it from the social context, the verses on polygamy are not permitting a men to marry more than one at will. Polygamy can only be allowed as to ensure justice for orphans or women (widows).<sup>21</sup>

<sup>20</sup>QS. An-nisa' (4):3

<sup>21</sup>Skripsi: Abdul Basyir, Tinjaun Hukum Islam Terhadap Status Nikah Siri di Indonesia, P.77.

If the mentioned factors do not arise, then polygamy is not applicable at all. Furthermore, he found that, when certain conditions are met and men are allowed to take more than one, the issue of fair treatment on all wives must be ignored. He believes that, fair treatment is almost condition for polygamy. If men cannot ensure the justice to his wives in the form of equal treatment, then *Quran* will not allow the person to take more than one. He argued that, what constituted as a fair treatment here, is not only the physical aspects, but also non-physical aspects, such as love and affection.

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.

Although he had admitted that, the Koran has expressly recognizes the equality between women and men, however he also did not deny on the superiority of men over women in some normative issues. He had commented based on the situation when a man has more than one wife in referring to the statement made by Parvez, a leading interpreter of the Koran, said: " It would seem that the permissibility marry more than one wife depends on two conditions: (1) If there is an excess of the women are single or without husband in the community and there is no other solution that makes sense, then an exception can be made to the rules of monogamy and a man can marry women (who without a husband) it. (2) This can only be permitted also when the requirement, justice be given to everyone in the family can be met eventually. Besides, it should be possible to carry the load over all the children born to the wife. He should not be a burden not him.

Pervez argued that, the permission from the first wife is utmost necessary as to the fair and equal treatment to all the wives, without the treatment that may not exist. He also believes that there should be a state authority rather than the individual to decide whether such existed social requirements, allow a men take more than one person at the same time. Thus, the state which allow or prohibit polygamy through legislation or laws shall take into account the social conditions. If such conditions do not exist, then it is not allowed to permit the polygamy. He also argues that, the verse on polygamy itself begins with the word *wa in khiftum*, which meant, if you're worried (will not do justice), how could polygamy is considered just for any situation.<sup>22</sup>

*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.

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<sup>22</sup>Asghar Ali Engineer, *Hak-hak Perempuan dalam Islam, op.cit.*, p. 154.