

INFLUENCE OF ISLAMIC PERSPECTIVES ON ITSBAT MARRIAGE PETITION IN RELIGION COURT OF METRO CITY

Intan Pelangi, S.H.,LL.M.

Ariza Umami, S.H.,M.H.

University of Muhammadiyah Metro

Abstract

Marriage is a bond between a man and a woman committed to becoming a family. Marriage is a legal social form that describes the smallest social accountability and its legal certainty. Register marriage is a form of welfare in Islamic law family. Islamic Compilations Law (KHI) also regulates *itsbat* marriage or the institution of marriage that is done by competent authorities on her marriage was not recorded.

The aim of this research was to determine the influence of Islamic perspective in an *itsbat* marriage petition at the Religious Court in Metro city as one of the agencies, legal guarantee to the community of Moslems. The author conducted the research used empiric jurisdictional approach. The analytical method used was descriptive qualitative data. The result of this research is Islam perception becomes the most important thing to regulates *itsbat* marriage with the divorce as the main factors.

Keyword: *Islamic perspective, religion court, itsbat marriage*

INTRODUCTION

In Islam, marriage is a physically and mentally bond between a man and a woman committed by the ceremony with the aim of being a *sakinah, mawadah warahmah* family. Harmonious family is basically formed by two dimensions, those are: quality of life and stability (Syarifuddin, 2007: 41). By the valid marriage, the relationship between men and women occurs in dignity according to the position of man as a social being. Marriage is also a beginning of a small institution in the family.

In the Holy Quran, Allah has set up an Islamic concept of marriage and imposes limits on Islamic marriage laws. Indonesia is not only a religious country but also a constitutional state that guarantees happiness to its people. Marriage is a form of legal social that symbolizes the smallest accountability. As the legitimacy of the human desire distribution, the marriage will be meaningful if the distribution of desire is clearly accountable as the survival of mankind and world civilization.

Listing of marriage is one of the government's efforts in applying orderly marriage. By the marriage recording, people will have legitimate law confessions for their marriage, thus if there is a dispute in the future who caused by the marriage, they will get the proper legal protection. In fact, the marriage that happened among the people is not fully applied in accordance with the applicable laws. Some of mating processes refer to the respective religious rules.

This fact should be realized, that indeed Indonesia is a country that recognizes the existence of legal pluralism. And the consequence is that legal issue become personal realm that cannot be imposed. A small example that becomes a trend in the society is unregistered marriage which is the legal options based on the context of religion, that the pressure essence is not only a legal relationship but also the Divine relationship. On the other hand there is role of the government in carrying out its function to maintain public order, especially concerning the registration of marriage in worldly affairs. When it all happened, and the mistakes cannot be avoided, a problem arises. In the end, not least of people who are aware that the dimensions of the world and the hereafter must goes hand in hand. *Isbat* marriage application becomes an alternative option in minimizing the problems that will arise later. To determine the influence of religion perception towards the high of *ithbat* marriage petition in the Religious Court of Metro city is needed more research.

THEORETICAL REVIEW

Reception theory is a theory which states that Islamic law applied in Indonesia to embrace Islam if Islamic law has really impregnated in Customary Law, then by seeing the particular clauses in Marriage Law have no hesitations to accept the argument that Islamic law has instantly become a source of law without requiring assistance/intermediary Customary law. (Soemiyati 2004: 1)

Marriage is a fundamental right of every citizen that has been mentioned in article 28 B paragraph (1) in the Constitution of 1945 as the result of the second amendment that: (1) Everyone has the right to form a family and continue the descent through legal marriage. However as a citizen living in a life of the nation (Indonesia), in conducting a marriage must necessarily follow the rules of applicable laws and regulations in the State of Indonesia, one of which marriage is listed in KUA as evidenced by the Marriage Certificate.

RESEARCH METHODOLOGY

Research on "**Influence of Islamic Perspectives on Marriage *Itsbat* Petition in Religion Court of Metro City**" is an empirical juridical. This kind of research is done by examining all the facts or real events in the field which is the primary data or namely field research. To support and complement the primary data, then it also conducted librarian research.

This empirical research is juridical sociological, the research aims to observe the reactions and interactions that occur when the norm is at work in society. In juridical sociological research, the task of the researcher is to complete what is behind the implementation of legislation. (Fajar Mukti, Yulianto: 2007: 14)

The results of this study manifested in a report that is descriptive analytical. The research result called descriptive because it is expected to provide a clear,

comprehensive, and systematic about the issues discussed or studied in the research. It is called analytical because the data that has been collected, both obtained from field research and literature are analyzed using qualitative methods.

DISCUSSION AND RESULT

1. Islam

Musjtari and Fitriyanti (2008) Islam means obedience or surrender. Surrender to Allah is called "Muslims". According to the Quran a Muslim is one who makes peace with Allah and the fellow of human beings. At peace with God means surrenders to Allah safely and prosperous. All the will of Allah that must be followed is His command. The entire command consists of an assortment of commands are matters that need to be done or avoided. Those commands and prohibitions are usually outlined in a "Law".

According to Akhmad Sukardja Islamic law is the regulations formulated by the revelation of Allah and the Sunnah of the Prophet about behaviour of the mukallaf recognized and enforceable along binding on all Muslims. Islamic law cannot be separated from the religion of Islam, which consists of *Aqeedah*, *Shari'ah* and Morals. Formally, Islamic Law is one of enforcement of Islam that is on the side of the *sharia*.

In essence, marriage is an outward love that is given by Allah to His people. In Islam, love is one of the pillars in marriage. While cooperation is the duty of marriage, and guarantee the further love.

Yubsir Hasani (2012: 335) in his journal, one of the important concepts of Islam is ordered to manifest and maintain beneficiaries of humanity "where there are beneficiaries, there are the laws of Allah". Masadar F Masudi equates the concept of *maqashid al syariah* with the concept of beneficiaries that is Measured with the theory of social justice. *Maqashid al Sharia* concept aims to realize the goodness or badness at the same time reaping the benefits and reject harmful.

Maqashid Al Sharia is also the value of religion or religious perspective that becomes the guideline in the development of Islamic law. That the intention *Maqashid Al Sharia* are; 1) Maintaining religion (*hifzh al-din*), 2) Maintaining the soul (*al-nafs hifzh*), 3) Maintaining reasonable (*hifzh al-'aql*), 4) Maintaining descent (*hifzh al-nashl*), 5) Maintaining the property (*hifzh al-mal*).

2. Status of Marriage in Islam

Marriage is very important in human life, both individuals and groups. By the legal marriage, the relationships between men and women occurred honourably. Therefore, it is quite appropriate if Islam set it in detail. Islamic marriage according to its origin included in *Fiqh Munakahat* which regulates the provision of marriage

according to Islam. Islam is one and applies to the whole world and of all time. Marriage is a physically and mentally bonding between a man and woman as husband and wife with the intention of forming an eternal and happy family based on Allah Almighty (Ali: 2012: 7). Article 2 of Islamic Law Compilation affirms that marriage is an agreement that is very strong (*mitsaqan ghalidhan*) to obey Allah's commands and the implementation is included in worship. The principles of marriage law that are sourced from the Holly Qur'an and *Al Hadith*, which is then outlined into the lines of the law through the Constitution No. 1 of 1974.

According to Islam, every legal act must fulfil the two elements, namely the terms and conditions. Term is a central element in a legal act, and the condition is an additional element that must be fulfilled.

Further, the elements of marriage are as follow:

- a. Groom
- b. Bride
- c. Bride's guardian
- d. Two witnesses
- e. *Ijab* and *Qobul*

The terms of the legitimate Marriage:

- a. The bride is legally married by the man who would become her husband
- b. Attended by two male witnesses
- c. The bride's guardian who do the contract

For the terms and conditions differences in marriage is slightly different. It would not be different if some of the *ulama* explain it in detail into a condition of marriage. What becomes the object of the marriage ceremony is not the one who is in the agreement but what is in the mutual consent that is the lawful conduct of reciprocal relationship between husband and wife. This means the presence of marriage ceremony does not occurring the mastery of husband towards his wife or the otherwise (Azhar Bashir Akhmad 2004: 13).

3. *Itsbat* of The Marriage

According to Rais Asasriwarni Syuriyah PW NU West Sumatra *itsbat* marriage comes from Arabic which consists of *Itsbat* and marriage. *Ithbat* derived from the Arabic language, namely the establishment, affirmation, and acknowledgment. According to KBBI (*Kamus Besar Bahasa Indonesia*), *ithbat* marriage is the determination of the truth (validity) of marriage. *Ithbat* marriage is the endorsement of marriage that has been held according to Islamic religious laws, which is not recorded by KUA or PPN authorities (the Chairman of Indonesian Supreme Court No. KMA/032/SK/2006 on Guidelines for Court Duties and Administration).

The Marriage Registration aims to realize the order of marriage in society, whether marriage based on Islamic law or marriages conducted besides Islamic law (Zainudin Ali 2012: 26). The Islamic Law Compilation also provides the formulation

of a legal marriage and the provisions for orderliness of marriage. In Article 7 paragraph (1) The Islamic Law Compilation (KHI) and Article 100 of the Civil Code is explained, the existence of a marriage can only be proved by a marriage certificate which is recorded in the register. Even it is affirmed that marriage certificate is the only evidence of marriage. In other words, the marriage that is registered at PPN (*Pegawai Pencatat Nikah*) of KUA (*Kantor Urusan Agama*) in the District will be provided a Marriage Certificate or Marriage Book is a constitutive element (that makes) the marriage.

Ithbat marriage is jurisdiction volunteer matter, which is a unilateral matter or no opponent. There is only applicant that pleaded on a determination of marriage. Voluntary matter is basically unacceptable, unless for the legislation purpose.

4. Basic Law of *Itsbat* Marriage

Basic Law of *ithbat* marriage is contained in the Act No.1 of 1974 Jo Government Regulation No.9 of 1975. However, this authority evolved and expanded into The Islamic Law Compilation (KHI) Article 7, paragraph 2 and 3 in paragraph (2) states: "*Ithbat* marriage submitted to the Religious Court", in paragraph (3) states: *Ithbat* marriage into the Religious Courts is limited on the matters relating to:

- a. The existence of marriage in the framework of divorce settlement;
- b. The loss of a marriage certificate;
- c. The existence of doubt on the legitimacy of a condition of lawful marriage;
- d. Marriages conducted by those who have no impediment marriage according to Law No. 1 of 1974

In legalizing the marriage that is held in the presence of PPN is a marriage which is in accordance with Article 2 paragraph (2) of Law No.1 of 1974 on Marriage so it has been legal and legitimate, thus will get certificate quotation of marriage. In contrast, if the marriage is not conducted accordance with the laws and does not get a marriage certificate as an authentic evidence then it in relation to a civil issue. This kind of marriage should get the legality to obtain legal assurance related to administrative problems. It is also related to the civil rights which is in associate with the child's status or child's birth certificate that is needed later. What should be explained in the verification is not the law but the events. The problem of marriage legalization can be lodged with the evidence as contained in Article 164; those are the written evidence, witness evidence, evidence of allegation, evidence of recognition, and vows. (Arto 1996: 140)

5. RESULT

Petition of *Itsbat* marriage received by the Religious Court of Metro, there were 88 requests wre decided during 2015. There are 17 *itsbat* marriage proposals since 2015 up to July 2016, 10 of them have not been decided and 7 others have been granted and decided by the Religious Court of Metro.

In this case, the government also has a part in assisting to promote the importance of marriage registration in accordance with law. *Ithbat* is a product of the Religious Courts, it means not the actual court and it is termed as jurisdiction volunteer. It is said not the actual court because in the judicial process there are only Petitioners. In other words, the applicants themselves plead for the determination of the marriage or the course of marriage. In case of volunteer, there is no dispute which mean single or no opponent. Essentially, such a case cannot be accepted but only to serve the interests of the rule or statute.

CLOSING

Based on the tentative result of the research, the researcher concludes that the perception of religion and the concept of *maqashid sharia* are fundamentally affecting the high number of *itsbat* marriage petition in the Religious Court Metro.

There are several things of understanding the concept of *maqashid sharia*, namely Keeping descent (*hifz al nashl*), Keeping Religion (*Hifz al-din*), Keeping treasure (*Hifz al-mal*) being the view in the petition of *ithbat* marriage. The perception of religion and the *maqashid sharia* theory lead to the awareness of law of the people who have not register their marriage. *Ithbat* marriage petition is closely related to the legality of the marriage and also due to the existing law as it is. Additionally, *isbat* marriage petition can also provide a clear legal certainty on the marriage.

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