



## PRINCIPLES OF MARRIAGE IN THE PERSPECTIVE OF LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE IN THE FRAMEWORK OF A COMPILATION OF ISLAMIC LAW

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### Abstract

Islam is the most complex religion among other religions in all lines of human life, all are regulated in Islam both human relations with God (*Hablu minallah*) to human relations with humans (*Hablu minannas*). In the realm of human relations with humans (*Hablu minannas*), basically humans are social creatures, of course, in socializing humans are required to be able to approach emotionally. In Islam, there is an order to carry out obligatory worship that is highly recommended for Muslims, it is called marriage, the meaning of marriage according to Islamic law is marriage, which is a very strong contract or *mitsaqan ghalidzan* to obey Allah's commands and carry it out in the form of worship, the purpose of marriage in Islam aims to create a household life that is *sakinah*, *mawaddah*, and *rahmah*. Marriage, of course, has a principle, the conditions for carrying out a marriage are five contents of the principles of marriage, the first is the principle of freedom to choose a partner, the second is the principle of equality, the third is *mu'asyarah bil ma'ruf*, the fourth is the principle of deliberation, the fifth is the principle of mutual acceptance of the five contents of this principle, making it a basic principle in carrying out a marriage. Indonesia is a state of law, all things have rules governing humans that are coercive and remember as well as a marriage that has sacred value, all of which are regulated in law number 1 of 1974 concerning marriage, whose contents in the law include the basics of marriage, the conditions, and pillars of marriage, all of which are contained in the law taken from the essence of Islamic law concerning marriage and all of which are in a collection called the Compilation of Islamic Law.

**Keywords:** Principles of Marriage, Compilation of Islamic Law, Marriage Law

## INTRODUCTION

In Allah's words, marriage has outlined marriage as a framework for achieving Sakinah by empowering the potential of *mawaddah* and the mercy that Allah SWT has given to mankind. Achieve the essence of marriage, does not come suddenly, each couple is required to make full efforts to make it happen using the guidelines set out in *an-nusus al-muqaddasah*. These guidelines are a series of marriage principles which, if implemented in domestic life, can achieve the goals of marriage outlined in the Al-Qur'an, as exemplified by the Prophet Muhammad SAW.

Before we move on to understand more about marriage, it would be good for us to know the meaning of marriage itself. Two terms are usually used in discussing the relationship between men and women which are wrapped in religious values, namely 'marriage' and marriage, both terms are commonplace among the people, and even though the meaning of these two terms is the same, it turns out that there are differences between the two. According to Moh. Zaid said that 'marriage' comes from the word 'Kawin', which according to the language, means forming a family with an opposing genius who has sexual relations and sexual intercourse. The term mating is used universally for plants, animals, and humans, and denotes a natural generative process. In contrast, the term "marriage" is only used for humans because it contains validity according to national law, custom, and especially according to religion (Zaid, 2002, p. 2).

Islamic law pays attention to all family problems because the family is the basic foundation of building a household ship amid society. When the household ark has been built strongly and established on a healthy basis and a very strong foundation, then the product of the community in building their household will experience a happy and prosperous life (Puniman, 2018, p. 87).

A marriage bond is a form of legal action, which in this case is an action that contains rights and obligations for the individuals who carry it out. A man and a woman after marriage will have legal consequences, namely regarding the legal relationship between husband and wife and regarding marital property and income (Darmabrata, 2009, p. 128).

Marriage according to Islamic law is a very strong contract or *mitsaaqan ghalidzan*. In this expression, it demands maintenance, affection, and love. In this way, marriage is a noble and strong bond of agreement, binding the hearts and uniting the benefits for the

formation of a harmonious family, *Sakinah mawadah warahmah* to obey Allah's commands and carry them out is worship.

The country of Indonesia, where the majority of the population is Muslim, makes it necessary to have regulations that regulate the dynamics of the lives of Muslims in Indonesia. One of the most important things in this case is marriage. Of course, a marriage must have regulations in carrying out a marriage because if this does not exist regulations that regulate it will cause confusion and even inequality. Some regulations have been formed that regulate marriage, namely Law Number 1 of 1974 concerning Marriage, which in this law regulates marriage in a complex manner. The presence of the Compilation of Islamic Law answers the concerns of islanders in Indonesia because the Compilation of Islamic Law provides a basis for answering and regulating family problems. The Compilation of Islamic Law covers matters regarding marriage, divorce, inheritance, and endowments.

## **REVIEW OF LITERATURE**

Several previous studies examine research principles, such as a journal entitled 'Study of Marriage Principles According to Law No. 1 of 1974 in the Perspective of Islamic Law,' written by Mohammad R. Hasan, in the journal *At-Tabayyun*. In his research, it was stated that if the marriage is carried out following religious regulations and laws, then it is certain that good families will be formed. In turn, the country will be better. The principle of marriage that lives and grows in society according to Law no. 1 of 1974 requires consent from both parties (the prospective bride and groom), as a condition or proposal, giving dowry, in the marriage contract, witnessed by 2 (two) witnesses, the guardian of the parties, the prospective bride and every marriage is recorded according to statutory regulations -valid invitation (Hasan, 2021).

Journal with the title "Principles of Marriage", written by Mohammad Rana and Usep Saepullah, in the *Court Journal* Vol. 6, No. 1<sup>st</sup>, June 2021, Sunan Gunung Djati State Islamic University Bandung, the conclusion in this article is that marriage is a *sunnatullah* that applies to His creatures, including humans. However, Allah SWT. outlines the rules for humans to give vent to their sexual desires to feel calm (*sakinah*) and to express feelings of love and affection to their partners through the institution of marriage that He has established. In forming a family, Islam itself outlines the essence of marriage which it prescribes as an

effort to realize *sakinah, mawaddah, and rahmah*. There are such principles contained in *an-nushūṣ al-muqaddasah* as a guide for humans to create and realize the family structure as outlined in the Qur'an (Rana, 2021).

Then the research entitled 'Marriage Law According to Islamic Law and Law No. 1 year 1974', written by Ach Puniman, in the journal *Yustitia* Vol. 19 No. May 1<sup>st</sup>, 2018, Faculty of Teacher Training and Education, Winaraja University. The results of this paper are that a valid marriage according to the perspective of Islamic law is a marriage that is carried out according to procedures that follow the provisions of the religion of those who are carrying out the marriage, which in this case is the Islamic religion, as explained in the inseparable Compilation of Islamic Law, in Here, the Compilation of Islamic Law exists to reinforce or become the basis for Islamic civil law in Indonesia, while *fiqh* is a source of law where the Compilation of Islamic Law is formed (Puniman, 2018).

## **RESEARCH METHOD**

In this writing, in the research method, the researcher uses a normative juridical research approach, or known as research that refers to legal norms contained in applicable laws and regulations and judicial decisions as well as norms that exist in society (Sulaiman, 2008, p 25). As for the object of research, namely the study of the principles of marriage from the perspective of Law No. 1 of 1974 in the Compilation of Islamic Law.

## **RESULTS AND DISCUSSION**

### **Principles of Marriage in Islamic Law**

Islam prescribes marriage to create a sense of *sakinah, mawaddah, and mercy* for both husband and wife. However, these three, as M. Quraish Shihab said, do not just come by themselves, each partner must strive for their presence in the household (Shihab, 2007, p. 141). To achieve the desired goals of marriage as stated in the Al-Qur'an, Islam has prepared a series of principles to guide each couple to achieve a sense of *sakinah, mawaddah, and mercy* in the domestic life they foster. Some of these principles are as follows:

#### **Principle of Freedom to Choose a Partner**

Choosing a partner is a basic right of every person, which is given to men and women who also have such rights. According to Asghar Ali Engineer, in the Qur'an women are equal

to men in their mental and moral abilities, so each has the right independent the same thing in choosing and determining her partner, because of this Islam emphasizes that women have the absolute right to accept or reject a proposal if it does not match what she wants. This is like a hadith history narrated by Ibn Majah.

"Told us Hannad bin As Sarri said, yes tell us Waqi' from Kahmas bin Al Hasan from Ibn Buraidah from his father he said: "There is one girl comes to Prophet SAW., and said, "Indeed, my father married off I'm with his nephew with the aim that raised him from humiliation." Buraidah said, "So he handed over the matter to the girl. Then he said, "I have accepted my father's decision, but I want women to know that the decision is not up to their fathers" (HR. Ibn Majah).

From Hadith above the freedom of choice for women to choose their partner according to their wishes, is not interpreted without having the permission and approval of the guardian. Because it cannot be denied that marriage will be more perfect if this freedom is at the same time also expected to be satisfying (Rana, 2021).

### **Principle of Equality**

According to M. Quraish Shihab, equality between husband and wife can be seen in terms of the events between the two, which do not have any differences. Therefore, the Qur'an emphasizes that "some of you are from others (*ba'dukum min ba'd*)". This term is used to show equality/togetherness and partnership as well as showing that men themselves or their husbands are not perfect and neither are women. Before uniting with his partner who is also partial. Both men and women are born from parts of both, namely a combination of male sperm and female egg cells (Shihab, 2007, p. 149).

This equality between men and women in the context of marriage can also be seen in the existence of rights and obligations that must be implemented and fulfilled by each party, fulfillment of rights by husband and wife is equal to the burden obligation which must be fulfilled by each party, both the wife and the husband. No one dominates and dominates their partner, but partners who respect each other, appreciate each other, complement each other, and also perfect each other.

### **Principles of *Mu'asyarah Bi Al-Ma'ruf***

In the principle has a basis stated by Allah SWT that:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا نِسَاءَ كُرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْنَهُنَّ  
إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ وَعَاشِرٌ وَهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ  
خَيْرًا كَثِيرًا

"O believers, it is not lawful for you to inherit women by force, and do not cause them trouble because they want to take back part of what you have given them unless they do real hard work. And appropriately associate with them. If you don't like them (then be patient because it may be that you don't like something even though Allah has made it a lot of good."

KH. Husein Muhammad defined *mu'asyarah bi al-ma'ruf* as association, friendship, camaraderie, and kinship that are built together between husband and wife in good ways, which must be in accordance with the traditions and situations of their respective communities, but do not conflict with religious norms, common sense or human nature (Muhammad, 2007, p. 14).

Although the context of the verse above is the command regarding someone's husband to have good relations with his wife, then if you use the methodology, it's a shame so these provisions also apply to a wife, to have good relations with her husband too. The good company according to the Shaykh Nawawi is good according to sharia', i.e. actions, attitudes, and speech. The husband ordered to be gentle, not easily angered, to please his wife, and to obey his wife's wishes in matters kind. On the other hand, a wife must also behave equally well towards her husband. Regarding *Mu'asyarah bi al-Ma'ruf*, apart from being interpreted as a gentle attitude and kind words, Shaykh Nawawi interprets *lafaz ma'ruf* as fair in terms of staying overnight (distribution of shifts for those in polygamy), living, and speaking. good words (Al-Bantani, n.d., p. 135).

Likewise, Shaykh Nawawi Faiquddin said that *mu'asyarah bi al-ma'ruf* is not all like that, indeed in interacting between husband and wife they are required to be fair and behave well, be gentle, please each other between the wife and husband and must not hurt each other. one another. Good association in a husband-and-wife relationship is a relationship that is based on piety and benefit (Kodir, 2005, p. 23).

### Principles of Deliberation

In the principle is based on the words of Allah SWT in QS At-Talaq verse 6:

.....وَأْتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ.....

"And discuss everything well between your husband and wife."

Husband and wife are two different genders, who have different thoughts and desires. If this cannot be managed well, then in the household it will be there is always a dispute between the two. A marriage that gives birth to *mawaddah* and *rahmah* is a marriage in which both partners can discuss all the problems they face, as well as the flexibility to accept their partner's opinions. Sincere research and do not judge it as diminishing the honor of the recipient.

That is what is always done and exemplified by Rasulullah SAW in Life House the Stairs. This is like history as narrated by Imam Bukhari: "Umar Bin Khattab said in the period of ignorance that we never involve women in matters, so the time has come for Allah SWT to determine their position and role. He (Umar) continued: "When I was thinking about an affair, suddenly my wife said; what if you make it like this and like that? Then I told him; How could you possibly know? You don't need to interfere and worry about my business. So he said to me; How strange you are, Ibn Khatthab, you don't want to exchange ideas with me! Even though your daughter always exchanged ideas with Rasulullah SAW"

By deliberating with your partner (husband or wife) on every issue and the desire to enrich the paradigm from a different point of view, so every decision taken is carried out with full awareness of the various benefits and consequences resulting from that decision.

### **Principle of Mutual Acceptance**

In the Qur'an, the principle is that there is acceptance or willingness between the two parties, husband and wife. Each partner accepts each other not only in terms of their partner's strengths but also all their partner's weaknesses and is also aware of their strengths and weaknesses. With this principle, neither party feels perfect, so that it does not give rise to a sense of arrogance towards their partner, and with this principle, it also creates awareness that both of them complement each other's shortcomings with the strengths they have. This is as stated by Allah SWT in QS Al-Baqarah; 187

...هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ...

"They your wives are clothes for you, and you are clothes for them."

If clothing functions to cover the nakedness and physical imperfections of humans, so do husband and wife couples who both complement and cover each other. If clothes are

decoration for the wearer, husbands are decoration for their wives and vice versa (Shihab, 2010, p. 94).

### **Principles of Marriage According to Law No. 1 of 1974 concerning Marriage within the Compilation Frame of Islamic Law**

Many legal experts have opinions about the principles of marriage based on their respective views. According to M. Yahya Harahap's view, several principles are quite principled in the law. Marriage is: (1) Accommodating all the realities that live in Indonesian society today. (2) Following the demands of the times. (3) marriage aims to form an eternal happy family. (4) Awareness of the religious laws and beliefs of each citizen of the Indonesian nation, namely that marriages must be carried out based on their respective religious laws and beliefs. (5) The marriage law adheres to the principles of monogamy, but there is an open opportunity to practice polygamy as long as religious law permits. (6) Marriage and family formation are carried out by individuals who have matured in body and soul. (7) The position of husband and wife in life is balanced, both in domestic life and in society.

Musdah Mulia explained from another perspective that there are four principles of marriage which are based on the verses of the Koran. First, the principle of freedom in choosing a partner. This principle is a criticism of the Arab tradition which places women in a weak position so that they do not have the freedom to determine what is best for themselves. Therefore, the freedom to choose a partner is a right and freedom for men and women as long as it does not conflict with Islamic law. Second, the principle of *mawaddah wa rahmah*. This principle is based on the words of Allah SWT QS. Ar-Rum: 21. *Mawaddah wa rahmah* is a human character that is not shared by other creatures. If animals have sexual relations solely for the needs of the sexual instinct and are also intended to reproduce, while human marriage aims to achieve Allah's approval, in addition to biological goals, it also builds a household to form a peaceful society based on love and affection (Ghozali, 2008, p. 24).

Third, the principle of complementarity and mutual protection. This principle is based on the words of Allah SWT, which is found in surah al-Baqarah: 187 which explains that wives are clothed as befits men as well as clothes for women. Marriage between men and women is intended to help and complement each other because each person has advantages and disadvantages. Fourth, the principle of *mu'asarah bi al-ma'ruf*. This principle is based

on the words of Allah SWT. contained in surah an-Nisa: 19 which orders every man to treat his wife in a *ma'ruf* manner. In this principle, the main message is protection and respect for women.

The principles of marriage according to Law No. 1/1974 are: (1) The purpose of marriage is to form a happy and eternal family; (2) The validity of a marriage is very dependent on the legal provisions of each religion and belief; (3) The principle of monogamy; (4) Prospective husband and wife must be mature in body and soul; (5) Makes divorce difficult; (5) The rights and positions of husband and wife are equal.

It is interesting to analyze that the principles of marriage have a firm foundation as contained in the Qur'an and Hadith. As explained by M. Rafiq, the first and fourth principles can be seen in the word of Allah:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

"And among the signs of His greatness is that He created for you wives from among yourselves, so that you will be inclined and feel at ease towards them, and made among your feelings of affection. Verily in that are truly the signs of His greatness for people who think" (QS. Al Rum: 21).

Regarding the second principle, something that is clear is that the law to be enforced must be based on the Qur'an and al-Hadith. The third principle can be seen in the words of God:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا

"And if you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry other women you like, two, three, four. Then, if you are afraid that you will not be able to do justice, marry only one person or the slaves you own. That is closer to not committing wrongdoing." (QS. an-Nisa: 3).

The fifth principle is following the Hadith of the Prophet which reads: "The lawful act that Allah hates most is divorce." (HR. Abu Daud and at-Tirmidhi). The sixth principle is in line with the word of Allah: "(because) for men there is a share of what they earn and for women there is a portion of what they earn."

The definition of marriage is also as stated in the Compilation of Islamic Law Article 2 which reads: Marriage according to Islamic law is a marriage, namely a very strong contract or *mitsaqon gholidhon* to obey Allah's commands and carrying them out is worship. The word *miitsaaqan ghaliidhan* is taken from the words of Allah SWT QS an-Nisa verse 21:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُم مِّيثَاقًا عَلِيمًا

"And how will you take the dowry that you have given your wives when some of you have mixed (mixed) with others as husband and wife? And they (your wives) have taken from you a strong agreement (*miitsaaqan ghaliizhan*)".

Regarding the purpose of marriage, it is stated in the next article, namely Article 3, which reads: "Marriage aims to create a domestic life that is *sakinah, mawaddah, and rahmah* (serene, love and affection)".

This goal is also formulated through the words of Allah SWT:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

"And among the signs of His greatness is that He created for you wives from among yourselves, so that you will be inclined and feel at ease towards them, and made among your feelings of affection. Verily in that are truly the signs of His greatness for people who think" (QS. Al Rum: 21).

From the explanation above regarding the principles of marriage, it is clear that marriage is the first step in forming a family, and then it is this group of families that will form the citizens of society which in the Compilation of Islamic Law form a state. If the marriage is carried out following the principles of marriage in Islam, good families will undoubtedly be formed, and if these principles are also carried out following the laws and regulations governing marriage, it will have an impact on reducing the number of divorces in a family.

## CONCLUSION

The principles of marriage in Islamic law prescribe marriage to create a sense of *sakinah, mawaddah, and mercy* for both husband and wife. Of the three principles for creating a good household, several other principles must be known to be experienced, namely 1) the principle of freedom to choose a partner 2) the principle of equality 3) *mu'asyarah bi al-Ma'ruf* 4) the principle of deliberation 5) mutual acceptance.

In channeling sexual desires, it is also to create a sense of *sakinah*, *mawaddah*, and *rahmah*. Efforts to realize the essence of marriage outlined in the Qur'an are by establishing a series of marriage principles contained in the Qur'an and Hadis as guidelines for married couples in forming a happy family, decorated with peace of mind and body, and as a place to pour out and love.

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