

LEGAL CERTAINTY AGAINST MARRIAGE IN FRONT OF THE BODY BASED ON THE COMPILATION OF ISLAMIC LAW (KHI)

^{i*} Hari Widiyanto, ⁱⁱMuhajir, ⁱⁱⁱRidwan, ^{iv}Hartono

ⁱⁱⁱFaculty of Syariah, Islamic Institute of An-Nawawi Purworejo Central Java Indonesia
^{iii,iv}State Islamic University (UIN) Prof. KH Saifuddin Zuhri, Purwokerto, Central Java Indonesia

*(Corresponding author) email: hari.widiyanto25@gmail.com

ABSTRACT

Marriage is a human nature which is a form of human need. In Islamic teachings, marriage is recommended for adults who already have the ability physically and mentally to live a family. Marriage in front of the corpse is a tradition that occurs in Indonesia, of course, as a layman about the law, marriages held in front of the corpse need a form of legal certainty that guarantees the community to have legal rights as a form of orderly administration. clear and consistent implementation. This type of research is a type of normative juridical research with the specifications of analyst descriptive writing. Based on the phenomenon of marriage in front of the corpse, it is necessary to know regarding the legal certainty of marriage in front of the corpse based on the compilation of Islamic.

Keywords: *Marriage, Marriage, Legal Certainty*

INTRODUCTION

Humans are social creatures who need friends or life partners, which means humans cannot live alone (Wan, 2015). So humans really need bonds of friendship or marriage bonds for survival in life. In the provisions of Indonesian law, binding a legal marriage requires a form of legal certainty that applies. This legal certainty will be the basis for a person to get his legal rights in full.

With marriage a person can live with their partner and get offspring (Umi Supraptiningsih and Khoirul Bariyyah, 2019). Marriage is a fitrah which is a necessity of human life. Marriage is a great and noble event because it aims to form an Islamic family that is sakinah, mawaddah, and rahmah based on the instructions of the Qur'an and the Prophet's sunnah in order to achieve happiness in this world and the hereafter. (Suriani Suratman, 2021).

In the teachings of Islam, marriage is recommended for adults who already have the ability physically and mentally to live a family (Anwar & Norwahdah, 2018). The marriage that is carried out certainly pays attention to various aspects that influence the implementation of the marriage. Physical and spiritual abilities are one of the things that underlie a person to get married, because with the physical and spiritual abilities that exist, a person can carry on his life after the marriage, not only that the marriage must be based on the existing legal certainty so that the marriage has certainty. someone in getting a definite legal consequences. Islam prescribes marriage to provide benefits to all humans and prevent them from misfortune. In maqasid sharia, marriage is the implementation of hifzh an-nasl (preserving offspring). (Wahyu Wibisana, 2016). In various countries there are various forms of marriage. Each country has different legal bases and traditions in carrying out marriage. In Indonesia, as a predominantly Muslim country, marriage must take place based on existing regulations. For Muslim citizens, marriage must be carried out in accordance with the provisions in the Compilation of Islamic Law (KHI) and the Marriage Law. (Fathol Hedi, 2017).

Marriage can be performed if it fulfills the main elements of marriage, namely: 1) a prospective bridegroom; 2) a prospective bride; 3) a guardian (of the bride who solemnizes); 4) witnesses (two people); 5) ijab performed by the bride's guardian and qabul performed by the prospective bridegroom. These conditions must be met so that the marriage is recognized as valid according to religion. In addition, marriage must be recorded. The recording is in the form of administrative order. This provides legal certainty for the status of the husband, wife, and children. In addition, registration can provide a guarantee of protection of rights arising from marriage such as the right to maintenance, the right to

joint property and the right to inheritance as well as the right to obtain legal identity such as birth certificates and family cards. (Ahyuni Yunus, 2020).

Indonesia as an archipelago has many traditions and beliefs in marriage. Among the traditions is marriage in front of a corpse. This tradition can be found in several places, especially in Java and Madura. There are even some groups that make marriage in front of a corpse a tradition that must be preserved and maintained. In Islam, although marriage is encouraged, there is no such thing as marriage in front of a corpse. Even if there is a death, the corpse should be buried immediately after being washed, shrouded and prayed for. (Rohman Ritonga, 1997).

Legal certainty is focused on the application of a clear law and its implementation is consistent and cannot be influenced by other circumstances (Fauzie, 2011). So it can be interpreted that this legal certainty leads to the application of law which cannot be changed by circumstances, in this case legal certainty is also to ensure that all human activities related to the law get their legal rights in full. This also applies to someone who wants to get married where the state has clearly accommodated legal certainty to regulate marriage in Indonesia, because marriage is a necessity of human life, the law is obliged to protect it as a legal umbrella. In addition, marriages must be registered which is a form of administrative order that is useful for providing legal certainty for the status of husbands, wives and children. In addition, recording can provide a guarantee of protection for rights arising from marriage such as the right to livelihood, joint property rights and inheritance rights as well as the right to obtain legal identity such as birth certificates and family cards (Ahyunni, 2020).

Marriage in Islam there is no term marriage in front of the corpse, because it is recommended that the body must be buried immediately after being bathed, shrouded and prayed (Rohman, 1997). Marriage in front of the corpse is usually carried out due to urgent circumstances because the parents of one of the married couples die, then the child is required to perform the marriage contract in front of the corpse. As is the case in Penungkulan Village, Gebang District, Purworejo Regency which occurred in 2022. Because they were engaged, then the mother of the bride's parents died, the marriage was moved forward because it was in a hurry so the marriage was carried out in front of the corpse in a serial manner.

Marriage in front of the corpse is a tradition that occurs in Indonesia, of course, as a layman about the law, of course, marriages held in front of the corpse are a form of legal certainty that guarantees people to have legal rights as a form of orderly administration. Based on this, the author is interested in discussing legal certainty for marriages carried out in front of the corpse based on the Islamic Law Compilation.

METHODOLOGY

This type of research is a type of normative juridical research with the specifications of analyst descriptive writing. This normative juridical research method is a legal research conducted by means of a literature study. This research approach is through a case approach and a statutory approach. Sources of data used using primary data and secondary data. Methods The data collection in this study was carried out through a literature study through the theory obtained, previous journals/research, relevant research, applicable legal provisions in the form of legislation and court decisions that have permanent legal force. Methods Data analysis in this study was analyzed qualitatively, namely by observing the data obtained by connecting the cases that occurred with the laws and regulations as well as the judges' considerations in court decisions using a descriptive analysis model. Then conclusions are drawn in a deductive way which produces a general to specific conclusion on the problem under study.

RESULTS AND DISCUSSIONS

Marriage or nikah according to the language is gathering and mix. According to the term shara' is ijab and qabul ('aqad) which legalises cohabitation between a man and a woman. that legalises cohabitation between a man and a woman, pronounced by words that indicate marriage, according to pronounced by words that indicate marriage, according to the rules determined by Islam. prescribed by Islam. The word nikah according to the language al-jam'u and al-dhamu which means gathering. The meaning of marriage

(zawaj) can be interpreted with *aqdu al-tazwij* which means marriage contract. can also be interpreted (*wath'u alzaujah*) means having intercourse with his wife. The definition above is also almost. The definition above is also almost the same as that put forward by Rahmat Hakim, that the word marriage comes from the Arabic word "*nikāhun*" which is *masdar* or from the verb verb (*fi'il madhi*) "*nakaha*" synonym "*tazawwaja*" is then translated into Indonesian as marriage (Abdul Muhammad Mathlub, 2005).

In the Indonesian language "marriage" comes from the word "*kawin*" which, according to the language, means to form a family with the opposite sex, to have sex and to have intercourse. opposite sex, have sex and have intercourse. The meaning of *nikah* is a contract or bond, because in a marriage process there is *ijab* (a statement of submission from the woman) and *qabul* (a statement of acceptance from the man), (a statement of acceptance from the man). In addition, *nikah* can also means to have intercourse (Amir Syarifuddin, 2006).

Marriage is the *sunnah* of the Prophet, which if performed will rewarded, but if it is not done, there is no sin, but it is disliked because it does not follow the *Sunnah* of the Prophet but it is disliked for not following the *Sunnah* of the Messenger (Muhammad At-tihami, 2004). The meaning of marriage is the union of two people with different types, namely men and women who establish a bond with an agreement or contract.

A marriage has a goal, namely to build a family that is *sakinah mawaddah warohmah* and wants to get a *solihah* offspring *solihah* offspring. This offspring is what is always coveted by everyone who is married because offspring are the generation for his parents (Ahmad Rafi Baihaqi, 2006).

Marriage in the perspective of Law No. 1 of 1974 that a new marriage can be said to be a valid marriage if the marriage is carried out according to the law. Then a valid marriage will get authentic evidence from the state in the form of a marriage certificate. This marriage certificate will later be useful for the community in administrative management, then if there are legal problems related to marriage, then there is sufficient evidence that has permanent legal force to be able to defend their legal rights.

Furthermore, the compilation of Islamic law states that if the marriage does not have proof of a marriage certificate, it is necessary to take legal steps or submit it to the Religious Court. This means that the public can obtain legal provisions for marriages that are not legally valid, the state can apply for steps from the Religious Courts.

In marriages that occur in the community, there is a marriage that is religiously valid but not legally valid, with the reason being married in front of the corpse because there is an appointment with the corpse that requires marriage in front of the corpse.

In the perspective of Islamic law, marriage in front of the corpse can be done as long as the conditions and pillars are met (Masyhadi, 2017). The terms and conditions of marriage are as follows:

- a. There is a groom and a bride
- b. There must be free consent between the two brides
- c. Guardian of marriage
- d. Two witnesses
- e. There is a dowry (*dowry*)
- f. There is a *Qobul Ijab*

Based on the conditions and pillars above, if all the elements have been met, the marriage is considered religiously valid. However, Article 2 explains the conditions for a valid marriage, namely:

- a. Marriage is valid if it is carried out according to the laws of each religion and belief.
- b. Every marriage is recorded according to the applicable laws and regulations.

The difference between the provisions of Islamic law and Law No. 1 of 1974 lies in the registration of marriages, in Islamic law it is not necessary to record during the marriage according to the terms and laws of Islam.

That under the provisions of state law, marriages must be registered. This is based on Chapter II Article 2 of Government Regulation No. 9 of 1975 concerning marriage which regulates registration, in this article it reads:

- a. The registration of the marriage of those who hold a marriage according to the past religion is carried out by the registrar as referred to in Law Number 32 of 1954 concerning the registration of marriage, divorce and reconciliation.
- b. Furthermore, the procedure for registering marriages is carried out as stipulated in Articles 3 to 9 of Government Regulations.

Marriages carried out in front of the corpse are basically carried out urgently and only use the basis of Islamic law. This means only obeying the terms and pillars of Islamic law, not using the legal basis of the state.

Marriages carried out in front of the corpse, which only use the terms and pillars of the provisions of Islamic law, need to be known regarding the steps that must be taken by the community. This step is what makes a legal determination to be able to ratify the marriage and register it, in order to get a marriage certificate.

The compilation of Islamic law provides provisions for couples with unregistered marriages. This is contained in Article 7 of the Compilation of Islamic Law which explains that, (1) marriage can only be proven by a marriage certificate made by a marriage registrar. (2) in a marriage that cannot be proven by a marriage certificate, a marriage certificate can be submitted to the Religious Court.

So it can be said that marriage in front of the corpse can be registered or get a legally valid decision by submitting an *istbat* to the Religious Court. However, in Article 7, not all unregistered marriages can be submitted for *istbat*, but there is a reason for doing *istbat*.

The conditions for the *Istbat* to be carried out are contained in Article 7 of the Compilation of Islamic Law which reads *Istbat* marriage that can be submitted to the Religious Courts is limited to matters relating to: (a) The existence of marriage in the framework of the settlement of Divorce; (b) Loss of Marriage Certificate; (c) There is disagreement about whether or not one of the conditions of marriage is legal; (d) The existence of marriages that occurred before the enactment of Law No. 1 of 1974 (e) marriages carried out by those who do not have marriage barriers according to Law no. 1 of 1974.

If you look at the limitations in Article 7, it can be said that marriage in front of the corpse is included in Article 7.

Marriage in Javanese Custom

In the view of Javanese society, marriage has in the Javanese community, marriage has its own meaning, namely in addition to obtaining legitimate offspring as well as maintaining the family tree. Marriage is an important issue because it is a basic human need marriage is an important issue because marriage is a basic human need. Every human being has the instinct to develop offspring and in this relationship, humans carry out basically, in addition to channelling basic human needs, marriage is carried out in order to develop human basic needs, marriage is carried out in order to develop every human being has an instinct for their offspring to develop offspring and preserve human life. Every human being has an instinct so that his descendants can inherit and continue the ideals of his life.

The purpose of marriage is the first goal to obtain legitimate offspring and is the main purpose of marriage itself. Obtaining children in marriage for human livelihood contains two aspects of interest, namely; personal interest and general (universal) interest. The second purpose of marriage is to fulfil the instinctive guidance of human life. The third purpose of marriage is to preserve humanity from evil and corruption. The fourth purpose of marriage is to form and organise the household, which is the first basis of a large society, on the basis of love and affection (Sudarto, 2009).

The requirements in Javanese traditional marriage are:

1. The marriage ceremony is the centrepiece of the marriage ceremony. Usually the marriage contract usually takes place before the reception.
2. Witnesses, witnessed by elders or parents of the bride and groom and elders bride and groom and elders. The execution of the marriage contract is performed by an official from the civil registry or a religious official (Suwardi Endraswara, 2009).

What is meant by the prohibition of marriage in customary law is everything that can cause the marriage to be unable to be carried out because it cannot fulfil the requirements as desired by customary law or the prohibitions of religious law that have entered into the provisions of customary law. Some of the prohibitions in customary law are as follows (Dewi Wulansari, 2010):

Because of kinship.

Because of differences in position, for example a man is prohibited from marrying a woman because she is of a lower class and vice versa.

Because of religious differences, religious differences can prevent a marriage from taking place.

Marriage is an important event in the history of every person's life. Javanese people interpret the event of marriage by organising various ceremonies. The ceremony starts from the introduction stage until the marriage takes place. The stages are as follows:

Nontoni, at this stage the role of an intermediary is needed. This intermediary is a messenger from the bride-to-be's family. This meeting is intended to watch, or see the candidate up close. Usually, the messenger comes to the bride's family home with the prospective groom. In that house, the bride and groom can meet directly even if only briefly. This fleeting meeting occurs when the bride-to-be brings out drinks and snacks as refreshments. Guests are welcomed by the bride's family consisting of the bride's parents and their families, usually *pakdhe* or *paklik*.

Nakokake/ Nembung/ Nglamar, before proceeding to the next stage, the middleman will ask some personal questions such as whether there is a candidate for the bride-to-be. If there is no candidate, then the groom's messenger informs him that the groom's family wishes to make a booking. Then the prospective groom is asked if he is willing to be his wife. If the bride agrees, then the next steps need to be taken. The next step is to determine the day of arrival of the messenger to conduct the *kekancangan rembug*. *Peningset* is a symbol that the bride-to-be has been unofficially bound by the groom-to-be. *Peningset* is usually in the form of a *kalpika* (ring), some money, and souvenirs in the form of regional specialities. *Peningset* can be accompanied by a *pasok tukon* event, which is the provision of goods in the form of *sanggung bananas* (*pisang jenis raja setangkep*), a set of clothes for the bride-to-be, and *upakarti* or assistance if the wedding ceremony is about to take place such as rice, sugar, vegetables, spices and some money, when everything is running smoothly, the date and day of the wedding are determined. Usually the determination of the date and day is adjusted to the *weton* (day of birth based on Javanese calculations) of the bride and groom. the marriage will bring happiness and prosperity to all family members. for all family members.

Pasang Tarub, When the date and day of the wedding have been agreed upon, the next step is the installation of the *tarub*, which is made from coconut leaves that have previously been woven and given a framework of bamboo, and *ijuk* or *welat* as the rope. In order to ensure the *tarub*'s safety, a simple ceremony of serving a complete *tumpang rice* is performed. Along with the *tarub*, the *tuwuhan* is also installed. What is meant by *tuwuhan* is a pair of plantain trees that are being The *tuwuhan* is a pair of plantain trees that are bearing fruit, which are installed on either side of the entrance.

Midodareni, the series of *midodareni* ceremonies begins with the *siraman*. The *siraman* ceremony is performed before the *midodareni* ceremony. After the *siraman*, the bride-to-be washes her face (Javanese term: *raup*) with a water jug brought by her mother, then the jug is immediately slammed / broken while saying words. is immediately slammed / broken while, saying the words the light has now broken like the full moon. After change clothes, followed by a haircut event performed by the bride's parents. performed by the bride's parents. After being cut, the hair is buried in front of the house. After the hair is buried, followed by the "*dodol dawet*" event. The one selling the *dawet* is the mother of the bride-to-be with her husband shading her. The money to buy the *dawet* is made from *kreweng* (shards of tiles) that are formed round. The next ceremony is the *midodareni* ceremony. It comes from the word *widadari*, which means *bidadari*. *Midodareni* is a ceremony that contains hope to make the atmosphere of the bride-to-be like *widadari*.

Akad Nikah, the marriage ceremony is the centrepiece of the marriage ceremony. Usually the marriage ceremony takes place before the reception. The marriage ceremony is witnessed by elders/parents of the bride and groom and elders. The marriage ceremony is conducted by an official from the civil registry or religious officials.

Panggih, *panggih* begins with the exchange of *kembar mayang*, *kalpataru dewadaru* which is the means of the *panggih* series. This is followed by *balangan suruh*, *ngidak endhog*, and *mijiki*.

Balangan suruh, the balangan suruh ceremony is performed by both brides alternately. The gantal carried to be thrown to the groom by the bride is called godhang kasih, while the gantal held by the groom is called godhang tutur. The gantal is made from betel leaves bent into a circle (Javanese term: dilinting) which is then tied with white thread/lawe. The betel leaf is a symbol that the bride and groom are expected to be united in their creations, thoughts and work.

Pecah Telur, the egg breaking ceremony is initiated by the juru paes, the person in charge of making up the bride and wearing the bride's clothes, by taking an egg from the box, then rubbing it on the groom's forehead and then the groom is asked to step on the egg then the bride wipes the groom's feet using water that has been given flowers. water that has been given setaman flowers.

Timbangan, the weighing ceremony is usually performed before the bride and groom sit on the aisle. The weighing ceremony is performed before the bride and groom in the following way: The father of the bride sits between the bride and groom. The groom sits on the right foot of the bride's father, while the bride sits on the left foot. The father of the bride sits on the right foot of the bride's father, while the bride sits on the left foot. The father's hands are placed on the shoulders of the bride and groom. Then the father says that they are equal, equally heavy in the connotative sense.

Kacar kucur, the way the groom pours the rich king from the bag of cloth, while the bride receives it with sindur cloth, which is placed on her lap. which is placed on her lap. The cloth bag contains dhuwit change, yellow rice, kawak beans, dhele kawak, kara and telon flowers (rose, jasmine, kenanga or kenanga). telon (rose, jasmine, kenanga or kanthil).

Dulangan, dulangan is a ceremony performed by by the bride and groom feeding each other food and drinks.

Sungkeman, sungkeman is a ceremony performed by both bride and groom sit jengkeng by holding and kissing the knees of both parents. kissing the knees of both parents, both the parents of the groom and the parents of the bride. and the parents of the bride.

Kirab, the kirap ceremony is a procession consisting of domas, cucuk lampah, and close family members to pick up or escort the escort the bride and groom who will leave the place of marriage ceremony.

Jenang sumsuman, the jenang sumsuman ceremony is performed after all the events of the marriage ceremony is completed. In other words, jenang sumsuman is an expression of gratitude because the event went well and survived without missing a thing, and everyone was in good health in good health. Usually jenang sumsuman is usually held in the evening, which is the next night after the marriage ceremony.

Boyongan/Ngunduh Manten, it is called boyongan because the bride and bride and groom are escorted by the bride's family to the groom's family together ngunduh ngunduh manten is held at the groom's house usually the event is not as complete as the event held at the bride's place, although it can also be done in full such as the bride's place although it can also be done in full like the usual pelih event. This depends on the wishes of the groom's family. Usually, the ngunduh manten is held a market after the wedding ceremony (Suwardi Endraswara, 2009).

CONCLUSION

Legal certainty regarding marriage in front of the corpse is based on the compilation of Islamic law in order to obtain definite legal provisions from the state, namely by submitting an application for marriage istbat to the Religious Court, because marriage in front of the corpse is included in the elements or limitations mentioned in Article 7 of the Compilation of Islamic Law.

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