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Puji dan syukur kita panjatkan kehadiran Allah SWT dengan segala limpahan karunia-Nya sehingga dengan rahmat dan iradahnya, Mawaddah: Jurnal Hukum Keluarga Islam dapat menerbitkan Volume 2 Nomor 1 Mei 2024 dalam edisi online maupun cetak, sebagai bentuk sumbangsih keilmuan dalam bidang Hukum Keluarga Islam dalam mewujudkan tatanan hukum dalam kehidupan berbangsa dan bernegara di Indonesia.

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Tim redaksi Mawaddah: Jurnal Hukum Keluarga Islam menyampaikan banyak terima kasih kepada semua pihak dalam mengsucceskan penerbitan Jurnal Mawaddah ini. Semua kritik konstruktif dan masukan sangat diharapkan untuk lebih menyempurnakan Jurnal Mawaddah pada edisi berikutnya.

Bandung, 01 Mei 2024

**Tim Redaksi Jurnal Mawaddah**

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## NUSHŪZ IN ISLAMIC FAMILY LAW: A Critical Study of Hadith Exegesis and Religious Court Verdicts

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### ABSTRACT

*The ongoing family conflicts cannot be separated from the neglect of the position of the husband and wife in Islamic family law, known as nusūz. The purpose of this study is to understand Mufasssireen's interpretation of nusyūz. This study is a qualitative research, a literature survey with an interdisciplinary approach - philosophical, Historical, psychological, sociological, and Islamic law approach - and a descriptive analysis from various sources such as tafsir, hadith, Islamic Jurisprudence, legal maxim and legislation. The meaning of nusyūz in al-Nisa 4:34 according to Mufasssireen is similar. The difference between classical mufasssirs and contemporary mufasssirs is that classics allow and contemporary ones reject wife beating. There is also an interpretation of verse al-Nisa 128, where commentators argue that the husband's nusūz means relinquishing rights and obligations due to polygamy and unequal living, and the form of resolving the husband's nusūz is through advice and mediation. The judge's decision in resolving husband and wife nusyus problems was the judge's reference to al-Baqarah paragraph 241, School Al-Dzahiriyyah Article 39 paragraph 2 of Law Number 1 of 1974 concerning Marriage, Articles 149 and 241 Compilation of Islamic Law of 1991 as the implementation of takhsis al- qada is based on benefit which refers to the Islamic legal maxim Hukm al-Hakim Yarfa al-Khillaf, Tassaruf al-Imam Ra'iyah Ala Manut bi al-Maslahah.*

**Keywords:** Nusuz, Tafsir, Hadith, Islamic Family Law, Judge's Decision.

### ABSTRAK

Konflik Keluarga yang terus terjadi tidak lepas dari pengabaian kedudukan suami istri dalam Hukum Keluarga Islam yang dikenal dengan nusyūz. Tujuan penelitian ini ialah untuk memahami Interpretasi Mufasssireen terhadap nusyūz. Penelitian ini merupakan penelitian kualitatif, dengan pendekatan interdisipliner yaitu pendekatan Filosofis, Historis, Psikologis, Sosiologis, Dan Yuridis dengan tipe analisis deskriptif dari berbagai sumber seperti Tafsir, Hadis, Usul Fiqh, Kaidah Hukum Islam, Perundang-Undangan Hasil Menunjukkan bahwa makna nusyuz dalam surat al-Nisa ayat 34 menurut Mufasssirin memiliki kesamaan adapun perbedaan antara klasik dan

kontemporer terkait pemukulan terhadap istri. Ada pula interpretasi pada ayat al-Nisa 128, nusūz suami kelalaian hak dan kewajiban akibat poligami dan pemberian nafkah yang tidak setara, dan bentuk penyelesaian nusyūz suami ialah melalui nasehat dan mediasi. Keputusan hakim dalam menyelesaikan permasalahan nusyuz suami istri ialah rujukan hakim pada al-Baqarah ayat 241, Madzhab Al-Dzahiriyah Pasal 39 ayat 2 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 149 dan 241 KHI Tahun 1991 sebagai pelaksanaan taksi al-qada berdasarkan kemaslahatan yang mengacu pada asas *hukm al-Hakim Yarfa al-Khillaf, Tassaruf al-Imam Ra'iyah Manut bi al-Maslahah*.

**Kata Kunci:** Nusyūz, Tafsir, Hadis, Hukum Keluarga Islam, Keputusan Hakim.

## INTRODUCTION

*The Qur'an* is a *kalamullah* which is revealed against the Prophet Muhammad PBUH in *Arabic lafdz*,<sup>1</sup> which are *miracles* and revelations. The Quran has timeless content that can help solve problems faced by humans. Hadith is the second most important source after *the Qur'an* and serves as an interpretation of the *Qur'an*.<sup>2</sup> Husband and wife receive each other's guidance and advice (*mauidzah hasanah*) in life to maintain family relationships by working hand in hand to build a harmonious and happy family. The family is an important social institution in Islam.<sup>3</sup>

But often tensions arise between husband and wife because they do not carry out the obligations laid down by *the Qur'an* and *Hadith*. Thus causing *nusyuz behavior* that has a bad impact on the family. Therefore, it is necessary to clearly understand the rights and obligations of both in order to establish a harmonious relationship.

The factors that cause *nusyuz* for husband and wife are conflict, economy, education, family and social intervention, politics, law, religion and unpreparedness in marriage, polygamy by means of sirri marriage, infidelity, polyandry of loveless marriage, dissatisfaction in marriage (*kafaah*) Allah says:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالْصَّالِحَاتُ قَنِينَتٌ ۖ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۚ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٣١﴾

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<sup>1</sup> Muhammad Ibrāhim Abd' Al-Bāits, *Kitāb Al-Furqāni Baina Nisbati Al-Qawli Wa Al-Kalām Fi Al-Qur'ān* (Kairo: Maktabah al-Majallad al-Araby, 2016).53

<sup>2</sup> Hasaballāh Ali, *Uṣūl At-Tasyri' Al-Islāmi*, 5th ed. (Kairo: Dār al-Fikr al-'Arabi, 1976).45

<sup>3</sup> Achmad Mubarak, *Psikologi Keluarga* (Malang: Madani, 2016).10

*"Men are protectors over women because Allah favors some (men) over others women and some (men) spend some of their property, therefore, a chaste woman is a woman who obeys Allah and protects herself when her husband is not there Also for the woman you fear is a traitor, until he rebukes him to pull her out of bed, and ignore him, God recognizes what you do." (QS Al-Nisa 4:34).*

In understanding the content of *Qur'anic verses* that are understood textually and legally formally, it often brings extreme attitudes and overreaches the limits.<sup>4</sup> Like the understanding of *nushūz* in the *Qur'an*, Sura Al-Nisa 4:34 which is overunderstood (*guluw*) which results in husbands committing acts of abuse against wives, as some cases in the world mentioned in the table as follows:<sup>5</sup>

**Table 1**

Country	Persentase	Cases of Violence Against Wives
United States	69 %	Physical Violence
Prancis	92 %	Physical Violence
Germany	1000 %	Physical and psychological abuse
Inggris	70 %	Physical Violence
Canada	150 %	Physical Violence
Timur Tengah <sup>6</sup>	50 %	Physical Violence
Indonesia <sup>7</sup>	792 %	Physical, sexual, and economic violence

The data above shows that the lack of understanding of husbands in understanding QS Al-Nisa 4:34 is still very weak even though in principle *nusyuz* is applied to husband and wife as stated in QS Al-Nisa 4:128:<sup>8</sup>

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<sup>4</sup> *Said Aqil Siroj*, Tasawuf Sebagai Kritik Sosial, (Bandung: Mizan, 2006).32

<sup>5</sup> Mu'tasham Abdurahaman Muhammad Mansur, "Provisions of Wives Mushuz In Islamic Sharia" (Najah al-Wathaniyyah University, 2007).299

<sup>6</sup> Lynn Welchman, Zahia Jouirou, and Marwa Sharafeldin, "Muslim Family Laws : Trajectories of Reform," *SOAS University of London Working Paper Series — School of Law , Gender and Media*, 2023.25

<sup>7</sup> Fauzan Fauzan, "Progressive Law Paradigm in Islamic Family Law Renewal in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 2 (2020): 187,.

<sup>8</sup> Jayusman Jayusman et al., "Maslahah Perspective on Husband Nusyuz in Islamic Law and Positive Law In Indonesia," *Muqaranah* 6, no. 1 (2022): 69–84,

وَإِنْ أَمْرَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ  
وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ﴿١٢٨﴾

*"And if a woman is afraid of her husband's indifference or indifference, even though her husband is stingy, it is normal for the two to be reconciled, and this peace will be better according to him and if you protect your wife and protect yourself (from lethargy and indifference), until in fact Allah knows all that you do." (QS Al-Nisa 128).*

The concept of *nusyūz* among the mufasssirin is divided into two periods: classical (*mutaqaddimin*) in the 8th century hijriyah and contemporary in the 9th century (*mutaakhirin*). In the classical era, such as al-Qurtubi, Al-Thabari, Al-Mawardi, Al-Fakhrudin Razi, while the contemporary era Al-Biqai, Abu Al-Suad, Muhammad Abduh, Muhammad Rashid Ridha, Thahir Ibn Ashur, Muhammad Mutawalli Al-Sya'rawi, Muhammad Madhi Abu Al-Aza'im, Muhammad Shahrur, Fazlur Rahman, Nasr Abu Zayd, Hasan Hanafi, Abdul Karim Amrullah, Muhammad Quraysh Shihab, Wahbah Juhayli, Muhammad Said Thantawi.

Contemporary commentators face different challenges from the classics as they pertain to Islam and human rights. So they reconstructed some interpretations of the *Qur'an* to answer the social changes (*al-Taghayyur al-Ijtima'i*) that occurred in society.<sup>9</sup> Several methods of interpretation such as the method of *al-Ma'tsur, bi al Ra'yi, bi al-Isyari*, have been used by scholars to study the historical aspects of the *Qur'an*. The *Qur'anic interpretation of nusyūz* is interesting to examine considering the changing times that continue to develop by paying attention to relevance to current conditions. Like the role of the wife who becomes a career woman who doubles as the backbone of the family because the husband is unable to carry out his obligations in the economy. The legal consequences of *the wife's nusyuz* are, the loss of *the husband's* income to the wife while *the husband's nusyuz* is divorce as in some cases that occur in the Religious Court as follows:

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<sup>9</sup> Kabuye Uthman Sulaiman, "The Role of Qur'an in the Transformation of Human Society," *Revelation and Science* 04, no. 01 (2014): 1–13,

**Table 2**

No	High Court of Religion	Verdict Number	Case	Year
1	Bengkulu	9/pdt.G/2017/PT.Bn	Perselingkuhan	2017
2	Palembang	21/Pdt, G/2018/PTA.Plg	KDRT	2018

The two rulings mentioned show that husband and wife *nusyuz* can be the cause of divorce. According to the majority of Ulama (*Ijma' al Ilm*) Hanafi, Maliki, Hanbali Shafi'i, Sharif, al-Sha'bi, Hasan, and Abi Sauli, and the Compilation of Islamic Law it is stated that if the wife commits *nushūz* then her loss of income is very different from the Judge's Decision in deciding the case of *nusyuz* the husband's wife is required to provide *iddah* for the wife who is *nushūz* Therefore, based on the above problems, the author is interested in linking this research with *nusyuz* in family law: a critical study of hadith interpretation and court decisions

## RESEARCH METHODS

This research is a qualitative research involving descriptive analysis, focusing on interpretive, historical, sociological, philosophical, psychological, juridical approaches. interpretive methods are used to interpret the texts of *the Quran and Hadith*, while philosophical approaches are based on the rules of Islamic law, psychology deals with problems, and Juridical is the legal approach. The data used in this study include primary, secondary, and tertiary sources, with comparative analysis techniques used to complement this study.

## RESULTS AND DISCUSSION

*Nusyūz* is a term used in many languages, including Indonesian meaning insubordination,<sup>10</sup> In Arabic Grammar *Nushuz*, taken and rooted from the word *Nasaza-yansuzu-nusyuzan* read fatah nun sin has the meaning *al-Irtifa'* iniquity. Etymologically, the word *nusyuz* put forward by linguists connotes iniquity committed by wives against husbands. While *the husband nushūz* is a husband who exalts himself and neglects sexual relations.<sup>11</sup> Meanwhile, according to experts from among Tafsir and Islamic jurists have a terminological definition as the table below:

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<sup>10</sup> Syafii, "Interpretasi Makna Sulhu Dalam Penyelsaian Kasus Nusyuz Suami Perspektif Tafsir" (Pascasarjana UIN Sultan Syarif Kasim, 2023).1

<sup>11</sup> Muhamad Ibrāhīm al-Hafnāwī, *Mu'zam Gharīb Al-Fīqh Wa Al-Ushūl Wa Ma'āhu I'rab Al-Kalimāt Al-Gharībah* (Kairo: Dār al-Hadith, 2009).623

**Tabel 3**

No	Nusyuz In Mufassirin Perspective	Nusyuz in the Perspective of Islamic Law Members
1	Al-Qurtubi "the woman of lawlessness" ( <i>al-Mar'ah al-Nasyiz</i> ) i.e. who hates her husband by carrying out evil deeds. <sup>12</sup>	The Hanafiyah Madhhab says <i>nusyuz</i> is the exit of the wife from the house without her husband's permission and closing herself to her husband, while actually not having the right to do so.
2	Ibn Kathir defines "Ungodly Woman" as belief in one's own beliefs, which aims to prevent or overcome one's own beliefs. Over her husband. <sup>13</sup>	Maliki madhhab defines a person as someone who commits sexual acts, without relationship with others, without seeking relationships, or acknowledging the Rights of Allah Almighty. <sup>14</sup>
3	Al-Tabahari defines "Righteousness" as exalting wives to their husbands, and defying them from their imitation. <sup>15</sup>	The Madhhab of Al-Shafi'iyah defines with <i>al-Mar'ah al-Nasyiz</i> the woman who commits iniquity to her husband. <sup>16</sup>
	Mahmud Al-Alusi defines it as the defiance of a wife who obeys her husband who does not obey his orders.	The Hanablah Madhhab defines a husband's obedience to what is commanded by Allah that a husband must obey all the commandments of Allah. <sup>17</sup>
	Muhammad Mutawalli Al-Sha'rawi by quoting from Al-Thabari Is <i>Al-Irtifa' Wa Al-Isti'la</i> , exalted the treatment in family interactions at home, consisting of nysuz itself. <sup>18</sup>	Madhhab al-Dhzahiriyyah defines "it is obligatory for women or slaves and free women not to prevent their master and husband from having

<sup>12</sup> Abū Abdillāh Muḥammad bin Aḥmad Bin Abi Bakar Al-Qurthūby, *Al-Jāmi' Li Ahkām Al-Qur'ān* (Beirut: Muassah al-Risalah, 2006). Jilid 5,112

<sup>13</sup> Abū al-Fiḍā' 'Imād ad-Dīn Ismā'īl ibn 'Umar ibn Kathīr al-Qurashī al-Damishqī, *Tafsīr Al-Qur'ān Al-'Azīm* (Kairo: Dar al-Hadist, n.d.). Jilid 1,654

<sup>14</sup> Abi al-Barakat Ahmad bin Muhammad al-Dardiri, *Al-Syarh Al-Shagir Ala Aqrab Ila Al-Masalik Ila Madzhab Malik*, n.d. 5/343

<sup>15</sup> Muḥammad Ibn Jarir al-Thabari, *Jami' Al-Bayan Fi Ta'wil Al-Thabari* ((Kairo: Dar al-Hadist, 2010).Jilid 5,228

<sup>16</sup> Syam al-Din Muhammad bin Abi Al-Abbas Ahmad bin Hamjah Syihāb al-Din Ramli Nihayah al-Muhtāz ila Syarh Al-Minhāj, *Nihayah Al-Muhtāz Ila Syarh Al-Minhāj* (Beirut: Dār al-Fikr, 1984). Jilid 6, 380

<sup>17</sup> Abū Muhammad Maufiq al-Din Abdullah Bin Ahmad al-Maqdisi, *Al-Mugni Li Ibn Al-Qudāmah* (Kairo: Dār al-Hadith, 1990). Jilid 3,92

<sup>18</sup> Muhammad Mutawalli Sya'rawi, *Tafsir Al-Sya'rawi* (Akhbar al-Yaum, n.d.).Jilid 4,192

		sexual relations whenever he invites them. <sup>19</sup>
	Abdul Karim Amrullah, <i>nushūz</i> is a wife's disobedience to what Allah teaches her husband. <sup>20</sup>	Abu Hamid al-Ghazali, What is meant by <i>nushūz</i> : Does not empower and enable a husband and disobeys him in a way that is beyond the limits of the Law.
	Muhammad Quraish Shihab <i>Nushūz</i> is pride, with the way the wife views her husband, which aims to fulfill the betrayal of the family. <sup>21</sup>	Wahbah Zuhayli Contemporary Islamic Lawmaker from the University of Damascus submitted <i>nusyūz</i> is the disobedience of the wife ( <i>Ma'siyah al-Mar'ah</i> ) to the husband in ordering him, which is obligatory in the marriage vow. <sup>22</sup>

From all the definitions expressed by scholars, there is a common understanding between the Tafsir (*Mufasirin*) and the Islamic Jurisprudence (*Fuqaha*) which connotes the iniquity of the wife<sup>23</sup> The author defines *nushūz* as the iniquity of the sins of husband and wife from neglect to carry out the rights and obligations mandated by Allah, resulting in the collapse of the family with various causes, disproportionality (*kafaah*) in terms of nasab, economic, social, educational, religious understanding, the absence of love of the couple when married so that there is defiance between the two. From the definition that the author defines it is inseparable from the dynamics of family institution life which is often faced with conflict (*syiqaq*) so that the essence of family life is to achieve *mardhatillah* on Allah's trust to the couple. The *nusyūz* in the Perspective of Laws and Regulations in the Islamic State is as follows:

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<sup>19</sup> Alī ibn Aḥmad ibn Saʿīd Ḥazm Ibn, *Al-Muhalla Bi Al-Atsar* (Dar al-Kutub al-Ilmiyah, n.d.). Jilid 9,251

<sup>20</sup> Abdul Malik Abdul Karim Amrullah, *Tafsir Al-Azhar* (Singapura: Pustaka Nasional PTE LTD, n.d.). Jilid 2,1197

<sup>21</sup> Muhammad Quraish Shihab, *Tafsir Al-Misbah Pesan Dan Keresasian Al-Qur'an* (Jakarta: Lentera Hati, 2002).Jilid 2,402

<sup>22</sup> Wahbah al-Zuhayli, *Mausū'ah al-Fiqh al-Islāmī wa al-Qhadāyā al-Muāshirah* (Damaskus: Dar al-Fikr, 2012).Jilid 8,736-737.

<sup>23</sup> Ban Essam Mohammed Haidar Hussein al-Shammari, "Hudud Tha'ah Al-Jauziyah Li Jaujiha Baina Syari'ah Wa Al-Qanun," *The Journal of Duhok University Humanities And Social Sience* 26 No 1 (2023): 294–301, <https://doi.org/https://doi.org/10.26682/chjuod.2023.26.1.21>.

**Tabel 4**

Country	Legal Basis	Information
Al-Jaza'ir	Undang-Undang Hukum Keluarga al-Jazair Pasal 55-56 Tahun 2007	When a married couple <i>nusyuz</i> , then it is the judge who decides the divorce with compensation to the aggrieved party.
Republik Arab Mesir	Undang-Undang Hukum Keluarga Mesir Tahun 1920, Tahun 1929, Tahun 1985 tahun 2000	A wife who has <i>nusyuz</i> against her husband, then a wife does not have the right to provide and shelter. <sup>24</sup>
Yordania	Undang-Undang Hukum Keluarga Yordania Pasal 69 Tahun 2005	A wife who leaves her husband's legitimate home, where a wife has left her husband whom the husband may have the right to divorce.
Suria	Undang-Undang Hukum Keluarga Suria Pasal 145	Al-Nasyiz is a person who enlarges or moves his body to a certain place before trying to impose other conditions.
Indonesia	Kompilasi Hukum Islam Pasal 84	A wife is considered <i>nusyuz</i> if she does not carry out the obligations as article 83 paragraph 1 except, the husband's obligations to his wife article 80 paragraph 4 letters a and b do not apply to matters for the benefit of their children.

Among the laws in the Islamic State only provide an explanation of the provisions *nusyuz* only applied to wives. Similarly, the Compilation of Islamic Law in Article 83 applies *nusyuz* only to wives<sup>25</sup>, Researchers consider that the definition of *nusyūz* written in the Laws and Regulations should have provisions for husband *nusyūz* written in law in Muslim countries because all regulations contained in the law are

<sup>24</sup> Ta'lulat Salwa, "Étude De Nusyuz Sur La Comparaison Entre Le Fiqh Et Le Droit De La Famille Al-Jaza'ir Et La Loi Islamique Arabe" (Université de Béjaïa, 2015).7

<sup>25</sup> Fitriyani, "Pertimbangan Hakim Dalam Putusan Perkara Nusyuz Perspektif Keadilan Gender (Putusan Pengadilan Tinggi Agama Tahun 2011-2019)" (Universitas Islam Negri Syarif Hidayatullah Jakarta, 2022).67

patriarchal in nature that have no relevance to the development of the times that are changing every time. Abdurahman Wahid argues that the principle is that men and women have equal rights while the difference between the two is only biological, so equal rights between men are part of Islamic values.<sup>26</sup> As stated in Ali Imran 3:195, Al-Nahl 16:97, Al-Nur 24:30-31, al-Ahzab 33:35, which places men and women placed egalitarianly.

#### NUSYUZ AND MUFASSIRIN INTERETATION IN THE QUR'AN

The term *nushūz* contains four verses in *the Qur'an* can be seen in QS Al-Baqarah 2:237 QS Al-Mujadallah 58: 11, then QS Al-Nisa, 4:34 and 4:128 which are specific related to *nusyuz* in detail.

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالْصَّالِحَاتُ قَنِبَتْنَ حَفِظْنَ لِنَفْسِنَّ بِمَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٣٤﴾

*"Men are protectors over women because Allah favors some (men) over others women and some (men) spend some of their property, therefore, a chaste woman is a woman who obeys Allah and protects herself when her husband is not around. and ignore him, God recognizes what you do." (QS al-Nisa 34).*

Because of the Descent of this Verse (*Asbab al-Nuzul*) Qurtubi, Ibn Kasir, Wahbah Juhayli Muhammad Sayyid Thantawi, Muhammad Ali Sayyis based on the case of Habibah Saad bin Rabi' who had committed *nusyuz* for refusing sexual relations<sup>27</sup> to her husband Saad bin Rabi' who then Saad slapped him then Habibah Bintu Jayyid bin Kharijah bin Abi Zahir bin Abu Hurairah reported the incident to his father then his father reported to the Prophet Muhammad SAW saying his Father Habibah to the Prophet Muhammad then Come back because Jibril will come to me to take down this verse.<sup>28</sup> The Prophet also said with his words: "We want a commandment and Allah wants a

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<sup>26</sup> Al Fitri et al., "Reconstruction of Nusyūz Concept in Compilation of Islamic Law in Indonesia (Gender Equality Perspective Analysis)," *SMART: Journal of Sharia, Tradition, and Modernity* 1, no. 2 (2021): 143–60.

<sup>27</sup> Judah Abd al-Ghani Basuni, *Dirasat Fi Ahwal Al-Syakhsiyyah Mualliqan Alayha Bi Qanun Al-Ahwal Al-Syaksiyyah Jadid* (Kairo: Dar Thaba'ah Muhammadiyyah, 2013).389

<sup>28</sup> Muḥammad Said Al-Thantāwī, "Tafsir Al-Wasith Li Al-Qur'ān Al-Adzim" (Kairo: Dār al-Saa'dah, 2006).136

commandment, and what Allah wants his *command is better*" and from this the abolition of *the punishment of qisas* for Saad.<sup>29</sup>

From the description above, it can be understood that the reason for the descent of this verse is based on a case of domestic violence that has been experienced by Saad Bin Rabi' against Habibah Bint Jayyid bin Kharijah bin Abu Hurairah when Habibah at that time refused to have sexual relations with her husband, after that her husband slapped his wife, not only that, this verse became one of the foundations of the argument that hygistically gave know her husband's behavior to her father and they faced to: The Prophet at that time served as a Judge (*Qhadi*) and prescribed *the punishment of Qisas* for Saad for physical violence, but the punishment of *Qisas* for Saad was canceled with the descent of QS al-Nisa 4:34. And one of the foundations for the cancellation of this provision of *qisas* is based on the Qur'an Surat Thaha:114.

Interpretation of commentators such as Imam Shafi' Ibn Kathir, al-Thabari, Qurtubi, Ali Sayyis, Wahbah Juhali, Muhammad Mutawali Sha'rawi' Sayyid Thantawi In this verse Allah Almighty has given glory to men and made them protectors for women because Allah has commanded humans to have responsibility for guardianship (*wilaya*) which is dominated by men because they have been given the excess of body and soul to fight and have advantages over dowry and income for the wife in meeting the needs of the wife. Ibn Arabi, Al-Jasas, al-Razi, al-Zamakhshari suggest that a man (*rijal*) is a protector (*ria'yah*) and leader with the first three privileges (*fada'il*), perfection of mind (*kamal al-aql*). The second is perfection in religion (*kamal al-Din*) in performing *jihad* as an implementation of *amr bi al-Ma'ruf wa Nahyu an al-Munkar*. The third husband has advantages over dowry and the income that Allah has promised.<sup>30</sup>

Fazlur Rahman, views al-Nisa 4:34 must be understood first from the side of the reason for the descent of the Verse which is then adjusted to the context in cases that occur in the contemporary era so that it is understood as a whole so that there is no multiinterpretation and have accuracy in the use of the verse.<sup>31</sup> Asgar Ali Engineer interprets Al-Nisa

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<sup>29</sup> Wahbah Al-Zuhayli, "Al-Tafsir Al-Munir Fi Al-Aqidah Wa Al-Syari'ah" (Damaskus: Dar al-Fikr, 2009).3/57.

<sup>30</sup> Abū 'Abd Allāh Muḥammad ibn al-'Arabī al-Ṭā'ī al-Ḥātimī, *Aḥkām Al-Qur'an* (Dar al-Kutub Ilmiyyah, n.d.).16

<sup>31</sup> Fazlur Rahman, *Islam & Modernity: Transformation of an Intellectual Tradition* (United States of America: The University of Chicago Press, 1982). 130-164

4:34 to be viewed contextually and not only theologically considering the *Qur'an's* highly contextual teachings<sup>32</sup>

Barbara Freyer Stowasser argues that Ali Engineer changed a new paradigm in determining the interpretation of the *Qur'an*. Amina Wadud reveals that Annisa 4:34 does not oblige women to obey their husbands but a good wife is a wife who obeys her husband Amina Wadud gives her interpretation that a wife's obedience only applies to a truly harmonious family where there is no interference from anyone by referring to the femenical theory and it is the young who take care of each other emotionally, economically, intellectual as well as spiritual.<sup>33</sup>

From the above interpretation, it can be seen from the aspect of interpretation of the exegetes that a wife has an obligation to serve her husband with the argument that Allah is the one who makes protectors for his wife and grandchildren. While the perspective of Amina Wadud and Ali Engineer Fazlurahman has a view of progressive thinking that is different from the Tafsir and the method used, meaning that Amina Wadud and Ali Engineer revealed that a wife is not obliged to obey her husband because obedience is only applied to couples who have harmony in the family, but in the understanding understood by Ali Engineer and Amina Wadud that men and women have equality in rights and obligations.

The psychological and historical perspectives of the author see from the aspect of the cause of the descent of this verse as the basis of reproductive function only, but the intervention of parents carried out by Habibah's parents who did not accept because their children were slapped by their daughter-in-law. While the sosological aspect of this verse as a foundation in the elimination of the Practice of Physical Violence committed by husbands against their wives which has become the custom of the Arabs in the pre-Islamic era in the Arabian Peninsula 15 centuries ago.

The author considers that QS Al-Nisa 4:34 in terms of interpretation that a husband is a protector (*qawamah*), educator (*murabbi*) for women has an obligation in food clothing, for his wife and children so that a husband has a very large role and responsibility in protecting women but the role of *qiwam* for husbands over wives is not *absolute* which has no limitations, but in its implementation of this verse

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<sup>32</sup> Asghar Ali Enggineer, "The Qur'an Women and Modern Society," 2007.45

<sup>33</sup> Amina Wadud, *Al-Qur'an And Woman Rereading The Sacred Text From a Woman's Perspective* (New York Oxford: Oxford University Press, 1999).62

in this contemporary era, husband and wife can work together in sharing roles between one another, such as women are allowed to carry out activities as seekers of economic needs in order to help their husbands to meet the needs of family life. Although social and psychological reality does not run smoothly because couples will get trials and obstacles that trigger conflict, thus influencing both to commit iniquity.

*Nusyūz* wife as a manifestation of the wife's inability to lead family life in conforming to the rights and obligations set by Allah. The negligence of a wife in carrying out duties of obligation is inseparable from social associations outside the home that trigger conflicts of married couples such as *nusyūz* wife refuses to live in the same house with her husband, leaves her husband without permission, insults her husband and family, refuses sexual relations without *udzur sar'i*, often asks for divorce if husband and wife are involved in conflicts, intimacy with men other than her husband digitally on social media, Judes face with the husband, allowing parents and in-laws to intervene in the household. killing the husband, loving people's husbands, otherwise *nushūz* Husbands i.e. not providing for the wife's economic needs, abandoning obligations to Allah, cyber and real affairs with other women, marrying serially without the wife's permission, beating the wife, insulting the wife and her family, exposing the wife's disgrace to others allowing parents and in-laws to intervene in the household. Love other people's wives. *Nusyuz* husband is stated and mentioned in QS Al-Nisa 4:128 which reads:<sup>34</sup>

وَإِنْ أَمْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ  
وَأَحْضَرْتُ الْأَنْفُسَ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ﴿١٢٨﴾

*"And if a wife fears iniquity or indifference from her husband, then it is sufficient for both to bring about true peace, and that peace is better (for them), though men are miserly in nature. Furthermore, if you behave well and take care of yourself (by not overeating and drinking), Allah will undoubtedly understand what you do at work (QS Al-Nisa 4:128).*

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<sup>34</sup> Ibnu Izzah, "Nusyuz and Its Solutions in Compilation of Islamic Law From the Perspective of the Al-Quran," *Jurnal Al-Dustur* 4, no. 1 (2021): 31–48,

The Tafsir (*Mufasssirin*) mentions several reasons for the descent of the verse as follows: The First narrated by Saeed bin Jubayr narrated from Ibn Abbas revealed this verse Ibn Abi Al-Sa'bi who had a wife and children from him, when he was old he intended to break off his wife, then his wife said "do not divorce me. Let me take care of my children, and I'm ready to share the night in every night. Then Saad Bin Jubayr told his wife if so it was better for me. And divide a few nights each month. Her husband said: If so, then it's better for me.

The second reason for the descent of this verse in the story of Sawda Bint Zam'a, who was about to be divorced by the Prophet Muhammad, And Sawdah prevented this intention by persuading the Prophet that the rights and duties of Saudah be transferred to Aisha<sup>35</sup> The third: It is narrated from Aisha about a woman who was with a man who wanted to change partners with another, so she said: wait, I married someone else, and you are free from keeping vows.

Al-Tabari quotes Abu Ja'far in his commentary on male *nushūz* as follows: a woman who fears her husband doing *nushūz* (*ma'siyat*) will consider herself superior to his own wife. A husband who hates his wife is an arrogance that respects others more than his wife so that the husband will turn away in his own way so by making peace it is not sinful for the wife if a husband will turn away from her.<sup>36</sup>

Al-Qurtubi understood this verse as a response to those ignorant (*juhala*) who had the view of a man taking by marrying the young and then abandoning the old. Ibn Kathir states that if a husband commits iniquity, a wife has the right to relinquish the rights and obligations of her husband such as bread, shelter or something that is due to her husband. Muhammad Madhi Abu Al-Aza'im interprets this verse, "If a wife is worried about her husband committing disobedience, abandonment, then there is nothing wrong for them to make peace (*al-Sulh*) between them, even if one of the two gives up his marital rights in favor of divorce and separation, because what is true in many things is good and remains secret. If the wife is not suitable for men because of her old age, illness, or there are obstacles that prevent her from carrying out her duties.<sup>37</sup>

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<sup>35</sup> Abū Dāwud Sulaiman ibn al-Asy'as as-Sajastāni al-Azdi, *Sunan Abi Dāwud* (Kairo: Dar al-Hadis, 1999). Jilid 2,915

<sup>36</sup> Muḥammad Ibn Jarir al-Thabari, *Jami' Al-Bayan Fi Ta'wil Al-Thabari*. Jilid 9,268

<sup>37</sup> Muhammad Madi Abu al-Aza'im, *Asrar Al-Qur'an* (Kairo: Dar al-Kutub al-Shufiyyah, n.d.). Jilid 5,1452

Wahbah Juhayli interprets this verse as a decree of Allah for an old woman, whose husband has remarried into a polygamous marriage so that the wife does not accept her husband's marriage, but the wife has the right to stay with her husband in order to protect the sacred bond of marriage that she has gone through for many years as a deterrent from divorce which is a matter that God hates so that the husband enact justice in the provision of his two wives.

From the Interpretations of Commentators such as al-Tabari, al-Qurtubi, Ibn Kathir Muhammad Madhi Abu al-Azaim, Wahbah Juhali in An-Nisa 4:128 is the problem of polygamy carried out by Ibn Abi Al-Sa'bi, Saad bin Rabi with a younger and more beautiful girl. and from this marriage resulted in prolonged conflict. Historically, the case of polygamy contained in Annisa 4:128 is not based on justice such as justice in reproduction (*al-wat'u*), economics (*nafaqa*) which is the obligation of the husband to his wife who makes losses unilaterally.

Al-Shafii and Abu Al-Aza'im stated that in principle, a husband cannot do justice to his wife, especially matters of the heart, which means that this is a matter that is very impossible for a husband who practices polygamy to do. Besides polygamy was the divorce that the Prophet was going to do with Sawda Bint Zam'a at that time but Sawdah did not want the Prophet to divorce her. So the method of resolving the polygamous conflict carried out at that time was to mediate on the basis of pleasure between the two if both were pleased then the polygamous marriage would be the intercession of the afterlife world as happened to the Prophet Muhammad, Ibn Al-Sabi and the couple Khaulah Bintu Muhammad Bin Salamah and Saad bin Rabi. However, if mediation is unsuccessful, then a wife is allowed to file for divorce. As in court decision 2240/pdt.g/2021/PA. Kab.Mlg with successful mediation and several cases of salabritis ustadz who failed in undergoing polygamous marriages.

In principle, the *Qur'an* commands a wife to respect her nature as a woman. Because in the Qur'an Allah has warned to always keep the marriage intact because in marriage there is a holy covenant *mitsaqan ghalizan*, this is so as not to occur divorce which results in the loss of the family, especially children who need complete parental love. This means that two verses in Annisa 4:128 and 34 explain that husband and wife should be aware of *the nusyuz* behavior between the two. The commitment and covenant of marriage for married couples must be held

tightly because of the empirical fact that marriage will undergo several phases, namely the phase in the first five years of marriage in which the married couple experiences economic difficulties and continuous conflicts for various reasons can be due to excessive jealousy of the wife towards the spouse and vice versa, Likewise, the disadvantages and advantages of property owned by the family, then the phase of each couple enters the second puberty era, one of which feels bored in carrying out routines in raising a family. Whereas in other verses referring to *the purpose of the Qur'an* is the protection of family harominas as the table below:<sup>38</sup>

**Table 5**

No	Qur'anic Basics	The Duties of Husband and Wife in the Qur'an
1	An-Nisa 4: 19	Connectivity in intercourse sexual <i>fulfillment</i> .
2	Al-Baqarah 2:147	Interplay in the Protection of Family Honor.
3	Al-Thalaq 65: 6	Interplay in Protection from Violence.
4	Al- Tahrīm 66:6	Interplay in Mutual Property Protection with Spouse.
5	Al-Nisa 4:32	Attachment in the Voluntary foundation in sexual relations in a good way.

From the table shows that the Qur'an gives news that for every couple must watch out for the *nushūz* behavior carried out for both husband and wife as an effort to prevent calamity and reinforcements of divorce. Because in Al-Nisa 4:34 is a *khabariyah* verse which is historically the responsibility of husband and wife in the marriage bond while Anisa 4: 128 as the principle of fidelity in the household is monogamy and if the husband practices polygamy then it is prescribed to mediate.

**NUSYUZ IN FAMILY LAW HADITH**

Among several *hadiths* related to Nusyuz is more about the rights of husband and wife who have functions as well as family functions, namely reproductive functions, economics, among several *hadiths* as follows.

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<sup>38</sup> Desi Asmaret, Alaidin Koto, and Afrizal M, “Transformasi Hukum Keluarga Islam Di Indonesia: Telaah Pemikiran Rifyal Ka’bah,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 2 (2020): 145, <https://doi.org/10.14421/ahwal.2019.12203>.

حدثنا محمد بن بشار حدثنا ابن أبي عدي عن شعبة عن سليمان عن أبي حازم عن أبي هريرة قال: إذا دعا الرجل امرأة إلى فراشه فأبت أن تجيء لعنتها الملائكة حتى تصبح رواه البخاري

*Muhammad ibn Bashar narrated to us from Ibn Abi Uday of Shu'ah, Solomon, Abu Hazem and Abu Hurayrah that he said: When a man calls his wife to bed for sexual intercourse she refuses, the angels keep cursing her until she falls (morning). (HR Al-Bukhari)<sup>39</sup>*

Ibn Hajar al-Asqalani, in *Fath al-Bari*, says that the word *Firas* in the expression *Idza Da'a al-Rajulu Imra'atuhu* is a kind of satire (kinayah) of the word *Jima'*, or copulation. (*Sexual Intercourse*), and the word *ma'na* (*al-Malaikah Laanatuha Hatta Tusbiha*) Ibn Jamrah explains that anathema here is the rejection of nighttime intercourse and also daytime copulation. *Hatta Tusbiha*. Copulation is usually carried out at night, in other words, the wife's refusal during the day is also considered *nusyuz*.<sup>40</sup>

Al-Nawawi said this hadith shows that the prohibition of a wife to refuse a man's desire to have biological relations without reason (*udzur al-Shar'i*) and a wife who is menstruating (menstruation) is not an excuse because it can still be done by a husband to his wife covered with clothes. The meaning of the hadith is that the curse will continue to fall on him until the end of his wife's refusal only in the morning, and the wife will be freed from the curse, by her repentance and return to serve her husband.<sup>41</sup> The hadith mentioned the command from the Prophet to the wife to obey her husband under any circumstances and no matter how busy, even when the wife is busy, a task is very difficult to leave shows that it is obligatory unless it is done. There is a presumption which

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<sup>39</sup> Al-Bukhārī's Abū Abdullah Muhammad ibn Ismā'il ibn Ibrāhīm ibn al-Mugīrah ibn Bardazabah, "Ṣāhih Al-Bukhārī," 3rd ed. (Beirut: Dar Ibn Kathir, 1887).1324

<sup>40</sup> Shihābud-Dīn Abul-Faḍl Aḥmad ibn Nūrud-Dīn 'Alī ibn Muḥammad ibn Ḥajar al-'Asqalānī, *Al-Bukhārī, Fath Al-Bārī Fī Sharḥ Ṣāḥīḥ* (Kairo: Dar al-Taufiqiyyah, 2015.).245-247

<sup>41</sup> Abū Zakariyyā Yaḥyā ibn Sharaf al-Nawawī, *Al Minhāj Sharḥ Ṣāḥīḥ Muslim* (Libanon: Dar al-Kutub al-Ilmiyah, n.d.).73

indicates that in that state it is transferable to another, and there is no presumption here, but that presumption affirms her obligation, and therefore abandoning her obedience to her husband is obedience to her.<sup>42</sup>

The author views the attitude of a wife who refuses the sexual relationship desired by the husband then included in the category of *nusyuz* wife towards the husband is very logical between the two having a *mutualism symbiosis* relationship that is opposite to *symbiotic parathym* because Islam, Medicine, Psychology, Anthropology, and Sociology emphasize the importance of sexual relations in marriage as a basic human need that provides peace of life psychologically, physically, and socially.<sup>43</sup> Medical experts (*al-Tiba*) identify two types of hunger, abdominal and sexual. Abdominal hunger is done as a means of maintaining a healthy lifestyle, while sexual hunger can only be done as a means of endurance by establishing sexual relations with the aim of achieving offspring.

Couple marriage is very dependent on the intimacy of conjugal sexual relations, so if there is no disobedience of a wife regarding sexual *intercourse desired* by the husband triggers the husband to commit adultery with another woman which is done secretly<sup>44</sup> The impact on couples' marital satisfaction becomes low, closed partner communication, husbands become pornography addicts, and glance more at other women on social media who are more beautiful than their partners.<sup>45</sup>

Such phenomena often occur in the socio-psychological reality in society. Given the legality of family ties bound by marriage with the main purpose of good marriage between husband and wife to unite hearts between the two as stated in QS al-Nisa 4:31.<sup>46</sup> *The khitab* contained in this verse and hadith is violated, so in the social and psychological

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<sup>42</sup> Mu'tasham Abdurahaman Muhammad Mansur, "Provisions of Wives Mushuz In Islamic Sharia."61

<sup>43</sup> Endy Muhammad Astiwaru, *Fikih Kedokteran Kontemporer* (Jakarta: Pustaka al-Kautsar, 2018).146-147

<sup>44</sup> A. Octamaya Tenri Awaru, *Sosiologi Keluarga, Media Sains Indonesia*, vol. 1, 2021, 125

<sup>45</sup> Muhammad Husni Abdulah Pakarti. 2024. "PERLINDUNGAN HAK ANAK DALAM PERCERAIAN MENURUT HUKUM KELUARGA ISLAM". *Mawaddah: Jurnal Hukum Keluarga Islam* 1 (1):1-20. <https://doi.org/10.52496/mjhki.v1i1.1>.

<sup>46</sup> Muhammad Ali Sayis Mahmud Syaltut, *Muqaranah Al-Madzahib Fi Al-Fiqh* (Dar al-Ma'arif, 1986).71

aspects a married couple will look for cheating friends for each of them.<sup>47</sup> In Islamic Family Law, the denial of sexual relations by a wife against a husband, or a husband against a wife is a violation of the law that Allah has established. Whereas in Islamic Sufism Al-Ghazali a wife who obeys her piety will prevent anger that triggers family conflicts.<sup>48</sup>

Kamal Sayyid Salim said that a wife's obedience to her husband is not absolute but has conditions with something that does not contain sin in Allah, so that the husband's commands are not required to be obeyed, such as taking off the hijab, or stopping praying, or telling the wife to become a prostitute, or a husband fucking his wife during menstruation, during the obligatory fasting month of Ramadan.<sup>49</sup> "*La Ma'shiyah al-Makhluk Fi Ma'siyah al-Khaliq*" There is no obedience of a creature to disobedience to the creator Ali Jum'ah stating that a wife may disobey her husband in trouble.<sup>50</sup> Sociological, psychological and juridical perspectives of the behavior of a husband who forces his wife to have sexual relations as a form of Sexual Violence based on research results have shown that many among women do not get and feel sexual pleasure with their handlers and this happens a lot in urban and rural areas.<sup>51</sup> Law Number 1 of 1974 regulates the obligations of husband and wife as a result of marriage, realizing a harmonious family<sup>52</sup> Law Number 8 of 2022 concerning Sexual Violence, men who commit sexual intercourse with the intention of humiliating their wives are threatened with a nine-month prison sentence.

The author views from various aspects of hadith, sociology, psychology, juridical, medical a man who wants to marry should be carefully prepared from various aspects, especially from economic aspek which is the most important handle, then religious, social,

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<sup>47</sup> Muhammad Iqbal, *Psikologi Pernikahan Menyelami Rahasia Pernikahan* (Depok: Gema Insani, 2018).109

<sup>48</sup> Nurzakia, "Pemahaman Masyarakat Terhadap Nusyuz Dan Dampaknya Terhadap KDRT Dalam Rumah Tangga," *Taddabur Jurnal Peradaban* 2 (2020): 45–66.

<sup>49</sup> Kamal Sayyid Salim, *Shahih Al-Kitab Wa Al-Sunnaah Wa Adillah Wa Taudih Madzahib Al-Aimah* (Kairo: Maktabah Taufiqiyah, n.d.).3/193

<sup>50</sup> Ali Muhammad Jum'ah, *Al-Kalim Al-Thayyib Fatawa Ashriyyah*, I (Kairo: Dar al-Salam, 2006).355

<sup>51</sup> Ulfiah, *Psikologi Keluarga Pemahaman Hakikat Keluarga Dan Penanganan Problematika Rumah Tangga* (Bogor: Ghalia Indonesia, 2002).110

<sup>52</sup> Rizki Pangestu Rizqa Febry Ayu, "Modernitas Nusyuz; Antara Hak Dan Kewajiban," *Yudisia : Jurnal Pemikiran Hukum Dan Hukum Islam* 12, no. 1 (2021): 73,

educational because men have obligations that are not light as well as women who will marry must prepare mentally, especially in having sexual relations because for married couples sexual relations become a staple food for husbands and wives who have legality towards an inner birth bond that will strengthen family institutions that generate economic power and prevent physical and digital infidelity that is increasingly rife in today's social culture, marriage agreements and commitments are still held by seleain, men are entrusted by God as breadwinners who should not be wasted because of the husband's negligence in providing *for* will only trigger a wife to look at a more economically established man the negligence of men in economic livelihood other than the share of *Nusyuz* for men and will not be styled by the wife and even then it is permissible according to Ali Jum'ah, Judah Kamal Sayyid if the husband *is nusyuz* like the Hindun Bint Utbah hadith on Abu Sufyan.

حدثنا محمد بن المثنى حدثنا يحيى عن هشام قال أخبرني أبي عن عائشة أن هن بنت عتبة قالت يا رسول الله إن أبا سفيان رجل شحيح وليس يعطيني ما يكفيني وولدي إلا ما أخذت منه وهو لا يعلم فقال خذي ما يكفيك وولدك بالمعروف

*Muhammad ibn al-Muthanna gave us know Yahya gave us about Hisham He said My father told me about Aisha that they were Utbah girls He said the Messenger of Allah, that Abu Sufyan was a very shakhih man did not provide for me and my son except what I took from him that he did not know So he said take what is enough for you and your son in a good way. (HR Bukhari) <sup>53</sup>*

The hadith in explaining Abu Sufyan who committed *nusyuz* because of his negligence in providing for his wife and children who then conveyed the laws that applied to the Prophet so that the Prophet allowed Hindun to take the money owned by Abu Sufyan. In principle, a husband providing for his wife is an obligation, both outwardly and mentally, if the husband cannot provide for the living, then including from the husband's *nusyuz*. According to the author, looking at the historical aspect between the hadiths above, actually *nusyuz* here applies to both because first, Hindun took the husband's property without permission, while Abu Sufyan disobeyed Allah for his wife's rights because he forgot

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<sup>53</sup> Muhammad bin Ismā'il al-Kahlāni As-Ṣan'āni, *Subūl As-Salām Sarh Bulug Al-Maram Min Jami' Adillah Al-Ahkām* (Kairo: Dar Al-Hadith, 2007).294

not to provide birth support. According to Judah Abdul Ghani, a husband who is negligent in providing *for* his wife then the wife has two choices, namely divorce and bread.

**SETTLEMENT OF NUSYUZ HUSBAND AND WIFE IN THE QUR'AN AND HADIST**

Scholars of Islamic Exegesis and Law have agreed that the completion of the wife's nusyuz by three methods namely advice, separation of beds and beating while the husband is advice and mediation. From this method is a very substantial principle as an offer of a humanistic solution to the family prolem of couples who often experience conflicts in order to avoid divorce<sup>54</sup> Wadribuhunna QS Annisa 4:34 The Scribes (*mufasssir**in*) and Islamic Jurists (*fuqaha*) have different interpretations, as the author compiles in this table.

**Table 6**

No	Ahl-e-Tafsir	Ahl-e-Islam
1	al-Zamakhsari thinks the beating is forbidden to the face and that is also an exception. <sup>55</sup>	Imam Shafii views related to the word Dharb (beating) in his view there is a prohibition from the Prophet Muhammad related to beating women. <sup>56</sup>
2	Fakhruddin Al-Raji argued that it was appropriate to beat it with a handkerchief and not allowed with a whip and stick.	Ibn Qudamah is that hitting will avoid face and sensitive and frightening places, because the purpose of beating is education to damage.
3	Al-Qhurtubi is an educational force that does not hurt which means it does not hurt and embarrass men, but which is a truth that no other.	Shihabuddin Ramli also causes bleeding wounds, which are clearly forbidden, because customs and pain also help pain also helps haram. <sup>57</sup>

<sup>54</sup> Prabanita Sundari, “Psikologi Keluarga Dalam Konteks Orang Tua Tunggal (Single Parent),” *Khazanah Multidisiplin* 4, no. 1 (2023): 109–28,

<sup>55</sup> Abu al-Qasim Mahmud ibn Umar Al-Zamakhshari, *Al-Kasyaf An Haqa’iq Ghawa’mid Al-Tanzil Wa Uyun Al-Aqa’wil Fi Wujuh Al-Ta’wil* (Beirut: Dar al-Kutub al-Arabi, 1407). Jilid 1,507

<sup>56</sup> Abi ‘Abd Allah Muhammad bin Idris Asy-Syāfi’i, *Ahkam Al-Qur’an*, n.d.598

<sup>57</sup> Ar-Ramli, “Nihāyah Al-Muhtāj Ilā Syarh Al-Minhāj” (Beirut: Dār al-Fikr, n.d.).Jilid 6/587

	Muhammad Rashid that legality against women who <i>are nusyuz</i> is a mandatory commandment, consisting of custom and morality is broken, but forbidden in case of damage. <sup>58</sup>	Abdul Karim Zaidan suggested that abandoning beatings is preferable if it can be done by means of peace to wives without beatings.
	Muhammad Quraish Shihab disagreed with beatings in either family or education.	Huzaimah T Yanggo in the Qur'an beating is permissible by not grieving by educating but in the Law beating is forbidden.

Although some scholars allow the beating of wives, as expressed by the Mufasssirin Muqaddimin al-Thabari, al-Zamakhsari, al-Raji', al-Alusi, Ibn Kathir the author agrees more with Shafii, Abdul Karim Zaidan, Shihabddin Ramli, Rashid Ridha, Muhammad Quraish Shihab, who forbade the beating of *nusyuz wives*.<sup>59</sup> Because there is no relevance to beating in any form, the beating done by the husband is not solving the problem but adding to bigger and bigger problems such as the wife becomes traumatized, the mentality of the wife and children will be disrupted, the communication of the husband and wife is cut off, the wife is increasingly disobedient to the husband and in-laws, loses passion, becomes forgetful, and loses confidence.<sup>60</sup>

In Law No. 23 of 2004 on domestic violence in Article 1, it is stated that every act against a person, especially a woman, which results in physical, psychological, sexual suffering, domestic abuse, then including unlawful acts In the Perspective of Criminal Law, contained in Article 351 of the Criminal Code, it is stated that something that causes serious injury, the victim can file a civil lawsuit to seek compensation for losses caused by domestic violence.

حدثنا محمد بن يوسف: حدثنا سفيان عن هشام عن أبيه عن عبد الله ابن زمرة عن النبي صلى الله عليه وسلم قال: لا يجلد أحدكم امرأته جلد العبد ثم يجامعا في آخر اليوم رواه البخاري

<sup>58</sup> Muhammad Rashīd Riḍā, *Tafsir Al-Qur'an Al-Hakim Al-Manār*, 1990. Jilid 5, 62

<sup>59</sup> Rosma Alimi and Nunung Nurwati, "Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan," *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)* 2, no. 2 (2021): 211

<sup>60</sup> Nurzakia, "Pemahaman Masyarakat Terhadap Nusyuz Dan Dampaknya Terhadap KDRT Dalam Rumah Tangga." 47-56

*Muhammad ibn Yusuf has told us Sufyan of Hisham from his father from 'Abdullah ibn Zam'ah of the Prophet said: None of you should whip his wife and then have sexual intercourse at the end of the day (HR Bukhari).*<sup>61</sup>

The word *la yajlid* redactionally has *shigat al-Nahyi*, which means the prohibition of hitting the word *al-dharb*, understood by Ibn Hajar al-Asqalani, a *gesture* that is not absolutely permissible, but as *makruh tanzihan* or *makruh tahriman*. Based on the Hadith above, beating in *ma'nai* is absolutely haram while the most victims in this case are women, and one solution in solving this case is mediation carried out in a non-litigation family manner if it cannot be resolved by non-litigation, then the wife is allowed to file a lawsuit (*khulu*) in the religious court.<sup>62</sup> Although legally permissible, a wife who has the heart and cannot maintain her family, including a wife who does not have readiness to live the ark of the household. According to the author, the husband who beat his wife was a weak man because he could not control himself and belonged to *Nusyuz*. While the wife who incites her husband to beat him belongs to the category of *nusyuz* women and *kufr ni'mat* given by Allah; Despite the global socioeconomic crisis sweeping the world, God will give them the opportunity to live a family life.

## THE NUSYUZ LAW OF HUSBAND AND WIFE AND THE CONSEQUENCES OF NUSYUZ ATTITUDE

*Nushūz* is *ma'siyat* wife to husband and husband to wife as Allah has commanded an obedience as Allah the Exalted has revealed the Verse about the obedience of a wife to husband *nushūz* by consensus (*Ijma*) The Ulema is Haram either in word (*qauli*) or deed (*fi'li*) or both simultaneously whether it is wife against husband or husband against wife simultaneously, al-Dhabi argues that *nushūz* as one of the great sins, *nushūz* wife against husband is therefore two virtues and it becomes a violation of a wife's obedience to her husband and this is based on *nusus al-Shari'* besides that it is based on the *Proposal of Fiqh and the Rules of Fiqhiyyah: al-Asl fi al-Nahyi li al-Tahrim*, philosophically the law of disobedience to the husband is haram. Including a husband who commits

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<sup>61</sup> Shihābud-Dīn Abul-Faḍl Aḥmad ibn Nūrud-Dīn 'Alī ibn Muḥammad ibn Ḥajar al-'Asqalānī, *Fath Al-Bārī Fī Sharḥ Ṣaḥīḥ Al-Bukhārī*.257.

<sup>62</sup> Diana Farid et al., "Harmonizing the Iddah Period for Women Divorced Outside the Court According to KHI and Fiqh Law" 10, no. 1 (2024): 55–67.

iniquity to Allah by neglecting obligations to his wife is absolutely haram.

*Al-Dhararu Yuzalu*<sup>63</sup>, a dangerous thing must be eliminated *al-Dharar la Yuazalu bi al-Dharar*,<sup>64</sup> One thing that creates danger cannot be eliminated by another matter of danger, "*ma adaa ila al-Haram fahua haram*". What has been determined to be haram is forbidden. *Al-Asl Baqā'un Mākana alā Mākana*, While the wife's obedience to an inviolable obligation as well as the husband's obedience to Allah and the Messenger and the teachings of Islam is an obligation "*Ma la Yatim al-Wajib illa bihi fahuwa obligatory*",<sup>65</sup> a matter that is compulsory cannot attain perfection unless it is lived with the obligation of *al-Wajib la yutraku illa biwajib*.<sup>66</sup>

Obligatory matters are not abandoned except with obligations. Then *al-Taqt La Yaud Kama anna al-Ma'dum la yaud*. The result of wife *nushūz* is the loss of nafqa, but there are some differences between Ulama: according to the majority of Hanafi, Maliki, Hanbali Shafi'i, Sharif, al-Sha'bi, Hasan, and Abi Sauli (*Ijma' al Ilm*) scholars, wives who perform *nushūz* do not earn a living and no place to live, no right to subsistence and shelter. Whereas according to al-Hakim ibn Uthayba, Abu Muhammad Ali ibn Hazim al-Zahiri, and Ibn Abu Qasim (*Maliki school*), wives who perform *nushūz* are entitled to livelihood and shelter, and according to Sayyid Sabeek and Judah Abdul Ghani The consequences for husbands who perform *Nushūz* It is the wife's step to file for divorce to the religious court. Broadly speaking, when viewed from two perspectives between Islamic and criminal law between *nusyūz* and family violence that both have something in common, namely that the act is prohibited The provisions of Islamic Law against *nusyūz* are, paying fines, atoning for sins and mediation with the victim, while in Criminal Law are KUHP Articles 351-358 that perpetrators of violence are subject to imprisonment or fines depending on the level of violence. Therefore, from the behavior of *nusyuz* it can be concluded from various

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<sup>63</sup> Alawi bin Ahmad bin Abdurrahman al-Syaqaf, *Fawa'id Al-Makiyyah Fima Yahtajuhu Thalabah Al-Syafiyyah Min Masail Wa Dhawabit Wa Al-Qawa'id Al-Kulliyah*, ed. 3 (Misr: Dar al-Farouk, 2015).44-45

<sup>64</sup> Jalal al-Din Abd al-Rahman Al-Suyuti, *Al-Asbah Wa Al-Nadza'ir*, 2nd ed. (Beirut: Dar al-Kutub al-Ilmiyah, 2012).135

<sup>65</sup> Rachmat Syafe'i, *Ilmu Ushul Fiqh* (Bandung: Pustaka Setia, 2007).251

<sup>66</sup> Muhammad Abū Zayyid al-Amir, *Adwā' Ala Qawā'id Al-Fiqh Al-Kulliyāh*, V (Kairo, 2018).40

legal perspectives that it is haram absolutely, which indicates that family defense is very weak.

### **NUSYUZ SETTLEMENT IN JUDGE'S DECREE**

In contrast to the views of mufassirin and fuqaha in the settlement of nusyuz in Indonesia, the completion of *nusyuz* is carried out in the Pengadilan Agama which performs the function of analyzing, and solving cases of several cases that are proven with authentic evidence and the basis of sharia so as to produce legal provisions despite the fact between the basis of decisions based on written regulations (*law in book*) and empirical facts (*law in action*) is very different as in the *Verdict of Nusyuz* husband and wife in the Religious Court.

**Table 7**

No	High Court of Religion	Verdict Number	Case	Year
1	Bengkulu	9/pdt.G/2017/PT.Bn	Infidelity	2017
2	Palembang	21/Pdt, G/2018/PTA.Plg	KDRT	2018

Of the two cases in the two verdicts, the case of *nusyuz* women for having an affair, while the case of *nusyuz* husband in Palembang beating the husband on his wife. Both cases were taken to the Religious Court for trial. Because the married couple in the two cases committed *nusyuz*, the judge decided to separate them by divorce.<sup>67</sup> Philosophical, jurisprudence, and social considerations became the basis for the judge's decision, namely the philosophical aspects of Al-Baqarah 2:41, juridical aspects, laws and regulations, in Article 39 paragraph (2) of Law no. 1 of 1974, Article 70 paragraph (1) of Law no. 7 of 1989, Government Regulation no. 9 of 1975 and Article of the Compilation of Islamic Law became a reference for the High Religious Courts of Bengkulu and Palembang in their decisions on talak raj'i. Decision of the Supreme Court of the Republic of Indonesia Number 276K / AG / 2010, Number 379 K / Ag / 1995; Number 137 K / AG / 2007, Number 276 K / AG / 2010, Number 296 K / Ag / 2017, Number 657 K / Ag / 2017. And Sociological Divorce of wives is not considered nusyuz because of domestic violence and physical and psychological suffering so as to require hospital treatment.

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<sup>67</sup> Alex Kusmardani, Siah Khosyi'ah, "Putusan Hakim Dalam Penyelesaian Sengketa Hak Asuh Anak Kepada Ayah," *Jurnal Syntax Admiration* 3 No. 7 Ju (2022): 881–95.

Based on the description above, the judge decides *the nusyuz* case with divorce and the ex-husband is required to provide iddah and mut'ah to the ex-wife, therefore the judge does not use the legal basis of QS Al-Nisa 4:34 and 4:128 but al-Baqarah 2:41, Legal Maxim *Tassaruf al-Imam ala Raiyah manut bi al-Maslahah*, *Hukum Al-Hakim Yarfa' al-Khilaf*, *Dar'u al-Mafasid Muqaddamun ala Jalb al-Mashalih* and Mazhab Al-Hakim Bin Utaibah, Abu Muhammad Ali Bin Hajm al-Dzahiri, Article 39 paragraph (2) of Law no. 1 of 1974, Compilation of Islamic Law Article 149, in the event of a break due to talaq, the ex-husband is obliged to give mut'ah, pay dowry, and hadhanah fees before the child turns 21 years old.<sup>68</sup>

In the judge's decision number 21/Pdt, G/2018/PTA. PLG is in accordance with Islamic Law while in the judgment 9/pdt. G/2017/PT.Bn is very controversial and not in accordance with Article 84 of the Compilation of Islamic Law, so the ex-husband must comply with the provisions of Article 149 of the Compilation of Islamic Law which is actually a burden for the ex-husband to fulfill the provisions decided by the judge. And the judge used the talfiq method by using Madzhab al-Dzhahiri, Takhsis al-Qadha as well as superstition<sup>69</sup> which is translated in article 10 paragraph 1 of Law Number 48 of 2009 so that for wives who perform *nusyuz* and are resolved in religious courts, the husband is required to pay iddah, mut'ah and child maintenance costs. And this is based on the *rules of fiqh Hukm al-Hakim Yarfa' al-Khilaf, al-Tabiu Tabiun, Tagayyur al-Ahkam bi tahayyur al-Azman wa al-Amkan wa al-Awa'id* so that the judge decides for the benefit.

## CONCLUSION

*Nusyuz* in Islam is the Obedience of Husband and Wife in Exercising Rights and Obligations in the Qur'an Al-Nisa 4:34 is the basis of *Nusyuz* carried out by wives for *Nushuz*, and tafsir al-Nisa surah al-Nisa verse 128 explains that this is related to the husband's negligence in fulfilling his obligations towards his wife. Al-Nisa's commentary on 3:128 gives an explanation of the husband's *nusyuz*, revealing that the

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<sup>68</sup> Alex Kusmardani et al., "Faktor-Faktor Penyebab Perceraian Dalam Perspektif Hukum Keluarga Antar Madzhab Islam Dan Realita Sosial," *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial Dan Pendidikan* 3, no. 3 (2022): 176, <https://doi.org/10.36418/syntax-imperatif.v3i3.168>.

<sup>69</sup> Alex Kusmardani, Siah Khosyi'ah, Oyo Sunaryo Mukhlis, Nurrohman, Usep Saepullah, "The Development of Ideas on The Reform and Transformation of Islamic Family Law Into Legislation in Islamic Countries," *JSIM: Jurnal Ilmu Sosial Dan Pendidikan Syntax Imperatif* 4, no. 5 (2023): 664–662.

verse relates to the husband's tyranny in conducting polygamous marriages that are not fair regarding bread. While in the Hadith it is more about the obligations of married couples in sexual relations. Legally *Nusyuz* husband and wife are haram, The settlement of *Nusyuz* husband and wife in Indonesia is settled in religious courts and if there is no peace then the judge decides the case with a divorce case between the two on the basis of QS Al-Baqarah 2:241, Madzhab al-Dzahiri, UUP Article 149, KHI Article 142 as the basis for the implementation of *takhsis al-qadha* and the rules of Hukm al-Hakim Yarfa'u al-Khilaf, Tassaruf al-Imam Raiyah Manut bi al-Maslahah namely for the benefit.

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## ANALYSIS OF THE ROLE OF RELIGIOUS JUSTICE IN THE TIME OF THE SURAKARTA SULTANATE

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### Abstract

*Islamic law has existed in the territory of Indonesia since the Muslims settled in Nusantara. Based on the opinions concluded at the Seminar on the Entry of Islam into Indonesia held in Medan in 1963. In the process of Islamization in Indonesia carried out by merchants through trade and marriage. The research in this journal comes from research into library data types that focus on the analysis of existing literature. This research does not involve collecting primary data through direct observations or experiments, but rather using written sources of information such as books, articles, and scientific publications. The Surakarta Residence has a legal system that has existed since the Mataram era and the Dutch Indian Government in the legal system under its supervision. Law is very closely linked to other fields, especially social and economic order. Keraton Surakarta has a government structure that inherited the reigns of Mataram II, Pajang and Demak. With such authority, the process of growth and development of the courts in various sections has their own uniqueness. Integration, or living side by side between custom and shara', is a settlement of conflict that occurs latently even manifest as studied in Aceh, Minangkabau, and in some places in South Sulawesi.*

**Keywords:** *Islamization; Religious Court; Surakarta Islamic Kingdom.*

### Abstrak

Hukum Islam telah ada di wilayah Indonesia sejak umat Islam menetap di nusantara. Berdasarkan pendapat yang disimpulkan pada Seminar Masuknya Islam ke Indonesia yang diselenggarakan di Medan tahun 1963. Dalam proses Islamisasi di Indonesia yang dilakukan oleh para saudagar melalui perdagangan dan perkawinan. penelitian dalam jurnal ini bersumber dari penelitian jenis data pustaka yang berfokus pada analisis literatur yang telah ada. Penelitian ini tidak melibatkan

pengumpulan data primer melalui observasi atau eksperimen langsung, melainkan memanfaatkan sumber informasi tertulis seperti buku, artikel, dan publikasi ilmiah. Karesidenan Surakarta memiliki sistem hukum yang sudah ada sejak zaman Kerajaan Mataram dan Pemerintah Hindia Belanda tetap mempertahankan sistem hukum tersebut di bawah pengawasannya. Hukum sangat erat kaitannya dengan bidang-bidang yang lain, terutama tatanan sosial dan ekonomi. Keraton Surakarta memiliki struktur pemerintahan yang mewarisi pemerintahan Kerajaan Mataram II, Pajang dan Demak. dengan wewenang demikian, proses petumbuhan dan perkembangan pengadilan pada berbagai kesultanan memiliki keunikan masing-masing. Pengintegrasian, atau hidup berdampingan antara adat dan syara', merupakan penyelesaian konflik yang terjadi secara laten bahkan manifes sebagaimana terkaji di Aceh, Minangkabau, dan di beberapa tempat di Sulawesi Selatan.

**Kata kunci:** Islamisasi; Peradilan Agama; Kesultanan Surakarta.

## INTRODUCTION

Islamic law has existed in Indonesian territory since Muslims settled in the archipelago. Based on opinions concluded at the Seminar on the Entry of Islam into Indonesia held in Medan in 1963, Islam entered Indonesia in the 1st century Hijri or in the 7th century AD. Another opinion states that Islam only entered the archipelago in the 13th century AD. The first area visited at that time was the northern coastal area of Sumatra, which later succeeded in forming the first Islamic community in Samudera Pasai, northern Aceh.

In the process of Islamization in Indonesia carried out by merchants through trade and marriage. This is evident from the fact that if a Muslim merchant wishes to marry, for example a native woman, she must first convert to Islam and subsequent marriages will take place in accordance with the provisions of Islamic Shari'a.

In the era of the Hindu kingdom, before the entry of Islam into Indonesia, there was a judicial institution that was divided into two parts, namely the pudu court and the civil court.<sup>1</sup> Whereas in the early period

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<sup>1</sup> Ahmad R. "Peradilan Agama Di Indonesia", YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam, 2015, vol. 6 no. 2, hal. 312

of Islam entering Indonesia, the establishment of the judicial system was still quite simple, namely in the form of *tahkim* to religious leaders.

The life journey of religious courts is certainly not as smooth as imagined. Sometimes the authority and power possessed are in accordance with Islamic values and the reality that exists in society, other times the authority and power are limited by various policies and laws and regulations, often even experiencing various fabrications from the ruler (Dutch colonial) and certain groups of society so that the position of religious courts is weakened.<sup>2</sup>

Islamic law as a single law had a strong force in society and state legislation before the Dutch implemented their legal politics in Indonesia. Islamic kingdoms that once existed in Indonesia implemented Islamic law in their territory. The Kingdom of Samudra Pasai was the first Islamic kingdom established in North Aceh at the end of the 13th century AD which was then followed by the establishment of other Islamic kingdoms, for example in the eastern part of Indonesia also stood Islamic kingdoms, such as: Tidore and Makassar. In the middle of the 16th century, a new dynasty emerged, namely the Kingdom of Mataram which had an important role in the spread of Islam in the archipelago, this kingdom ruled in Central Java, and which later succeeded in conquering small kingdoms on the north coast. With the entry of the ruler of the kingdom of Mataram into Islam, then at the beginning of the 17th century AD the spread of Islam almost covered most of Indonesia (Muchtar Zarkasyi: 21).

## RESEARCH METHODS

The method used qualitative method is sourced from library data that focuses on analyzing existing literature. This research does not involve primary data collection through observation or direct experimentation, but rather utilizes written sources of information such as books, articles, and scientific publications. Researchers will develop a theoretical framework based on an in-depth literature review, filter and synthesize relevant information to support the formulation of hypotheses or research findings.

Although this method does not produce new data, its contribution lies in a deep understanding of the conceptual framework that supports the argument or findings. These methods provide a solid theoretical

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<sup>2</sup> Pakarti, M. H. A. (2023). Pembaruan Hukum Keluarga Dalam Putusan Pengadilan Agama. *Sakina: Journal of Family Studies*, 7(3), 335-344. DOI: <https://doi.org/10.18860/jfs.v7i3.3935>

foundation for further research as well as provide valuable insights into the development of knowledge in a particular field.

## **RESULTS AND DISCUSSION**

### **Periodization of Islamic Courts in the Early Archipelago**

The entry of Religious Courts in Indonesia certainly cannot be separated and is closely related to the history of the entry of Islam in Indonesia. This is due to the entry of Islam into Indonesia and with the rapid development of Islam in Indonesia so that there are many Islamic sultanates / kingdoms ruling in various regions of Indonesia, indirectly showing that the entry and development of Religious Courts in Indonesia is none other than the entry of Islam in Indonesia.

As explained in the discussion chapter that Islam entered Indonesia is estimated around the 7th century to the 13th century AD, at that time many Muslim traders from Arabia, Persia, and Gujarat who made stops in the coastal areas of Indonesia to trade.<sup>3</sup>

With the entry and settlement of Arab and Gujarati merchants in Indonesia, gradually made the surrounding community groups in the area visited slowly apply Islamic law in various fields such as in the fields of worship, muamalah, munakahat, and 'uqubat. So that in the end Islam can develop into an Islamic kingdom.<sup>4</sup>

In its development, at that time Islamic law was also used in solving problems in the fields mentioned above, and the problem was resolved through religious courts,<sup>5</sup> Although Islamic law has begun to be implemented in some practices, it has not been fully resolved, because juridically there is no religious judiciary. Prior to the establishment of the judiciary and the arrival of the Dutch in Indonesia, scholars say that there was a periodization of religious courts in Indonesia, three of which were<sup>6</sup>:

#### **1. The period Arbitration**

This period is referred to as the early period of the development of religious justice in Indonesia. Where at that time Islam had just entered several regions in Indonesia, with the number of followers of Islam which was still quite small. In this

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<sup>3</sup> Badri Yatim. "*Sejarah Peradaban Islam Dirasah Islamiyah II*", (Jakarta: PT. Raja Grafindo Persada, 2013), hal. 192

<sup>4</sup> Ismanto, dan Suparman. "*Sejarah Peradilan Islam Di Nusantara Masa Kesultanan-Kesultanan Islam Pra-Kolonial*", Historia Madania, hal. 68

<sup>5</sup> *Ibid.*

<sup>6</sup> Faisal. "*Histori Pemberlakuan Peradilan Agama Era Kerajaan Islam Dan Penjajahan Di Indonesia*", Al-Qadha, vol. 6 no. 1, hal. 20

period, when someone is faced with a problem or dispute, then they will appoint voluntarily to settle their case to a 'ulama' or religious expert provided that both parties to the dispute are willing to accept and obey whatever decision has been determined by the ulama'. Usually the cases decided in this matter are non-criminal matters.<sup>7</sup>

2. The period Ahl al-Hilli wa'l-'Aqdi

After Islamic community groups were formed and were able to regulate their own living arrangements, in the exercise of judicial authority, the community at that time began to appoint someone with broad knowledge and trust to be the elder of the community.<sup>8</sup> According to another period, this period explained that the Dutch government began to hand over some judicial authority to the sultans or kings who were ruling at that time. as in the Kingdom of Saudra Pasai, Aceh, Demak, and Banten.<sup>9</sup>

3. The period Tauliyah

After the formation of Islamic kingdoms in Indonesia, the appointment of judges was carried out by means of Tauliyah from the Imam, or delegation of authority from the Sultan as the head of State, the head of State as the ruler had the authority to appoint people who had met certain requirements to become judges in the territory of the kingdom (*penghulu agung*) determined by the head of state or sultan, in carrying out his duties the supreme ruler was also assisted by several advisors who were later called the *surambi court*.<sup>10</sup>

This period was an important period in the history of the entry of Islamic law in Indonesia. This was due to the emergence of Islamic sultanates in Indonesia which shifted the Hindu-Buddhist kingdom, making Islamic law used as positive law, where at that time the sultans positioned Islamic law as state law. In addition, it can also be seen that in the 16th and 17th centuries there appeared some fiqh literature written by ulama'-ulama' of the archipelago.<sup>11</sup>

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<sup>7</sup> Basiq Djalil. "*Peradilan Agama Di Indonesia*", (Jakarta: Kencana Prenada Media Group, 2010), hal. 31

<sup>8</sup> Faisal. "*Histori Pemberlakuan .....*", hlm. 20

<sup>9</sup> Basiq Djalil. "*Peradilan Agama Di Indonesia*"....., hlm. 32

<sup>10</sup> *Ibid.*

<sup>11</sup> Ismanto, dan Suparman. "*Sejarah Peradilan Islam.....*", hlm.71

With the development of Islamic law in this period does not mean that everything went smoothly, there were challenges that arose afterwards, namely with the arrival of western colonialism who came to the archipelago with trade missions, political missions, and even Christianization missions.<sup>12</sup>

Actually, before Islam came to Nusantara, in this country there were two types of courts, namely Civil courts and Unified Courts. The Civil Court handled matters under the king's jurisdiction, while the Unified Court handled matters that were not within the king's authority. Civil Courts when viewed in terms of legal substance take the law from Hindu law contained in the pepakem or book of law, so that it becomes written law. Meanwhile, the Padu Court is based on the original unwritten law of the archipelago.<sup>13</sup> According to R. Tresna (1977: 17), with the entry of Islam in the archipelago, the legal system in the archipelago changed.

Islamic law not only replaces Hindu law contained in pre-civil law, but also has an impact in various aspects of people's lives in general. Although native law is still present, Islamic law is pervasive among its adherents, especially in family law. This greatly impacted the process of establishing and developing Religious Courts in Indonesia.

Actually, Islamic law in the archipelago has existed for a long time among Muslim communities, of course, this is related to the growth and development of Islam. If we look before Islam entered, Indonesian society had embraced a culture of animist beliefs and dynamism. Furthermore, kingdoms were established and built based on their religions, such as Hinduism, Buddhism and followed by Islamic kingdoms / sultanates supported by Islamic religious broadcasters. The historical basis of Islamic law in the Nusantara region according to some historians began at the beginning of the Hijri century, or around the 7th and 8th centuries AD.

As the main way of entry of Islam into the archipelago, the northern region of Sumatra served as the starting point for the spread of Islamic teachings by Muslim immigrants. Slowly, this da'wah movement led to the formation of the first Islamic community in Peureulak, East Aceh. The development of the Muslim community in the region was then

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<sup>12</sup> Ibid.

<sup>13</sup> Abdul Halim, *Peradilan Agama dalam Politik Hukum Islam*, PT. Raja Grafindo Persada, Jakarta, 2000, hlm. 34

followed by the establishment of the first Islamic Kingdom around the 13th century, known as Samudera Pasai, located in North Aceh.

With the establishment of the Kingdom of Samudera Pasai, the influence of Islam increasingly spread which led to the establishment of other Islamic Kingdoms such as the Sultanate of Malacca located not far from Aceh. In addition, there are several in Java, including the Sultanates of Demak, Mataram, and Cirebon. Then in the Sulawesi and Maluku regions, there are the Kingdom of Gowa and the Sultanates of Ternate and Tidore.

Islamic law in this period became an important phase in the history of Islamic law in the archipelago. With Islamic Kingdoms replacing Hindu-Buddhist Kingdoms, this marked the first time Islamic law was present in the archipelago as positive law. This is supported by the facts and the existence of fiqh literature written by Nusantara Ulama in the 16th and 17th centuries. During this time, the rulers placed Islamic law as the law of the land.

Islam was chosen by society because theologically its teachings provide confidence and peace to its adherents. In this period people voluntarily and obediently submitted and followed the teachings of Islam in various dimensions of life. However, this situation was later disturbed by the arrival of Western colonialism, which brought certain missions, ranging from trade missions, politics, even to Christianization missions.

### **History of the Development of Religious Courts in Indonesia**

#### **1. Kingdom of Samudera Pasai**

Islam entered Indonesia around the 13th and 14th centuries AD, starting in the Kingdom of Samudera Pasai. The spread of Islam was brought by traders from Hadramaut and Gujarat, India, as well as a small number of individuals from Persia. The development of Islam in this period was more dominant in coastal areas closer to ports, while in inland areas, Islam was less dominant due to limited transportation at that time.

Islamic history records that Samudra Pasai was the first Islamic Kingdom in Indonesia. The kingdom was established after Rajendra I of India from 1020 to 1024 failed to subdue the region, causing a loss of sympathy from the locals and subsequent defeat. Malikus Saleh is recorded as the King who ascended the throne, became the first ruler to embrace Islam, establishing his kingdom called Samudera Pasai.

This kingdom is an Islamic Kingdom that implements Islamic criminal law. According to Hamka, it was from Pasai that

Shafi'i ideology developed and spread to other Islamic Kingdoms in Indonesia, even after the establishment of the Islamic Kingdom of Malacca (1400-1500 AD), Islamic jurists from Malacca came to Samudra Pasai to seek legal rulings on various legal issues faced in society.<sup>14</sup> The implementation of Islamic law is integrated with judicial institutions and is organized hierarchically. The first instance is conducted by a village-level court presided over by a *keuchik*, handling only minor cases. Appeals from courts of first instance can be made to *ulee balang* (courts of second instance). Furthermore, appeals can be made to the Sultan, whose implementation is handled by the Supreme Court consisting of *Malikul Adil*, *Orang Kaya Sri Paduka Tuan*, *Orang Kaya Raja Bandhara*, and *Faqih (ulama)*.<sup>15</sup> The implementation of Islamic penal law has been carried out in this Kingdom, such as the execution of stoning for *Meurah Pupoek*, a son of the king who was convicted of adultery.

The implementation of Islamic law in this Kingdom knows no title or social class, ranging from the Royal family to the common people. If found to have violated Islamic law, the individual will without hesitation receive a punishment proportional to his actions.

#### 1. Islamic Religious Court in the Kingdom/Sultanate of Mataram

The most important Islamic kingdoms in Java were Demak (which was later replaced by Mataram), Cirebon, and Banten. In eastern Indonesia, the most important were Goa in South Sulawesi and Ternate whose influence extended to the Philippine archipelago, in Sumatra, Aceh being the most important whose territory included Malays. The scattered state of the Indonesian Kingdoms and their relations with neighboring countries, such as Malaysia and the Philippines.<sup>16</sup>

Before Sultan Agung became Sultan of Mataram, Islamic law had limited influence in the Kingdom, as many of them adhered to Hinduism. During the reign of Sultan Agung (1613-1645) Islamic

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<sup>14</sup> Ismanto, *Sejarah Peradilan Islam di Nusantara Masa Kesultanan-Kesultanan Islam Pra-Kolonial*, Historia Madania, hlm. 72

<sup>15</sup> Jefik Zulfikar, *Sejarah Hukum Islam di Indonesia: Dari Masa Kerajaan Islam Sampai Indonesia Modern*, Vol. 9, Tamaddun: Jurnal Sejarah dan Kebudayaan Islam, 2021, hlm. 173

<sup>16</sup> Miftakhur Ridlo, *Sejarah Perkembangan Peradilan Agama pada Masa Kesultanan dan Penjajahan Sampai Kemerdekaan*, Vol. 7, Asy-Syari'ah: Jurnal Hukum Islam, 2021, hlm. 155

law developed rapidly and had a significant impact on the Kingdom. This statement is supported by the transformation of the legal system in Mataram which adjudicates cases that endanger the security of the Kingdom. The term for this judicial process is qishah, a term that retains its original language. The kingdom did not fully apply Islamic penal code, applying it only to matters related to bughah (rebellion).

With the establishment of Mataram as an Islamic Sultanate/Kingdom under the rule of Sultan Agung, changes were introduced in the judicial system to include elements of Islamic law and teachings through the involvement of Muslims in the judiciary of civilization. However, after the public was considered ready and understood the policies implemented by Sultan Agung, the existing pre-civil court system was changed to Surambi Court and this institution was not directly under the king's rule but was led by ulama. Although the head of the court was principally under the authority of the sultan, in practice it was in the hands of religious leaders, accompanied by several scholars from the pesantren as members of the assembly. The Sultan never took decisions contrary to the advice of the Surambi Judiciary.

Despite the name change from the Pradata Court to the Surambi Court, its jurisdictional authority remains the same as that of the Pradata Court. When Amangkurat I succeeded Sultan Agung in 1645, the Pradata Court was revived to reduce the influence of the clergy in the judicial system, with the king himself presiding over it. However, in subsequent developments, the Surambi Court continued to exist until the Dutch colonial period, albeit with limited authority. According to Snouck (1973: 21) the court has the authority to resolve disputes related to family law, especially marriage and inheritance.<sup>17</sup>

The Surambi Court or Dalem Ing Surambi Law in Yogyakarta Palace is presided over by a chief justice known as the "chief judge." As chairman, the chief judge obtained a title from the Sultan, namely Kyai Penghulu. It is likely that the first chief judge in Yogyakarta to be given responsibility for the mosque was Kyai Penghulu Sheikh Abidin.

In carrying out their duties to deal with problems in society, the chief judge is assisted by four members known as "pathok

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<sup>17</sup> Ismanto, *Op. Cit.*, hlm. 73

nagara" or in subtle language "pathok nagari," both the chief judge and the state pathok are considered courtiers. In a later development, this membership structure was expanded with the addition of several preachers who were in charge of giving sermons in several mosques on Fridays. The books of law used together with the Qur'an and Hadith are the books of fiqh, namely the books of Muharrar, Mahali, Tuhfah, Fathul mu'in, and Fathul Wahab. If this is so, the task of the chief judge and his members, namely pathok nagara with courtiers in the field of law and religion in society is undoubtedly very large.

## 2. Islamic Courts in the Kingdom/Sultanate of Aceh and Banjar

In Aceh, the judicial system based on Islamic law is integrated with the district courts which have several levels:

- a) Conducted at the village level led by Keucik, this court only handles minor matters. Meanwhile, cases that are classified as heavy are handled by the Mukim Law Center.
- b) If the disputing parties are not satisfied with the decision in the first instance, they can appeal to the second instance, namely Oeloebalang.
- c) If the decision in Oeloebalang is still deemed unsatisfactory to seek justice, they can appeal to a court of third instance called Panglima Sagi.
- d) If Panglima Sagi's decision is not satisfactory, there is still the option to appeal to the Sultan. Its implementation is carried out by the Supreme Court whose members consist of malikul adil, orang kaya sri paduka tuan, orang kaya bandara, and fakih (ulama). The judicial system in Aceh clearly shows its hierarchy and absolute power.<sup>18</sup>

## 3. Religious Courts in Banjar Kingdom

No one can definitively determine when Islam first entered the Kingdom of Banjar or South Kalimantan. Even so, it can be said that Islam began to enter and develop in South Kalimantan at least in the 16th century. The penal system is purely applied in this Kingdom, as evidenced by the punishment of chopping off hands for thieves and stoning for adulterers. Banjar Kingdom is recorded as a large kingdom that adheres to Islam.

The initial process of spreading Islam initially took place from individual to individual, but reached a solid stage of spread

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<sup>18</sup> Cik Hasan Bisri, *Peradilan Agama di Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 2003), Cet: 4, hlm. 115

when the Sultan of Banjar (formerly known as Pangeran Samudera) decided to embrace Islam and changed his name to Pangeran Suriansyah. Prince Samudera's decision to embrace Islam was taken when he won the battle against his uncle, Prince Tumenggung, with the support of the Kingdom in Java.

With the conversion of the King, further development became smoother because it was supported by other facilities and facilities which ultimately brought the Banjar community into a life that was entirely based on Islam. However, similar to the entry of Islam in Indonesia dating after Hinduism, the conception of law applied in the Banjar Kingdom does not seem to be entirely based on the Qur'an and As-Sunah. In South Kalimantan, before the entry of Islam, old indigenous traditions of animism flourished. This is a challenge for preachers who persistently seek to eliminate any teaching that contradicts Islam.<sup>19</sup>

Religious life is implemented through the presence of muftis and qadhis who are judges and advisors to the Kingdom in matters of religion. In carrying out their duties, their main focus is to deal with issues related to family law and marriage law. Qadhi also in addition to handling private law matters, also specialized in handling criminal cases known as Had. In the History of Banjar, records record the application of the law of murder to apostate Muslims, the punishment of chopping off hands for thieves and corporal punishment for adulterers.

Even within the legal framework of the Banjar Kingdom, the rule of law has been regulated simply following the principles of Islamic law completely. This attempt at codification became known as the Sultan Adam Act. In the end, the position of the Sultan of Banjar was not only as a ruler in the Kingdom, but also recognized as the Ulul Amri of Muslims throughout the Kingdom.

During the sultanate era in the Banjar region, the Religious Court became real as seen in the biography of Datu Abulung. He was sentenced to death by the Sultan for spreading the teachings of wahdatul wujud. Sultan Tahmidullah decided on the death penalty after deliberation with the scholars and they concluded that, based on the interest of public safety and the responsibility of a leader to protect the creed and welfare of his people; Rejecting potential

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<sup>19</sup> Ismanto, *Op.Cit.*, hlm. 78

damage takes precedence over bringing good. Therefore, the Sultan decided to sentence Datu Abulung to death.<sup>20</sup>

#### 4. Islamic Religious Courts in Priangan

Not only in Sultan Agung's territory, but also on the north coast of Java especially Cirebon, Islamic law especially with regard to family issues had a significant influence. In Priangan, for example, there is a Religious Court that adjudicates cases that can currently be categorized as subversive issues. This court refers to the guidelines set by the rulers who are religious figures in the Kingdom.

The judicial system in Cirebon is governed by seven Ministers representing three Sultans, namely Sultan Sepuh, Sultan Anom, and Panembahan Cirebon. All court events are decided based on the Mataram, Jaya Lengkar, Kontra Menawa, and Adilullah laws. One thing that cannot be denied is that Papakem Cirebon has seen the influence of Islamic law.

In Cirebon or Priangan there are three forms of court, namely the Religious Court, the Drigama Court, and the Cilaga Court. The ability of the Religious Courts is that cases can be threatened with corporal punishment or the death penalty, which is the absolute authority of the civil courts in Mataram. The cases are no longer transferred to Mataram, because lately the power of the Mataram government has declined from before it. The absolute authority of the Court of Drigama is marriage and inheritance. The Cilaga court specializes in differences in commercial interests. This court is known as the referee court.

#### 5. Islamic Religious Court in Banten

Meanwhile in Banten, the talks were held based on the meaning of Islam. During the reign of Sultan Hasanuddin, the impact of Hindu law has disappeared because in Banten there is only one court headed by Qodli as the sole judge. Unlike in Cirebon, the court was conducted by seven ministers representing three sultans, namely Sultan Sepuh, Sultan Anom, and Panembahan Cirebon. The law book used is the Cirebon pepakem which is a collection of various ancient Javanese laws, which contain the Law Book of King Niscaya, Mataram Law, Jaya Lengkar, Kontra Menawa, and Adidullah. However, one thing that cannot be denied is that the Cirebon pepakem has no influence of Islamic law.

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<sup>20</sup> Ahmadi Hasan, *Adat Badamai Interaksi Hukum Islam dan Hukum Adat pada Masyarakat Banjar*, (Banjarmasin: Antasari Press), 2009, hlm. 123

The system applied in Indonesia including Banten is a plural legal system, because in this country applies various kinds of legal systems such as customary law, Islamic law, and Western law. This happens because Indonesia has a population of different religions, the three laws have been applied in Indonesia even though the circumstances and time of validity are not the same.<sup>21</sup>

In other words, Western law and customary law focus only on worldly affairs, whereas Islam is not limited to worldly affairs only, but also afterlife affairs.<sup>22</sup> The Dutch first set foot in the port of Banten in 1596. The beginning of the Religious Court began to conduct there and what was the attitude of the Dutch towards the Religious Court in this area, it can be known how Islam first entered Banten. After the city of Banten, one of the port cities of the kingdom of Pakuan-Pajajaran was controlled by Falatehan, a government was immediately formed in the name of the Sultan of Demak. Shortly after that Sunda Kelapa which was also one form of the port city of Pakuan-Pajajaran which was also successfully controlled, was then named Jayakarta and became the territory of the Banten sultanate. Cirebon as the last port city of Pakuan-Pajajaran was also occupied by Falatehan, as a courtier of the Sultan of Demak in order to spread Islam, so that Banten, Sunda Kelapa, and Cirebon became Demak's territory.

In 1552 Falatehan moved to Cirebon and continued to rule the area, while the government in Banten was handed over to his eldest son, Hasanudin. In 1568, Hasanudin declared the Banten sultanate an independent state, independent of Demak rule, and began to run his own government. Among them is the administration of justice in the sultanate. The people of Banten, before state power was usurped by Falatehan, had begun to embrace Islam. This can be made easier because Syahbandar in Banten who ruled on behalf of Prabu Siliwangi had embraced Islam. The people of Banten as followers of Islam who have just converted to Islam are very active in carrying out their religion and obeying Islamic law.

Although Cirebon stood almost simultaneously with the Banten Sultanate, the upper layers of Cirebon society originating from Demak were still closely bound to the norms of Old Javanese

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<sup>21</sup> H. Mohamad Daud Ali, *Hukum Islam: Pengantar ilmu hukum islam dan tata hukum islam di indonesia*. (Pt. Raja Grafindo persada: Jakarta, 1993) h. 187.

<sup>22</sup> Sirojul Munir, *Jurnal Pengaruh Hukum Islam terhadap Politik hukum Indonesia*, *Istinbath, Jurnal Hukum Islam* Vol. 13, No 2, Desember 2014. h. 133.

laws and customs. This can be influenced by the development of the judicial system in both sultanates. The trial in Banten was held based on Islamic understanding. No trace of the court ever existed and operated under Hindu law as a creation of the Pakuan-Pajajaran kingdom, when Sultan Hasanudin ruled. In the 17th century there was only one type of court in Banten, headed by Kadhi as the sole standing judge.

In the 17th century the Sultanate of Banten had implemented Islamic law perfectly, so that at the beginning of the 17th century the ruler of the kingdom of Mataram had just converted to Islam. However, with the entry of the rulers of the kingdom of Mataram into Islam in the early 17th century, the spread of Islam almost covered most of Indonesia because the territory of the kingdom of Mataram covered almost the entire territory of Indonesia.

#### 6. Islamic Courts in Sulawesi

In Sulawesi, the process of unifying Islam and its institutions into the government and customs of the kingdom went more smoothly because of the role of the king. In Sulawesi, the first kingdom to officially accept Islam was the kingdom of Tallo in South Sulawesi. Then followed by the kingdom of Goa which is the strongest kingdom and can influence among its people.

In other regions, such as in South and East Kalimantan and elsewhere, religious judges are appointed by local governments. The existence of various types of courts indicates the same position, as one of the executors of the power of the king or sultan. In addition, the authority of the Religious Court basically covers the area of family law, namely marriage and inheritance. With this authority, the process of the number and development of palaces in various sultanates became distinctive. And the function of the sultan in those days was as a representative in case of legal differences.

In Sulawesi, uniting Islam and its institutions into the administration of kingdoms and customs went more smoothly because of the role of the king. Through political power, a Parewa Sharia (Sharia official) was placed in the royal structure, which had the same position as the Parewa Adek (adek official) that had existed before the entry of Islam (level II palace). Parewa Shara was headed by Kali (Kadli), the highest official in Islamic law domiciled at the center of the kingdom (court of third instance). In each Paleli, an official is appointed who is called an imam and assisted by a khatib

and Bilal (court of first instance). Kadi and other officials are given salaries taken from zakat harta, alms on Eid al-Fitr and Eid al-Adha, royal holidays, funerals and weddings. This happened during the reign of King Gowa XV (1637-1653) when Malikus Said was in power. In the past, King Gowa himself was a judge of Islam.

### **Religious Justice System During the Surakarta Sultanate**

Colonialism in Surakarta had significant differences compared to other regions in the Dutch East Indies. In Gubernemen - the term used for Dutch-controlled areas - government was direct, meaning that the institutional organizational structure was based on the Dutch East Indies Government based in Batavia. High-ranking officials in the Gubernemen were native Dutch and the process of replacement was based on the policy of the Dutch East Indies Government. In Surakarta, the Sunans and Dukpati of Mangkunegara remained local rulers and not Dutch officials. But in reality Papatih Dalem had a very dualistic position, because on the one hand he was a high-ranking official of the palace and on the other hand he was part of the Dutch officials. The position of Papatih Dalem in the organizational structure of the palace is the second highest official after Sunan and takes care of government administration so that the dualism attached to this position overshadows the independence of the palace. The dualism of the position of Papatih Dalem is unique in the practice of Dutch colonialism because the position only applies in the Vorstenlanden region and Surakarta is included in it.

During the Surakarta Residency, with the concurrent status of Papatih Dalem and the position of Sunan and Adipati Mangkunegara, the Dutch East Indies Government said this area as a semi-autonomous region. In terms of government administration in the Dutch East Indies, the Surakarta Residency only had one resident and resident assistant representing Europees Bestuur and did not have the identity of Inlands Bestuur at all. In Surakarta Residency, local government is purely coordinated by Surakarta Kasunanan and Mangkunegaran Duchy. The existence of a resident in Surakarta Residency is proof that the Dutch East Indies Government has the right to make policies to govern this region even though it has semi-autonomous status. One of the things that became a special concern of the Dutch East Indies Government in Surakarta Residency was the field of local law. Law is of particular concern because it is an important aspect in the constitutional life of society and is a set of rules made by the ruler to regulate people's lives.

Surakarta Residency has a legal system that has existed since the time of the Kingdom of Mataram and the Dutch East Indies Government still maintains the legal system under its supervision. Law is closely related to other fields, especially the social and economic order of society because the existence of law itself guarantees the creation of a safe and peaceful situation.

Surakarta Palace has a government structure that inherits the government of the Kingdom of Mataram II, Pajang and Demak. Among these government officials, there is one official called "PENGULU" whose organizational structure goes down to the Kapanewon (subdistrict) level, namely:

- a. Pengulu Ageng.
- b. District Governor.
- c. Subdistrict/Duty Supervisor.

The main duties of the Ageng Foreign Government in Surakarta itself are 3;

- a. Sharia law relating to worship, etc. And has the authority to form Imams and Mosque Staff to manage places of worship (Mosques).
- b. Apply Sharia Law in Surambi Court, accept, examine and decide divorce, inheritance, will, marriage, division of mutually beneficial property (joint property) etc.
- c. Conducting religious affairs in general, especially marriage matters and acting as Guardian Judge, in an institution called: Yugosworo Office of Religious Affairs (KUA).

At the time of the issuance of the Decree of the King of the Netherlands dated January 19, 1882 No. 24 Stbl 1882 No. 152 concerning the establishment of the Religious Council of the Javanese & Madura Pengulu in Surakarta held by K. Pengulu Tafsir Anom ke V. At the graduation ceremony on 3 Safar 1815 AD / 1883 AD and at the formation of Landraad in Surakarta on March 1, 1903, he was appointed Hoofd Pengulu of Landraad by Decree of the Resident dated 7 January 1903.

As for those who have served as Pengulu Ageng Kraton Surakarta Hadiningrat, since the first time the Kraton was established in 1738 AD, since the move of the Palace from Kartosuro to Surakarta, the order is as follows:

- a. Kanjeng Kyahi Pengulu Jalalain II
- b. Kanjeng Kyahi Pengulu Muhammad Thohar Hadiningrat
- c. Kanjeng Kyahi Pengulu Tafsir Anom Hadiningrat ke I

- d. Kanjeng Kyahi Pengulu Mertoloyo
- e. Kanjeng Kyahi Pengulu Sumemi (Tengah)
- f. Kanjeng Kyahi Pengulu Diponingrat III
- g. Kanjeng Kyahi Pengulu Tafsir Anom II
- h. Kanjeng Kyahi Pengulu Tafsir Anom III
- i. Kanjeng Kyahi Pengulu Tafsir Anom IV
- j. Kanjeng Kyahi Pengulu Tafsir Anom V

Raad Serambi is based in the foyer of the Great Mosque of Surakarta. It was only around 1935 that Raad Serambi had an office in Yugosworo, the Surakarta Palace building located north of the gate of the Great Mosque of Surakarta.

### **CONCLUSION**

A court that is a tool for Muslims in implementing Islamic Law, the Islamic Religious Court is specifically for the Muslim community in Indonesia, as a complete tool for the implementation of Islamic Law itself. So this Religious Court grew and developed in the archipelago which was then welcomed happily and well by the people of Indonesia. Although it is fully realized that the Religious Courts in particular and the Science of Islamic Law in general have never developed markedly in Indonesia when compared to other countries, especially those with a majority Muslim population, nevertheless the conceptions of Islamic Law have contributed a very good potential for the development and formation of Islamic Law.

With a variety of courts it shows its position as one of the executors of the kingdom or sultan. In addition, basically the limitation of religious authority covers the area of family law, namely inheritance marriage. With such authority, the process of growth and development of courts in various sultanates has its own uniqueness. Integration, or coexistence between adat and syara', is a latent and even manifest resolution of conflicts as studied in Aceh, Minangkabau, and in several places in South Sulawesi. The position of the sultan as supreme ruler has, in many ways, served as a peacemaker in case of legal disputes. Furthermore, the Religious Court in the Dutch era carried certain missions, ranging from trade missions, politics and even Christianization missions. Initially, they knew that in the midst of Indonesian society, customary law was applied which had been influenced by Islam and was more inclined to its religious elements than the customary law itself. From the brief description of the history of the development of religious courts mentioned above, it can be concluded that religious courts aspire to be able to provide legal protection and services to the community

From the brief description of the history of the development of religious courts mentioned above, it can be concluded that religious courts aspire to be able to provide legal protection and services to the community. The legal awareness of the community channeled through the religious courts has great significance in the formation of government legal politics. Thus, the more the ummah is committed to Islam, the more aware of the need for Islamic law for itself, the more upright and strong the religious judiciary will be in the future.

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## THE ROLE OF PARENTS IN EDUCATING CHILDREN ACCORDING TO LAW NUMBER 35 OF 2014 CONCERNING CHILD PROTECTION AND ISLAMIC LAW

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### **Abstract**

*Parents have a role in shaping character in children, wrong parenting in educating children will affect children in the future. Children who become victims of violence or perpetrators of violence are a negative impact of wrong parenting. This study aims to determine the role of parents in educating children according to Law Number 35 of 2014 concerning Child Protection and Islamic Law. The research method used is qualitative research with a normative juridical approach with the method of collecting data through literature studies where the data sources are obtained from books, Al-Qur'an and hadith, laws and journals that have been published and have similarities with this research as reinforcement and refinement. The data collected is analyzed using descriptive analysis, the data collected is in accordance with the actual then the data is processed and analyzed to be able to provide a picture found and get conclusions according to what it is. The results in this study confirm that parents have a very important role in shaping children's character, to get a good child's character, parents have a duty to educate their children, regulated in Article 26 paragraph (1) of Law Number 35 of 2014, and Islamic Law, including by way of: Instilling monotheism and faith, educating children in worship, educating children to be responsible, and educating adab and noble morals.*

**Keywords:** *Child protection, Role of parents, Law Number 35 Year 2014.*

### **Abstrak**

Orang tua mempunyai peran dalam membentuk karakter pada anak, pola asuh yang salah dalam mendidik anak akan memperngaruhi anak di masa depan. Anak yang menjadi korban kekerasan atau pelaku kekerasan merupakan sebuah dampak negatif dari pola asuh yang salah. Penelitian ini bertujuan untuk mengetahui peran orang tua dalam mendidik anak menurut Undang-Undang Nomor 35 Tahun 2014 Tentang

Perlindungan Anak dan Hukum Islam. Metode penelitian yang digunakan adalah penelitian kualitatif dengan pendekatan yuridis normatif dengan metode pengumpulan datanya melalui studi kepustakaan yang mana sumber datanya didapatkan dari buku-buku, Al-Qur'an dan hadis, Undang-undang maupun jurnal-jurnal yang sudah terpublikasi dan memiliki kesamaan dengan penelitian ini sebagai penguat dan menyempurnakan. Data yang terkumpul dianalisis menggunakan analisis deskriptif, data yang terkumpul sesuai dengan yang sebenarnya kemudian data disusun diolah dan dianalisis untuk dapat memberikan gambaran yang ditemukan dan mendapatkan kesimpulan sesuai apa adanya. Hasil dalam penelitian ini menegaskan bahwa orangtua mempunyai peranan yang sangat untuk membentuk karakter anak, untuk mendapatkan karakter anak yang baik orangtua mempunyai tugas untuk mendidik anaknya, diatur dalam Pasal 26 ayat (1) Undang-Undang Nomor 35 Tahun 2014, dan Hukum Islam, diantaranya dengan cara: Menanamkan tauhid dan akidah, mendidik anak dalam melakukan ibadah, mendidik anak untuk bertanggungjawab, dan mendidik adab serta akhlak yang mulia.

**Kata kunci:** Perlindungan Anak, Peran Orang Tua, UU No. 35 Tahun 2014.

## INTRODUCTION

Family is always in everyone's life. A family is a group of people consisting of one or more people, families may not be bound by blood or legal relations, but they consider themselves to be family.<sup>1</sup> The family is the smallest part of society consisting of fathers, mothers, and children born through marriage.<sup>2</sup> Marriage, according to Article 1 of Law Number 1 of 1974, is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and sustainable family (household) based on the One and Only Godhead. Families perform some basic functions, such as nurturing each other, rewarding family relationships, performing social functions, performing reproductive functions, and providing health care. Family is very important as a place to meet the needs of children.<sup>3</sup>

Children are the greatest trust God gives to every parent, they are a source of happiness and conditioning. Therefore, children are the responsibility of parents.<sup>4</sup> Their parenting and education greatly affect a

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<sup>1</sup> Vatima Estetika Siswandari, *Cinta dalam kehidupan* (Bantul: CV. Pilar Nusantara, 2023), h. 66.

<sup>2</sup> Hapi Hastuti, *Meneropong Konsep Binsyowi Kedudukan Perempuan Biak-Papua dalam Perspektif Komunikasi* (Bandung : Joeragan Artikel, 2022), hlm. 32.

<sup>3</sup> Rezka Arina Rahma dkk., *Pengembangan Model Parenting Support Center Dalam Mendukung Program Penurunan Stunting* (Madiun : Bayfa Cendekia Indonesia, 2023), hlm. 32.

<sup>4</sup> Budi Sunarso, *Merajut Kebahagiaan Keluarga (Perspektif Sosial Agama) Jilid 1* (Yogyakarta : Deepublish, 2021), hlm. 51.

child's future. The child is God's entrustment. As a deposit, parents who accept children must take good care and care of their children. They must provide everything they need to ensure that the entrustment is maintained and in accordance with the expectations of the depositor to their child.<sup>5</sup>

Article 26 Paragraph (1) of Law Number 35 of 2014 concerning Child Protection states that parents have the duty to provide, nurture, educate, and take care of their children.<sup>6</sup> Article 1 letter (g) Kompilasi Hukum Islam Defining *hadana* or parenting is the act of raising, educating, and nurturing a child until he reaches adulthood or is able to live independently. Parenting patterns are the way parents behave differently and over time towards their children.<sup>7</sup>

Therefore, parents have an obligation to educate children who have good morals. In the afterlife, parents have children as an obligation to give. Therefore, it is the duty of parents to love, raise, support, and educate their children. Education is the most effective means to maximize children's potential and shape their character. Therefore, education is built and developed consistently to produce the desired generation.

Therefore, education is very much needed for Indonesian children. To date, many parents still do not care about the education of their children. With the development of the times and technological progress, human beings must not only be intellectually intelligent, or IQ, or intelligence level, but also must have character. Character is a unique personality that encourages and moves others. Parents need a long and continuous time to form the character of a child. The family is the first place where children get character education. Children will learn behavioral principles that are important for their future lives in their family environment.<sup>8</sup>

Inappropriate roles and parenting styles can support children to commit juvenile delinquency and even commit juvenile delinquency at a more severe level, namely crime. According to Kohn "Parenting is a

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<sup>5</sup> Muhammad Husni Abdulah Pakarti. 2024. "PERLINDUNGAN HAK ANAK DALAM PERCERAIAN MENURUT HUKUM KELUARGA ISLAM". *Mawaddah: Jurnal Hukum Keluarga Islam* 1 (1):1-20. <https://doi.org/10.52496/mjhki.v1i1.1>.

<sup>6</sup> Rahman Amin, *Hukum Perlindungan Anak Dan Perempuan Di Indonesia* (Yogyakarta : Deepublish, 2021), hlm. 169.

<sup>7</sup> Cik Basir, *Konstruksi Yuridis Penerapan Uang Paksa (Dwangsom): Sebagai Instrumen Eksekusi Dalam Putusan Hakim dan Eksistensinya Dalam Perspektif Hukum Islam* (Jakarta: Prenada Media, 2020), h. 76.

<sup>8</sup> Marzuki, *Pendidikan Karakter Islam* (Jakarta : Amzah, 2022), h. 69.

parent's attitude in dealing with their children, this attitude can be seen from various aspects, including the way parents give rules to children, how to give rewards and punishments, how parents show authority and how parents pay attention, responses to children's desires". So, parenting is the attitude or way of parents that has a relationship with the interaction of children.<sup>9</sup>

Acts that lead to criminal or unlawful acts, such as foul language, theft, destruction of property, running away from home, lack of discipline at school, truancy, possession of sharp weapons, smoking, hitting, speeding on the street. Murder, robbery, rape and free sex, as well as the use of illegal drugs are other acts of violence that are widely reported in the mass media. Juvenile delinquency is caused one of them by wrong parenting (family education).<sup>10</sup>

Therefore, children's behavior is more reinforcing than good behavior, and their views are strongly influenced by the way they imitate what they observe.<sup>11</sup> To maximize a child's growth and development, parents should be able to choose a discipline plan that is best for them. Most importantly, a discipline plan should instill religious values in children and help them avoid any form of inappropriate behavior. abnormal in adolescents.

Data showing an increase in juvenile delinquency from year to year was obtained from the Central Bureau of Statistics. In 2013, the juvenile delinquency rate increased by 25%. . The number of juvenile delinquency cases in Indonesia reached 6325 cases, while in 2014 it reached 7007 cases and in 2015 it reached 7762, meaning that from 2013 to 2014 it increased by around 10.7%. Juvenile delinquency cases include theft, murder, promiscuity, and drugs. From these data, it can be predicted that the number of juvenile delinquency cases continues to increase every year. The prediction for 2019 is 11685.90 cases and in 2020 it will reach 12944.47 cases. Experienced an annual increase of 10.7%. According to the Central Statistics Agency (BPS) of Indonesia's

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<sup>9</sup> Adistinindya Citra Nur Utami, dan Santoso Tri Raharjo, "Pola Asuh Orang Tua Dan Kenakalan Remaja", Jurnal UNPAD, No.1, Vol. 4, Juli 2021, hlm. 5.

<sup>10</sup> Abhi Rachma Ramadhan, *KENAKALAN REMAJA Penguatan Peran Keluarga dan Sosial* (Sumedang : Mega Press Nusantara, 2023), hlm. 59.

<sup>11</sup> M. Ihsan Dacholfany and Uswatun Hasanah, *Early Childhood Education According to Islamic Concepts* (Jakarta : Amzah, 2021), p. 76.

233 million people, 28.6% or 63 million people are teenagers aged 10-24 years.<sup>12</sup>

One very strong factor that affects juvenile delinquency, broken families, or the result of parental divorce and not paying attention to the child when they do something detrimental Parenting will affect their children's development, including their involvement in delinquency or delinquency.<sup>13</sup>

Therefore it is interesting to be careful, on the one hand law number 35 of 2014 and Islamic law mandate us as parents who always educate their children properly and correctly, but on the other hand the fact is not as expected, of course it needs to be studied and examined why this happens.

## **RESEARCH METHODS**

The research method used is qualitative research with a normative juridical approach with data collection methods through literature studies where data sources are obtained from books, the Qur'an and hadith, laws and journals that have been published and have similarities with this research as reinforcement and improvement. The collected data is analyzed using descriptive analysis, the data collected is in accordance with the truth then the data is compiled processed and analyzed to be able to provide a picture found and get conclusions as they are.

## **RESULTS AND DISCUSSION**

### **Educating Children According to the Law**

Parents have a responsibility to fulfill their children's rights so that they can live, grow, develop, and participate optimally. Their goal is for their children to become qualified, noble, and prosperous people. This is in accordance with Article 3 of Law on Child Protection Number 35 of 2014.

Based on Article 26 paragraph (1) of Law Number 35 of 2014 concerning Child Protection, parents and families must provide good education to children during their growth:

- a. Guarding, nurturing, educating, and protecting Children;
- b. Developing Children according to their abilities, talents, and interests;
- c. Avoiding marriage at the age of the child;

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<sup>12</sup> Hardin, Frans, and Elin Nidia. "GAMBARAN FAKTOR-FAKTOR PENYEBAB KENAKALAN REMAJA DI RT 09 RW 03 KELURAHAN ALANG LAWEH KOTA PADANG." CITRA RANAH MEDIKA 2.1 (2022): 9-19.

<sup>13</sup> Adistinindya Citra Nur Utami, dan Santoso Tri Raharjo, "Pola Asuh Orang Tua Dan Kenakalan Remaja", hlm 3.

d. Provide character education and moral values to children.

Article 9 of Law Number 35 of 2014 concerning Child Protection, which states, the above article emphasizes the importance of education and education of children, including:

- a. Paragraph (1) Every child has the right to receive education and instruction in the context of his personal development and level of intelligence, in accordance with his interests and talents.
- b. (1a) Every child has the right to protection in the education unit from sexual crimes and violence committed by educators, educators, fellow students, and/or other parties.
- c. (2) In addition to obtaining the rights of the Child as referred to in paragraph (1) and paragraph (1a). Children with disabilities are entitled to special education and children who have excellence are entitled to special education.

Parents have a responsibility to teach children about the environment around their home and the place where they live. This is done so that children who are involved in activities outside the home, such as attending school and playing with friends, have the necessary provisions to socialize and develop their talents and desires well. Parents are expected to teach biological (sexual) and religious sciences to their children.

In an effort to raise morally and spiritually strong children, parents should instill moral and spiritual education to their children from an early age. Spiritual intelligence, according to Danah Zahar, is the basic manifestation of all human intelligence and has a significant impact on the future life of children.<sup>14</sup> Article 6 of Law Number 35 of 2014 states, "Every child has the right to worship according to his religion, think, and interact according to his level and age under the guidance of Parents and Guardians." This explanation is in accordance with the verse.

To prevent and avoid sexual violence against children, parents must be able to educate their children to provide an understanding of biological science (sexual), indistinguishable boys and girls, both must get sensual education. The World Health Organization (WHO) says that adolescence is a time of rapid growth, including reproductive function, which has an impact on changes in physical, mental, and social roles and developmental changes from infancy to adulthood.<sup>15</sup>

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<sup>14</sup> Habibu Rahman, dkk, *Pengembangan Nilai Moral dan Agama Anak Usia Dini*, (Edu Publisher: Tasikmalaya, 2020), hlm. 3

<sup>15</sup> Wellina Sebayang, dkk, *Perilaku Seksual Remaja*, (Yogyakarta: Deepublish, 2018), hlm. 5.

Before going to this adolescent phase, parents should start teaching children from an early age as possible about sexual education, including:

1. Introducing limbs without disguising the name of the genitals as parallel to the rest of the body, so as not to make it difficult for them to understand sexual education.
2. Teach children to keep private areas, that there are parts of the body that should not be touched by others.<sup>16</sup>
3. Parents teach their children about shame when there are limbs that are visible to others, these limbs are especially the chest, thighs, genitals, and buttocks.<sup>17</sup>

### **Educating Children According to Islamic Law**

The obligation of parents must really be carried out as a responsibility towards children, in Q.S At-Tahrim verse 6 Allah SWT says which means as follows:

*"O men of faith, preserve yourselves and your families from the fires of hell whose fuel is man and stone; his guardians were angels who were harsh, hard, and disobeyed God not what he commanded them and always did what he commanded."*

In the hadith parents have an obligation in educating and nurturing their children, this hadith is as follows:

From Abdullah bin Umar said, that the Prophet (peace be upon him) said, *"Each of you is a leader, and every leader will be held accountable for what he leads. The priest is the leader who will be held accountable for his people. A husband is a leader and will be held accountable for his family. A wife is the leader in her husband's household, and will be held accountable for the affairs of the household. Each of you is a leader and every leader will be held accountable for those he leads."* (H.R Bukhari)

In the word of Allah and the words of the Messenger of Allah in the verse and hadith above that must protect his family from hellfire by carrying out what is commanded, leaving what is forbidden by Allah, parents must take care of their children by educating them properly, as

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<sup>16</sup> Indarwati, Sutrisno, dkk, *Pendidikan Anak Usia Dini*, (Serang: PT Sada Kurnia Pustaka, 2023), hlm. 114

<sup>17</sup> Boyke Dian Nugraha, dan Sonia Wibisono, *Adik Bayi Datang Dari Mana?*, (Jakarta Selatan: PT Mizan Publika, 2016), hlm. 10

exemplified by the Prophet SAW some teachings in educating children including:<sup>18</sup>

1. Inculcating Tauhid and Aqidah

Tawhid educators are developed with the view that children are rewarded with potential and excellence, Faith in Allah SWT is a seed that must be planted by parents, because the nature of faith has been embedded in the child's life.<sup>19</sup> Instilling tawhid in children can be done by getting children to say *thayyibah sentences* that are easy to remember.

Parents can teach their parents to taste basmallah when starting something, say hamdallah when finished doing something, taste Masya Allah when admiring something, this simple habit will be recorded in the child's memory to always remember Allah anywhere, and introduce him to Allah.<sup>20</sup> Other habits that parents can do are:

a. Playing the adhan

According to Imam Musbikin in *his book The Magic Adhan to Educate Otal Children from birth, the sound of Adhan and Iqomah is a gos spot installer software*. This act is an exhortation of the Sunnah of the Messenger, Imam an-Nawawi in his kitan an-Adzkar states: We have narrated in the books of Sunan Abu Dawud and at-Tirmidhi and apart from these two from Abu Rafi (r.a), the Prophet (saw) said: "*I have seen the Prophet (peace be upon him) adzani in the ear of Hasan bin Ali when Fatimah had just given birth to him with the adhan of prayer may Allah have mercy on them all*". Imam al-Tirmidhi said: This is a hadith that hasan lagi shahih.<sup>21</sup>

b. Take advantage of bedtime

Parents can introduce children to tawhid to Allah when they want not to by telling the attributes of Allah, listening to the recitation of the holy verses of the Quran and other activities that he thinks can and is needed.

c. Reflecting on the creation of Allah SWT

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<sup>18</sup> Muhammad Mahfud. 2022. "Mendidik Anak Menurut Ajaran Rasulullah : (Kajian Hadis Tematik)". Jurnal Pendidikan Agama Islam Miazhar 1 (1), 11-21. <https://jurnal.mialazhar.sch.id/index.php/jpaimi/article/view/9>.

<sup>19</sup> Achmad Sifullah Syahid, *Parenting Kidz Zaman Now*, (Jombang: Maticinta, 2019), hlm. 120.

<sup>20</sup> Ririn Astutiningrum, dan Kazuhana El-Ratna Mida, *49 Teladan Dalam Al-Qur'an*, (Jakarta: PT Elex Media Komputindo, 2017), hlm. 152

<sup>21</sup> Achmad Sifullah Syahid, *Parenting Kidz Zaman Now*, hlm. 121.

Children are often very curious and their curiosity is very high, parents can introduce God's creations such as the earth, sky, stars, moon, sun, humans, and others because someone created, and God created it.

c. Thankful for the blessings of Allah SWT

No need for difficult parents can teach children to be grateful, just as simple as being grateful for God's blessings that have been given five senses and limbs.

Instilling Aqidah to children, the first time that parents can teach shahada sentences to children, by listening to these sentences<sup>22</sup>, according to the hadith narrated by Ibn Abbas "*Open the tongues of your children first with the phrase Lailaha-illaallah*". The sturdiness of a child's Akidah will be the foundation of the sturdy edifice of Islam and the decoration of faith in his soul.<sup>23</sup>

Teaching the right creed why children are more important and easier, because the right creed is in accordance with human nature, and at an early age there is no influence that pollutes the nature. Note in education the true creed for children is the main reason for guarding them from nature and deviation in the future. Reality proves, whoever grows above the right rules, will avoid indicators of deviation (shirk, heresy, and slander).<sup>24</sup>

2. Educating Children in Performing Worship

Understanding tawhid without understanding the concept of worship is impossible, worship is a matter of *tauqifiyah* that is not allowed to have forms of worship that are not based on the Qur'an and As-Sunnah.<sup>25</sup> Among the worship that can be taught to children based on the Qur'an and the Sunnah is prayer and fasting.

As exemplified by the Prophet SAW in educating children to perform prayers, because prayer is one of the pillars of Islam, and the law does it is mandatory, then parents must teach prayer to their children from an early age possible, in the hadith narrated Tirmidhi it is explained that the Prophet SAW told to teach prayer to children

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<sup>22</sup> Muhammad Fathurohman, *Prinsip dan Tahapan Pendidikan Islam*, (Yogyakarta: Garudhawaca, 2017), hlm. 149

<sup>23</sup> Muhammad Syafiie El-Bantanie, *Menjadi BundaYang Dirindukan*, (Jakarta: PT Elex Media Komputindo, 2018), hlm. 204

<sup>24</sup> Agus Hasan Bashori dan M. Syu'aib Al-Fa-liz, *Mengajarkan Akidah Sejak Dini*, (Malang: Pustaka al-umm, 2020), hlm.44.

<sup>25</sup> Junaidi Ahmad, *Rahasia Selamat Dari Siksa Kubur*, (Yogyakarta: Araska, 2020), hlm. 11

from the age of 7 years, if until the age of 10 years it is difficult or unwilling to do it then it may hit him in an educational way.<sup>26</sup>

Then the worship taught to children is to train children to fast, Ibn Qadamah's statement if the child is 10 years old and is able to fast, then it must be printed to do so. This question can be learned that children are commanded to fast as id commanded to pray. Some scholars also believe so, although they differ in their views on the age at which children are instructed to do so,<sup>27</sup> The child does it as an exercise or study.

### 3. Educating Children To Be Responsible

The next way to educate children in Islam is to teach how to be responsible for every action and speech of the child. Strive to set boundaries on children and provide appropriate consequences to instill discipline in them.<sup>28</sup> Here are some ways you can teach your child how to be responsible:

#### a. Give Age-Appropriate Tasks and Their Responsibilities

Training children to be responsible can start from childhood. One of them is to accustom children to tidy up their toys, make the bed, and throw garbage in its place.

#### b. Be a Good Example For Kids

Children will imitate what their parents do. If you want a child to be a responsible person, then be a person who can be an example for your children.

#### c. Give Praise, Acknowledgment, or Even Rewards

As a form of positive appreciation and support, you can give praise or recognition to children so that they are always responsible in everything.

#### d. Give Appropriate Consequences

Teach children about the consequences of their irresponsible attitude. Explain to them if something not done seriously can cause problems for yourself and others.

#### e. Communication and Discussion

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<sup>26</sup> Nurul Hikmah, *Pendidikan Islam Anak Usia Dini Berbasis Al Qur'an*, (Tangerang Selatan: Bait Qur'any Multimedia, 2022), hlm. 252

<sup>27</sup> Mohammad Wifaqul Adaini, *Wasiat Rasulullah Tentang Anak*, (Yogyakarta: Araska, 2019), hlm. 87

<sup>28</sup> “5 Cara Mendidik Anak dalam Islam, Calon Orangtua Wajib Tahu!” dalam BFI Finance 23 Mei 23, <https://www.bfi.co.id/id/blog/cara-mendidik-anak-dalam-islam-calon-orangtua-wajib-tahu> diunduh pada 31 Januari 2024.

Communicate with your child the importance of responsibility and discuss with them what responsibility means in various ways, such as at home, at school, in friendships, and so on

#### 4. Educating His Holiness and Morals

Among the ways to educate children in civilization is to get used to speaking with good speech, so that children can imitate what their parents do. Teaching children to dress modestly and closed, adab in dressing is mentioned in the Qur'an to cover his aurat, in addition to being a command from Allah to wear clothes that are in accordance with sharia he will be more awake from views that are not makhrom that can lead to sexual things. Educate children to behave politely towards peers or parents.

Adab is a reflection of morality.<sup>29</sup> As explained in the hadith of Abi Hurairah, the Prophet (peace be upon him) said: *"Indeed, I was sent nothing but to perfect morals"*. (H.R Imam Ahmad).

So as parents must educate their children to have good morals, the Qur'an has given a very clear picture of moral education in children<sup>30</sup>, diantaranya:

- a. Morals to Allah, in Q.S Luqman verse 13 of the verse regarding morals to Allah, parents are required to educate their children to feel Allah and not fellowship with him.
- b. Akhliah to parents, in Q.S Luqman verse 14 the verse explains that humans must do good to both parents, parents must educate their children by explaining to their children to do good to their parents as gratitude for being born and love that has been given, acting courtesy to fellow humans.
- c. Morality to others, in Q.S Luqman verse 18 the verse explains that Allah does not like people who are arrogant. So parents must educate children not to be indifferent to others.

## CONCLUSION

The responsibility of parents towards their children is enormous, both according to positive law and Islamic law. One of the rights emphasized in the law on child protection is the right to education, protection from violence, and moral and spiritual guidance. Parents should educate their children about various aspects of their lives,

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<sup>29</sup> Ahliya Tiffani, *Mudzakarah Cinta*, (Ponogoro: Uwais Inspirasi Indonesia, 2019), hlm. 93

<sup>30</sup> (2017). STRATEGI PENDIDIKAN AKHLAK PADA ANAK. Sawwa: Jurnal Studi Gender, 12(2), 241-264. Doi: <https://doi.org/10.21580/sa.v12i2.1544>

including the importance of sexual education to prevent sexual violence. The perspective of Islamic law emphasizes the importance of religious and moral education from an early age. Parents are obliged to educate children about tawhid, qidah, as well as religious obligations such as prayer and fasting. In addition, it must also guide children in good behavior and noble morals, including civility towards God, parents, and fellow humans.

Critics of the law do not provide a clear explanation of how parents should educate their children according to their religion, talents, and interests. This can cause some parents to feel confused and unsure about how best to educate their child. Researchers suggest that parenting education is needed for each parent to provide more learning to parents about how they should educate their children. For example, it could include a guidebook on how to educate children in religious values, how to identify and support children's talents and interests, and how to protect children from the dangers they may face.

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## THE INHERITANCE RIGHTS OF CHILDREN FROM MARRIAGE ARE NOT RECORDED ACCORDING TO THE MARRIAGE LAW AND THE COMPILATION OF ISLAMIC LAW

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### **Abstract**

*This research focuses on the inheritance rights of children from unregistered marriages in the Compilation of Islamic Law. Although marriages are supposed to be registered, situations where they are not recorded can have an impact on the inheritance rights of children. This research uses a qualitative research method with a normative juridical approach that is carried out based on legislation, which in this case includes the Civil Code, Law No. 1 of 1974. Data is obtained from sources of Law, Civil Code and journals. Data analysis is carried out to filter the data obtained and collected according to its type and finally draw conclusions from the findings obtained. The results show that children from irri marriages previously only received inheritance from the mother and the mother's family. However, the decision of the Constitutional Court allows extra-marital children to inherit from their biological father if legally proven. The Compilation of Islamic Law states that children from irri marriages only have a nasab relationship with the mother and her family, not with the father. Parents can apply for itsbat nikah to confirm the legal relationship, providing inheritance protection. However, if itsbat nikah is rejected, the child is not entitled to receive inheritance from the father. In conclusion, children from irri marriages have inheritance rights depending on the legal recognition of the relationship with their parents.*

**Keywords:** *Illegitimate children, inheritance rights, compilation of Islamic law.*

### **Abstrak**

Penelitian ini fokus pada hak waris anak dari perkawinan tidak tercatat dalam Kompilasi Hukum Islam. Meskipun perkawinan seharusnya didaftarkan, situasi di mana tidak tercatat dapat berdampak pada hak waris anak. Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan yuridis normatif yang dilakukan berdasarkan perundang-undangan yang dalam hal ini diantaranya kuhperdata, UU No

1 Tahun 1974. Data diperoleh dari sumber-sumber UU, KUH Perdata dan jurnal-jurnal. Analisis data dilakukan untuk memfilter data yang didapatkan dan dikumpulkan sesuai dengan jenisnya dan terakhir menarik kesimpulan dari temuan yang didapatkan. Hasilnya menunjukkan bahwa anak dari perkawinan sirri sebelumnya hanya mendapat waris dari ibu dan keluarga ibunya. Namun, putusan Mahkamah Konstitusi memungkinkan anak luar kawin mendapat waris dari ayah biologisnya jika terbukti secara hukum. Kompilasi Hukum Islam menyatakan bahwa anak dari perkawinan sirri hanya memiliki hubungan nasab dengan ibu dan keluarganya, bukan dengan ayahnya. Orang tua dapat memohon itsbat nikah untuk menegaskan hubungan hukum, memberikan perlindungan waris. Namun, jika itsbat nikah ditolak, anak tidak berhak menerima waris dari ayahnya. Kesimpulannya, anak dari perkawinan sirri memiliki hak waris tergantung pada pengakuan hukum terhadap hubungan dengan orang tua mereka. **Kata Kunci:** Anak Tidak Sah, Hak Waris, Kompilasi Hukum Islam.

## INTRODUCTION

Kompilasi Hukum Islam (KHI) stipulates that marriage is valid, if it is carried out according to Islamic Law in accordance with Article 2 paragraph (1) of Law Number 1 of 1974. A valid marriage is a marriage performed according to the laws of each religion and belief, in other words a marriage that is not according to the laws of each religion and belief is an invalid marriage. So that the children he gave birth to were also illegitimate children.<sup>1</sup> Then Islamic Law confirms that a marriage is considered valid if the marriage has fulfilled the pillars and conditions of marriage as stipulated in the Islamic Shari'a, which is meant by the conditions of the validity of marriage, namely that the marriage must have a prospective husband, prospective wife, marriage guardian, two witnesses and ijab and qabul.<sup>2</sup> In addition, marriage must be recorded, which is a condition for whether or not marriage is recognized by the state. With the registration of there has also been protection of interests for the parties in a marriage.

A valid marriage can only be proven by a marriage certificate made by the Marriage Registration Officer. In the event that the marriage

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<sup>1</sup> Muhammad Husni Abdulah Pakarti. 2024. "Perlindungan Hak Anak Dalam Perceraian Menurut Hukum Keluarga Islam". Mawaddah: Jurnal Hukum Keluarga Islam 1 (1):1-20. <https://doi.org/10.52496/mjhki.v1i1.1>.

<sup>2</sup> Abdulah Pakarti, Muhammad Husni, and Diana Farid. 2023. "IMPLEMENTASI HUKUM WARIS DALAM ISLAM: STUDI KOMPARATIF TENTANG PRAKTEK WARIS DI NEGARA-NEGARA MUSLIM". El-Ahli: Jurnal Hukum Keluarga Islam 4 (2), 37-62. <https://doi.org/10.56874/el-ahli.v4i2.1267>.

cannot be proven by a marriage certificate, it can be submitted to the religious court. *Itsbat nikah* which can be submitted to the religious court in the relevant cases. Those who have the right to apply for marriage *itsbat* are the husband or wife, their children, the marriage guardian and parties interested in the marriage.<sup>3</sup>

A valid marriage must be performed based on the provisions of the laws of their respective religions. The marriage needs to be protected by law in accordance with applicable laws and regulations, so that the marriage has legal force. At this time not all people in Indonesia comply with the laws and regulations governing marriage in Indonesia, so many people carry out unregistered marriages (marriage under the hands).<sup>4</sup>

The definition of unregistered marriage (*nikah under hand*) is a marriage performed by a female guardian with a man and witnessed by two witnesses, but not reported or not recorded with the Marriage Registration Officer (PPN) and not registered with the Office of Religious Affairs (KUA).<sup>5</sup>

Unregistered marriages are performed without going through the proper process according to the Marriage Act. From this understanding, unregistered marriage (marriage under the hand) has no legal force because considering article 2 of Law Number 1 of 1974 concerning Marriage, marriage is valid if it is carried out according to the laws of each religion and belief. Every marriage is recorded according to applicable laws and regulations. Unregistered marriages (marriages under the hands) are legal according to the religion of Islam.<sup>6</sup>

Some factors that cause people in Indonesia to perform many unregistered marriages (marriage under hand) include Law Number 1 of

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<sup>3</sup> Zidna Nama, "MAKNA YURIDIS STATUS HUKUM HAK WARIS ANAK HASIL DARI PERKAWINAN SIRI MENURUT KOMPILASI HUKUM ISLAM" (2014), <https://doi.org/10.21776/ub.arenahukum.2014.00701.4>

<sup>4</sup> S. Sudarsono, "PERLINDUNGAN HUKUM HAK WARIS ISTRI KEDUA DARI PERKAWINAN TIDAK TERCATAT DIKAITKAN DENGAN FUNGSI PENCATATAN PERKAWINAN (Studi Komparatif Fiqih Islam Dan Undang-Undang Nomor 1 Tahun 1974)" (2022), <https://doi.org/10.54367/fiat.v2i2.1773>

<sup>5</sup> Iffah Fathiah, Sofyan Mei Utama, Diana Farid, Muhammad Husni Abdulah Pakarti, Kemal Al Kautsar Maburri, and Hendriana Hendriana. 2023. "Protection of the Rights of Adultery Children in Indonesia: A Perspective of Positive and Islamic Law". *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 10 (2), 147-60. <https://doi.org/10.32505/qadha.v10i2.7068>.

<sup>6</sup> Dwitya Laras Suharyati, Susilo Edi Purwanto and I. N. Suarna, "ANALISIS HUKUM ATAS HAK WARIS ANAK PADA PERKAWINAN YANG TIDAK TERCATAT NEGARA (DITINJAU DARI HUKUM POSITIF DAN HUKUM HINDU)" (2021), <https://doi.org/10.53977/wk.v4i2.390>

1974 adheres to the principle of monogamy, but still provides leeway for those whose religion allows polygamy (one of which is Islam) with very strict requirements. A person who wishes to practice polygamy must meet at least one of the alternative conditions specified in the law.<sup>7</sup> The strict permission for polygamy also causes the person concerned to prefer marriage under the hand or *nikah sirri* because the implementation (ordinance) of marriage under the hand is simpler and faster to achieve the goal of marriage itself.<sup>8</sup>

A man or woman who is ready to marry, but has not met the age in the Law, finally they choose to have an unregistered marriage.<sup>9</sup>

Many people do not fully understand how important marriage registration is. Some people consider marriage registration to be just a matter of administration without considering full awareness of the beneficial aspects of marriage registration.<sup>10</sup>

The provisions of article 2 of Law No. 1 of 1974 are the subject matter of the validity of marriage. The provisions of paragraphs (1) and (2) of the article must be understood as a cumulative condition, not an alternative condition for the validity of a marriage. From the legal facts and / or legal norms are actually enough to be the basis for Muslims to register their marriages. However, this provision contains weaknesses because the article has multiple interpretations and also does not come with sanctions for those who violate it. In other words, the provisions for marriage registration in the law are not unequivocal.<sup>11</sup>

Unregistered marriages (underhand marriages) can cause problems for the women who live them. Various problems can arise due to unregistered marriages (marriages under hand) due to unbound marriages in the country. Marriage registration is very important. Although administrative, registration has a major juridical influence on legal recognition of marital law. With the registration of a marriage

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<sup>7</sup> Muhammad Husni Abdulah Pakarti, Sofyan Mei Utama, Diana Farid, and Hendriana. 2023. "The Role of Family Law in Facing the Challenges of Polygamy in Contemporary Society". *At-Tahdzib: Journal of Islamic Studies and Muamalah* 11 (2):36-43. <https://doi.org/10.61181/at-tahdzib.v11i2.303>.

<sup>8</sup><https://www.nomifrod.com/2022/06/4-faktor-penyebab-terjadinya-nikah-siri.html> diakses tanggal 16 Juni 2022

<sup>9</sup>Mahmudin Bunyamin dan Agus Hermanto, *Hukum Perkawinan Islam* (Bandung, Pustaka Setia, 2017), 151

<sup>10</sup> <https://www.nomifrod.com/2022/06/4-faktor-penyebab-terjadinya-nikah-siri.html> diakses tanggal 16 Juni 2022

<sup>11</sup> <https://www.nomifrod.com/2022/06/4-faktor-penyebab-terjadinya-nikah-siri.html> diakses tanggal 16 Juni 2022

carried out by the Marriage Registration Officer, then the Marriage Certificate Quotation Book is published, there is authentic evidence of the existence of a valid marriage, which is religiously recognized and juridically recognized.<sup>12</sup> Although serial marriages are considered valid according to Islam, namely the existence of ijab and qabul, guardians and brides who are of legal age, but the marriage must also be valid under the laws of the country. Without state registration, children born from such marriages cannot be legally proven to be legitimate children of their fathers.<sup>13</sup>

Unenforced marriages in the country have no legal force and have juridical impact on the rights of public services that should be provided by the competent authorities. In the event of a divorce of joint property, the inheritance rights and custody of the child become unclear due to the absence of a marriage performed in front of the civil registry officer. Without a valid letter or proof in marriage, if there is a divorce it will be difficult to prove blood relationship or marriage. Wives who perform or children born from unregistered marriages (marriage under hand) cannot obtain legal protection and services, the status of husband and wife who perform unregistered marriages (marriage under hand) is not registered in the civil registry, so children born cannot obtain birth certificates. The invalidity of unregistered marriages (marriages under the hands) according to state law has a negative impact on the status of children born in the eyes of the law.<sup>14</sup>

Children born from unregistered marriages (marriage under hand) in this case include illegitimate children or extramarital children because the child was born from a marriage that was not recorded in the state administration in accordance with the provisions of the applicable laws and regulations, namely Law Number 1 of 1974 concerning Marriage. Consequently, the child only has a civil relationship with the mother and the mother's family. This means that the child has no legal relationship with his father (Article 42 and Article 43 of the Marriage Law, Article 100 of the KHI). In the birth certificate only included the name of the mother who gave birth to him.<sup>15</sup> After the Constitutional Court's ruling,

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<sup>12</sup> Mahmudin Bunyamin dan Agus Hermanto, 151.

<sup>13</sup> Rosnidar Sembiring, *Hukum Keluarga*, (Depok Rajagrafindo Persada, 2016), 126.

<sup>14</sup> Rosnidar Sembiring, *Hukum Keluarga*, (Depok Rajagrafindo Persada, 2016), 152.

<sup>15</sup> Rosnidar Sembiring, *Hukum Keluarga*, (Depok Rajagrafindo Persada, 2016), 152.

the Constitutional Court stated that the father of the child must still be legally responsible, regardless of the procedure or administration of the marriage.

An unregistered marriage can become a valid marriage, if the husband and wife apply for a marriage certificate, to obtain legal force for the status of children.

Application for itsbat nikah based on the provisions of Article 7 Paragraph (3) letter e of the Compilation of Islamic Law. If the marriage requested for marriage is not subject to marriage as stipulated in Law No. 1 of 1974 concerning Marriage, the Religious Court will grant the request for marriage even though the marriage was carried out after the enactment of Law No. 1 of 1974 concerning Marriage.

Kompilasi Hukum Islam does not strictly regulate the definition of extramarital children. Article 186 of the KHI only confirms that a child born out of wedlock only has a civil relationship with his mother and of course only has a relationship of inheritance with his mother and his mother's family. The Civil Code regulates the division of extramarital children regulated in Articles 862 to 873 BW. If the heir leaves a legitimate descendant or a husband or wife, then the extramarital child will inherit one-third of the share.<sup>16</sup> To determine the status of inheritance rights of children from unregistered marriages according to Law Number 1 of 1974 concerning Marriage and KHI, researchers will provide an explanation in the form of the position of unregistered marriages (marriage under hand), the position of children from unregistered marriages (marriage under hand) and the status of inheritance rights of children from unregistered marriages (marriage under hand).

## **RESEARCH METHODS**

This research uses qualitative research methods with a normative juridical approach carried out based on legislation which in this case includes the Civil Code, Law No. 1 of 1974. The primary data in this study are KUHPerdata, Law No. 1 of 1974, KHI while secondary data is obtained from books related to marriage, inheritance and journals that have been published with high credibility. This research was conducted by reviewing library materials and legislation related to the status of children's inheritance rights from unregistered marriages (marriage

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<sup>16</sup> T. Pratiwi, K. Kurniati and Abdul Rahman, "INHERITANCE STATUS OF CHILDREN RESULTING FROM ADULTERY RELATIONSHIP PERSPECTIVE COMPILATION OF ISLAMIC LAW AND CIVIL CODE" (2023), <https://doi.org/10.24952/tazkir.v9i1.4009>

under hand), in this case concerning issues of marriage, inheritance and children's rights that must be fulfilled, one of which is the right to inherit children. After the data is obtained, the next step is data analysis to filter the data obtained and collected according to its type and finally draw conclusions from the findings obtained.

## **RESULTS AND DISCUSSION**

### **Understanding and Legal Basis of Inheritance**

The law that regulates the transfer of inheritance from heir to heir is called inheritance law, which in Islamic Law is known by several terms such as: faraidl, Fiqh, Mawaris. Islamic inheritance law is the law that governs everything pertaining to the transfer of rights and obligations over a person's property after death to his heirs.<sup>17</sup>

Kompilasi Hukum Islam which is contained in the format of legislation regulating inheritance provisions is used as a guideline in Islamic inheritance law. The law of inheritance in Islamic law is regulated in the Qur'an and as a complement to it is used by the sunnah of the Prophet and the results of the ijihad of Islamic jurists. Islamic inheritance law is also regulated in Presidential Instruction No.1 of 1991 concerning the Compilation of Islamic Law (Articles 171-214 KHI).<sup>18</sup>

Article 171 of the KHI states that inheritance law is a law that regulates the transfer of ownership rights of heirs (tirkah), determining who is entitled to be the heir and their respective shares.<sup>19</sup>

From the above understanding, the inheritance law according to the KHI includes the following provisions:

1. Provisions governing who is the heir.
2. Provisions governing who the heirs are.
3. Provisions governing estate.
4. Provisions governing the consequences of the transfer of estate from heir to heir.
5. Provisions governing the share of each heir

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<sup>17</sup> Fitri Ayu Sari Wijaya, "Perlindungan Hukum Hak Waris Anak dari Perkawinan Poligami yang Tidak Dicatatkan (Studi Putusan Mahkamah Agung No. 671K/Ag/2015)" (2020), <https://doi.org/10.31289/DOKTRINA.V3I2.4140>

<sup>18</sup> Vaula Surya Hannifa, Johni Najwan and M. Qodri, "Hak Waris Anak Angkatan dalam Perspektif Kompilasi Hukum Islam Indonesia" (2022), <https://doi.org/10.22437/zaaken.v3i1.15919>

<sup>19</sup> Hamdani Hamdani, Adi Mansar and T. Erwinsyahbana, "Hibah Wasiat Bagi Anak Yang Lahir Dari Perkawinan Tidak Tercatat" (2022), <https://doi.org/10.33087/legalitas.v14i1.324>

Thus the principle of only rights and obligations covering property can be inherited, it turns out that it cannot be upheld and there are some exceptions.

Islamic Inheritance Law only applies to societies that embrace Islam, where the system of inheritance distribution uses the principle of bilateral individuality. So it can be said that the heirs must be from the paternal or maternal line. In addition, the meaning of inheritance is if the property or asset given by the person who gave it has died, if the person is still alive the term is called Grant not inheritance.<sup>20</sup> Although the Qur'an already explains in sufficient detail about heirs and their parts, the Hadith also explains some things about the division of inheritance.

The Hadith is among others narrated by Ibn Abbas Ra:

أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا , فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرَ

It means: "Give those who have a fixed share according to their own share, while the excess is given to the closer asabah, that is, the man who is more important".

There are 3 (three) elements of inheritance in the KHI namely:

1. Heir (Muwarit), i.e.: A person who has died and left something that can pass to his surviving family heir. The testator is the person who, at the time of death, leaves behind heirs and estate. Article 171 point b of the KHI explains that: "An heir is a person who, at the time of his death or who is declared dead based on a Muslim court decision, leaves behind heirs and relic property" Thus, a new heir is said to exist if the person concerned dies and has estate and heirs.
2. Warits, namely: People who are entitled to inheritance because they have a relationship with the heir, in the form of kinship, marriage or other relationships. Heirs In Article 171 point c of the KHI it is explained that the heir is a person who at the time of death has a blood relationship or marital

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<sup>20</sup> Wasdikin, W, Mohamad Muidul Fitri Atoilah, Yogi Iskandar, Muhammad Husni Abdulah Pakarti. Asas Hukum Kewarisan Islam Sebagai Parameter Dalam Menyelesaikan Masalah Waris."Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga dan Peradilan Islam 4, No. 1 (2023): 15-28. Doi: <https://doi.org/10.15575/as.v4i1.21052>.

relationship with the heir, is Muslim and is not hindered by law from becoming an heir.

3. Inheritance (Mauruts), namely: Something left by the deceased, both in the form of movable and immovable objects. Inheritance KHI distinguishes between inheritance and inheritance.

In Article 171 point d of the KHI: "Estate is property left by the heir, both in the form of objects that belong to him and his rights". The basis and main source of Islamic Law as Islamic law as Islamic religious law is the nash or text contained in the Qur'an and the sunnah of the prophet. It is the verses of the Qur'an and the sunnah of the Prophet that directly govern the inheritance.<sup>21</sup>

Basically, the issue of inheritance is always synonymous with the transfer of ownership of an object, rights and responsibilities from the heir to his heirs. And in Islamic inheritance law the acceptance of inheritance is based on the principle of *ijbari*, i.e. inheritance moves by itself according to the decrees of Allah SWT without depending on the will of the heir or heir.<sup>22</sup>

In the KHI, the provisions on inheritance are regulated in Book II, which consists of 23 articles, from Article 171 to Article 193. In these various provisions there are some things that are not in classical jurisprudence, but are in the KHI, as well as provisions that should exist, but are not included in the KHI. Inheritances function as a change of position in owning property between the deceased person and the living person he left behind (heirs). Therefore, the heir-inherit (the one who bequeaths).<sup>23</sup>

There are several conditions that must be met in the division of inheritance, these conditions always follow the harmony, but some stand alone. In the event that there are three conditions of inheritance that have been agreed upon by the scholars, the three conditions are:

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<sup>21</sup> G. Safitri, "Status Anak Di Luar Perkawinan Menurut Kompilasi Hukum Islam Bab XIV Pasal 100" (2021), <https://doi.org/10.31293/DDK.V30I1.5675>

<sup>22</sup> S. PutriNofita, "TINJAUAN YURIDIS TERHADAP KEDUDUKAN DAN HAK WARIS ANAK LUAR KAWIN MENURUT UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN DAN KOMPILASI HUKUM ISLAM" (2018)

<sup>23</sup> Wasdikin, W., Atoilah, M. M. F., Iskandar, Y., & Pakarti, M. H. A. (2023). ASAS HUKUM KEWARISAN ISLAM SEBAGAI PARAMETER DALAM MENYELESAIKAN MASALAH WARIS. *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga dan Peradilan Islam*, 4(1), 15-28. DOI: <https://doi.org/10.15575/as.v4i1.21052>

1. The death of a person (heir) either haqiqi, hukmy, (e.g. presumed dead) or taqdiri.
2. There are heirs who live haqiqi at the time of the testator's death.
3. All heirs are known for certain their respective parts.

### **The Position of Children in Marriage Is Not Recorded According to the Marriage Law and the Compilation of Islamic Law**

Marriages performed in Indonesia are subject to the provisions in Law No. 1 of 1974 concerning Marriage (UUP) which stipulates the principles or principles of marriage. The purpose of marriage is to form a happy and eternal family. For this reason, husband and wife help and complement each other so that each can develop his personality, help and achieve spiritual and material well-being. A marriage is valid if it is performed according to the laws of each religion and belief, and in addition each marriage must be recorded according to the laws and regulations in force.<sup>24</sup>

If the marriage is not performed based on religion and belief and is registered at the Civil Registry Office, the marriage performed is invalid and not recognized by the state. Sirri marriage is a marriage that is carried out not in accordance with the provisions of the applicable laws and regulations.<sup>25</sup>

Based on Article 2 Paragraph (1) of the Marriage Law states that:

*"A marriage is valid when it is performed according to the laws of each religion and belief."*

According to Article 2 paragraph (2) of the Marriage Law, it is stated that:

*"Every marriage must be recorded in accordance with applicable laws and regulations".*

A lawful child is the result of a legal marriage. This is stated in Law No.1 of 1974 concerning Marriage Article 42 Paragraph 1: Legal children are children born in or as a result of a valid marriage.<sup>26</sup> Children born from sirri marriages in this case include extramarital children

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<sup>24</sup> Suaib Lubis and K. Khairani, "Hak Waris Anak Angkat Menurut Fikih dan Kompilasi Hukum Islam (KHI)" (2020), <https://doi.org/10.46799/ar1.v4i1.80>

<sup>25</sup> M. N. Najmuddin and Adi Laksono, "KEDUDUKAN HAK WARIS ISTRI SIRI BESERTA ANAKNYA MENURUT HUKUM WARIS ISLAM" (2022), <https://doi.org/10.32492/justicia.v11i1.685>

<sup>26</sup> Abdullah Jayadi, *Fenomena Nikah Sirri Prespektif Makna Pelaku Nikah Sirri*, (Cet. I; Putra Media Nusantara, Surabaya: 2012), hlm. 11-12.

because the child was born from marriages that were not recorded in the state administration in accordance with the provisions of the applicable laws and regulations, namely Law Number 1 of 1974 concerning Marriage. The status of the child born is considered an illegitimate child. Consequently, the child only has a civil relationship with the mother and the mother's family. That is, the child has no legal relationship with his father (article 42 and article 43 of the Law).<sup>27</sup>

Based on the limitations provided by Article 250 KUHPerdata It can be concluded that the so-called extramarital child is any child born outside of legal marriage. Act Number. 1 Year 1974 on Marriage regulates the position of extramarital children in Article 43, namely:

- a. A child born out of wedlock has only a civil relationship with his mother and his mother's family;
- b. The position of the child in paragraph (1) above will then be regulated in a Government Regulation.

Positive law in Indonesia distinguishes between legitimate offspring and illegitimate offspring. Legitimate offspring is based on the existence of a valid marriage, in the sense that one is the offspring of the other by birth or as a result of a valid marriage, such children are called legitimate children.<sup>28</sup> Whereas an illegitimate child is a descendant who is not based on a valid marriage, people call such a child an extramarital child.

A marriage that is valid under state law is a marriage that is registered and meets the conditions set by the government. A serial marriage is a marriage that is not registered so that it does not meet these conditions. Children born from unregistered marriages are considered extramarital children (considered illegitimate) by the state so that children only have civil relations with their mothers and families while civil relations with their fathers do not exist, in addition children born from unregistered marriages will have difficulty obtaining birth certificates, In the absence of birth certificates for children, So the state has obstacles in protecting children, because legally there is no record of the child's birth status along with the data of both parents who caused the

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<sup>27</sup> Dyah Ayu Anggraeni, "KEDUDUKAN ANAK ANGKAT TERHADAP HARTA PENINGGALAN ORANG TUA ANGKAT YANG BERASAL DARI HIBAH ORANG TUA BERDASARKAN KOMPILASI HUKUM ISLAM" (2023), <https://doi.org/10.24123/argu.v8i1.5185>

<sup>28</sup> J. Satrio, *Family Law on the Position of Children in Law*, PT Citra Aditya Bakti, Bandung, 2000, p. 5.

birth of the child.<sup>29</sup> Without the existence of state legal registration, children born from such marriages cannot be legally proven to be legitimate children of their fathers. Another legal consequence of serial marriage on children is that children cannot take care of birth certificates. This can be seen from the application for a birth certificate submitted to the Civil Registration Office. If you cannot show the marriage certificate of the child's parents, then in the child's birth certificate the status is considered an extramarital child.

A legitimate child is a child born of a legal marriage. A valid marriage is a marriage that is in accordance with its religion and beliefs and is recorded by a state institution According to Article 4 of the KHI, Marriage is valid, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage which states "Marriage is valid if it is carried out according to the laws of each religion and belief." Such marriages must be reported and recorded at the Office of Religious Affairs or in the Civil Registry for non-Muslims. This is in accordance with the provisions of Article 2 paragraph (2) of the Marriage Law which states "Every marriage is recorded according to applicable laws and regulations.

Similarly, Article 5 of the KHI states:<sup>30</sup>

1. In order to ensure marital order for the Islamic community, every marriage must be recorded.
2. The registration of the marriage in paragraph (1), is carried out by the Marriage Registration Officer as stipulated in Law No. 22 of 1946 jo Law No. 32 of 1954. Children born from sirri marriages in this case include extramarital children because the child was born from a marriage that was not recorded in the state administration in accordance with the provisions of the applicable laws and regulations, namely. According to the KHI, the status of a child born is considered an illegitimate child. Consequently, according to Article 100 of the Compilation of Islamic Law the child only has a civil relationship with the mother and the mother's family. That is, the son has no legal relationship with his father.

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<sup>29</sup> Rosnidar Sembiring, *Op. Cit*, hlm. 126.

<sup>30</sup> M. Lubis, "KEDUDUKAN ANAK ANGKAT TERHADAP HARTA WARISAN DALAM KOMPILASI HUKUM ISLAM (Analisis Putusan Mahkamah Syar'iyah Aceh No. 125/Pdt.G/2011/MS-Aceh)" (2023), <https://doi.org/10.47652/metadata.v5i2.376>

The marriage must be reported and recorded at the Office of Religious Affairs (KUA). Although sirri marriage is considered valid according to Islam, namely the existence of ijab and qabul, marriage guardians and brides who are of legal age, but the marriage must also be valid under the laws of the country, even in the birth certificate the status is considered as an extramarital child, so only the name of the mother who gave birth to it is included. Information in the form of status as an out-of-wedlock child and the absence of the father's name will have a very profound social and psychological impact on the child and his mother.<sup>31</sup> From this explanation, children born from serial marriages even though they meet religious provisions and have rights and obligations according to Islamic law but are not registered with the state registration agency are considered extramarital children who do not get rights like children born in legal marriages according to law.<sup>32</sup> Therefore, to obtain legal certainty, marriage itsbat must be carried out in religious courts.

Application for isbat nikah, to determine the application for determination of the origin of the child, the panel of judges must conduct an examination to ensure that the marriage of the parents has fulfilled the requirements and harmony of marriage and does not violate the rules contained in the Compilation of Islamic Law Articles 14-38 and the child who is asked to determine the origin of the child is not the child of adultery or the child of illegal polygamy who is requested to be legalized. Parents can apply for itsbat nikah to the religious court, by submitting itsbat nikah, then a married couple who perform a sirri marriage will get a marriage certificate whose position is proof of the existence of the marriage and also protect the rights of children born from the marriage. The rights of the child in question include birth certificates, inheritance.<sup>33</sup>

If there is a refusal of marriage itsbat, the status of children from the serial marriage does not have legal force. According to Article 99 of the Compilation of Islamic Law that a legitimate child is a child born in or as a result of a valid marriage, while an illegitimate child is a child born outside a legal marriage or born in a legal marriage but denied by

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31 Arso Sosroatmojo dan Wasit Aulawi, *Hukum Perkawinan di Indonesia*, Jakarta:

GrafindoPersada, 2011), hlm. 116

32 Diana Farid et al., "Marriage and Divorce Practices in the Society of Bandung: Contestation of Islamic and State Law," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan*, 2023, <https://doi.org/10.32505/qadha.v10i1.5673>.

33 Farid et al.

her husband. According to Article 100 of the Compilation of Islamic Law, children born from unregistered marriages are considered extramarital children (considered illegitimate) by the state, so the child only has a civil relationship with the mother and her family in a civil relationship. Without the legal registration of the country, the children born from the marriage cannot be legally proven to be the legitimate children of their fathers.<sup>34</sup>

**Status of inheritance rights of children from Sirri marriage (marriage under hand) according to the Marriage Law**

In Law No. 1 of 1974 concerning marriage, what is meant by a legitimate child is a child born in or as a result of a valid marriage and only a legal child has the right to inherit property from his mother and father. The Marriage Law does not regulate in detail the inheritance rights of extramarital children, so it depends on the heir who wants to follow which legal perspective.<sup>35</sup>

The legal status of children born out of wedlock is valid as a unification in the field of National Marriage Law as stated in Law Number 1 of 1974 concerning Marriage, that article 43 paragraph (1) of the Law, states that children born out of wedlock only have civil relations with their mother or their mother's family. The provisions of the article stipulate that a child born out of wedlock only has a familial relationship with consequences, especially the right to inherit only with his mother. On the other hand, a legitimate child has a civil relationship in addition to his mother and his mother's family, as well as a civil relationship with his father and his father's family.<sup>36</sup>

Currently, the Constitutional Court has issued a ruling regarding the position of extramarital children. Based on the Constitutional Court Decision No. 46/PUU-VIII/2010 dated February 17, 2012 which tested Article 43 paragraph (1) of the Law, the article must read: "A child born out of wedlock has a civil relationship with his mother and his mother's family and with a man as his father which can be proven based on science

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<sup>34</sup> Rosnidar Sembiring, *op. cit.* hlm 129

<sup>35</sup> Mahmurodhi Mahmurodhi, "KEDUDUKAN HUKUM ANAK ANGKAT MENURUT HUKUM PERDATA DAN KOMPILASI HUKUM ISLAM DALAM KEWARISAN" (2021), <https://doi.org/10.59635/jihk.v8i2.156>

<sup>36</sup> Iriyanti Iriyanti, "HAK WARIS ANAK DALAM KANDUNGAN DIHUBUNGKAN DENGAN PASAL 836 KITAB UNDANG-UNDANG HUKUM PERDATA DAN KOMPILASI HUKUM ISLAM" (2018)

and technology or other evidence according to law to have a blood relationship, including civil relations with his father's family".<sup>37</sup>

In the provisions of Article 862 of the Civil Code, that an extramarital child who has been recognized by his biological father is entitled to inheritance in the provision of that article that in order to get a share of inheritance, an extramarital child must get recognition from his father. Therefore, if it is related to the Constitutional Court Decision No. 46/PUU-VIII/2010, the Constitutional Court decision overrides the Civil Code. In the Judgment, a child born out of wedlock has a civil relationship with his mother and his mother's family and with a man as his father which can be proven based on science and technology or other evidence according to law to have a blood relationship, including a civil relationship with his father's family".<sup>38</sup> The provision means, that an outside child born out of wedlock will get a share of inheritance rights (civil relations) as long as it can be proven based on science and technology and or other evidence according to law to have blood relations including civil relations and his father, without having to get recognition from the father of the child.

#### **The status of inheritance rights of children from Sirri's marriage according to Kompilasi Hukum Islam (KHI)**

In accordance with Article 186 of the KHI which states that: "A child born out of wedlock only has a relationship of inheritance with his mother and his mother's family".

Parents can apply for itsbat, the determination of marriage isbat is the emergence of inheritance that gets legal protection because of kinship or nasab relationship between the person who inherits and the person who inherits caused by birth. So children born in marriage are entitled to inheritance from their parents and vice versa. If there is a refusal of marriage itsbat, the status of children from the serial marriage does not have legal force. So children from sirri marriages are still called extramarital children.<sup>39</sup>

Extramarital children who do not come to be recognized by the heir (his father). However, an extramarital child can inherit from his

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<sup>37</sup> I. A. Surya, "Implementasi Pasal 280 Kitab Undang Undang Hukum Perdata Atas Hak Waris Anak Luar Kawin" (2023), <https://doi.org/10.47532/jirk.v6i2.924>

<sup>38</sup> I. Ismayani and Syaiful Khoiri Harahap, "Hak Asuh Anak dalam Hukum Islam dan Hukum Positif" (2023), <https://doi.org/10.58939/afosj-las.v3i2.585>

<sup>39</sup> Dinda Ediningsih Dwi Utami and Taufik Yahya, "Akibat Hukum Nikah Siri Terhadap Hak Anak Dan Isteri Ditinjau Dari Kompilasi Hukum Islam" (2022), <https://doi.org/10.22437/zaaken.v3i2.14767>

biological father if his biological father makes a will stating that the child gets a share of the estate left behind. A will is a tasharruf (release) of property executed after the death of a person.<sup>40</sup>

According to the origin of law, a will is an act done by the will of the heart under any circumstances. Therefore, there is nothing in Islamic law that a will must be made by way of a judge's decision. Broadly speaking, a will is a gift of property from one person to another person or to several people after the death of that person. However, the share of inheritance from his biological father's will cannot be more than 1/3 of his estate, in order to protect the rights of the main heir.

## **CONCLUSION**

From the results of this study, researchers concluded that, Children born from sirri marriages in this case include extramarital children because the child was born from marriages that were not recorded in the state administration in accordance with the provisions of the applicable laws and regulations, namely Law Number 1 of 1974 concerning Marriage. Without the existence of state legal registration, children born from such marriages cannot be legally proven to be legitimate children of their fathers. Another legal consequence of serial marriage on children is that children cannot take care of birth certificates. This can be seen from the application for a birth certificate submitted to the Civil Registration Office. According to the Compilation of Islamic Law, to obtain legal certainty, itsbat nikah must be carried out in religious courts. As evidence of the existence of the marriage and as well as protecting the rights of children born from marriage, if there is a refusal of marriage itsbat then the status of children from serial marriages does not have legal force and the status of children is still an extramarital child.

The inheritance status of a child from a sirri marriage according to the Marriage Law is only obtained from the mother and the mother's family, but after a decision from the Constitutional Court, an extramarital child can get inheritance rights from his father if it can be legally proven and clear that he has a blood relationship with his biological father. Meanwhile, the right of inheritance of sirri marriage according to the Compilation of Islamic Law remains in accordance with his position which states that he only has a sexual relationship and inheritance relationship inherits with his mother and his mother's family only but not

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<sup>40</sup> Dinda Ediningsih Dwi Utami and Taufik Yahya, "Akibat Hukum Nikah Siri Terhadap Hak Anak Dan Isteri Ditinjau Dari Kompilasi Hukum Islam" (2022), <https://doi.org/10.22437/zaaken.v3i2.14767>

with his father. Parents can apply for itsbat, the determination of marriage isbat is the emergence of inheritance that gets legal protection because of kinship or nasab relationship between the person who inherits and the person who inherits caused by birth. So children born in marriage are entitled to inheritance from their parents. If there is a refusal of marriage itsbat, then the status of children from the serial marriage does not have legal force. So the child of the sirri marriage is not entitled to receive an inheritance from his father.

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**Jenal Wahidin, etc.,** *The inheritance rights of children from marriage are not.....*



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## OPTIMIZATION OF THE PERFORMANCE OF THE MARRIAGE ADVISORY, GUIDANCE, PRESERVATION AGENCY (BP4) IN RELATION TO THE DIVORCE RATE IN THE BANDUNG HIGH RELIGIOUS COURT (PTA) AREA

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### *Abstract*

*This research starts from the fact that shows the high divorce rate in Indonesia, this is evidence of the absence of household harmony that is not sufficient before entering into marriage, so the State is responsible as ordered by law, for the welfare of its people, making their households happy and eternal, that is where the State must be present and act to realize the households of its people happy and prosperous, one of which is by establishing premarital education early on as a concrete step to reduce the high divorce rate in Indonesia. The purpose of this study is to determine and analyze the optimal function of BP4 in tackling the divorce rate, the divorce rate in the PTA Bandung area 2017 to 2022, the function of BP4 in relation to the competence of judges, and BP4's efforts to reduce the divorce rate in the PTA Bandung area. The results of this study indicate that, First, Optimizing the Function of the Marriage Counseling, Guidance, Preservation Agency in relation to the high divorce rate in the Bandung PTA area, including: enhancing and improving the quality of marriage and happy families, preventing underage marriage, preventing unhealthy polygamy, and providing information advice in guidance to those concerned about Nikah, Talak and Rujuk (NTR) issues, especially for broken home households.*

**Keywords:** BP4 Performance, Divorce Rate, Bandung Religious High Court.

### **Abstrak**

Penelitian ini berawal dari fakta yang menunjukkan tingginya angka perceraian di Indonesia, hal ini merupakan bukti tidak adanya keharmonisan rumah tangga yang tidak cukup bakal sebelum melangsungkan pernikahan, maka Negara bertanggungjawab sebagaimana perintah UU, untuk mensejahterakan rakyatnya, menjadikan rumah tangganya bahagia dan kekal, disitulah Negara harus hadir dan bertindak untuk mewujudkan rumah tangga rakyatnya bahagia sejahtera, salah satunya dengan cara menetapkan pendidikan pranikah sejak dini sebagai langkah konkrit untuk menekan tingginya angka perceraian di Indonesia. Tujuan penelitian ini adalah untuk mengetahui dan menganalisis Optimalnya Fungsi BP4 dalam menanggulangi tingkat perceraian, Tingkat perceraian di wilayah PTA Bandung 2017 sd 2022, Fungsi BP4 hubungannya

dengan kompetensi Hakim, serta Upaya BP4 untuk menurunkan tingkat perceraian di Wilayah PTA Bandung. Hasil penelitian ini menunjukkan bahwa, Pertama, Optimalisasi Fungsi Badan Penasehatan, Pembinaan, Pelestarian Perkawinan hubungannya dengan tingginya perceraian di wilayah PTA Bandung? diantaranya adalah: mempertinggi dan meningkatkan mutu perkawinan serta keluarga bahagia sejahtera, mencegah perkawinan anak di bawah umur, mencegah poligami yang tidak sehat, dan memberikan nasehat penerangan dalam tuntunan kepada yang berkepentingan mengenai masalah-masalah Nikah, Talak dan Rujuk (NTR) khususnya terhadap rumah tangga yang broken home.

**Kata Kunci:** Kinerja BP4, Tingkat Perceraian, Pengadilan Tinggi Agama Bandung.

## **INTRODUCTION**

Married life in the frame of marriage between married couples in the reality of their journey is not always happy, harmonious and harmonious. Various potential problems in the marital relationship are undeniable will definitely be encountered. Conditions where disputes and quarrels occur are something normal, natural and will be faced by every married couple.<sup>1</sup>

As in article 38 of Law No. 1 of 1974 concerning Marriage<sup>2</sup> and article 113 HKI<sup>3</sup> that the breakup of marriage can occur by death, divorce, and by decision of the Court. Then in cases in the Religious Court, the breakup of marriage can occur due to a request for divorce talaq or divorce.

The problem of divorce in Indonesia has not diminished and is even increasing every year, both from artists, officials and people whose economy is middle to lower often with divorce cases. The phenomenon that affects the destruction of the household ark is not only evidenced by economic factors, but also lack of affection and emotional maturity.<sup>4</sup>

Based on the table above, in 2018 in West Java, there have been 438,384 marriages and 87,306 divorces, consisting of 22,050 talaq divorces and 65,256 lawsuit divorces. Around 20% of divorces have occurred in West Java (compared to the number of marriages in 2018).<sup>5</sup>

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<sup>1</sup> Aziz, Abdul. *Perkawinan yang Harmonis*, cet.III. Jakarta: CV Firdaus, 1993.

<sup>2</sup> Undang-Undang No. 1 tahun 1974 tentang Perkawinan, h. 9.

<sup>3</sup> Intruksi presiden R.I. Nomor 1 tahun 1991. Kompilasi Hukum Islam di Indonesia. (Jakarta, 2001), h. 15.

<sup>4</sup> Djaelani, Abdul Qadir. *Keluarga Sakinah*, cet.I. Surabaya: PT Bina Ilmu, 1995.

<sup>5</sup> Fa'iz, Ahmad. *Cita Keluarga Islam Pendekatan Tafsir Tematik*, cet.II. Jakarta: Serambi Ilmu Semesta, 2002.

Although divorce is halal, it is legally valid both according to religious law and positive law (state law) in Indonesia. But the halal divorce / talaq is hated by Allah, as the hadith of Rosulullah SAW which reads:

ابغض الحلال الى الله الطلاق

"Although talaq is lawful, Allah does not like it" (HR. Abu David).

The government's concrete steps in overcoming divorce carried out at will regardless of the consequences that then arise afterwards, therefore the government issued Law Number 22 of 1946 concerning Marriage Registration, Talaq and Reference.<sup>6</sup>

There are many tasks carried out by the Ministry of Religious Affairs, one of which is to implement Law Number 22 of 1946 concerning the supervision and registration of marriage, talaq, and reference carried out according to Islam. However, in the Law, the Ministry of Religious Affairs is tasked only with supervising and recording marriages, talaq and reconciliation, not including in the area of efforts to maintain, care for, and maintain the continuity and sustainability and harmony of marriages that have been carried out by the community.<sup>7</sup>

The role of the Religious Court as one of the judicial bodies under the Supreme Court as the executor of judicial power where the PA in its duty to receive, examine and adjudicate certain civil cases, one of which is divorce issues, which must first mediate with the parties (Plaintiff and Defendant or Applicant and Respondent) before the reading of the divorce lawsuit filed by the wife or talaq application filed by the husband, as mandated by PERMA Number 1 of 2016 concerning Mediation, and as an obligation also the Panel of Judges to provide advice to the parties at the beginning of each trial as an effort to provide an understanding of awareness so that married couples who are in harmony and harmony to build their households, but it feels ineffective, because in addition to the limited duration of time there have also been

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<sup>6</sup> Ghozali, Abdul Rahman. *Fiqh Munakahat*, cet.III. Jakarta: Prenada Media Group, 2008.

<sup>7</sup> Hadisubroto, Ahmad Subino. dkk. *Keluarga Muslim dalam Masyarakat Modern*. Bandung: PT Remaja Rosdakarya, 1993.

acute problems faced by the parties, So that very few of them want to be aware of each other, so the success rate of mediation is very minimal.<sup>8</sup>

As a concrete step to prevent divorce, the Ministry of Religious Affairs issued the Decree of the Minister of Religious Affairs Number 85 of 1961 with the establishment of the Marriage Advisory and Divorce Settlement Agency (BP4) under the auspices of the Ministry of Religious Affairs of the Republic of Indonesia which carries out its duties as an extension of the Ministry of Religious Affairs of the Republic of Indonesia with its functions and duties, BP4 solves various problems that arise in marriage problems, the existence of BP4 which is needed by the community and as a spearhead for Muslims who wish to perform marriage, in detail the objectives of PB4 include: (1) giving advice and information on marriage, talaq, divorce, and reference to those who will do it both individuals and groups; (2) prevent arbitrary divorce, irresponsible polygamy, underage marriage, and underhand marriage; (3) provide assistance in overcoming marital, family, and domestic disputes, so the role of PB4 is not only as a marriage advisor but as a mediator for married couples who are facing domestic problems.<sup>9</sup>

Such conditions according to the hypothesis while the author shows that the marriage carried out is not carefully prepared both in terms of mental solitude, social mentality and even not prepared for established financial maturity and the most foundational is that they have not prepared "the ability of maturity to master scientifically, understand consciously about *marriage klowledge* related to the rights and obligations of married couples" although the role of BP4 has been clearly implemented as a step to reduce the high divorce rate.<sup>10</sup>

The provision of BP4 material to Catin is not the right moment, not enough time. From these two (2) reasons, it is difficult for BP4 to be able to carry out its duties properly, and for that reason Catin cannot absorb well the material presented by BP4, thus it is natural that the divorce rate cannot be stopped, because the existing married couples do not have enough provisions to deal with complex problems in the household.<sup>11</sup>

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<sup>8</sup> Hakal, Abduttawab. *Rahasia perkawinan Rasulullah SAW, Poligami Dalam Islam vs Monogami Barat*, cet.I. Jakarta: CV. Pedoman Ilmu Jaya, 1993.

<sup>9</sup> Hawari, Dadang. *Forbidden Love (Cinta Terlarang)*. Jakarta: Balai Penerbit Fakultas Kedokteran Universitas Indonesia, 2005.

<sup>10</sup> Ilyas, Hj. Ny. Nurdin. *Pernikahan yang Suci Berlandaskan Tuntutan Agama*, cet.I. Yogyakarta: Bintang Cemerlang, 2000.

<sup>11</sup> Ismail, Thoriq. *Mata Kuliah Menjelang Pernikahan*. Surabaya: Pustaka Progressif, 1994.

The fact of the high divorce rate as mentioned upfront, is evidence of the absence of household harmony that is not adequately equipped before marriage, the State is responsible as ordered by the Law, to prosper its people, make their homes happy and eternal, that is where the State must be present and act to realize the households of its people happy and prosperous, one of which is by establishing premarital education from an early age as a concrete step to reduce the high divorce rate in Indonesia.<sup>12</sup>

## RESEARCH METHODS

The selected research method uses empirical juridical research methods. analysis of the implementation of premarital education by the institution of the *Marriage Advisory, Guidance, Preservation Agency* (BP4) in divorce control at the Regional Religious Court of the Bandung High Religious Court. *Empirical juridical* research is legal research on the enactment or implementation of normative legal provisions *in action* on any particular legal event that occurs in society.<sup>13</sup> In addition, data is obtained from books about BP4, journals and laws related to BP4 procedures in carrying out their duties. After the data is collected, data analysis is carried out to get the answer to this problem and the answer as it should be.

## RESULTS AND DISCUSSION

Marriage is a sacred bond between husband and wife, carrying it out is worship because it is classified as the sunnah of the Prophet, while maintaining its integrity as it meets its needs is jihad, as the hadith of the Prophet SAW narrated by Ath-Thabarani from Abu Hurayrah, he said "when we (the companions) were sitting with the Prophet SAW, suddenly there was a young man coming from the hill road, we (the companions) watched him as we said if only this young man used strength in his youth for jihad in the cause of Allah" The Prophet heard our words (companions) then the Prophet said:

وَمَا سَبِيلُ اللَّهِ إِلَّا مَنْ قُتِلَ؟ مَنْ سَعَى عَلَى وَالدَّيْهِ فَفِي سَبِيلِ اللَّهِ، وَمَنْ سَعَى عَلَى عِيَالِهِ فَفِي سَبِيلِ اللَّهِ، وَمَنْ سَعَى مَكَائِرًا فَفِي سَبِيلِ الطَّاغُوتِ

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<sup>12</sup> Junaedi, Dedi. *Bimbingan Perkawinan Membina Keluarga Sakinah Menurut alQuran dan as-Sunnah*, edisi pertama. Jakarta: Akademika Pressindo, 2002.

<sup>13</sup> Bambang Waluyo, 1991. *Penelitian Hukum Dalam Praktek*, Jakarta: Sinar Grafika

Jihad is not only killed in war, but whoever provides for his parents is waging jihad in the way of Allah, and whoever supports (meets) the needs of his family (his wife's children) is classified as jihad in the way of Allah, and whoever works to accumulate wealth is on the path of thaghut.<sup>14</sup> (H.R Thabrani).

Getting married not only legalizes the lawfulness of husband and wife relationships in *ber-jima'* but the bonuses that Allah gives from marriage worship are very many that cannot be measured in value with material, one of which is peace of life, equanimity, love filled with affection because of the flowing grace of Allah SWT. As Q.S. 30. 21 as follows:

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

Of His many powers, one of them Allah created for you (Prophet Muhammad (PBUH) and for mankind) Allah created a male couple as a husband and a woman as a wife of your own kind (man), so that you may feel at peace and be made between you to love each other, which is as a ground for meditation for thinking people.<sup>15</sup> (Q.S. Al-Ruum: 21)

With the simple benefits of marriage, in addition to the value of worship for those who run it, but he will also be more savety in guarding himself from adultery. Today's modernization that advances in all aspects of life, especially the rapid development and advancement of technology, the world feels in the palm of the hand, life without gadgets seems empty. The fact is that with the advancement of technology, work, communication is easy and effective, not only young people but toddlers to the elderly do not escape social media because progress forces us to adapt, not a few madharat because using technology is not accompanied by faith and comprehensive maturity, even the effect of gelobalization changes the cuff.<sup>16</sup>

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<sup>14</sup> Kitab Hadits Al-Mu'jam Al-Ausath, Nomor Hadits 4214, Jilid 4, h. 284

<sup>15</sup> Depag RI, Al-Qur'an dan Terjemahannya PT Karya Toha Putra, Semarang Indonesia, 1998, Juz 21 h. 803

<sup>16</sup> Kartubi, Mashuri. *Baiti Jannati Memasuki Pintu-pintu Surga dalam Rumah Tangga*. Jakarta: Yayasan Fajar Islam Indonesia, 2007.

Everything became instantaneous, until even household problematics problems were resolved instantly, not resolved peacefully, deliberately, mediating as taught by religion, our ancestors by deliberation mediated a joint crush to find the best solution that benefited both parties (husband and wife) but now have an instant route, namely to the court without mediating first with a BP4 mediator or tahkim from the family.<sup>17</sup>

Unstoppable progress can tear apart the noble values of religious orders, ancestral heritage such as deliberation, reconciliation in conflict resolution such as domestic problems, but take the fast road, there is a problem of bringing it to court. Therefore, to keep ourselves from being contaminated by the negative effects of the times, it is necessary to provide comprehensive science and strong religion.<sup>18</sup>

It does not escape the religious message that the institution of marriage (household) must be prepared with careful provisions before carrying it out, which the author calls the term *Marriage Knowledge* and *Conflict Management* Why is that? because marriage is the longest worship, marriage is a miniature of a country and its existence can be a meter of prosperity and progress of a country, the other side is very ironic if marriage does not have enough provisions Even though the problems and problematics faced are very complex.<sup>19</sup>

In the hadith the Prophet (peace be upon him) told young men to get married if he already has sufficient provisions called *Ba'a tan* (material, health and knowledge). Namely: H.R Bukhari Muslim:

عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ لَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ( يَا مَعْشَرَ الشَّبَابِ ! مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ , فَإِنَّهُ أَغْضُ لِلْبَصَرِ , وَأَحْصَنُ لِلْفَرْجِ , وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ ; فَإِنَّهُ لَهُ وَجَاءٌ ) مُتَّفَقٌ عَلَيْهِ

Abdullah Ibn Mas'ud Radliyallaahu 'anhu said: The Prophet Sallallaahu 'alaihi wa Sallam said to us: "*O younger generation, whoever among you has been able to marry should he marry, for*

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<sup>17</sup> Lili Rasjidi dan I.B Wyasa Putra, *Hukum sebagai Suatu Sistem*, (Remaja Rosdakarya, Bandung, 2013), 79-80.

<sup>18</sup> Mubarak, Achmad. *Nasehat Perkawinan dan Konsep Hidup Berkeluarga*. Jakarta: Jatibangsa, 2006.

<sup>19</sup> Muchtar, Kamal. *Asas-asas Hukum Islam tentang Perkawinan*. Jakarta: Bulan Bintang, t.th.

*he can bow his eyes and nourish the genitals. He who is not yet able should fast, for fasting can control you.*<sup>20</sup> (H.R. Muttafaq Alaihi).

Article 1 of Law Number 1 of 1974 concerning Marriage which was amended into Law Number 16 of 2019 requires that marriage in force in Indonesia formulates "Marriage is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty Godhead".<sup>21</sup>

According to the Compilation of Islamic Law, it asserts that "Marriage is a very strong covenant or mitsaqon gholizhon to obey Allah's commandments and perform them constitutes worship".<sup>22</sup>

The validity of a marriage according to article 2 paragraph (1) of Law Number 1 of 1974 On, "marriage is if it is carried out according to the law of each religion and belief", then if it is carried out outside the provisions of the article such as different religions or beliefs then the marriage is not valid, while article 2 paragraph (2) reads "that each marriage is recorded according to the applicable legislation".<sup>23</sup>

There are two opinions regarding the application of paragraph (1) and paragraph (2) in article 2 of Law Number 1 of 1974 concerning Marriage. The first difference states that "*marriage is valid if it is performed according to the laws of each religion and belief, while disability (paragraph 2) is only an administrative requirement*", so a marriage is valid if it is in accordance with his religion and beliefs even if it is not registered. While the second opinion that article 2 paragraph (1) and paragraph (2) are cumulative is an inseparable unity, which

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<sup>20</sup> Ulumul Hadits, Shalah Ibnu, Mualif Imam Abu Umar Wa Usman bin Abdurrahman Asharozauri, Darul Fikr, Damasku Suriyah, Bab Munakahat 243 Hijriyah, h.

<sup>21</sup> Himpunan Peraturan Perundang-Undangan Dalam Lingkungan Peradilan Agama. Proyek Peningkatan Pelayanan Aparatur Hukum Pusat Direktorat Pembinaan Peradilan Agama, Direktorat Jenderal Bimbingan Masyarakat Islam Dan Penyelenggaraan Haji Departemen Agama RI Tahun 2004

<sup>22</sup> Mahkamah Agung RI, Kumpulan Hukum, Kompilasi Hukum Islam, (Jakarta, 2004, Instruksi Presiden RI, No: 1 Tahun 1991, tanggal 10 Juni 1991, h. 2.

<sup>23</sup> Himpunan Peraturan Perundang-Undangan Dalam Lingkungan Peradilan Agama. Proyek Peningkatan Pelayanan Aparatur Hukum Pusat Direktorat Pembinaan Peradilan Agama, Direktorat Jenderal Bimbingan Masyarakat Islam Dan Penyelenggaraan Haji Departemen Agama RI Tahun 2004

means "*marriage must be carried out in accordance with their respective religions and beliefs and must be recorded*".<sup>24</sup>

In addition to article 2 mentioned above which explains the validity of a marriage, there are other conditions that must be fulfilled in marriage so that the marriage can be considered valid according to Law Number 1 of 1974 concerning Marriage, as contained in article 6 paragraph (1) "Marriage must be based on the consent of both prospective brides". The law determines that, because the purpose of marriage is to form and achieve a married couple as a harmonious and eternal family, in accordance with human rights, a marriage must have the consent of both prospective spouses without any coercion from any party. The article guarantees the absence of forced marriage with a minimum age of marriage of 16 years for women and 19 years for men, now the condition of our society is smarter and more open, therefore marriages without the consent of the bride and groom (forced marriage) are not allowed.<sup>25</sup>

The updated requirement in article 7 of Law Number 1 of 1974 concerning Marriage amended by Law Number 16 of 2019 that the minimum age limit of 19 years is not only for men but also for women. The main reason for the change in the age of prospective husband and wife from 16 years to 19 years, according to the results of the analysis of Dr, Rachmi Sulistyarini, S.H., M.H and Fitri Hidayat, S.H., M.H in their research that the fundamental reason for changing the age of marriage (philosophically is to eliminate discrimination in obtaining basic and constitutional rights born due to differences in marriage age as stipulated in Law No. 1 of 1974. Sociologically it is to prevent the occurrence of early marriage which will have a further impact on pregnant women and childbirth at an early age who are at high risk for maternal and infant health (baby blues syndrome and stunting). The juridical reason is as a fulfillment of the mandate of Constitutional Court Decision No. 22/PUU-XV/2007 relating to the unification of the minimum age of marriage between men and women.<sup>26</sup>

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<sup>24</sup> Rofiq, Ahmad. *Hukum Islam di Indonesia*, cet.III. Jakarta: PT Raja Grafindo Persada, 1998.

<sup>25</sup> Wasman dan Wardah Nuroniyah, *Hukum Perkawinan Islam di Indonesia Perbandingan Fiqh dan Hukum Positif* (Yogyakarta: Teras, 2011), h. 45-46.

<sup>26</sup> Himpunan Peraturan Perundang-Undangan Dalam Lingkungan Peradilan Agama. Proyek Peningkatan Pelayanan Aparatur Hukum Pusat Direktorat Pembinaan Peradilan Agama, Direktorat Jenderal Bimbingan Masyarakat Islam Dan Penyelenggaraan Haji Departemen Agama RI Tahun 2004

From the author's observation of the conditions determined by Law No. 16 of 2019, it is only a matter of the minimum age limit, but does not require maturity in the sense of mature age accompanied by knowledge, nature and adult behavior.<sup>27</sup>

Measuring a person's maturity is very difficult because there are people whose age is above the one prescribed by law but still does not have maturity, and vice versa there are people who are still under the age prescribed by the law such as the age of 18 (eighteen) years but have adult behavior in their daily lives.<sup>28</sup>

The age of majority according to the Civil Law (*Burgerlijk Wetboek Voor*) is 21 years old. Article 330 of this rule states that immature persons are those who have not reached the age of 21 years and have not married before. Meanwhile, the KHI sets the same legal age limit as KUHPerdata is 21 years old. According to this regulation, the age limit for children who are able to stand alone or adults is 21 years, as long as the child is not physically or mentally disabled or has never been married.

From this context, according to the author, to measure maturity in relation to obtaining permission to hold a marriage, it is enough to measure it by obtaining a certificate of knowledge related to household problems, *Marriage Knowledge* related to knowledge of rights and obligations of married couples, and having knowledge of how to deal with problems in the household, *Conflict Management* obtained from related institutions.<sup>29</sup>

Therefore, it is not enough if the requirements for permission to hold a marriage are only a matter of the minimum age limit, but must be accompanied by maturity requirements measured by the existence of a certificate of ability on *Marriage Knowledge* and *Conflict Management*. Thus, Law Number 16 of 2019, especially in Article 7, must be amended again to add the requirements for permission to hold marriage in addition

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<sup>27</sup> Himpunan Peraturan Perundang-Undangan Dalam Lingkungan Peradilan Agama. Proyek Peningkatan Pelayanan Aparatur Hukum Pusat Direktorat Pembinaan Peradilan Agama, Direktorat Jenderal Bimbingan Masyarakat Islam Dan Penyelenggaraan Haji Departemen Agama RI Tahun 2004

<sup>28</sup> Summa, Muhammad Amin. *Hukum Keluarga Islam di Dunia Islam*, Lampiran III. Jakarta: PT Raja Grafindo Persada, 2005.

<sup>29</sup> Satjipto Rahardjo, 2010. *Penegakan Hukum Progresif*, Jakarta: PT. Kompas Media Nusantara.

to the minimum age limit plus the ability requirements on *Marriage Knowledge and Conflict Management*.<sup>30</sup>

Nowadays divorce both nationally and regionally, especially in the jurisdiction of the Bandung High Court continues to increase as evidenced in the graph that the author submits, this phenomenon shows that marriages that are carried out do not have sufficient provisions from all sides, especially the provision of *Marriage Knowledge and Conflict Management*.<sup>31</sup>

Maintaining, prospering, protecting citizens is the domain and obligation of the State. Maintaining the integrity of the household, maintaining the survival of his descendants is a religious command that falls into the category of *Maqasid As-Syr'I* called *Hifdzu an-Nasel*. Dejure maintaining, building stairs for Indonesian citizens is the domain of the Ministry of Religious Affairs which has been delegated to BP4 since 1961.<sup>32</sup>

The existence of BP4 and its functions are broadly twofold, namely providing extension guidance (suscatin, Bimwin) to Catin as a provision to build their households, and the second function of BP4 is as a mediator who provides advice, advice to households facing *Broken Home conflicts*.

The vision and mission of BP4 and its programs are very good as contained in AD ART BP4 in 2014. However, the optimization of BP4's performance to carry out its program is not optimal, it is measured by the high divorce rate in Indonesia in general and in the jurisdiction of the Bandung High Religious Court in particular.<sup>33</sup>

The results of the author's research that the non-optimal function of BP4 in carrying out its program is behind many things. First, BP4 does not want to pick up the ball or conduct community counseling even if there are only a few BP4s and even then it is not massive. Secondly, few people know what BP4 is, where is the BP4 office, what are the functions

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<sup>30</sup> Sutarmadi, Achmad dan Mesraini. *Administrasi Pernikahan dan Manajemen Keluarga*. Jakarta: Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2006.

<sup>31</sup> Sutarmadi, Achmad. *Memberdayakan Keluarga Sakinah Menuju Indonesia 2020*. BP4 Bekerjasama Dengan BKM Provinsi Jawa Timur, 1997.

<sup>32</sup> Thalib, Sayuti. *Hukum Keluarga Indonesia*, cet.V. Jakarta: Universitas Indonesia, 1986.

<sup>33</sup> Himpunan Peraturan Perundang-Undangan Dalam Lingkungan Peradilan Agama. Proyek Peningkatan Pelayanan Aparatur Hukum Pusat Direktorat Pembinaan Peradilan Agama, Direktorat Jenderal Bimbingan Masyarakat Islam Dan Penyelenggaraan Haji Departemen Agama RI Tahun 2004

and programs of BP4, so when people face problems in their households (broken home) they do not come to BP4 to mediate, get advice, but people tend to take quick steps directly to the court. Third, the low public awareness of the value of knowledge about housekeeping *Marriage Knowledge* and *Conflict Management*, finally they are indifferent when marrying or marrying their children, the main priority is material problems, it is true that the material must be prepared because the running of the household wheel requires financial material, but the very basic provisions are actually many who ignore, from the results of the author's research the three factors are what contributing to the high divorce rate.<sup>34</sup>

It is said that marriage is the smallest institution in a State, marriage is a miniature will prosper and peace a State, meaning that if the smallest institution (marriage) is good then it will be good Neighborhood Pillars (RT), if the Neighborhood Pillars (RT) are good then the Neighborhood Pillars (RW) if RW is good then the District is good, and if the District is good then the City and State Regency will be good, from there marriage as a miniature State and as a parameter of prosperity and peace of a State.<sup>35</sup>

The condition of BP4 as a partner of the Ministry of Religion that is not optimal in carrying out its functions and programs, the State must be present to revitalize the existence of BP4 by changing the formal legal status of BP4 with a formal legal status that has value and executory power meaning that BP4 can declare marriage cannot take place if it does not have a Pre-Marital Education certificate, if it still violates then there are criminal sanctions and fines, it was done with the aim of making a deterrent effect to the community and restoring public awareness about the importance of marriage provision not only material but more than that is the science of *Marriage Knowledge* and *Conflict Management*. The two countries must also provide facilities and infrastructure as well as finances budgeted through the State Budget, so that the BP4 program can run well in accordance with the mandate of the Law that the welfare of citizens is responsible for the State Article 27 paragraph (2) of the 1945 Constitution.<sup>36</sup>

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<sup>34</sup> As'ad, Abdul Muhaimin. *Risalah Nikah Penuntun Perkawinan*. Surabaya: Bintang Terang 99, 1993.

<sup>35</sup> Basri, Hasan. *Membina Keluarga Sakinah*, cet.IV. Jakarta: Pustaka Antara, 1996.

<sup>36</sup> Fa'iz, Ahmad. *Cita Keluarga Islam Pendekatan Tafsir Tematik*, cet.II. Jakarta: Serambi Ilmu Semesta, 2002.

## **CONCLUSION**

Optimization of the performance of the Marriage Advisory, Guidance, Preservation Agency in relation to the high divorce *rate in the Bandung High Religious Court Area* includes: that the Marriage Advisory, Guidance, Preservation Agency (BP4) is a social professional organization about religion, BP4 is a partner of the Ministry of Religious Affairs and other related agencies, BP4 tupoksi broadly speaking there are 2 (two): Providing Islamic Counseling Guidance (BKI), Suscatin, Bimwin, Premarital Education if the author's term is "*Marriage Knowledge* and *Conflict Management*. Become a mediator over households in conflict with *Broken Home*. Of the 2 (two) functions of BP4, it aims to make the quality of marriage better, no underage marriage, and unhealthy polygamy does not occur, all of which are so that the divorce rate decreases, but the fact is that the divorce rate remains high from year to year, meaning that BP4's performance is not optimal.

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## THE LEGAL CONSEQUENCES OF UNDERAGE MARRIAGE IN THE MERARIQ CULTURE OF THE SASAK TRIBE IN MEREMBU VILLAGE, LABUAPI DISTRICT, WEST LOMBOK REGENCY

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### *Abstract*

The culture of marriage varies from region to region, influenced by religion, customs, and community environment. One of them is the Merarik culture of the Sasak tribe in Lombok. This study aims to analyze the settlement of underage marriages and their legal consequences in the Merarik culture of the Sasak tribe in Merembu Village, West Lombok. The research method uses empirical legal methods and qualitative approaches with primary data from the research location and secondary data from reliable sources. Data collection techniques include observation, interviews, and document studies. The results showed that the process of settling underage marriages was carried out through negotiations and mediation involving village heads, religious leaders, and local communities. The legal consequences affect marital status, husband and wife, children, and property. Unregistered marriages are not recognized by the state, so the wife loses her rights if abandoned, divorced, or the husband dies. The child of the marriage only has a legal relationship with the mother and the mother's family, without a legal relationship with the father. Therefore, it is recommended that authorized institutions provide counseling on the importance of state-recognized marriages to prevent adverse effects in the future.

**Keywords:** *As a result of the law, the culture of the Sasak tribe, underage marriage.*

### **Abstrak**

Budaya perkawinan bervariasi di setiap daerah, dipengaruhi oleh agama, adat, dan lingkungan masyarakat. Salah satunya adalah budaya Merarik suku Sasak di Lombok. Penelitian ini bertujuan menganalisis penyelesaian perkawinan di bawah umur dan akibat hukumnya dalam budaya Merarik suku Sasak di Desa Merembu, Lombok Barat. Metode penelitian menggunakan metode hukum empiris dan pendekatan kualitatif dengan data primer dari lokasi penelitian dan data sekunder dari sumber terpercaya. Teknik pengumpulan data meliputi observasi, wawancara, dan studi dokumen. Hasil penelitian menunjukkan proses penyelesaian perkawinan di bawah umur dilakukan melalui negosiasi dan mediasi yang melibatkan kepala desa, tokoh agama, dan masyarakat setempat. Akibat hukumnya berdampak pada status pernikahan, suami istri, anak, dan harta kekayaan. Perkawinan yang tidak tercatat tidak diakui negara, sehingga istri kehilangan haknya jika ditinggalkan, bercerai, atau suami meninggal. Anak dari perkawinan tersebut hanya memiliki hubungan hukum dengan ibu dan keluarga ibunya, tanpa hubungan hukum dengan ayahnya. Oleh karena itu, disarankan agar lembaga

yang berwenang memberikan penyuluhan tentang pentingnya perkawinan yang diakui negara untuk mencegah dampak buruk di masa depan.

**Kata Kunci:** Akibat Hukum, Budaya Merariq Suku Sasak, Perkawinan Dibawah Umur.

## INTRODUCTION

A welfare state is a country whose inhabitants respect each other and uphold the customs and beliefs of each community.<sup>1</sup> Indonesia's pluralistic society is united within the framework of harmonious social relations called marriage or marriage. Marriage is a very important event for most human lives that aims to foster a prosperous and happy family.<sup>2</sup>

Normatively, marriage is regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law). The Marriage Law states that marriage is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One True Godhead. Marriage is valid if it is performed according to the laws of each religion and belief.<sup>3</sup>

The marriage system can be done in various ways, namely some do it by begging but there are also those who do it by running away the bride (turning away or eloping).<sup>4</sup> Culture is a manifestation of noble values that have been mutually agreed upon as a basis for behavior for society that covers various aspects of life including marriage.<sup>5</sup> Indonesia is an archipelagic country consisting of various tribes, cultures, and

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<sup>1</sup> Diding Sariding and Siti Ngainnur Rohmah, "Konsepsi Negara Sejahtera Menurut-Farabi," *STAATSRECHT: Indonesian Constitutional Law Journal*, 2020, <https://doi.org/10.15408/siclj.v4i1.16127>; Hamdani Institut and Agama Islam Ngawi, "NEGARA SEJAHTERA DALAM PERSPEKTIF MAQASHID SYARIAH," *Al-Mabsut : Jurnal Studi Islam Dan Sosial*, 2020.

<sup>2</sup> Rizqi Suprayogi, "REFORMASI HUKUM PERKAWINAN ISLAM DI INDONESIA," *Indonesia Journal of Business Law*, 2023, <https://doi.org/10.47709/ijbl.v2i1.1962>; Haerini Ayatina et al., "PERAN HUKUM KELUARGA SEBAGAI PENGGERAK PEMBANGUNAN BERKELANJUTAN DI INDONESIA," *At-Thullab : Jurnal Mahasiswa Studi Islam*, 2021, <https://doi.org/10.20885/tullab.vol3.iss2.art1>.

<sup>3</sup> MA, "Kitab Undang-Undang Hukum Perdata," *JDIH*, 2014; Jogloabang, "UU 16 Tahun 2019 Tentang Perubahan Atas UU 1 Tahun 1974 Tentang Perkawinan," 23 Okt 2019, 2019.

<sup>4</sup> Kementerian Kesehatan RI, "UNDANG-UNDANG PERKAWINAN," *Journal Presumption of Law*, 2019.

<sup>5</sup> Khumedi Ja'far, *Hukum Perdata Islam Di Indonesia: Aspek Hukum Keluarga Dan Hukum Bisnis*, *Journal de Jure*, 2019.

customs. The culture of community marriage between one region and another is certainly different, this is inseparable from the influence of religion, customs and the surrounding community, one of which is the *Merariq* culture of the indigenous Sasak tribe in Lombok.<sup>6</sup>

Merarik if interpreted in Indonesian is the bridegroom running away to marry without the knowledge of the parents or family of the bride.<sup>7</sup> The kinship system of the Sasak community is based on *patrilineal relationships with patrilocal settling patterns*. Kinship relations have an important meaning in the daily life of the Sasak people living in Lombok. Kinship relations on a geneological basis are a great potential in determining the affairs concerned with society.<sup>8</sup>

In its development, the *merariq* custom was also influenced by religious law, namely Islam, which is the majority religion adopted by the Sasak tribe community. In *merariq* custom, there is no known age limit for the bridegroom and bride, both of whom can marry or marry if they have reached puberty.

This is contrary to the Marriage Law which stipulates the minimum age limit for prospective brides and grooms is 19 years.<sup>9</sup> Inside Kitab Undang-Undang Hukum Perdata (KUH Perdata) It is also regulated about the age limit for a person to marry, namely if both prospective brides are adults. The adult size in Civil Law is 21 (twenty-one) years

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<sup>6</sup> Ketut Nuasa, "Implementasi Kawin Lari Antar Suku Bali Di Desa Babakan Gerung Lombok Barat," *Widya Kerta Jurnal Hukum Agama Hindu*, 2020.

<sup>7</sup> Nuasa; Anjany Anjany and Fadilawati Fadilawati, "Analisis Hukum Terhadap Pelaksanaan Sanksi Adat Seda' Pada Kasus Kawin Lari," *Amsir Law Journal*, 2023, <https://doi.org/10.36746/alj.v4i2.191>; Murni Murni, Asis Muslimin, and Suardi Suardi, "Penerimaan Masyarakat Terhadap Perilaku Kawin Lari (Study Kasus Kelurahan Malakaji Kecamatan Tompobulu Kabupaten Gowa)," *Equilibrium: Jurnal Pendidikan*, 2019, <https://doi.org/10.26618/equilibrium.v7i2.2685>; I Wayan Bayu Suta, I Nyoman Putu Budiarta, and I Ketut Sukadana, "Keabsahan Perkawinan Ngerorod (Kawin Lari) Di Desa Kelusa, Kabupaten Gianyar," *Jurnal Interpretasi Hukum*, 2021, <https://doi.org/10.22225/juinhum.2.1.3099.184-188>; Nilawati Nilawati, Hamuni Hamuni, and Nerlin Nerlin, "KAWIN LARI BERSAMA (POFELEI AO) PADA MASYARAKAT ADAT BUTON (STUDI DI KELURAHAN GU TIMUR KECAMATAN LAKUDO KABUPATEN BUTON TENGAH)," *SELAMI IPS*, 2020, <https://doi.org/10.36709/selami.v12i2.10847>.

<sup>8</sup> Anjany and Fadilawati, "Analisis Hukum Terhadap Pelaksanaan Sanksi Adat Seda' Pada Kasus Kawin Lari"; Nuasa, "Implementasi Kawin Lari Antar Suku Bali Di Desa Babakan Gerung Lombok Barat"; Murni, Muslimin, and Suardi, "Penerimaan Masyarakat Terhadap Perilaku Kawin Lari (Study Kasus Kelurahan Malakaji Kecamatan Tompobulu Kabupaten Gowa)."

<sup>9</sup> Fitria Olivia, "Batasan Umur Dalam Perkawinan Berdasarkan Undang-Undang Nomor 1 Tahun 1974," *Lex Jurnalica Volume 12 Nomor 3, Desember*, 2015.

for the bride and groom. If both prospective brides are not adults, there must be a recommendation from the woman's parents with a written statement that the child is allowed to carry out the marriage.<sup>10</sup>

In the Sasak tribal community, especially in Merembu Village, Labuapi District, West Lombok Regency, Merarik culture is a hereditary tradition and is a series of processions that must be carried out where the bride-to-be is brought to the family home of the prospective bridegroom with the aim of being known by the surrounding community so as not to cause slander in the future. The Merarik case that occurred in Merembu Village, Labuapi District, West Lombok Regency, became so problematic, because it was carried out by the bride and groom who were underage and problems arose due to the constraints of the process of issuing marriage books by authorized officials, namely officials of the Office of Religious Affairs.

Along with the times, and in this era of modern globalization and increasingly sophisticated technology, many marriages are not in accordance with applicable rules and laws. The marriage bond is a bond without meaning and hope. Many problems that arise in people's lives concern marriage. Although it has a national marriage law that functions to regulate marriage problems, it cannot be denied that in fact there are still many people who still use the rules of customs of each religion and their respective tribes, so that in carrying out marriage there are many who violate the rules of law that have been regulated. One of them is underage marriage.<sup>11</sup> The more complex a society is, the greater the diversity found in the interests of community members.

In order to find out in depth about this, researchers are interested in conducting research entitled "Legal Effects of Underage Marriage in

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<sup>10</sup> Amiur Nuruddin and Azhari Akmal Tarigan, "Hukum Perdata Islam Di Indonesia: Studi Kritis Perkembangan Hukum Islam Dari Fiqih, UU No. 1/1974 Sampai KHI," *UU No 1/1974 Sampai KHI*, 2004; Mar'atus Sholihah Arkisman, "Polemik Dibalik Perkawinan Usia Dini: Kontradiksi Hukum Perkawinan Yang Pluralisme Di Indonesia," *Jurnal Pro Hukum*, 2022.

<sup>11</sup> Rani Dewi Kurniawati, "Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus Di Pengadilan Agama Majalengka Kelas IA)," *Journal Presumption of Law*, 2021, <https://doi.org/10.31949/jpl.v3i2.1505>; Sarikun Sarikun and Dina Paramitha Hefni Putri, "PERKAWINAN DIBAWAH UMUR: BAGAIMANA AKIBAT HUKUMNYA?," *Kertha Semaya : Journal Ilmu Hukum*, 2022, <https://doi.org/10.24843/ks.2022.v10.10.p14>; A Riyan Fadhil and Darmadi A.A. Ngurah Yusa, "Tinjauan Yuridis Terhadap Dispensasi Perkawinan Di Bawah Umur Menurut Hukum Islam," *Kertha Semaya*, 2018.

the Merariq Culture of the Sasak Tribe in Merembu Village, Labuapi District, West Lombok Regency" so that researchers can find out the actualization of norms that regulate these problems.

## RESEARCH METHODS

Researchers use empirical legal research methods with a qualitative approach,<sup>12</sup> This type of research was chosen to determine and explain the process of settling underage marriages that occurred in Merembu Village, Labuapi District, West Lombok Regency. This research is descriptive because it wants to see the situation objectively and is carried out by taking the steps of data collection, classification, data processing/analysis, and making conclusions.

Primary data sources are obtained by interviews, observations or observations by recording data in the form of answers or informant statements. Secondary data sources that will be used in this study are obtained from textbooks written by legal experts, legal journals, articles, previous research, news reports, and other sources that have related legal issues to be examined in this study.<sup>13</sup>

The observation method is carried out to find out the cause of the problems that occur in the object of research and efforts to overcome these problems.<sup>14</sup> The interview guidelines used in this study are non-structural guidelines,<sup>15</sup> While the documentary method, researchers investigate written objects such as books, magazines, documents, regulations, meeting minutes, and so on. The sampling technique used is Non Probability Sampling by choosing purposive sampling as the sampling technique. After all the data is collected, it is then analyzed by descriptive analysis, which describes the applicable regulations, then related to the reality that occurs in the community, and finally a conclusion is drawn.

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<sup>12</sup> Rukin, *Metodologi Penelitian Kualitatif*, Rake Sarasin, 2022; Sugiyono, *Metodologi Penelitian Kualitatif*. In *Metodologi Penelitian Kualitatif*, Rake Sarasin, 2020.

<sup>13</sup> Nina Siti, "Metode Dan Teknik Wawancara," *Journal of Direktorat Pengembangan Mahasiswa*, 2002.

<sup>14</sup> Yusuf Abdhul, "Metode Observasi: Pengertian, Macam Dan Contoh," *Deepublish Store*, 2022.

<sup>15</sup> Nina Siti, "Metode Dan Teknik Wawancara."

## RESULTS AND DISCUSSION

### **The Process of Settling Underage Marriage in the Merariq Culture of the Sasak Tribe in Merembu Village, Labuapi District, West Lombok Regency**

Geographically, Merembu Village is located to the east of the District Capital City is an integral part of the West Lombok Regency area, the distance from the District Capital is 7 Km and from the District Capital is 12 Km, while from the Provincial Capital City is about 9 Km with the following boundaries:

- a. North Side: Sembung Village
- b. South: Montong Are Village
- c. West Side: Workshop Village
- d. East: Badrain Village

Orbitation (Distance from village / village government center)

- a. Distance from District Government center: 7 Km
- b. Distance from district capital: 12 Km
- c. Distance from Provincial Capital: 9 Km
- d. Distance from National Capital: 1300 Km

Merembu Village has an area of 753 Ha which is divided into 8 hamlets. Based on its use, the area of desamerembu is divided into several parts, namely: rice fields for agriculture covering an area of 550 Ha (75.51%), while the remaining area of 203 Ha (24.09%) is land used for residential needs, offices, school buildings, shops, gardens and others. With the conditions of Merembu Village are:

- 1) Land height from the surface of sea water: 400 m.
- 2) Rainfall 2000 to 3000mm/ year.
- 3) Topography: Lowlands.
- 4) Average air temperature: 30 degrees c.

Merembu Village has 8 Hamlets, namely Tangkeban, East Merembu, West Merembu, Central Merembu, Merembu Mekar, Rungkang, Karang Sembung, and Baginda. The population is 11,693. According to the latest data in 2018, the population of Merembu Village consists of 5,545 men and 6,148 women consisting of 2996 households. Each family consists of an average of 3-5 family members.

Meanwhile, judging from its fairly large area, the average population density is moderate. According to the Head of Merembu Village, this is because many people are already aware of the importance of managing the distance and number of births. This is a positive result of sharing programs held by the government such as: family planning

counseling, counseling on setting the age of underage marriage or young marriage and other counseling related to population issues.

The natural resources owned by Merembu Village are rice fields which are still mostly irrigated by river water so that in one year the community is only able to plant rice twice. Even then, with medium production and most of them are used as shops. As with the economic life of rural communities in general, at first the life of the people of Merembu Village started from the traditional economy by relying on agriculture as the main livelihood but now began to develop sources of income outside the agricultural sector such as trade, workshop industry, fisheries and so on.

Judging from the location of the village not far from the sub-district center, it seems that the existing education is enough to give hope to local residents. However, according to the Head of Merembu Village, even so, there are still many members who did not finish elementary school, in general, they are elderly groups and underprivileged children.<sup>16</sup> So these are members of the community who could not afford to go to school in their time and those who could not afford to pay for school.

Human resources in Merembu Village are low-education (on average they do not pass elementary school) and most are still traditional farmers even though the land managed is still under their dependents or pawn land. But now, in general, the level of education in Merembu Village is quite good, and some even complete it to college.

Related to this study, it is focused on examining the process of settling underage marriages in the Merarik culture of the Sasak Tribe in Merembu Village, Labuapi District, West Lombok Regency. One of the cultural results in Sasak society is the mercurial culture. The case that occurred in Merembu Village, Labuapi District, West Lombok Regency became so problematic, starting from a prospective groom named M. Ripai aged 25 years, a bride-to-be named Miftahul Jannah aged 15 years. The wedding took place at the local hamlet mosque and was attended by the bride and groom's parents, witnesses as well as local religious and community leaders without KUA officials attending. This is because employees or officials do not want or dare to attend because the bride-to-be is underage. The marriage was not registered in the local KUA so it did not get a marriage certificate. And to get the marriage certificate, these two couples have to wait about 2 (two) years by means of isbat

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<sup>16</sup> Wawancara dengan Kepala Desa Merambu

nikah, which is remarried at the local KUA office. The reason for the marriage is to further strengthen family relationships.<sup>17</sup>

There is also the case of the groom named Husen aged 17 years and the bride named Aini aged 15 years. When the two of them were about to get married, there was a refusal from the bride's family who did not approve or approve of the marriage because at that time the bride and groom were still students. However, because of the overwhelming desire to marry, they both agreed to Merariq. Husen as the bridegroom took Aini to a relative's house, after which Husen told his family that he had taken Aini away to marry. The Husen family did not approve, but after negotiations, the family finally resigned to agree and agreed to it. Rejection also occurred from the school of the bride and groom because they both the bride and groom had not finished school. The school suggested that he finish his education first and then get married. But finally after a long negotiation between the bridegroom, the bride and the marriage school were approved and praised with several conditions. The marriage was performed without the presence of local KUA officials so that the marriage was not registered and did not get a marriage certificate.

Listening to the example of the case that occurred in Merembu Village, it is implied that in people's lives there are still many underage marriages. Underage marriage is something that is legally allowed to be done with various considerations and existing rules, because the law itself regulates the age limit for marriage, which is at least 19 years, in accordance with the principles of Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage affirms that prospective husbands and wives must be mature body and soul in order to realize the goal of a happy marriage, Avoid divorce.<sup>18</sup> Underage marriage can legally be carried out if it meets the conditions listed by law, one of which is requesting marriage dispensation in the Court, then if the conditions are met they can marry legally according to religion.

Underage marriages that occur in Merembu Village are caused by several factors, namely:

- 1) low level of education so that it encourages quick marriage, because it does not understand how marriage really is not

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<sup>17</sup> Hasil wawancara dengan warga setempat yang menyaksikan acara pernikahan tersebut.

<sup>18</sup> Arso Sosroatmodjo dan A. Wait Aulawi, "Hukum Perkawinan Di Indonesia," *Bulan Bintang*, 1975; Jogloabang, "UU 16 Tahun 2019 Tentang Perubahan Atas UU 1 Tahun 1974 Tentang Perkawinan."

solely because of sex but many responsibilities that must be carried after marriage;

- 2) the habit of descent, that society considers underage marriage to be common because it has been carried out for generations, so that parents understand when their children who are young or underage even in high school or junior high school get married;
- 3) The influence of mass media and social media, this is very vulnerable because adolescents are groups or groups that are easily influenced so that they quickly imitate or imitate what is seen, such as films or news that contain content about violence, porn, and viral about child marriage can be accessed by anyone.

In Merembu Village, if the marriage does not go through a procedure that has been arranged by the government, the couple will marry in the presence of a Kyai or local religious figure.<sup>19</sup> Basically, the mindset of the community assumes that registering a marriage with KUA is considered to complicate and slow down the marriage process because there are several conditions that must be met first, which makes married couples reluctant to register their marriage.

Indonesia is known for its diverse culture, customs that have been embedded from ancestors and different religions and beliefs. Of course, each has different rules. It's the same with marriage. The diverse culture of marriage and the rules in it cannot be separated from the influence of religion, beliefs and knowledge from the community and religious leaders in the environment in which the community is located.<sup>20</sup>

Communication between different legal cultures (country/local law, written/unwritten law) in plural conditions becomes very important, because communication will ultimately avoid the various absolutism claims that exist in each law.

Everyone certainly does not want to dispute with others and wants to live peacefully and respect each other. But in a very complex society, whether ethnically, economically, socially, culturally and the variety of different desires of each person, conflicts or disputes are difficult to

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<sup>19</sup> Hasil wawancara dengan warga setempat.

<sup>20</sup> Nilawati, Hamuni, and Nerlin, "KAWIN LARI BERSAMA (POFELEI AO) PADA MASYARAKAT ADAT BUTON (STUDI DI KELURAHAN GU TIMUR KECAMATAN LAKUDO KABUPATEN BUTON TENGAH)"; I Wayan Bayu Suta, I Nyoman Putu Budiarta, and I Ketut Sukadana, "Keabsahan Perkawinan Ngerorod (Kawin Lari) Di Desa Kelusa, Kabupaten Gianyar."

avoid. Conflicts can occur between two parties individually, can also be communal, can even involve many parties and states, from simple conflicts to the most crucial.

Various disputes can be grouped:

- 1) Family disputes;
- 2) Business disputes;
- 3) Land disputes;
- 4) Disputes between society and the state;
- 5) Customary disputes;
- 6) Press disputes;
- 7) Environmental disputes.

*Alternative Dispute Resolution* (ADR) is an option for dispute resolution in the midst of the current crisis of trust in the judiciary. The community hopes that by resolving disputes outside the court, they will get justice and legal certainty in the true sense effectively and efficiently. Juridical dispute resolution can be divided into 2 (two), namely: Settlement Through Court and Settlement not through court (ADR) which can take the form of: Arbitration, Mediation, and Conciliation. While non-juridical settlements consist of several forms, namely negotiation, unilateral settlement, and violent settlement.<sup>21</sup>

Regarding the process of settling underage marriages in the *Merariq Culture* of the Sasak Tribe in Merembu Village, Labuapi District, West Lombok Regency, it is carried out by negotiation. Negotiation here is a negotiation process between the two families so that the issue of underage marriage can be resolved in a way that is acceptable to each party.<sup>22</sup>

If the negotiation process goes hard and does not get a meeting point, the problem of underage marriage will be resolved by mediation, namely by involving the village head, religious leaders and local community leaders as mediators. And from the results of the mediation, it will be the basis for the decision by the Village Head that the marriage can be carried out or not.<sup>23</sup>

In Sasak culture, the case of *merariqini* has become a culture in customary law itself, not contradictory. Merik culture is one of the traditional cultural entities for the Sasak people from the results of cultural assimilation and dialectics. The anticipation of Sasak families

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<sup>21</sup> R.F. Saragih, "Lembaga Alternatif Penyelesaian Sengketa," *Jurnal Hukum & Pembangunan*, 2017, <https://doi.org/10.21143/jhp.vol29.no4.564>.

<sup>22</sup> Hasil wawancara dengan warga setempat.

<sup>23</sup> Hasil wawancara dengan warga setempat.

often encourages their daughters to run together (run) with the Sasak men they love. Because there is an expression that is commonly spoken in Sasak language: *Sarian kicks a manuk bae child* (like asking for a chick only). So in this context, *merariq* is understood as a way to perform the wedding procession, as well as a way to get out of conflict. The result of an interview with the Head of Merembu Village, Mr. Muhazzab, stated that when there is *merariq*, the Head of the Hamlet must know because the male family must notify the Kadus for the purpose of completing the process rather than *merariq* as usual.<sup>24</sup>

For the Sasak Tribe community on the island of Lombok to resolve conflicts or disputes, customary institutions in carrying out their duties do not depend on the presence or absence of cases reported to them, meaning that "*rembuq Subak*" or Kerama Desa or "*Krame Gubuq*" in completing their duties must be proactive to anticipate disputes, therefore before disputes occur this institution carries out its duties actively.

If there is a conflict or dispute that is known to occur and is complained to him, then *the lover* or head of the village kerama or *krame gubuq* conducts an examination of the initiative (case) by inviting all members of all members of the village kerama and interested parties in a meeting called "*Sangkep* or *Begundem*" or deliberation. *Sangkep* or *Begundem* is performed at night in a neutral place which is usually in "*sekenem*" (six-legged stilt houses or mosques).

In the sangkep process is passed through at least three phases, namely:

- 1) The disputing parties raise their respective problems in the presence of mitigating or incriminating witnesses;
- 2) Then each member of the kerame gives fatwas based on customary law and religious law to the disputants in order to be willing to reconcile;
- 3) After the examination process (deliberation) is complete, it will end with the granting of a decision, namely a decision in the form of peace (*soloh*) or punishment.

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<sup>24</sup> Fathul Hamdani and Ana Fauzia, "Tradisi Merariq Dalam Kacamata Hukum Adat Dan Hukum Islam," *Jurnal Hukum Lex Generalis*, 2022, <https://doi.org/10.56370/jhlg.v3i6.245>; Baiq Desy Anggraeny, "Keabsahan Perkawinan Hukum Adat Lombok (Merarik) Ditinjau Dari Perspektif Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Hukum Islam (Studi Di Kabupaten Lombok Tengah)," *De Jure: Jurnal Hukum Dan Syar'iah*, 2017, <https://doi.org/10.18860/j-fsh.v9i1.4375>.

The peace agreement (*soloh*) is very binding for the individuals in dispute and the community, therefore often *soloh* decisions have a very strong legal force. Another decision that may be given by the *kerama* is to impose penalties in the form of fines using standard hollow money (*kepeng*) and animals or *dedosan* as well as other violations that disturb the community such as adultery and other serious offenses in the form of exile from society.<sup>25</sup>

In terms of customary law of the Sasak Tribe of Lombok, if there is a deviation from the customary provisions applicable in the Sasak Tribe community, legal action will be taken as appropriate by the oldest customary or indigenous people in accordance with the type of customary violation committed.<sup>26</sup>

The oldest influence of Sasak Tribe customs is very large and respected by the community and recognized for its existence to carry out and maintain customs. The efforts made by the indigenous people of the Sasak Tribe to maintain and maintain the indigenous cultural values inherited by their ancestors or ancestors can be seen in the implementation of ceremonies carried out in an orderly and systematic manner in solving customary problems. If any community member violates the customary rules that have been agreed in advance, it will be resolved through "*Gundern*" (customary deliberation).

The existence of customary sanctions in Indonesia is clearly protected by the state, where the State of Indonesia recognizes the existence of customary law communities in Indonesia in the Constitution of the Republic of Indonesia Year 1945. The Second Preamble to Article 18 B paragraph (2) states "The State recognizes and respects the unity of indigenous peoples and traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia". Then what is stipulated in Article 281 paragraph (3) of the Second Amendment states: "cultural identity and rights of traditional communities are respected in accordance with the development of times and civilization".

The existence of customary sanctions in the reality of customary law communities in certain regions in Indonesia, such as: Aceh, Gayo-

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<sup>25</sup> Bustami Saladin, "TRADISI MERARI' SUKU SASAK DI LOMBOK DALAM PERSPEKTIF HUKUM ISLAM," *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 2014, <https://doi.org/10.19105/al-lhkam.v8i1.338>.

<sup>26</sup> Febri Triwahyudi and Achmad Muja M., "MAKNA MERARIK DAN NYONGKOLAN BAGI PASANGAN PENGANTIN DI NUSA TENGGARA BARAT," *Journal of Chemical Information and Modeling*, 2017.

Alas and Batak, Minangkabau, Bali, Lombok, and others is a manifestation of social control mechanisms that grow and develop within the traditions of the community concerned.

Similarly, in the life of the people of Merembu Village, if there is a case of customary violation, especially in the field of marriage, customary sanctions will be imposed in the form of payment *of a Kerame Gubuk* fine of Rp. 1,500,000-Rp. 3,000,000 rupiah depending on each hamlet.

### **Legal Effects of Underage Marriage in the Culture of Merarik Sasak Tribe in Merembu Village, Labuapi District, West Lombok Regency**

According to local customary law, marriage is not only a social, cultural, religious-magical act but also a legal act that gives rise to rights and obligations between the parties. Marriage is referred to as a social act because it is a social product, meaning that sociologically marriage binds all elements in social life, both individuals and society and even society itself.<sup>27</sup>

Marriage is also called *a religious-magical act* because it is carried out through religious processes with traditions carried out for generations involving ancestral spirits and based on religion.

The definition of marriage according to customary law is a bond between a man and a woman to form a new household or family that will later produce offspring, which is related to problems of position, property and inheritance problems. Marriages that are carried out customarily involving the extended families of both parties.<sup>28</sup>

Marriage in the sense of adat is a marriage that has legal consequences on customary law in force in the community concerned. This legal effect has existed since before the marriage took place, what is meant by this legal effect is that it will give rise to a parental right and obligation, namely in carrying out traditional ceremonies, fostering and maintaining harmony in the integrity and permanence of the lives of their children who are bound in marriage.

An action that is done not according to the rule of law, then it cannot be said to be a legal act so that the act has no legal consequences that can be protected by law. Child marriage carried out by the people of

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<sup>27</sup> Saladin, "TRADISI MERARI' SUKU SASAK DI LOMBOK DALAM PERSPEKTIF HUKUM ISLAM"; Triwahyudi and Mujab M., "MAKNA MERARIK DAN NYONGKOLAN BAGI PASANGAN PENGANTIN DI NUSA TENGGARA BARAT."

<sup>28</sup> Triwahyudi and Mujab M., "MAKNA MERARIK DAN NYONGKOLAN BAGI PASANGAN PENGANTIN DI NUSA TENGGARA BARAT."

Merembu Village is a marriage that is carried out not in accordance with the provisions of the applicable laws and regulations. The legal provisions governing marriage procedures that are justified by law are Article 2 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974, namely marriage is valid if it is carried out according to the laws of each religion and belief, and in Article 2 paragraph (2) which states that each marriage is recorded according to applicable laws and regulations. So a marriage must be performed legally according to religious law, it must also be recorded by an authorized official.<sup>29</sup>

For Indonesian Muslims, there are two main requirements that must be conditioned as cumulative conditions that make marriage valid according to positive law, namely: first, marriage must be performed according to Islamic law, and second, every marriage must be recorded. The marriage registration is carried out by VAT in accordance with Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974. Thus, non-fulfillment of any of the provisions in Article 2 causes the marriage to be null or void and can be annulled.<sup>30</sup>

Marriage registration is important. Although administrative, the registration has a major juridical influence on the legal recognition of the existence of the marriage. With the registration of the existence of marriage carried out by the marriage registrar employee and then the issuance of a Marriage Certificate Quotation Book, there has been authentic evidence of the existence of a valid marriage, which is religiously recognized and juridically recognized.<sup>31</sup>

Although according to Islamic law, underage marriages carried out by the Merembu community are valid, but according to the state do not recognize it because they do not have a marriage certificate, so that in the event of divorce, it can only be resolved outside the state legal channels or carried out by deliberation and consensus according to

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<sup>29</sup> Arso Sosroatmodjo dan A. Wait Aulawi, "Hukum Perkawinan Di Indonesia"; Anggraeny, "Keabsahan Perkawinan Hukum Adat Lombok (Merarik) Ditinjau Dari Perspektif Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Hukum Islam (Studi Di Kabupaten Lombok Tengah)."

<sup>30</sup> Arso Sosroatmodjo dan A. Wait Aulawi, "Hukum Perkawinan Di Indonesia"; Anggraeny, "Keabsahan Perkawinan Hukum Adat Lombok (Merarik) Ditinjau Dari Perspektif Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Hukum Islam (Studi Di Kabupaten Lombok Tengah)."

<sup>31</sup> Arso Sosroatmodjo dan A. Wait Aulawi, "Hukum Perkawinan Di Indonesia"; Kementerian Kesehatan RI, "UNDANG-UNDANG PERKAWINAN."

Islamic law. The settlement of marriage lawsuit cases in cases like this can only be resolved through customary law.

As a result of marriage without a marriage certificate against the husband and wife, the wife cannot sue the husband if the husband leaves, the wife does not get alimony if the husband is an employee and dies, the wife does not get marital benefits and husband pension benefits because her name is not recorded in her husband's office, and the wife is not entitled to the husband's income and estate if she dies. The wife is not entitled to joint property in case of divorce. The legal consequences of serial marriage on the husband are nothing to worry about but are beneficial for the husband, namely the husband is free to remarry, because the previous marriage is considered invalid in the eyes of the law and the husband can avoid his obligation to provide for his wife and children.<sup>32</sup>

Legally, wives of marriages that do not have a marriage certificate are considered invalid because the marriage carried out is invalid according to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974. Underage marriage that does not have a marriage certificate is tantamount to betel marriage and according to Article 45 PP No.9 of 1975 is considered an offense and also has no legal force stipulated in Article 6 KHI.<sup>33</sup> For people who perform serial marriages to get legal certainty and protection, they must do itsbat nikah.

Underage marriages in Merembu village, although religiously or religiously considered valid, but marriages performed outside the knowledge and supervision of marriage registration officials do not have permanent legal force and are considered invalid in the eyes of state law.<sup>34</sup> The legal consequences of marriage have a very detrimental impact on wives and women in general, both legally and socially, as well as for the children born. Women are not legally considered legal wives.

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<sup>32</sup> Kementrian Kesehatan RI, "UNDANG-UNDANG PERKAWINAN"; Kabinet Bidang Kesejahteraan Rakyat, "Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Journal Presumption of Law*, 2021.

<sup>33</sup> Jogloabang, "UU 16 Tahun 2019 Tentang Perubahan Atas UU 1 Tahun 1974 Tentang Perkawinan."

<sup>34</sup> A Z Nirmala, *Pelaksanaan Akibat Hukum Perkawinan Menak Dengan Jajar Karang Pada Masyarakat Suku Sasak (Studi Di Desa Rarang, Kecamatan Terara, Lombok Timur)*, *Kumpulan Jurnal Mahasiswa Fakultas ...*, 2015; Yayuk Kusumawati, "CELAH HUKUM TERJADINYA PRAKTIK PERKAWINAN DI BAWAH UMUR DAN TINDAKAN KONDUSIF PERLINDUNGAN HAM," *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum*, 2019, <https://doi.org/10.52266/sangaji.v2i1.262>.

Children born in marriages that are not registered, the certificate they have only includes the name of their mother so that the child's legal relationship is only with the mother and her mother's family, while the civil relationship with her father does not exist.<sup>35</sup> Therefore, a further consequence of unregistered marriages is that neither the wife nor the children born of the marriage, are entitled to claim any support or inheritance from the father. Property acquired in marriage under the hands belongs only to each one who produces it, because there is no property.<sup>36</sup>

The status of children born from serial marriages is invalid, this is in accordance with the provisions of Article 42 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage which states "A legitimate child is a child born in or as a result of a valid marriage".<sup>37</sup> Information in the form of status as an out-of-wedlock child and the absence of the father's name will have a very deep social and psychological impact on the child and his mother. The unclear status of the child according to the law, resulting in the child's relationship with the father is not strong, so that one time the father can deny that the child is his biological child. The child can get his rights, in the form of property or property from his father but not inheritance only in the form of gifts or grants.<sup>38</sup> In civil terms, a father does not have a civil relationship with his child, because he was born out of wedlock in accordance with the law. However, after the Constitutional Court decision No. 46/PUU-VIII/2010 dated February 17, 2012, a legal breakthrough has been made by ruling that Article 43 paragraph (1) of Law No. 16 of 2019 concerning

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<sup>35</sup> Nilawati, Hamuni, and Nerlin, "KAWIN LARI BERSAMA (POFELEI AO) PADA MASYARAKAT ADAT BUTON (STUDI DI KELURAHAN GU TIMUR KECAMATAN LAKUDO KABUPATEN BUTON TENGAH)."

<sup>36</sup> Wahidin, Jenal, Diana Farid, Muhammad Husni Abdulah Pakarti, Iffah Fathiah, dan Kemal Al Kautsar Maburri. 2024. "THE INHERITANCE RIGHTS OF CHILDREN FROM MARRIAGE ARE NOT RECORDED ACCORDING TO THE MARRIAGE LAW AND THE COMPILATION OF ISLAMIC LAW". Mawaddah: Jurnal Hukum Keluarga Islam 2 (1):65-85. <https://doi.org/10.52496/mjhki.v1i2.15>.

<sup>37</sup> Wahidin, Jenal, Diana Farid, Muhammad Husni Abdulah Pakarti, Iffah Fathiah, dan Kemal Al Kautsar Maburri. 2024. "THE INHERITANCE RIGHTS OF CHILDREN FROM MARRIAGE ARE NOT RECORDED ACCORDING TO THE MARRIAGE LAW AND THE COMPILATION OF ISLAMIC LAW". Mawaddah: Jurnal Hukum Keluarga Islam 2 (1):65-85. <https://doi.org/10.52496/mjhki.v1i2.15>.

<sup>38</sup> Burhan Latip, Ahmad Muhajir, Elly Lestari, dan Muhammad Farid Hasan. 2024. "PENYELESAIAN SENGKETA KEWARISAN MELALUI MEDIASI: JALAN TERBAIK MENYELESAIKAN MASALAH". Mawaddah: Jurnal Hukum Keluarga Islam 1 (1):58-67. <https://doi.org/10.52496/mjhki.v1i1.4>.

Amendments to Law No. 1 of 1974 concerning Marriage is contrary to the 1945 Constitution. Because the extramarital child has no relationship with his father. The provisions of the Marriage Law should read "A child born out of wedlock only has a civil relationship with his mother and his mother's family and with a man as his father who can be proven based on science and technology and/or other evidence according to law to have a blood relationship, including a civil relationship with his father's family."

The implications relate to legal status and proving the origin of extramarital children. The relationship with birth certificates is because proving a child's origin can only be done with an authentic birth certificate issued by an authorized official. Problems that arise in the household arising from the consequences of serial marriage, clearly cannot be resolved before the Court because from the results of the marriage they do not have permanent legal force with the existence of a marriage certificate so that the marriage carried out is considered to have never existed.<sup>39</sup>

Marriages performed outside the provisions of the law will not receive recognition and are not protected by law. Acts that do not register a marriage even though the marriage has been carried out according to Islam, are considered not to carry out the marriage in accordance with the conditions of marriage as stipulated in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage.<sup>40</sup>

Although the territorial culture in the Sasak Lombok customary law community is justified, it is not entirely an excuse because in marriage also must pay attention to norms both moral norms, polite norms and religious norms as mentioned by Hans Kelsen in Abdul Gafur Al Anshari that the law consists of norms about how a person should behave, because violation of a norm will have a negative impact on the

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<sup>39</sup> Sakirman Sakirman, "Akibat Hukum Dalam Praktik Nikah Sirri Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Muslim Heritage*, 2017, <https://doi.org/10.21154/muslimheritage.v2i1.1046>; Khoirul Hidayah, "PERSOALAN HUKUM PEREMPUAN REMBANG AKIBAT PRAKTEK NIKAH SIRRI," *De Jure: Jurnal Hukum Dan Syar'iah*, 2011, <https://doi.org/10.18860/j-fsh.v3i1.1322>; Asripa Asripa, "NIKAH SIRRI DALAM PERSPEKTIF ISLAM," *Imtiyaz: Jurnal Ilmu Keislaman*, 2020, <https://doi.org/10.46773/imtiyaz.v4i1.64>.

<sup>40</sup> Sakirman, "Akibat Hukum Dalam Praktik Nikah Sirri Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan"; Jogloabang, "UU 16 Tahun 2019 Tentang Perubahan Atas UU 1 Tahun 1974 Tentang Perkawinan"; Rakyat, "Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

violator at any given time and must also observe the conditions of marriage, otherwise the consequences of such a marriage can be prevented.<sup>41</sup>

Underage marriages carried out in Merembu Village, Labuapi District, West Lombok Regency do not have authentic evidence, namely in the form of marriage certificates officially issued by Marriage Registration Employees (PPN) around their area, so that these marriages have no legal force. Therefore, serial marriage will bring legal consequences for married couples, children born, and property in marriage. Legally wives of marriages that do not have a marriage certificate are considered invalid because the marriage performed is invalid according to the Marriage Law, the husband / wife is also not entitled to inheritance from the husband / wife if he dies and is not entitled to joint property, gono gini property in the event of divorce, because legally their marriage is considered never to have occurred and vice versa.

The provisions of Article 2 paragraph (1) of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage explain that "Marriage is valid if it is carried out according to the laws of each religion and belief". The provision describes the principle of Indonesian marriage based on Pancasila, which can be seen from the explanation of Article 2 paragraph (1) of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage that a marriage carried out according to their respective religions is the main principle of a valid marriage. Article 2 paragraph (2) of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage states "every marriage shall be recorded according to applicable laws and regulations". The validity of a marriage according to Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage is based on the laws of their respective religions and beliefs, so that since the enactment of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, the marriage ceremony according to religious law is decisive about the validity or not of the marriage. Based on the general explanation of Law No. 16 of 2019 concerning

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<sup>41</sup> Abdul Gafur, Siti Mutholingah, and Misbahul Munir, "MEMBANGUN SIKAP TOLERAN DAN DEMOKRATIS MELALUI PENDIDIKAN AGAMA ISLAM," *Journal TA'LIMUNA*, 2021, <https://doi.org/10.32478/talimuna.v10i2.798>; Jamaluddin Jamaluddin, "ABDUL GAFUR: KETERLIBATAN ULAMA SASAK DALAM JARINGAN ULAMA (1754-1904)," *Al-Qalam*, 2016, <https://doi.org/10.31969/alq.v22i1.307>.

Amendments to Law No. 1 of 1974 concerning Marriage, regarding marriage registration, birth registration, death registration is an important event not a legal event. Marriage registration in a certificate is a marriage certificate. A marriage certificate is proof of marriage and is a perfect proof of marriage.

In the explanation of Article 2 paragraphs (1) and (2) of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, it has clearly stated the requirements for the validity of a marriage. In practice, in society there are also people who only perform marriages in their religious way and are not registered. In addition, there are also those who only register their marriages without performing religious ceremonies. This action is clearly contrary to the laws and regulations and principles or principles of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, namely:

- 1) Marriage aims to create a happy and lasting family.
- 2) Marriage is valid when it is performed according to the laws of his religion and beliefs.
- 3) Marriage should be recorded according to the law.
- 4) Marriage is based on open monogamy.
- 5) The prospective husband and wife must unite between their bodies and souls to carry out the marriage
- 6) The age limit for marriage is 19 years.
- 7) Divorce is complicated and must be done before a court hearing
- 8) The rights and position of the husband and wife are balanced

The problem of marriage is a sacred act that has a close relationship with religion/spirituality. Marriage has not only an outward/jasmani element but also a spiritual element that has an important role. This is in accordance with Law No. 16 of 2019 on Changes to Law No 1 of 1974 on Marriage "Not only as a data bond but also a religious alliance".

## CONCLUSION

Based on the results of the study, researchers concluded that the process of settling underage marriages in the Merariq culture of the Sasak Tribe in Merembu Village, Labuapi District, West Lombok Regency by negotiation or negotiation process between the bride and groom's two families. If in the Mediation process there is no meeting point or an agreement is reached, it will proceed to the second settlement process, namely Mediation involving Village Heads, Religious Leaders

and Local Community Leaders as third parties or Mediators. The next one will be decided by the Village Head. Meanwhile, the legal consequences of Underage Marriage in the Merariq Culture of the Sasak Tribe in Merembu Village, Labuapi District, West Lombok Regency, have an impact on the status of marriage, husband and wife, children and property, namely marriages that are not registered do not receive state recognition. The wife does not get her rights if the husband abandons, divorces or the husband dies. The legal impact on the child from the marriage is that the child's legal relationship is only with the mother and the mother's family, while the civil relationship with the father does not exist. Therefore, a further consequence of unregistered marriages is that neither the wife nor the children born of the marriage, are entitled to claim any subsistence or inheritance from the father. Property acquired in marriage under the hands belongs only to each one who produces it, because there is no joint property.

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# Mawaddah

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## **The Legal Consequences Of Underage Marriage In The Merariq Culture Of The Sasak Tribe In Merembu Village, Labuapi District, West Lombok Regency**

Ruslan Haerani



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