



Prevention of Marriage: Legal Parameters and Guardianship Rights in Islamic Law

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Abstract

Prevention of marriage Prevention of marriage is an attempt to cancel a marriage before its implementation. Prevention of marriage can occur if the prospective husband or prospective wife who wants to get married does not fulfill the conditions regulated by Islamic law in accordance with Article 13 of Law (UU) Number 1 of 1974. In fiqh literature, prevention of marriage is often referred to as *l'tiradlun*, which refers to intervention, refusal, or preventive action. In particular, this relates to *kafa'ah* and dowry. Girls and guardians have equal rights with regard to *kafa'ah* and dowry. Some scholars, such as the Hanafis and Shi'a, allow adult women to marry themselves, but prevention of marriage can still be requested by the rightful guardian based on *kafa'ah*. If there is disagreement between the guardian and the child regarding *kafa'ah* and dowry, both have the right to prevent the marriage.

Keywords: Marriage, Analysis, Prevention, Law

Abstrak

Pencegahan Perkawinan Pencegahan perkawinan merupakan upaya untuk membatalkan perkawinan sebelum pelaksanaannya. Pencegahan perkawinan dapat terjadi jika calon suami atau calon isteri yang hendak menikah tidak memenuhi syarat-syarat yang diatur oleh hukum Islam sesuai dengan Pasal 13 Undang-undang (UU) Nomor 1 tahun 1974. Dalam literatur fikih, pencegahan perkawinan sering disebut sebagai *l'tiradlun*, yang merujuk pada intervensi, penolakan, atau tindakan pencegahan. Terutama, hal ini berkaitan dengan *kafa'ah* dan mahar. Anak perempuan dan wali memiliki hak yang setara terkait dengan *kafa'ah* dan mahar. Beberapa ulama, seperti dalam kalangan Hanafiyah dan Syi'ah, memperbolehkan perempuan dewasa untuk mengawinkan diri mereka sendiri, tetapi pencegahan perkawinan masih dapat diajukan oleh wali yang berhak berdasarkan *kafa'ah*. Jika terjadi ketidaksepakatan antara wali dan anak terkait *kafa'ah* dan mahar, keduanya memiliki hak untuk melakukan pencegahan perkawinan.

Kata Kunci: Perkawinan, Analisis, Pencegahan, Hukum

A. Introduction

Marriage is a sacred bond that unites two individuals, is blessed by the *Divine Rabbi*, and is often considered as something sacred because of its goal of forming a family that is *sakinah, mawaddah wa rahmah*. However, today, we often encounter situations of divorce, where *marriage* is sometimes considered only as a means to have fun or play around.

Typical cases, especially among celebrities, show a trend of marrying, divorcing, and easily entering into new *marriages*, making the first marriage seemingly obsolete. To prevent such cases, the government developed a law that regulates divorce, including mediation efforts to annul divorce decrees. The 1974 marriage law not only addresses divorces that can be annulled, but also addresses the issue of divorces that must be done, as well as regulating the procedures for annulment of marriages.¹

In addition, Law No. 1 of 1974 discusses Islamic marriage law, which, although similar, has certain differences. For ease of understanding, we will explain a little about Islamic marriage law and its related aspects.

B. Problem Formulation

1. What is marriage prevention?
2. What factors can invalidate a *marriage*?
3. What are the rights and obligations of husbands and wives?
4. How is child rearing from an Islamic perspective?
5. What factors can cause marriage breakdown?

C. Research Methods

The analysis in this research is carried out using a qualitative approach, where the method of analysis used is interpretative. This method involves

¹Zainuddin Ali, *Islamic Civil Law in Indonesia*, (Jakarta: Sinar Grafika, 2007) Cet. 2, p. 33

interpretation or interpretation of legal material that has been processed. The interpretative approach is used with the aim of analyzing the law, especially primary legal materials, in order to identify the emptiness of legal norms, antinomy of legal norms, and ambiguous legal norms.

D. Research Results

1. Prevention of Marriage

Prevention of marriage is an attempt to cancel a *marriage* before its implementation. Prevention of marriage can occur if the prospective husband or prospective wife who wants to get married does not fulfill the conditions regulated by Islamic law in accordance with Article 13 of Law (UU) Number 1 of 1974. In fiqh literature, prevention of marriage is often referred to as *l'tirادلun*, which refers to intervention, refusal, or preventive action. In particular, this relates to *kafa'ah* and dowry. Girls and guardians have equal rights with regard to *kafa'ah* and dowry.

Some scholars, such as the Hanafis and Shi'a, allow adult women to marry themselves, but prevention of marriage can still be requested by the rightful guardian on the basis of *kafa'ah*. If there is disagreement between the guardian and the child regarding *kafa'ah* and dowry, both have the right to prevent the marriage. However, if these differences cannot be resolved, a third party, the judge, must be involved.²

In the Compilation of Islamic Law, there are matters that regulate the prevention of marriage. The prevention of marriage in question is as stated in article 60:

- a. Prevention of marriage aims to avoid a marriage that is prohibited by Islamic law and legislation.
- b. Prevention of marriage can be carried out if the prospective husband or prospective wife who will enter into marriage does not fulfill the requirements for marriage according to Islamic law and laws and regulations.

2. Nullity of marriage

²Amir Syarifuddin, *Islamic Marriage Law in Indonesia (Between Fiqh Munakahat and Marriage Law)*, (Jakarta: Kencana Prenada Media Group, 2009), Cet. 3rd, p. 150

Article 22 of Law No. 1/1974 on *Marriage* states that a *marriage* can be annulled if the parties do not fulfill the conditions necessary to enter into a *marriage*. In addition, Article 24 of the same Law also stipulates that a person who is still bound in a previous marriage can apply for the annulment of a new marriage, while taking into account the provisions contained in Article 1 paragraph (2) and Article 4 of the Law. This statement illustrates the strong legal basis for *marriage* annulment in the Marriage Law in force in Indonesia, namely Law Number 1 of 1974 concerning Marriage.

According to the Compilation of Islamic Law in Article 70 a *marriage* is declared void (null and void) if:³

- a. The husband enters into a *marriage* contract when he is not entitled to do so because he already has four wives, even if one of them is still in a *raj'i* divorce.
- b. A man marries his ex-wife whom *he* has divorced.
- c. A person may marry his ex-wife whom he has divorced three times, unless she has been married to another man and then divorced from him and her 'iddah has expired.
- d. *Marriage* is entered into between two persons who are related by blood, consanguinity and consanguinity to a certain degree which precludes *marriage* according to Article 8 of Law Number 1 of 1974, namely:⁴
- e. Blood related in a straight line down and up.
- f. Blood relations in the straight line of lateral descent are between siblings, between a person and his parents' siblings and between a person and his grandmother's siblings.
- g. Related by marriage are in-laws, stepchildren, daughters-in-law, mothers and stepfathers.
- h. Related by consanguinity are parents of consanguinity, children of consanguinity and aunts or uncles of consanguinity.
- i. The wife is the sibling or is the aunt or niece of the wife or wives.

According to Article 70 of the Compilation of Islamic Law, marriages that can be annulled are:

- a. A husband commits polygamy without the permission of the Religious Court.

³Asnawi Asnawi, "*Nikah Cancellation and Its Legal Effects (Analysis of Islamic Law Perspectives and Legislation)*", Journal of Al-Fikrah Vol 9 No 2 Year 2020, p. 119. 119

⁴

- b. The woman who was married was later found to still be the wife of a man who was *mafqud*.
- c. The married woman is still in the *iddah* of another husband.
- d. *Marriages* that violate the age limit for *marriage*, as stipulated in Article 7 of Law Number 1 Year 1974.
- e. *Marriages* performed without a guardian or performed by an unauthorized guardian.
- f. *Marriages* that are entered into under duress.

3. Rights and Obligations of Husband and Wife

Specifically, the legal effects arising from legal marriage can be illustrated by the example of underage *marriage*, where the age limit set is 19 years old for both men and women. Individuals who have not met the age limit are considered legally incapable. This incapacity will automatically disappear and be considered capable after the occurrence of marriage. In other words, the rights and obligations as husband and wife are legally attached after the marriage process. These rights and obligations are regulated in the Civil Code (KUH Perdata) articles 103-107 which state that "husband and wife shall be faithful to each other, help each other, and assist each other." They have a shared responsibility to look after, protect and educate their children.⁵

According to the Marriage Law (UUP), husbands and wives are required to have a house as a permanent residence determined jointly (article 32), so that their domestic life is based on mutual love, respect and assistance (article 33). The use of joint property is also determined with the consent of both, while with regard to each other's property, the husband or wife has the full right to use it (article 36 number 1).

These provisions show differences with the Civil Code. Article 124 of the Civil Code states that the husband has the authority to manage marital property, including selling, transferring or mortgaging it without the involvement of the wife. In contrast, due to the differences in nature between men and women and

⁵Sifa Mulya Nurani, "The *Relationship of Rights and Obligations of Husband and Wife in the Perspective of Islamic Law*", *Journal of Al-Syakhsyiyah* Vol 3 No 1 Year 2021, p. 104

their roles and positions in marriage, the law distinguishes the status between husbands and wives.

Article 105 paragraph 1 of the Civil Code stipulates that the husband is the head of the marriage, while Article 31 paragraph 3 of the Marriage Law (UUP) states that "the husband is the head of the household and the wife is the housewife." With this status, the husband has the responsibility to protect his wife and provide all the necessities of life in the household according to his ability. On the other hand, the wife has an obligation, as stipulated in Article 107 of the Civil Code and Article 34 of the UUP, to manage household affairs as well as possible.

4. Child rearing

Basically, Islam entrusts parents with the responsibility of caring for, nurturing and educating children. From an Islamic perspective, parents also have the responsibility to supervise, protect, and provide appropriate and adequate services to meet the needs of the child. This responsibility is permanent and continues until the child reaches the legal age that allows him or her to fulfill his or her own needs.

Parents are required to teach the principles of monotheism, gratitude, filial piety, interacting well with others, realizing that every human action will be rewarded by Allah, performing prayers, encouraging good, rejecting evil, being patient, not being arrogant or haughty, and maintaining simplicity in speech and attitude. In addition, parents need to provide skills to their children, and if they are unable to provide them directly, parents are expected to try to get their children to receive education from other parties.

According to Rohidin, to fulfill the rights of children from parents in the family, both must be equally responsible, work together, and help each other. In a divorce situation, if that happens, custody of the child is given to the mother or the mother's relatives, while financial obligations are the responsibility of the

father. If the father is unable to fulfill them, the mother can participate in bearing the cost of child maintenance through a court order.⁶

5. Causes of marriage breakdown

A number of factors lead to the dissolution of the marriage bond in Islamic law, including death, whether of the husband or the wife, which brings the *marriage to an end* from the moment of death, provided there are no *shar'i* obstacles. In the case of death, the surviving wife or husband is entitled to a share of the deceased's estate.

In Islamic Law, divorce indicates that the husband has the right to grant divorce, taking into consideration that men are naturally more inclined to consider whether it is better to separate or stay with their wives.⁷

Fasakh, which means annulment or destruction, can also cause the breakdown of a marriage. *Fasakh* can occur for various reasons, such as discovering that the woman is still *married* to someone else or is in the *iddah* period of a divorce from another man, so their marriage is considered void because it does not fulfill the valid conditions of marriage.

Divorce can also occur through *lian*, which is an oath that includes a declaration of willingness to accept God's curse. This occurs when the husband accuses the wife of adultery without having concrete evidence of the act.

Finally, disobedience to the obligations of marital life, called *Nusyuz*, can cause the *marriage to break down*. *Nusyuz* on the part of the wife can occur if she neglects her obligations such as leaving the house without her husband's permission or refusing to live with her husband. If *Nusyuz* occurs on the part of the husband, advice should be given so that the husband returns to fulfilling his obligations towards his wife.

E. Cover

⁶Rohidin, "*Child Maintenance in the Perspective of Fiqh and Positive Law*", Journal of Law Vol. 12 No. 29 (May 2005), p. 97

⁷Choirunnisa Nur Novitasari, "*Analysis of Islamic Law on the Factors of Marriage Breakup*", Journal of Family Law and Islamic Law Vol. 3 No. 2 (July - December 2019), p. 331. 331

A common case, especially among celebrities, shows the trend of getting divorced and easily entering into a new marriage, making the first marriage seem to be without a trace. To prevent such cases the government developed a Law (UU) that regulates divorce including mediation efforts to annul the divorce decree. The 1974 marriage law not only addresses divorce that can be annulled but also addresses the issue of divorce that must be done as well as regulating the procedure for annulment of marriage. In addition, Law No. 1 of 1974 discusses Islamic marriage law which, although almost similar, has certain differences. To facilitate understanding, we will explain a little about Islamic marriage law and its related aspects.

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