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Legality of Marriage from the perspective of Fazlur Rahman's Double Movement Theory

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ABSTRACT Underhand marriage has become an open secret and causes harm. In its development, marriages that only meet the legal requirements of religion without considering the progress of the times related to the regulations of the Indonesian State in the 1974 Marriage Law result in the loss of benefits in marriage, including not having the legality to become legal evidence that is recognized to obtain legal protection related to rights. rights as a result of the law of marriage, such as a living and a place to live for the wife/children, *hadhanah* (childcare rights), inheritance, and others. The results of this study can be explained as follows, firstly, the legality of marriage in the era of the Prophet Muhammad SAW by holding a reception at least slaughtering one goat, there is also announcing it, carrying it out in mosques, and beating the tambourine, and there is also in the hadith of the Prophet the legality of marriage can be realized by there is a guardian and two witnesses. In classical fiqh, marriage is valid when it meets the requirements and is in harmony. Second, regarding the legality of marriage with a review of Fazlur Rahman's Double Movement, it can be seen that there are two movements, the first movement looks at the historical context of what was practiced by the Prophet as well as in classical Fiqh literature. The second movement is by looking at the current context while maintaining the legality of marriage during the Prophet's time and by the classical Fiqh books with additional legality that is by today's era, namely by being registered so that it has legal force. The movements one and two described here contain the benefits.

KEYWORDS Marriage, Legality, Double Movement and Fazlur Rahman

INTRODUCTION

The current era of development has a lot of impact on all the needs of society, including Muslims. This has the potential to have an impact on the development of law, including Islamic Law. On the other hand, the potential of Islamic Law to keep up with the times is challenged by the fact that it has limited sources consisting only of core texts.

In Islam, *Istinbath Al-ahkam* (henceforth referred to as "extracting the

law") is a very important component, as extracting the law is the door to updating the law therein. Due to the limited nature of the text of the Al-Quran and As-Sunnah, a new paradigm is needed to understand the contents of the Al-Quran and As-Sunnah. Because of this need, many Islamic thinkers were born who tried to explore the hidden meanings of a redaction of the verses of the Koran, so that limited Islamic Law could be applied and implemented by the times (Annas Rolli, tt).

Fazlur Rahman is one of the Islamic thinkers in this modern era, who is famous for his contextual approach to the Quran. This will then be a solution for the renewal of Islamic Law (Annas Rolli, tt). The advantage of the method used by him is that it is quite critical, logical, and comprehensive, by providing a systematic and contextualist understanding, thus giving rise to interpretations that are not atomistic, literalist, and textualist, but contextual interpretations based on contemporary issues.

However, the Al-Quran as a reference for Islamic Law does not provide laws related to marriage registration, this gives a view that the Al-Quran allows marriage without a record, but this results in things that are not by the objectives of the Sharia. So several Muslim thinkers with their Fiqh provide opinions regarding this phenomenon. because basically what is not regulated in the Al-Quran, the Fiqh view will be used as a reference. Meanwhile, in the hadith narrated by Tirmidzi, it states:

أَعْلِنُوا هَذَا النِّكَاحَ وَاجْعَلُوهُ فِي الْمَسَاجِدِ وَأَضْرِبُوهُ عَلَيْهِ بِالْذُّفُوفِ

Meaning: "*Announce this marriage, make its place in the mosque and beat on it the duff (tambourines) (H.R At Tirmidzi No. 1089)*"

This explains the implementation of the legality of marriage by having to be announced so that it can be known by many people. This raises the conception of an effort to increase legality from what in ancient times was only announced and by fulfilling the terms and conditions of marriage, so nowadays the fulfillment of legality with the registration of marriage, the issue of marriage registration in this modern era has taken the forefront, because it is related to important practical issues relating to the nasab / origin of children, inheritance, and maintenance. With this administrative curbing effort, it brings convenience to marriage registration, because it is impossible for people not to understand the benefits of it (Agustina, 2011).

The importance of marriage registration is because it is filled with benefits (Agustina, 2011). In Indonesia,

marriage is regulated through Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the "Marriage Law"). Article 1 of the Marriage Law states: "Marriage is a physical and mental bond between a man and a woman as husband and wife to form a happy and lasting family based on the Almighty God."

On the other hand, the Compilation of Islamic Law enacted through Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (hereinafter referred to as "KHI") in Article 2 of KHI states that (Ali Wafa, tt) "Marriage according to Islamic Law is marriage, which is a very strong contract as a form of obedience to Allah SWT and as a manifestation or embodiment of a form of worship to Him." Along with the times, Indonesia as a state of law, regulates marriage registration, as found in the 1974 Law on Marriage No. 1 article 2 paragraph 2 which reads as follows "Every marriage is recorded according to the applicable laws and regulations." Because it is considered that marriage is a strong bond that needs to be recorded, the presence of the marriage law cannot then eliminate marriages that are not recorded by an authorized institution (hereinafter referred to as "Kawin Siri").

In practice, Kawin Siri is certainly contrary to the spirit of Sharia, because it eliminates some of the objectives of Sharia, such as clarity of status in positive law for the protection of women, as well as human benefit, which illustrates the urgency of registration as the legality of marriage which is also by the spirit of sharia, and in line with "Maqashid Asy-Syariah". However, in reality, there are still many Muslim communities who deliberately do not register their marriages at the Office of Religious Affairs (hereinafter referred to as "KUA"). This is what must then be emphasized marriage registration must be made mandatory, not just an administrative complement.

As explained above, this problem then attracts the author to study it using the theory of the contextual approach of Fazlur Rahman, as a medium of learning for the author and understanding to the public

regarding how Fazlur Rahman's Double Movement theory accommodates the law of marriage registration as legality, so that people will understand more about Fiqh laws in the contemporary era today.

METHODS

As the title above suggests, the paradigm built in this research uses a qualitative approach, a qualitative approach is a research process based on a methodology that investigates social phenomena and the problems that occur in them (Guidelines for the Implementation of Duties and Administration of Religious Courts, tt).

The character of this qualitative research is the existence of one very significant thing, namely the disclosure of meaning in the data collection process in this writing using the data collection method "library research". Which relies on literature sources, the author uses this method by reading and examining books and journals related to the theme that the author examines. The nature of this research is descriptive-analytical (Restu Kartiko Widi, 2010), or it can also be called normative legal research with an Islamic legal perspective frame. In this case, the author uses this method to examine the conceptualization of marriage registration from the perspective of Double Movement Theory.

The approach used in this research is a socio-historical approach and a contextual approach, Rahman argues that socio-history is the initial stage that will be used for the application of his methodology, by looking back at the background of the revelation of the verse related to the problem of discussion, which will then be contextualized with the state of society at that time. The contextual approach refers to the context dimension (not bound by time, region, or situation) which does not only rely on textual meaning (Lahiriyah) alone but also involves the contextual dimension mentioned above as well as the subjectivity of the mufassir.

RESULT

Marriage and the Legality of Marriage

According to Fiqh scholars, several terms are put forward to define the meaning of marriage, as stated by Imam Shafi'i that marriage is "a contract that contains the permissibility of having husband and wife relations with the memorization of nikah/marriage or something similar to that."

On the other hand, scholars from the Hanfi madzhab argue that marriage is "a contract that makes it permissible to have husband and wife relations between a man and a woman as long as there are no shara obstacles", Akad as a manifestation of mitsaqan ghalizan means that marriage is not just a civil agreement, but also a form of obeying the commands of Allah SWT and his Messenger (Irfan Islami, tt), as in His words contained in QS. An-Nahl:

Meaning: "And Allah made for you partners (husband or wife) of your kind and made children and grandchildren for you from your partners, and gave you sustenance from good. Why do they believe in what is false and deny the blessings of Allah?"

Given that humans are social creatures, marriage is obligatory (for those who are able) to undergo, because humans as social creatures certainly cannot live alone, so marriage is a means available to continue offspring in line with the principles of religion and the State. As stated in Article 1 of the Marriage Law is as follows: "Marriage is a physical and mental bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the Almighty God."

From the view of the Islamic community, marriage is one thing that becomes a basic principle in life, as a noble act in building a household. Marriage, which is a noble act, is intended as a means to establish a physical and mental bond that is eternal, based on this intention, a Sakinah, Mawaddah, Warhamah household must then be established. Which is by what is mentioned in the marriage law above.

Still related to the Marriage Law, since the issuance of the Marriage Law in 1974, the validity of a marriage is according to religious law, and each belief determines the validity of the marriage according to the Marriage Law itself so that if the marriage is according to religion and each belief cannot be fulfilled, it will result in the invalidity of the marriage according to the Marriage Law.

According to Islamic Law, a marriage can be said to be valid if it fulfills the conditions and pillars of marriage, where the pillar is an instrument that determines the validity of an act of worship, and is an integral part (not separate) of the act of worship itself. Like ablution which is part of prayer, as well as the recitation of surah Al Fatihah in the implementation of prayers, or the existence of a male candidate in a marriage, things like that must be fulfilled as pillars of an act of worship. Meanwhile, a condition is something that determines the validity of worship but is not included in the series of worship itself.

The conditions and pillars are as follows: Prospective bridegroom: Muslim, Male, Clear person, Can give consent and There are no obstacles to marriage. Prospective bride: Muslim, Female, Clear person, Can be asked for consent and There are no obstacles to marriage. Marriage guardian: Male, Adult, Has the right to be a guardian and There does not impede a guardian. Nikah Witnesses: At least 2 men, present at the Ijab Qabul, able to understand the purpose of the contract, Muslim and adult. Ijab Qabul: There is a statement from the guardian to marry, and there is a statement of acceptance from the prospective bride, Using the words marriage, Tazwij, or a translation of these words, Between ijab and qabul are connected, Between hijab and qabul the intention is clear, The person related to ijab and qabul is not in ihram or hajj and the ijab and qabul Assembly must be attended by at least 4 people, namely the bridegroom, guardian of the bride, and two witnesses.

According to the scholars, in addition to the conditions mentioned above, there is a dowry as a condition for the validity of

marriage, this is based on the Al-Quran, Surah An-Nisa verse which reads as follows:

Meaning: "Give the dowry to the woman (whom you marry) as a gift with full willingness. Then if they give you part of the dowry gladly, then eat (take) the gift (as food) that is pleasant and of good consequence."

Marriage registration is a mechanism implemented in several countries, including Indonesia. where every marriage is required to be registered at a recording institution, which will then produce a deed to be used as a requirement in managing various administrative interests, especially for Muslims, namely at the KUA, this is because Marriage Registration is a principle in the Marriage Law. as contained in the 1974 Law on Marriage in article 2 paragraph 2 as follows "Every marriage is recorded according to the applicable laws and regulations."

Then it is also contained in KHI (Compilation of Islamic Law) as an implementing regulation that regulates marriage registration, as found in Book I, Chapter II, in articles 5-7 which reads as follows "To ensure the orderliness of marriage for the Islamic community, every marriage must be recorded."

The order in state administration makes marriage registration one of the important conditions for achieving administrative order, one of which is to provide a guarantee of certainty in positive law to obtain legal protection, including against the consequences that arise later from the marriage.

Quoted from Maria Farida Indrati's opinion that:

"Marriage registration is needed as an instrument of protection from the state against the parties to a marriage, as well as to avoid inconsistencies in the implementation of religion and belief as a whole in marriages that are held according to their respective religions as stated in the Marriage Law Article 1 paragraph 2, and/or to avoid partial application of religious teachings in legitimizing marriage".

In addition to the above, the essential value of marriage registration is for the protection of women and children, marriage registration is placed as one of the administrative requirements which occupies 2 main functions, namely Preventing and Protecting.

The above is concerned with preventing and/or protecting women and children in marriages that are not by the purpose of marriage (irresponsible) and avoiding the misuse of marriage so as not to cause potential and/or harm to interested parties (Constitutional Court Decision Number: Number 46/Puu-Viii/2010).

Fazlur Rahman's Biography and Double Movement Theory

Fazlur Rahman is a Muslim intellectual who was born in the region before the division of Hindustan which is currently part of Pakistan, Fazlur Rahman was born on September 21, 1919, and died on July 26, 1988, in Chicago, Illinois. In his childhood, he was educated under the care of his father, besides that Fazlur Rahman also entered a modern school in Lahore which was the place where his ancestors lived.

After completing his schooling, he continued his studies at the Department of Orientalism at Punjab University in the field of Arabic literature, as well as continuing his doctoral studies at the same University, then because of his awareness of the lack of Islamic education in India, he decided to continue his doctoral studies at Oxford University.

It was at Oxford University that Falur Rahman completed his dissertation under the supervision of Professor Simon Van Den Bergh with the title Psychology of Ibn Sina, which is also a translation, criticism, and commentary on parts of the book An-Najit belonging to the oldest Muslim philosopher in the 7th century (Rudy Irawfan, 2020).

After completing his studies, Rahman did not immediately return to his country, but stayed temporarily there, at that time from 1950 to 1958 he joined Durham University as

a teacher of Persian and Islamic Philosophy, then moved to the Institute of Islamic Studies, McGill University in Canada, and served as Associate Professor of Philosophy until early 1960. Only then after 3 years there, Rahman finally returned to Pakistan at the request of President Ayyub Khan to jointly develop his home country (Budi Harianto, 2016).

In Pakistan, Fazlur Rahman served as head of the Islamic Research Institute and became a member of the Advisory Council of Islamic Ideology. His thoughts he got from the West caused controversy at that time, so in the end, there were various rejections related to his thoughts, precisely in 1968 A wave of demonstrations and total strikes occurred in various regions in Pakistan, which then made Fazlur Rahman resign from his position as head of the Islamic Research Institute.

Fazlur Rahman is one of the Islamic thinkers who has high intellectual value and contributes a lot to society from time to time in various scientific forms. Double Movement Theory in his thought is an effort made to explore the sociological background including institutions as mentioned above, as well as the important role of the Quraysh tribe as an influential group and as a tribe where the Prophet and religio-economic influence on the Arabs, because without it all understanding of the verses of the Koran cannot be cohesive and comprehensive. Thus it can be understood that the interpretation in its methodology is based on a historical approach.

This must be done to understand the purpose of the Quran. According to him, it is very important to understand the conditions of Arabia in pre-Islamic times, customs, economics, as well as politics and other institutions which he calls "Sya'n al-nuzul" so that the universal message of the Quranic Ideas will be conceptualized with the present. This then made some thinkers call Rahman a pioneer of the approach with contextual interpretation.

His thoughts are then widely documented in books that interpret his thoughts about revelation and the journey of the Prophet Muhammad SAW, as well as what

the Quran is and all forms of Islamic teachings. His most famous works are as follows:

- a. *Prophecy in Islam: Philosophy and Orthodoxy* (London: George Allen & Unwin, 1958)

This book was written by Fazlur Rahman because at that time many scholars paid little attention to the position of the prophetic doctrine. So Fazlur Rahman made the book to concentrate on the study of these problems, by adopting the views of Muslim philosophers such as Ibn Sina and al-Farabi regarding the doctrine of intellect, the psychological process of technical or imaginative revelation (Akhyar Zailani, 2008).

- b. *The philosophy of Mulla Shadra* (Albany: University of New York Press, 1975)

The book contains the religio-philosophical thought of Shadra al-Din al-Syirazi, with a more critical presentation by relying on his work, namely al-Asfar al-Arba'ah (Fazlur Rahman, 1975).

- c. *Islam* (Chicago: the university of Chicago press, 1979)

This book is an introduction to Islam, but it is different from other introductory books because to understand this book it is sufficient to understand the basics of Islam. The striking difference between this book is the interpretation of the normative side in it so that it can be equated with books by Western scholars (Fazlur Rahman, 1979).

- d. *Major themes of al-Qur'an* (Minneapolis: Bible Lotheca Islamica, 1980)

This book explains thematic studies with some of the main themes of the Quran systematically, namely God, man and the universe, revelation and eschatology, Satan and evil, and the birth of the conception of Muslim Society (Fazlur Rahman, 1980).

- e. *Islam and modernity Transformation of an Intellectual Tradition* (Chicago: Chicago University Press, 1982)

This work is a project of research conducted in Chicago with the theme of Islam and Social Change, where Fazlur Rahman is the leader of the project, a little description of

the background of the research is because at that time the Islamic world was experiencing a crisis that was feared to have an impact on the development of Islam in the future (Fazlur Rahman, 1982).

The legality of Classical Era Marriages

The organization of marriage during the time of the Prophet Muhammad SAW took place as it is carried out today, but there was no recording instrument to accommodate a marriage. In ancient times, at the beginning of the revelation of Islam, marriages usually only took place in one region, where the two prospective brides were still in the same region, making evidence in marriage (other than witnesses) not needed.

In classical fiqh literature, there is no explicit discussion of marriage registration, but in the tradition of communities such as the Hijaz region, a feast with animal slaughter is sufficient to announce the legality of marriage. This confirms that there is a tradition of tasyakuran in Arabia and also in Java carried out so that the community knows and is witnessed by many people to avoid marrying sirri. In the hadith of the prophet, it is explained that "marriage is not valid except with a guardian and 2 witnesses", (HR. Ibn Hibban). The existence of the walimah / Walimat al-'urusy tradition (even if only with one goat) which at that time was used as legality or testimony in a marriage.

In ancient times at the beginning of the revelation of Islam, marriages usually only took place in one region, where the two prospective brides were still in the same region, making evidence in marriage (other than witnesses) not needed. The foregoing makes the ancient times marriage was considered valid if it fulfilled the Terms and Conditions of Marriage.

Shafi'iyah scholars state: that the pillars of marriage are all things that must be realized in a marriage, not just the marriage contract itself. Thus, there are 5 pillars of marriage, namely: marriage contract, male candidate, female candidate, guardian, and witness. Or it can be said 4 by making the

prospective husband and wife into 1 pillar only. This is as explained in the book Raudah Al-Thalibin Wa 'Umdah Al-Muftin, which is quoted by Muhammad Solikhudin in the book Tafsir of Family Law (Muhammad Solikhudin, 2022).

The Legality of Marriage from the Perspective of Double Movement Theory

The process of organizing marriage from Fazlur Rahman's point of view uses a contextual point of view, where there is an urgency that emphasizes that marriage is guarded by a written record. Along with the development of the era, marriage registration is needed as an instrument of protection from the state against the parties to a marriage, as well as to avoid inconsistencies from the implementation of religion and belief as a whole against marriages that are held according to their respective religions.

In addition to the above, the essential value of marriage registration is for the protection of women and children. Marriage registration is placed as one of the administrative requirements that occupy 2 main functions, namely Preventing and Protecting. The above is concerned with preventing and/or protecting women and children in marriages that are not by the purpose of marriage (irresponsible) and avoiding the misuse of marriage so as not to cause potential and/or harm to interested parties. So with this urgency, legal reform is needed where marriage registration is one thing that must be done in this day and age because as follows

1. Relevance to the times

As times develop, the progress of the human mindset creates various social dynamics that must be met by legal needs. The transition of oral culture (humans) with its replacement with culture or writing (records) is a form of the characteristics of today's society.

This is because humans have a period, where there are times when their testimony cannot be relied upon. Because they forget, disappear or even die. Making the loss of information that should be used as evidence. Therefore, the development of the times

requires that this habit be replaced with records/bookkeeping, this is because recording/bookkeeping has a longer durability, it cannot be lost, forgotten, or die, unless it is caused by someone's actions.

About Family Law, this has an impact on efforts to replace living witnesses of a marriage with a marriage record.

This then initiated the administrative requirements for marriage in Indonesia, as contained in the 1974 Marriage Law article 2 paragraph 2 which states that "Every marriage is recorded according to the applicable laws". So people who carry out marriage are required to register their marriage to get protection from the state.

In connection with the times, that recording is a form of interpretation of the progress of the times to accommodate the public interest. Marriage registration is present to fill the lack of human effectiveness as a witness in marriage. Another thing that is still related is as a sign that the marriage is legally recorded and recognized by the State. Recognition from a state is an important function for marriage, to have access to protect the parties to the marriage.

The importance of protection from a state is because there are mudharat in an unrecorded marriage, this is considering the vulnerability of a woman and her child to be abandoned by a husband, which in this written age when the marriage is not recorded, will cause mudharat because of the loss of the benefits of marriage registration, namely:

Being valid and legally authentic evidence that there has been a marriage between a man and a woman, so it can be used as a basis for processing files to take care of population administration interests, such as KTP, KK, and childbirth certificates. 1- Being valid and authentic evidence to litigate in court when a dispute occurs. 2- Being recognized legal evidence to obtain legal protection related to rights as a legal consequence of marriage, such as maintenance and residence of wife/child, hadhanah (child maintenance rights), inheritance, and others. 3- The loss of clarity of lineage, which in this case is contrary to the

objective of Maqasid Al-Syariah, namely hidden nasal, confusing lineage.

The mudharat caused by not recording a marriage is contrary to the principle of Maqasid sharia, there are secondary objectives that must be met. Where the secondary goal seeks to provide human protection from distress.

2. Kemalahatan in marriage registration

The end of the discussion boils down to the goal of achieving Kemalah, by attracting benefits and/or eliminating harms (which are the objectives of shara'), this is to ensure that the objectives of shari'a are maintained by the principles of Maqasid Sharia. With the purpose of shara' which.

The Concept of Beneficence as a Universal Moral Ideal in the Legality of Marriage

The legality of marriage in the past and present has experienced dynamics. The universal moral ideal/core message of the two movements, both the classical era and now regarding the legality of marriage is benefit/*purpose*. So it can be understood that the interpretation of the text of the Koran and Hadith is always linked to the objectives of the Shari'a so that the moral message conveyed also takes into account human benefit, commonly known as the *purpose of Al-Sharia* (Abu Ishaq al-Shatibi, 2004) (Wahbah al-Zuhayli, tt) (Busyro, 2009).

This is to maintain the objectives of the *purpose of Al-Sharia* namely hifdzun nasal or caring for offspring. It is considered that maintaining clarity of lineage by adding additional registration of the legality of marriages will bring more benefits.

In his understanding, Imam Syahtibi, explains that Maqasid Al-Syariah is the aim of the revelation of the Shari'a or the rules of Allah SWT, to bring benefit and avoid harm. In terms of terminology, it is a rule revealed by Allah SWT to be used as a guide for humans in doing things related to Him, fellow humans, and the environment. So it can be interpreted that the *purpose of Al-Sharia* are is the final goal that must be realized with the application of the Shari'a.

For Classification The *purpose of Al-Sharia'ah*, According to al-Syathibi, in general, Maqasid Al-syariah is divided into two, namely *Maqasid Al-Shari'*, is the purpose and purpose of God in giving the Sharia or rules contained in His word, and the *purpose of Al-Mukallaf*, namely the aim and purpose of all human actions, all actions carried out by humans depend on intentions, therefore, intentions must be regulated so that they are in line with God's purposes contained in His Word. The division is divided as follows (Busyro, 2019):

First, *Al-dharuriyyat* is the primary goal, the goal includes five things, namely: protecting religion, soul, mind, property, and descendants. According to Al-Syathibi, the meaning of Al-dharuriyyat is a certainty of the establishment of religious and world benefits, with the paradigm that religious benefits will not work without world benefits so this will cause chaos or even damage. So you lose your enjoyment and return to losses.

Second, *Al-hajiyyat* is a secondary purpose, the purpose places the existence of human protection from hardship, when *Al-Hajiyyat* If this is not used in the concept of fiqh, it will tend to make all human activities difficult individually or in part. However, it does not cause anything that threatens the points contained therein *Al-dharuriyyat*.

Third *Al-Tahsiniyyat* is a tertiary goal, it can also be called a complement, where this goal is to try to protect the comfort of a person or most people, simplify and expand things that are felt to have not yet reached the optimal point of human comfort itself.

The purpose of Al-Sharia Syahtibi is considered the most relevant because its meaning *The purpose of Al-Sharia* includes very important elements, namely *Al-dharuriyyat*, as the main goal, which aims to protect religion, soul, mind, property, and descendants, so that it is in line with the presence of marriage registration as legality in contemporary marriages to provide certainty of the upholding of religious and world benefits.

Strengthening the Legality of Marriage from the Classical Era to the Contemporary Era

Prophetic time. During the early days of his prophethood, the Prophet Muhammad SAW still encountered conditions in Arab society that still often carried out their bad habits, especially regarding discrimination against women, until finally little by little Islam became *Rahmatan lil Al' Amincan* repositioned women according to their nature with all their dignity.

Islam adopts one of the four models that used to exist in time *Jahiliyyah* which is still used by Muslims today, while other models have been abolished, namely marriage-wilâdah, *al-istibdhâ*, *al-right*, as well as *asal-rayah*, where Islam adopted the first model of marriage, namely al-wilâdah, namely a man to marry a woman, he must go to the woman's guardian, then propose and marry her accompanied by a dowry.

In the implementation of marriages during the time of the Prophet Muhammad SAW, they took place as they do today, but there was no recording instrument to accommodate a marriage. In ancient times, at the beginning of the decline of Islam, usually marriages only took place in one area, where the bride and groom were still in the same area. Likewise, this means that evidence in marriage (apart from witnesses) is not needed.

In classical jurisprudence literature, there is no explicit discussion regarding marriage registration, but in social traditions such as the Hijaz region in the past, a feast with animal slaughter was enough to be an official announcement, this was due to the prohibition on writing other than the Koran, so Ancient people only relied on memorization, the biggest possibility is that events are not difficult to remember.

The existence of the walimah tradition/*Walimat al-'urusy* (even with just one goat) which at that time was used as a witnessing process in a marriage. In ancient times at the beginning of the decline of Islam, marriages usually only took place in one area, where the bride and groom were still in the

same area, this meant that evidence for marriage (aside from witnesses) was not needed. The foregoing meant that in the past marriages were considered valid because they fulfilled the requirements and pillars of marriage.

Contemporary Era. The contemporary era is an era where the law is undergoing reform because there is an urgency that demands the renewal of Islamic laws by the times. In the contemporary era, several terms are known as the basis for legal codification, among others (a) *takhayyur*, (b) *talfiq*, (c) *takhshîsh al-qadlâ*, (d) *syyâsah syar'iyah*, and (It is) reinterpretation of nash.

Indonesia, as a country steeped in Islamic dogma, seeks to interpret these values in the formation of laws, which are implemented *al-qadlâ* as the basis for the state's right to limit the authority of the judiciary, both in terms of individual and procedural law, not to apply Classical Family Law in certain situations without changing the substance of Islamic law, to harmonize the law with the situation for the benefit of society (Khoiruddin Nasution).

In this case, the government also has the authority to implement regulations that are beneficial for the benefit of society, which is also part of *Takhshish al-Qadla*, or the authority's right to determine policy, in various ways, one of which is determining administrative requirements for all activities.

This is related to the very comprehensive religion of Islam, related to security itself, according to Sayid Qutub (1993) states that security covers the entire universe, life, and humans, in Islam, security begins with the security of the individual's soul, which will bring security in family, which then forms a safe, happy family which will then lead to a peaceful society (Adenan, 2020).

Then the basic consideration used to obtain the urgency of reforming Islamic Law, especially Islamic Family Law, is the benefit and relevance of the law which is in line with current developments. Therefore, with the development of the times, it must be accompanied by legal updates, to create

relevance between the law and the developments of the times. An example of the results of this legal reform can be seen in the 1974 Marriage Law, in article 2 paragraph 2 which reads "*Every marriage is recorded according to the applicable laws.*"

So the registration of marriages in their position of positive punishment is one of the conditions that must be fulfilled for a marriage to take place. Marriage registration for those who are Muslim is carried out by the Marriage Registrar Officer, as regulated in Law Number 32 of 1954, then for those of a religion other than Islam, the registration is carried out by the Office. Civil registration.

The above is concerned with preventing and/or protecting women and children in marriages that are not by the purpose of marriage (irresponsible) as well as avoiding abuse of marriage so as not to cause potential and/or losses for interested parties.

CONCLUSION

The implementation of the legality of marriage during the time of the Prophet Muhammad SAW took place as it is carried out today, but there was no recording instrument to accommodate a marriage. In ancient times, at the beginning of the decline of Islam, usually marriages only took place in one area, where the bride and groom were still in the same area. At the same time, this means that evidence in marriage (apart from witnesses) is not needed. The above means that in the past, marriage was considered valid because it fulfilled the requirements and pillars of marriage as stated in the book of Fiqh. Besides that, in ancient times technology was not like today. Weddings are also held with Thanksgiving events so that many people know about them and avoid unscrupulous marriages.

Legality of Marriage with the Double Movement Theory approach emphasizes the implementation of moral ideals by looking at the historical context in ancient times where in the past the implementation of the legality of marriage was limited to announcing it and slaughtering even one goat, then in the current context (with the Double Movement hermeneutic approach) with The term benefit as a moral ideal that is implemented into a marriage, this creates an urgency regarding the instrument to accommodate marriage, namely the registration of marriages for authentic evidence before the law that the marriage has been consummated.

The reason for the need to establish marriage registration as a legal condition for marriage according to contemporary jurisprudence is the result of the emergence of mafsadat, including the loss of the beneficial aim of protecting *Hifdz al-nasl* or to protect the confusion of descent and to avoid inconsistencies in the implementation of religion or belief as a whole in marriages held according to their respective religions as stated in the Marriage Law Article 1 paragraph 2, and/to avoid partial application of religious teachings in legitimizing marriages."

This is the background for a state as a policy maker to determine policies, in various ways, one of which is determining administrative requirements in all activities, especially implementing regulations that are beneficial for the benefit of society.

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