

## Marriage Registration As a Form Of *Maşlahah Mursalah*

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**Abstract:** *Registration of marriages can be categorized as a new phenomenon because in its history during the time of the Prophet there had never been registration and bookkeeping of marriages, divorces and reconciliation. Bookkeeping during the time of the Prophet was only a matter of book keeping in the Qur'an, whereas explicitly in the text there is an order to record and record books in the aspect of muamalah or selling buying and selling transactions. This article attempts to explore more deeply the issue of marriage registration within the framework of maslahah mursalah. The author's findings are that marriage registration is in line with sharia provisions, namely creating benefits and preventing harm. The first dharuriy need is the benefit of maintaining religion. Marriage registration is seen as able to protect and maintain religious benefits. Second, benefit in protecting and guarding the soul. This can be seen from the psychological condition of the wife and children who are calmer, because without a marriage book a child cannot make a birth certificate. Third, benefit in maintaining reason. Marriage registration is very important for children's psychology, because with a marriage book, the child will feel calm because he is the legitimate child of both parents, so he will be confident in developing his mind to the maximum. Fourth, maintaining offspring. By registering a marriage, mixing between two people of different sexes is considered not adultery, so that children born from this relationship are considered valid and have clear identities and can be proven by law. Fifth, maintain property. By recording a marriage, the identity of the child born has clarity, so that when the parents die, the child will get his inheritance rights, so that the assets from the marriage can be maintained.*

**Keywords:** *Women of Career, Samawa, Post-Truth Era, Islamic Law*

### 1. Introduction

Today's complex modern life demands an orderly administration of law in various matters, including the issue of registering marriages to obtain a marriage certificate as authentic evidence. A marriage certificate is a deed drawn up and issued by the Population Service which proves definitively and legally the registration of a person's marriage after marriage according to their religion and belief. If you don't have a marriage certificate, problems will most likely arise in people's lives, because you don't have the force of law in the event of a conflict or legal event in the future, such as regarding whether a child is legal or not, the rights and obligations of both as husband and wife, and if a divorce occurs, you will experience difficulties because there is no marriage certificate.

It cannot be denied that the phenomenon of marriages without being officially registered by the state is still rampant among Indonesian Muslims. Regardless of the variety

of underlying reasons, empirical facts show that unregistered marriages cause many complex legal problems, both for the life of the family concerned, society and the state.<sup>1</sup>

The rise of unregistered marriages (marriage *sirri*) in society is inseparable from the paradigm that is still developing among Islamic societies, that there are still those who have the view that the existence of marriage is valid when the conditions and pillars of harmony are fulfilled as set out in classical *fiqh* literature.<sup>2</sup> Without us realizing it, in fact the existence of marriage registration which has been designed and regulated by the state in such a way turns out to have implications for the benefit of society in matters of marriage.

Nowadays people's lives have changed with an administrative system that is no longer an oral system, so that authentic evidence such as registration of marriages is the most urgent matter in the current order of life. There are several previous studies that have discussed marriage registration including: Itsnaatul Lathifah, Dian Mustika, Oyoh Bariah, Dyah Ochtorina Susanti, Dewa Gede Sudika Mangku and Ni Putu Rai Yuliantini, Shofiatul Jannah, Nur Syam, and Sudirman Hasan. From some of the writings of this author, there are several things that become the point of discussion regarding the registration of marriages, including: the registration of marriages in various Muslim countries, the public's response to the registration of marriages, and the urgency of registering marriages.

In terms of the variables of marriage registration in various Muslim worlds, Mustika stated that one of the family law reforms carried out by Muslim countries around the world is the registration of marriages. The goal is to achieve legal supremacy, legal clarity, and specific marital legal rights. As a result, some Islamic countries make marriage registration a legal requirement of any regulatory framework. There are various points of view regarding registration, depending on how it is implemented. In fact, although the validity of marriage is still supported by Islamic legal norms, many Muslim countries only enforce it as an administrative requirement. They have nothing to do with the validity of the marriage.<sup>3</sup>

Bariah also stated that marriages that are not recorded in accordance with applicable regulations will bring harm to the parties who do so and also to their offspring. Registration of marriages and proving it with a marriage certificate very clearly brings about *maslahat* (goodness and benefits) for the upholding of the household and this is in line with the principles/rules of Islamic law, namely rejecting harm takes precedence over obtaining benefit.<sup>4</sup>

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<sup>1</sup> Syukri Fathudin Ahmad Widodo and Vita Fitria, "The Problem of Siri Marriage and its Legal Consequences for Women," *Journal of Humanities Research* 15, no. 1 (2010): 1–2.

<sup>2</sup> Nenan Julir, "Marriage Registration in Indonesia from Ushul Fiqh Perspective," *Mizani: Legal, Economic and Religious Discourse* 1 (2017): 54.

<sup>3</sup> Dian Mustika, "Recording Marriage in Family Law in the Islamic World," *INNOVATIVE | Journal of Law Science* 4, no. 5 (2011): 52.

<sup>4</sup> Ooh Bariah, "Reconstruction Marriage Registration in Islamic Law," *SOLUSI Scientific Magazine* 1, no. 04 (2014): 20.

In terms of the community response variable, Lathifah said that legal knowledge among the community is increasing in this modern era. They are ready to marry according to legal requirements. Increasing public awareness of administrative procedures has increased their understanding of the importance of marriage registration. It is undeniable that many people in society deliberately choose not to recognize their marriage legally for the sake of financial gain, and this often creates problems for both the husband and wife as well as their offspring and family. Therefore, in dealing with situations like this, the government must be able to act more firmly so that no more parties are harmed.<sup>5</sup>

Mangku and Yuliantini similarly mentioned the things that were achieved in the implementation of this Community Service in an effort to increase the legal awareness of the people of Sidetapa village regarding the urgency of registering marriages to obtain a marriage certificate, namely: There was a positive change in knowledge about public awareness in terms of registration procedures right marriage; There has been a positive change in the knowledge of the village community in general and youth in particular about the importance of marriage certificates and they have begun to register marriages in an orderly manner, by seeking more in-depth information on the process of registering marriages.<sup>6</sup>

In terms of the urgency of registering marriages, Ochterina stated that the normative juridical method with a statutory approach, and the theory of utilities provides an explanation that registration of marriages is carried out in order to provide maximum benefit for the creation of happiness for many people.<sup>7</sup>

Marriage registration is one of the legal principles of national marriage which is based on law number 1 of 1974 concerning marriage. In the laws and regulations in force in Indonesia, marriage registration has a very strong role in determining whether or not a marriage is valid. This means that apart from following the legal provisions and beliefs of each religion, this is also a condition for the validity of a marriage. Therefore, according to Indonesian laws and regulations, marriage registration is an obligation that must be carried out. Marriages that are not registered do not have positive legal force, but such marriages are recognized as valid if they are carried out in accordance with the provisions of the respective religious

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<sup>5</sup> Itsnaatul Lathifah , " Recording Marriage : Tracing the Roots of Legal Culture and Indonesian Society's Response to Marriage Registration," *Al-Mazaahib: Journal of Comparative Law* 3, no. 1 (2015): 53.

<sup>6</sup> God Big Sudika Mangku and Ni Putu Rai Yuliantini, "Dissemination of Law Number 1 of 1974 Concerning Marriage in Raising Community Legal Awareness in Sidetapa Village Regarding the Urgency of Marriage Registration to Obtain a Marriage Certificate," *Journal of Citizenship Education Undiksha* 8, no . 1 (2020): 152.

<sup>7</sup> Dyah Ochterina Susanti , " The Urgency of Marriage Registration (Utilities Perspective)," *Rechtidee* 11, no. 2 (2016): 166.

teachings of the bride and groom. However, such marriages have the impact that husbands, wives and children do not receive legal protection in Indonesia for their rights.<sup>8</sup>

Based on some of the previous research above, it still discusses the registration of marriages, it's just that the authors here are more in the nature of perfecting previous writings by exploring marriage registration as a form of *masalah mursalah*. Novelty in this article the author tries to explore marriage registration from the perspective of *masalah mursalah*.

## 2. Research Methods

This research includes qualitative research in the form of a literature review. A normative-philosophical approach is used in this research. Various primary data are the focus of this research, such as Law Number 1 of 1974, PP Number 9 of 1975 concerning the Implementation of Marriage Laws and *Maslahah Mursalah*. Meanwhile, secondary data uses a variety of scientific literature that is cooperative with the subject matter of the research discussion. The *Maslahah Mursalah* theory is the concept in this research. This research approach is descriptive-analytic. In the technical steps, the author documents a number of objects related to this research object, then data analysis techniques through reduction, presentation and verification.

## 3. Discussion

### a. Marriage Registration In Indonesia

Provisions regarding the registration of marriages in Indonesia in general are regulated in Law Number 1 of 1974. Article 2 paragraph 2 of the law states that each marriage is recorded according to the applicable laws and regulations. Even though in the marriage law, the issue of registering marriages is only regulated by one paragraph, this issue of registration is very dominant. This will be clearly visible in marriage procedures which are all related to registration. Furthermore, in PP No. 9 of 1975 concerning the implementation of the marriage law in article 3 paragraph 1 it is stated that every person who is going to get married informs his wishes to the Registrar at the place where the marriage will take place.

Apart from that, regarding marriage registration, the law also discusses the minimum age for marriage, which has undergone changes. This was triggered by several considerations regarding Law Article 7 Number 1 of 1974 concerning Marriage which states " *Marriage is only permitted if the man reaches the age of 19 (nineteen) years and the woman reaches the age of 16 (sixteen) years*".

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<sup>8</sup> Shofiatul Jannah , Nur Syam , and Sudirman Hasan, "The Urgency of Marriage Registration in the Perspective of Islamic Law and Positive Law in Indonesia," *Al-Ulum Journal of Islamic Thought and Research* 8, no. 2 (2021): 190.

In this article the minimum age for marriage between men and women is differentiated. Then in 2019 the State issued Amendment Sheet No. 186 of 2019 concerning this law. Namely, the ratification of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Article 7 Number 1 of 1974 concerning Marriage states that "Marriage is *only permitted if the man and woman have reached the age of 19 (nineteen) years.*" The changes that occurred through this article regarding the minimum age limit for marriage were made after several considerations.<sup>9</sup>

Principle This put forward religious balance as base for do marriage. Second candidate bride must be of the same religion or of the same faith, except law his religion or his trust That determine otherwise. Explanation principle law. This can found in article 1 paragraph (1) Law 1/1974. Then in Law 1/1974 to contain principle marriage registered, where each the marriage took place according to law each his religion and trust That will considered have strength law as something marriage when marriage the noted according to regulation applicable legislation. Marriage is noted, no have strength law something according to or based on Law 1/1974.

Explanation principle law this confirmed in Article 1 paragraph (2) Law 1/1974. Arrangement in Article 2 of Law 1/1974 exists weakness, because made two verse, marriage according to law each his religion and element recording characteristic marriage imperative (no contain element necessity).<sup>10</sup>

Especially for Muslims in Indonesia, marriage registration is regulated separately in the Compilation of Islamic Law article 5 which states: a). In order to ensure orderly marriages in Islamic society, every marriage must be recorded. b). The registration of the marriage referred to in paragraph (1) is carried out by the Marriage Registrar as stipulated in Law Number 22 of 1946 in conjunction with Law Number 32 of 1954.

Furthermore, in article 6 it is emphasized:

- 1) To fulfill the provisions in article 5, every marriage must take place in the presence and under the supervision of a Marriage Registrar.
- 2) Marriages carried out outside the supervision of marriage registrar employees have no legal force.<sup>11</sup>

From the several provisions that have been put forward, it appears that marriage registration is a formal requirement for the validity of a marriage. These requirements are procedural and administrative in nature. Related to this, A. Mukti Arto explained that a marriage

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<sup>9</sup> Mega Puspita and Nindya Octariza, "The Rule Minimum Age of Marriage in Islamic Family Law in the Muslim World," *International Journal of Social Science and Religion (IJSSR)* , 2022, 192.

<sup>10</sup> Rian M. Sirait , " Recording Marriage In Regulation Legislation Marriage in Indonesia Marriage Registration In Indonesia's Marriage Law Regulations," *Juristic Journal* 1, no. 1 (2021): 16–23.

<sup>11</sup> Abdurrahman, *Compilation Islamic Law in Indonesia* (Jakarta: Akademika Pressindo , 1992), 114.

is considered valid if it fulfills two requirements. *First*, fulfilling the provisions of material law, carried out in accordance with the requirements and in harmony according to Islamic law. *Second*, it fulfills formal legal requirements, namely it has been registered with an authorized Marriage Registrar. Forms of marriage that only fulfill material requirements are considered to have never existed or are not recognized. While the marriage only meets formal requirements, can be canceled.<sup>12</sup>

Recording marriage aim for realize order marriage in society, fine the marriage was carried out based on Islamic law as well the marriage was carried out by society that doesn't based on Islamic law. Recording marriage is an effort to maintain the sanctity (*mitsāqān galīdzān*) of legal aspects arising from aspects of marriage. The realization of this registration resulted in a marriage certificate, a copy of which was owned by the husband and wife respectively.<sup>13</sup>

## b. Maslahah Mursale In An Islamic Frame

*Maṣlaḥah* is *masdar* from the word صلح-يصلح-صالحا which means positive or good.<sup>14</sup> Al-Ghozali in the book *al Mustasfa* explains the meaning of *maṣlaḥlah* both in language and terms. Al-Ghozali gives the linguistic meaning of *maṣlaḥlah* as follows:

المصلحة فهي عبارة في الاصل عن جلب منفعة او دفع منضره<sup>15</sup>

This means " *maṣlaḥat* is a term about getting benefits and rejecting madharat"

Meanwhile, in terms of terms, al-Ghazali gives the meaning of *Maṣlaḥah* as follows:

هي المحافظة علي مقصود الشرع في الخلق خمسة, وهي أن يحفظ عليهم دينهم ونسلهم ومالهم. فكل ما يتضمن حفظ هذه الأصول الخمسة فهي مصلحة, وكل ما يفوت حذء الأصول فهي مفسدة, ودفعها مصلحة<sup>16</sup>

Meaning: " *Guarding objective shara ' , goal shara ' who has determined on man There is five, protect religion, soul, mind, descendants and treasure them. So every something containing keep the five basics, this so called benefit And every something that eliminates the five basics. This so including sorry and reject sorry the is benefit*".

In general, *maṣlaḥlah* can be interpreted as something that brings goodness or benefit (*manfa'ah*) and keeps away from damage (*mafsadah*). In the study of Islamic jurisprudence, *maṣlaḥlah* can be seen from several aspects.<sup>17</sup> *First*, in terms of interests or needs, *maṣlaḥlah*

<sup>12</sup> A. Mukti Arto, *The Problem of Marriage Registration and Legality of Marriage in Iskandar Ritonga, Women's Rights in the Marriage Act and Compilation of Islamic Law* (Jakarta: Nuansa Madani, 1999), 64–65.

<sup>13</sup> Imam Faishol, "Implementation Recording Marriage in Indonesia (Study On Constitution Marriage No. 1 of 1974)," *Ulumul Syari' : Journal Sciences Law And Sharia* 8, no. 2 (2019): 6.

<sup>14</sup> Ahmad Warson, *Al-Munawwir Dictionary* (Surabaya: Pustaka Progressive, 1997), 788.

<sup>15</sup> Abu Hamid Muhammad bin Muhammad al-Ghazali, *Al-Mustasfa Min Ilm al-Ushul*, Vol.2 (Madinah: al-Jami'ah al-Islamiyah, tt), 481.

<sup>16</sup> Abu Hamid Muhammad bin Muhammad al-Ghazali, 482.

<sup>17</sup> Imron Rosyadi, "Maslahah Mursalah as a Legal Argument," 2012, 5.

is divided into three types, namely *maṣlaḥlah daruriyyah*, *maṣlaḥlah ḥâjiyyah*, and *maṣlaḥlah tasîniyyah*.

The definition of *maṣlaḥlah daruriyyah* is benefit which is fundamental to human needs in this world and in the hereafter, so that these needs must exist and be a top priority. What is meant by *maṣlaḥlah ḥajiyah* is benefit which functions to fulfill basic needs. Meanwhile, *maṣlaḥlah tasîniyyah* is a complementary benefit. In the study of ushul fiqh, these three benefits are associated with five things, namely, maintaining religion, soul, reason, offspring and property.

*Second*, maslahah in terms of its content is divided into two, namely *maṣlaḥlah 'ammah* and *maslahah khassah*. The definition of *maṣlaḥlah 'ammah* is the general benefit that concerns the interests of many people. Whereas *maṣlaḥlah khassah* is a personal benefit. *Third*, maslahah seen in terms of change or not is divided into two, namely, *maṣlaḥlah œâbitah* and *maṣlaḥlah mutagayyarah*.

The definition of *maṣlaḥlah œâbitah* is benefit that is permanent and does not change until the end of time. Examples of this benefit are orders for prayer, fasting, zakat and pilgrimage. Meanwhile, the definition of *maṣlaḥlah mutagayyarah* is benefit that can change according to changes in place, time and legal subject. This benefit is related to the field of muamalah and also customs.

*Finally*, *maslahah* in terms of whether it is supported or not is divided into three, namely *maṣlaḥlah mu'tabarah*, *maṣlaḥlah mulghah* and *maslahah mursalah*. The definition of *maṣlaḥlah mu'tabarah* is benefit that is supported by explicit evidence, both in the Qur'an, Hadith, and Ijma'. For this benefit, an example can be given, such as the prohibition of alcohol. Then the meaning of *maṣlaḥlah mulghah* is benefit that is rejected by syara' because it is contrary to Islamic teachings. Meanwhile, the meaning of *maṣlaḥlah mursalah* is benefit whose existence is not mentioned by the argument and also not rejected by the argument.

Meanwhile, *mursalah* means to be free or not bound. So *maṣlaḥlah mursalah* can be interpreted as a legal determination based on benefit that does not exist or is not supported in detail in the Qur'an and Hadith.<sup>18</sup>

Ibnu Qudamah defines *maṣlaḥlah mursalah* as a maslahah for which there is no evidence of guidance that cancels it or pays attention to it.<sup>19</sup> Basically, *maṣlaḥlah murlah* is a special provision that is not in the text that cancels or pays attention to it.

Al-Ghazali defines *maṣlaḥlah mursalah* as something that is taken advantage of and rejects damage and also he stated that maslahah must be in line with syara' goals, even if it

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<sup>18</sup> Ali Sodikin , *Fiqh Ushul Fiqh History, Methodology and Implementation in Indonesia* (Yogyakarta: Beranda Publishing, 2012), 92.

<sup>19</sup> Henry Hermawan Adinugraha and Mashudi Mashudi, "Al-Maslahah al-Mursaya in Determining Islamic Law," *Scientific Journal of Islamic Economics* 4, no. 01 (2018): 63–75.

conflicts with human goals, because human benefit is not always based on syara' will, but is often based on lust. The purpose of enforcing syara' law must fulfill five principles, namely religion, soul, lineage, intellect and property in order to guarantee human life to be safe and prosperous. Imam al-Ghazali stated:

الصلحة ما لم يشهد له من الشرع بالاعتبار ني<sup>20</sup>

Meaning: "Maslahah al- Mursalah is What who doesn't There is proposition for him from syara' in form nas some cancel it And No someone noticed it".

From several definition on can concluded that *maṣlaḥah mursalah* is something proposition law for set law on problems new ones explicit No mentioned in the Qur'an and the hadith that can bring kind or benefit And keep away from damage for humans who don't cancel it And didn't even notice it. (*daruriyyat*)

On basically benefit it is relative and very susceptible to human speculative influence, which is sometimes only based on human lust and ego. To eliminate *maṣlaḥah relativity*, al-Syatibi set a number of condition as test meteril and verification to benefit these, namely<sup>21</sup>:

- 1) Maslahah the must in line with intention legislation and no violate principle base determination law in Islam.
- 2) Benefits the characteristic rational, sure and no only based on assumption and speculative man just.
- 3) Maslahah the as protection to need essential and eliminate religious difficulties.

Meanwhile al-Ghazali set requirements for *maṣlaḥah sorry* can become proposition in *istinbat* law namely<sup>22</sup>:

- 1) Benefit the including in level or category need principal (*darûriyyât*).
- 2) Benefit the must characteristic Certain and No can propped up on guess just.
- 3) Benefit the must is universal.
- 4) Benefit the must in line with intention legislation law Islam.

With requirements given by the scholars on indicate that the scholars in apply *maṣlaḥah sorry* as proposition *istinbat* law with Enough be careful in implement it. Attitude caution This reflected with give strict requirements to benefit that can be done accepted as a base and base theoretically.

Development The increasingly rapid era has given rise to several increasingly complex problems, while these problems have not everything stated in texts (the Qur'an and Hadith) so needed steps concrete for finish problem that. Based on problem above, the scholars are trying with all their might to establish comprehensive methods and theories to overcome problems

<sup>20</sup> Abu Hamid al- Ghazali, *Al- Mustasfa Fi 'ilmi al-Ushul* (Bairut: Dar al 'Ilmiyah, 1983), 286.

<sup>21</sup> Muhammad Rusfi, "Validity Maslahah Murlah as a Source of Law," *Al-'Adalah* 12, no.1 (2014): 63-74.

<sup>22</sup> Abu Hamid Muhammad bin Muhammad al-Ghazali, *Al-Mustasfa Min Ilm al-Ushul*, 253.



that have not been established by law. One of the methods found is *maṣlaḥah mursalah*, as base theoretical troubleshoot with put forward benefit man And dismissed imminent loss generated.<sup>23</sup>

If want to study a problem using *the maslahah mursalah approach* must meet all the requirements predetermined by the scholars, so that the law does not violate religious rules. According to Hanafiyah scholars, *maslahah mursalah* can be used as a method for establishing new laws provided that they are supported by verses, hadith or ijma' which show that the characteristics considered to be beneficial constitute *'illat* (legal motivation) in the determination, law, or type the nature of being motivation law the used by *nass* as motivation law.

No all cleric support *maslahah mursalah* as a legal proposition, the ulama who support *maslahah mursalah* are Malikiyah ulama and also Hanabilah Ulama, the reason for this acceptance is that they view *maslahah mursalah* as an induction from the logic of a set of *texts*. Meanwhile those who refuse *maslahah mursalah* is Imam Syafi'i, Hanafiyah and group Zahiriyah. On receiving group *maslahah mursalah* does not necessarily mean absolute acceptance, but is accompanied by very strict conditions. While the group that rejects it is more based on attitude worry and caution they in error If set law that only based on speculative.<sup>24</sup>

### **c. Marriage Registration From Maslahah Mursale's Perspective**

Marriage can be considered valid if it is carried out according to the laws of each religion and belief. In Indonesia, there are special regulations so that a marriage can be said to be valid, namely by registering the marriage as regulated in Article 2 of Marriage Law No. 1 of 1974 which states: "Marriage is valid if it is carried out according to the laws of each religion and belief. And every marriage is recorded according to applicable laws and regulations."

Marriage registration can be categorized as a new phenomenon because in history, during the time of the Prophet, there was never any recording and bookkeeping of marriages, divorces and reconciliations. Bookkeeping during the time of the Prophet was only a matter of bookkeeping in the Qur'an, whereas explicitly in the text there is an order to record and book in the aspect of muamalah or selling buying and selling transactions, as ordered in Surah al-Baqarah verse 282.

Marriage registration is a form of *maṣlaḥah murlahah*, because it is not expressly ordered by *the syara'*, but its existence is also not opposed by *the syara'*, because marriage registration contains many benefits. Basically, registering a marriage is a very important legal act because registering a marriage will produce a marriage certificate or marriage book which

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<sup>23</sup> Abu Hamid Muhammad bin Muhammad al-Ghazali, 253.

<sup>24</sup> Amen Aminah , " Maqāṣid Ash-Syarī 'Ah Understanding and Application In Islamic Economics ," *Fitrah : Journal Study Sciences Islam* 3, no. 1 (2017): 167.

is proof if there is a denial of the existence of the marriage. Without marriage registration, irregularities often occur, resulting in certain parties being harmed, namely the wife and children. By having marriage registration, it will anticipate all harm that arises and its existence is in accordance with current needs.

Marriage registration is in line with *sharia provisions*, namely creating benefits and preventing harm. This is in accordance with the rules of fiqh which read:

دفع الضرر اولي من جلب النفع<sup>25</sup>

" *Rejecting harm is more important than achieving benefit.*"

Or in the rules of fiqh:

دفع المفساد مقدم علي جلب المصالح<sup>26</sup>

"*Refuse sorry comes first than reach benefit*".

The marriage registration law is a regulation established by the government because it sees enormous benefits in it, namely to protect rights and also worry about denial of marriage, so that someone does not easily play with their marriage.

With the existence of a law that requires people to register their marriages, it is mandatory for people to obey it and not violate it. The Qur'an orders every Muslim to obey the regulations set by the Government as long as they do not conflict with the laws of Allah SWT. In a rule of fiqh it is explained:

تصف الامام علي الرعية منوط بالمصلحة<sup>27</sup>

"*Determination government on people depends to benefit*".

The obligation to register marriages actually fulfills the will of Allah SWT. In realizing benefits and goodness for the lives of Muslims, marriage registration is included in the category of primary benefits (*dharuriy*), which includes being able to protect and maintain the benefits of religion, soul, mind, lineage and property.<sup>28</sup>

The first *dharuriy* need is the benefit of maintaining religion. Marriage registration is seen as being able to protect and maintain the benefit of religion, because if there is no marriage registration then religious teachings can be disrupted. It is known that in the Qur'an and Hadith, marriage registration is not mentioned directly, but with marriage registration, a person will not easily play with their marriage. Marriages that are not registered tend to be uncontrollable, especially for men, they can easily remarry without the permission of their first wife. If this action is carried out continuously it will result in a man having more wives than those specified by him. religion, ultimately the benefit of religion is disrupted.

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<sup>25</sup> A. Djazuli, *Fiqh Rules: Islamic Legal Rules in Resolving Practical Problems* (Jakarta: Kencana, 2006), 28.

<sup>26</sup> A. Djazuli, 28.

<sup>27</sup> Gosh Mubarak, *Rules Historical Fiqh and Human Rights* (Jakarta: Rajawali Press, 2000), 178.

<sup>28</sup> Zulkifli Zulkifli, "Maqasid Asy-Syari'ah Recording of Marriages" (PhD Thesis, Sultan Syarif State Islamic University Kasim Riau, 2021), 45–48.

*Dharuriy* need is benefit in protecting and safeguarding the soul. This can be seen from the psychological condition of the wife and also the child who is calmer, because without a marriage book a child cannot make a birth certificate, while a birth certificate is very important to support a child's life, such as registering at school requires document requirements, one of which is birth certificate.

Third, there is the benefit of maintaining reason. Marriage registration is very important for children's psychology, because with a marriage book, the child will feel calm because he is the legitimate child of both parents, so he will be confident in developing his mind to the maximum.

Next, the fourth is maintaining offspring. By registering a marriage, the mixing between two people of different sexes is considered not adultery, so that children born from that relationship are considered legitimate and have a clear identity and can be proven by law. Lastly is maintaining property. By registering the marriage, the identity of the child born is clear, so that when the parents die the child will receive their inheritance rights, so that the assets from the marriage can be protected.<sup>29</sup>

#### **4. Conclusion**

Marriage registration is a form of *maslahah mursalah*, because it is not strictly ordered by *syara'* but its existence is not opposed by *syara' either*, because marriage registration contains many benefits. Basically, the registration of marriages is a very important legal action because registering a marriage will bring up a marriage certificate or marriage book which is evidence if there is denial about the existence of a marriage. Without marriage registration, irregularities often occur, resulting in certain parties being harmed, namely the wife and children. By having marriage registration, it will anticipate all harm that arises and its existence is in accordance with current needs.

Marriage registration is in line with *sharia provisions*, namely creating benefits and preventing harm. The first *dharuriy* need is the benefit of maintaining religion. Marriage registration is seen as able to protect and maintain religious benefits. *Second*, benefits in protecting and preserving the soul. This can be seen from the psychological condition of the wife and children who are calmer, because without a marriage book a child cannot make a birth certificate. *Third*, benefit in maintaining reason. Marriage registration is very important for children's psychology, because with a marriage book, the child will feel calm because he is the legitimate child of both parents, so he will be confident in developing his mind to the maximum. *Fourth*, maintaining offspring. By registering a marriage, mixing between two people of different

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<sup>29</sup> Toha Ma'arif, "Marriage Registration (Analysis With Approach Qiyas, Istihsan, Sadd al-Dzari'ah, Maslahah Murlah and Law Positive in Indonesia)," *ASAS: Journal Law Economy Sharia* 11, no.1 (2019): 119-41.

sexes is considered not adultery, so that children born from this relationship are considered valid and have clear identities and can be proven by law. *Fifth*, maintain property. By recording a marriage, the identity of the child born has clarity, so that when the parents die, the child will get his inheritance rights, so that the assets from the marriage can be maintained.

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