



THE NEED TO ESTABLISH A PRE-MARRIAGE
COURSE REGULATION IN INDONESIA WITH
SPECIAL REFERENCE TO JAMBI PROVINCE

BY

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ABSTRACT

A Pre-Marriage Course is a course on the circumstances of marriage carried out before the couples go through the marriage world. The purpose of the pre-marriage course is to guide and give knowledge about the principles of marriage to couples who want to get married. The lack of knowledge and marital responsibility has contributed to the breakdown of marriages among Indonesian couples. The study adapts doctrinal and qualitative analysis of data obtained from textbooks and statutory laws. In addition, data is collected from the Jambi province to answer problems associated with marital conflicts. A sample of pre-marriage course as practised in Malaysia is examined to provide guidelines and model the implementation of the course. Thus, the researcher argues that a pre-marriage course in Indonesia in general and especially in Jambi province is very important to be in practice, before couples perform marriages. Therefore, the study is undertaken to introduce a pre-marriage course in minimising marital conflicts. Compulsory pre-marriage course is expected to provide an understanding on the principles of knowledge about the ins and outs of marriage to a prospective husband and wife in the realisation of the purpose of family institution based on Islam.

ملخص البحث

الدورة التدريبية التمهيلية للمقبلين على الزواج ؛ هي عبارة عن دورة تتعلق بكل تفاصيل النواحي الأسرية والتي تُجرى قبل أن يعقد قران الزوجين المقبلين على الزواج. أما عن الهدف من تلك الدورة فهو إرشاد وتعريف الزوجين علي أسس الحياة الزوجية. فالجهل وعدم المسؤولية الزوجية ساهما في تقهقر الحياة الزوجية لدى المتزوجين الأندونيسيين واعتمدت الدراسة التحليل الكيفي والعقدي لمحتويات الكتب والقوانين الوصفية. وتم جمع البيانات من محافظة جامي للإجابة على المشاكل الناجمة عن الخلافات الزوجية. وأخذت كعينة الدورة التدريبية التمهيلية للمقبلين على الزواج المعمول بها في ماليزيا للمعآينة بغية الحصول على التوجيهات ومماثلة لممارسة الدورة. ومن هذا المنطلق يرى الباحث أن الدورة التدريبية التمهيلية للمقبلين على الزواج في إندونيسيا عموما، وفي محافظة جامي خصوصا، مهم جدا في تطبيقها لدى الزوجين المقبلين على الزواج. وعليه أجريت الدراسة لإدماج الدورة التدريبية التمهيلية للمقبلين على الزواج للحد من الخصومات الزوجية. وبناء عليه يرجى من الالزام بالدورة التدريبية للمقبلين على الزواج أن تثمر معرفة حقيقية فيما يتعلق بتفاصيل الحياة الأسرية وكذلك تشمل التدريبية الحقوق والواجبات والأسس الخاصة لكل من الزوج والزوجة لكي يحققا الهدف من إقامة الشراكة الأسرية على أساس إسلامي.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the results of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for my other degree at IIUM or other institutions.

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IN INDONESIA WITH SPECIAL REFERENCE TO JAMBI PROVINCE**

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Indonesian Marriage Law, Act No. 1 of 1974

Compilation of Islamic Law of Indonesia, 1991

Islamic Family Law (Federal Territories) Act 1984

LIST OF ABBREVIATIONS

BADILAG	Badan Peradilan Agama
BP4	Badan Pelestarian Penasehat Pembinaan Perkawinan
BKKBN	Badan Koordinasi Keluarga Berencana Nasional
DITJEN	Direktorat Jendral
IFLA	Islamic Family Law (Federal Territories) Act
JAWI	Jabatan Agama Wilayah Persekutuan
JAKIM	Jabatan Kemajuan Islam Malaysia
KHI	Kompilasi Hukum Islam
KUA	Kantor Urusan Agama
KMA	Keputusan Mahkamah Agung
KAGAT-BAT	Kor Agama Angkatan Tentera-Batalion
LBH	Lembaga Bantuan Hukum
MUI	Majelis Ulama Indonesia
PA	Pengadilan Agama
PDRM	Polis DiRaja Malaysia
PERMA	Peraturan Mahkamah Agung
PP	Peraturan Pemerintah
PTA	Pengadilan Tinggi Agama
PUS	Perempuan Usia Subur
SDKI	Survey Data Kependudukan Indonesia
UNDESA	United Nations Development of Economic and Social Affairs
UU	Undang-Undang

TRANSLITERATION

ء	'	خ	kh	ش	Sh	غ	Gh	ن	N
ب	B	د	D	ص	ṣ	ف	F	هـ	H
ت	T	ذ	dh	ض	ḍ	ق	Q	و	W
ث	Th	ر	r	ط	ṭ	ك	K	ي	Y
ج	J	ز	z	ظ	ẓ	ل	L		
ح	ḥ	س	s	ع	ʿ	م	M		

Short Vowels	
اَ	a
اِ	i
اُ	u

Long Vowels	
اَ + َ	ā
اِ + ِ	ī
اُ + ُ	ū

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Allah the Almighty God creates human in pairs¹. It is a well-known and recognised nature or *fitrah*.² In fulfilling such *fitrah*, humans naturally desire and are in need of life partners. Islam never denies but rather fully respects such desire as a part of the natural human instinct. The holy Qur'an describes in matter of desire and lust that men are in need of opposite partners.

“Fair In the eyes of men is the love of things They covet: women and sons; Heaped-up hoards of gold and silver; horses branded (for blood and excellence); and (wealth of) cattle and well-tilled land. Such are they possessions of this world's life; but in nearness to Allah is the best of the goals (to return to).”³

Islam provides such a beautiful way in respecting such instinct and provides a proper channel for humans in completing their *fitrah*. As such, Allah the Exalted with His mercy provides comprehensive laws (*aḥkām*) relating to such *fitrah* and gives it a proper channel that can easily be followed by human beings in fulfilling their desire. This is significant due to the position of humans as *khalīfah* or vicegerents of Allah the Exalted. By following such laws, humans are able to complete their duties towards Allah the Almighty and at the same time, accept their own nature. It is understandable as to why the concept of celibacy and nun-hood never exist in Islam.

¹ Qur'an, *Al-Hujrāt*: 13. Not only human beings, but also all His creations are pairs themselves, for example, Light and Night, Heat and Cold, life and Death and so forth. (all Qur'anic translation in this thesis are taken from the Qur'anic Sofwar of Yusuf Ali)

² The word of *fitrah* is often interpreted as the character or character traits of human nature since he/she was born. See *Kamus Al-Munawwir Arab Indonesia Terlengkap*, (Surabaya: Pustaka Progressif, 1997), 1063

³ Qur'an, *Ali-Imran*: 14

The main purpose or goal of such laws is to maintain the benefit (*maṣlaḥah*) of the human beings themselves, and it is definitely to avoid damage (*mafsadah*) in this world and the hereafter. Such desire by men must be controlled in a proper manner, otherwise destruction is going to be spread on the surface of the Earth. As it is already warned by the holy Qur'an:

“And if the Truth had followed their desires, verily the heavens and the earth and whosoever is therein had been corrupted”.⁴

In order to protect and preserve these benefits (*maṣlaḥah*), according to Scholars of *Fiqh* (*ahl al-Fiqh*), there are five fundamental elements that must be maintained and preserved in life namely: religion, life, intellect, progeny and property.⁵ In achieving such objectives, especially in the protection of future progeny, Islam provides the concept of marriage or *nikah* as one of the most important ways in maintaining the benefit.

In Islam, the legal concept of marriage is provided in detail. It begins from the recommendation of marriage for those who have the capability to give *mahar* to the bride, the presence of *wali*, appearance of witnesses and it goes on until the detailed discussion of *nikāḥ*'s dissolution itself. Additionally, Islam also clearly regulates the rights and duties between husband and wife during the subsistence of the marriage or in case of polygamy. Such description of rights and duties continues even in matter of divorce (*talāq*). For example, the husband's duty to sustain the wife during the '*iddah* period and the wife's right for *nafkah* during such period.

A marriage tie is the basis of a family. The institution of family is recognized as the fundamental unit of a society. In order to have a balanced society and a strong

⁴ Qur'ān, *Al-Mu'minun*: 71

⁵ These five goals are popularly known as *Maqāsid Al-Sharī'ah* or *Qawā'id Al-Khamsah*. For more detail, see Imran Ahsan Khan Nyazee, *Islamic Jurisprudence (Usūl al Fiqh)*, (New Delhi: Adam Publisher and Distributors, 2006), 235.

country, this very basic foundation of family and marriage itself must be strongly protected and preserved. The purpose of marriage is to build a harmonious family in this life; it is regarded as a form of devotion and obedience to Allah the Almighty. It is also a recommendation in religion and part of the Sunnah of the Prophet Muhammad (peace be upon him). The legal establishment of marriage itself is based on the holy Qur'an as in:

“If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (A captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice.”⁶

In another verse, Allah the Exalted says:

“Marry those among you who are single, or the virtuous ones among yourselves, male or female: if they are in poverty, Allah will give them means out of His grace: for Allah Encompass the all and He knows the all things.”⁷

In Islam, marriage is a strong *'akad* (covenant) or *mithaqan ghalīdhan*. The word of *mithaqan ghalīdhan* is mentioned three times in Al-Qur'an in surah Al-Nisā 4; 21 and 154 and in surah Al-Ahzāb 33; 7 that means “something very serious” as mentioned before.⁸ Thus, marriage is a sacred matter which should be preserved and safeguarded.⁹

⁶ Qur'ān, *An-Nisā*: 3

⁷ Qur'ān, *An-Nūr*: 32

⁸ In surah *An-Nisā*: 21 Allah says: “And how could ye take it when ye have gone In unto Each other, and They have taken from you **a solemn covenant**”?

In verse 154 Allah says: “And for their Covenant we raised over them (the towering height) of Mount (Sinai); and (on another occasion) we said: “Enter the gate with humility”; and (once again) we commanded them: “Transgress not In the matter of the *sabbath*.” and we took from them **a solemn covenant**”.

In surah *Al-Ahzāb*: 7 Allah says: “And remember we took from the prophets their covenant: As (We did) from thee: from Noah, Abraham, Moses, and Jesus the son of Mary: we took from them **a solemn covenant**”.

⁹ Nowadays, in Indonesia the phenomena of divorce-marriage or marriage-divorce commonly happens, especially for celebrities or artists, this illustrates that the marriage is an event that is only perfunctory.

In Indonesia, as written in Article 1 of the Marriage Law, Act No. 1 of 1974; all Ulama of Indonesia (Indonesian Scholars) define marriage as “both a physical and mental bond between a man and a woman: husband and wife, with the purpose of building a harmonious family based on piety”¹⁰.

Furthermore, Article 2 of the Compilation of Islamic Law of Indonesia mentioned that marriage under Islamic Law, is *nikāh*, it is a strong ‘*akad* (covenant) or *mithaqan ghalīdhan* to obey Allah’s instruction. Doing it means worship, and it is there for the purpose of creating a household life that has *sakīnah* (serenity), *mawaddah* (love) and *rahmah* (compassion).¹¹

Indonesia is one of the countries with a fairly high divorce rate. This was proved by the data recorded in Court. The data showed that the reasons of divorce are caused by many factors. One of them is due to different political view during the time of general elections.

According to the Director General of the Islamic Community Guidance of Indonesia,¹² the number of cases of divorce had reached 2 million a year; with 200 of them ultimately ending up in divorce. The biggest contributors to the rate of divorce are young couples. The majority of divorces are caused by general family disharmony, not fulfilling the family’s responsibility and economic factors.¹³

From 157,771 cases of divorce that were ruled by the Religious Court in 2007; 77,528 cases were caused by non-fulfillment of marital responsibilities. This is due to

¹⁰ Indonesian Marriage Law, Act No. 1 of 1974, Article 1. See also *Bahan Penyuluhan Hukum Departemen Agama RI Direktorat Jenderal Pembinaan Kelembagaan Agama Islam*, 2001, 117

¹¹ Compilation of Islamic Law of Indonesia, 1991/1992, Article 2

¹² *Muslimat* NU is the women’s wing of one of the country’s largest Islamic organizations, *Nahdlatul Ulama* (NU). www.badilag.net. Accessed, 11 October 2013.

¹³ AntaraNews.com, see <http://www.antaraneews.com/en/news/73793/ris-divorce-rate-up-300-pct-since-1998>. Accessed, 11 October 2013.

one of the parties not being responsible (48,623 cases), economic factors (26,510 cases) and forced marriage of the parties by their parents (2,395 cases).¹⁴

Another reason for divorce is constant conflict.¹⁵ This factor approximately amounted to 65,818 cases. Lack of mutual understanding, immaturity and bad communication between couples are the main causes of divorce are due to constant conflict. Other than the above reasons, disputes in marriage that end in divorce are also caused by personal disharmony (55,095 cases), interference of third-party (10,444 cases), political factors and others.

The data from the Directorate General of the Religious Court Body of the Supreme Court of Indonesia (DITJEN BADILAG MA) showed that in 2010 there were over 285,184 cases that ended in divorce at the Religious Court. This was the highest rate since 2005-2010.

One of reasons that may influence the longevity of a conjugal life is poor economic conditions in a family. In 2010, the data showed that 67,891 or 24 percent of divorced couples was caused by economic factors. It is usual for a young man in Indonesia to marry a girl even though he is economically dependent on his parents.¹⁶

In Jambi, Indonesia, statistics from the High Court of Religious Affairs showed that in the period of 2010 and 2011, the divorce rate across the province of Jambi was quite high. For the year 2010, there were 774 cases of *ṭalaq* (divorce) by husbands and 2024 cases of divorce by the wives. During the period of November 2011, at least 172 couples in this province filed for divorce. The figure increases year

¹⁴Supreme Court of the Republic of Indonesia, Directorate General of Religious Court Body. See, www.badilag.net. Accessed, 11 October 2013.

¹⁵The Jakarta Post News. See, <http://www.thejakartapost.com/news/2011/09/12/why-divorce-indonesia-increasing.html>. Accessed, 11 October 2013.

¹⁶Supreme Court of the Republic of Indonesia. n. 14

by year. Statistics showed that the cause of divorce is due to one of the parties not fulfilling their financial duties towards the family.¹⁷

In Indonesia, Law No. 1 of 1974 on marriage and Government Regulation No. 9 of 1975 on the implementation of Marriage Law clearly state that divorce is not allowed to be carried out except in Court, after careful examination of each case by judges.

Under this law, the grounds for divorce are various, such as party is either being an adulterer, a drunkard, a junkie, or a gambler; respondent leaves the other for two years successively without any legal reason or the other's permission, respondent is convicted by a Court and sentenced to five years' imprisonment or longer during the marriage, respondent commits violence and extreme oppression which threatens the other's safety, respondent suffers from a disease and or physical defect which is incurable, preventing him or her from fulfilling his or her spousal duties, or the spouses are in an extreme and continuous dispute without hope of living together in harmony.¹⁸ The law nevertheless do not provide for a divorce on the ground of mutual agreement.

As being discussed, the rate of divorce in Indonesia is increasing every year and many factors are involved ranging from complicated reasons to trivial factors. These issues should not arise if the spouses know the purpose of marriage and their rights and duties as a husband or wife so that *Sakīnah* (serenity), *mawaddah* (love) and *rahmah* (compassion) in a family could be achieved.

In order to realize *Sakīnah* (serenity), *mawaddah* (love) and *rahmah* (compassion) in a family, the couple is required to exert hard effort and have

¹⁷ <http://www.republika.co.id/berita/regional/nusantara/11/12/14/lw611d-duh-selama-periode-november-ratusan-pasutri-di-jambi-bercerai>. Accessed, 13 October 2013.

¹⁸ Indonesian Marriage Law No. 1 of 1974 and Government Regulation No. 9 of 1975.

knowledge of the rights and duties of a husband and wife before entering the gate of marriage. Accordingly, the introduction of premarital education or a pre-marriage course appears very necessary.

Premarital education is knowledge about the intricacies of marriage, starting from the process of selecting a partner until performing the life of marriage. The knowledge must be acquired by every person who intends to get married; with the hope that no disputes that might end in divorce would arise in the future.

Therefore, based on the problem mentioned above, it is essential to conduct a research on the need to establish a pre-marriage course regulation as an administrative procedure before the performance of marriage in Indonesia.

1.2 STATEMENT OF THE PROBLEM

The existence of marriage law is not sufficient to regulate pre-marital education. It is evidenced by the divorce rate in Indonesia which continuously increases especially in Jambi Province. It is also become a proof of the ineffectiveness of the work of the Marriage Preservation Development Advisory Board (BP4).

1.3 RESEARCH QUESTIONS

This research can be elaborated into the following questions:

1. To what extent is a pre-marriage course in Indonesia necessary?
2. What is the form of the pre-marriage course that the Government of Indonesia should apply?
3. Can a pre-marriage course regulation as an administrative procedure in Indonesia reduce the number of the divorce rate?

1.4 OBJECTIVE

The objectives of this dissertation are:

1. To study the rules and regulations on the mechanism of a pre-marriage course in Indonesia.
2. To study the strength and weaknesses of the current system on the marriage regulation in Indonesia.
3. To propose the formulation of a pre-marriage course in Indonesia.

1.5 HYPOTHESIS

This dissertation is based on a hypothesis that the absence of a pre-marriage course contributes to the high divorce rate. The establishment of a pre-marriage course may minimize the number of divorces in Indonesia.

1.6 LITERATURE REVIEW

According to Tauqir Mohammad Khan “Marriage” is “an institution ordained for the protection of society, and in order that human beings may guard themselves from foulness and adulteration.”¹⁹

Whereas according to Muhammad Iqbal Siddiqi marriage is “a social institution as old as the human race itself”. It may be defined as a relation between a man and a woman which is recognized by custom or law and involves certain rights and duties, both in the case of the parties entering the union, and in case of the children born of it.²⁰

¹⁹ Tauqir Mohammad Khan, *Law of Marriage and Divorce in Islam*, (India; Pentagon Press, 2007), 1.

²⁰ Muhammad Iqbal Siddiqi, *The Family Law of Islam*, (New Delhi; Adam Publisher and Distributors, 2010), 53.

According to Muhammad Idris, generally a wife's right from her husband is divided into two, namely a material right and a non-material right. The material right is like the dowry (*mahar*) whereas a non-material right is good behavior, keeping the wife well and educating her.²¹

Besides, N. M Sheikh also said that the basic responsibility for a woman or a wife is maintaining the household including feeding and educating the children. As a wife as well, she should take care of all matters related to her husband and his family's responsibilities. A wife also should have control: protect the welfare of all persons under her responsibilities.²² Whereas according to Sayyid Abdul A'la Maududi there are two kinds of rights of the husband on his wife. Firstly, she should keep a firm vigil, in his absence, over everything that belongs to him.²³ In the words of the Qur'an: "Good wives are obedient, and keep a vigil under Allah's protection when the husband is absent."²⁴

Yusnita said that pre-marriage course is a basic knowledge related to marriage (*munakahat*), rules and the proposal process for couples who are going to get married.²⁵ Rohaidah gives special attention for a pre-marriage course as some process and procedure before '*aqad nikāh* is done by couples.²⁶

Abdul Aziz Abdul Hamid in his book said that pre-marriage course is a guide to all couples who are getting married. Knowledge and guidance contained in this course also help prospective couples to make various psychological preparations to

²¹ Muhammad Idris Ramulyo, *Hukum Perkawinan Islam*, (Jakarta: PT Bumi Askara, 1996), 188.

²² N. M Sheikh, *Woman in Muslim Society*, (Pakistan: International Islamic Publisher, 1981), 53.

²³ Sayyid Abdul A'la Maududi, *The Rights and Duties of Spouses*, (New Delhi: Markazi Maktaba Islami), 33.

²⁴ Qur'ān, *An-Nisā*: 34

²⁵ Yusnita Bt Marjuki, *Kursus Praperkahwinan Jabatan Agama Islam Selangor: Kajian mengenai permasalahan* (Unpublished Thesis, Academy of Islamic Studies, University of Malaya, 2003), 11.

²⁶ Rohaidah Awang Nik, *Prosedur Praperkahwinan: Satu kajian tentang pelaksanaannya di daerah Temerloh, Pahang Darul Makmur* (Project Paper, Academy of Islamic Studies, University of Malaya, 1997), 8.