



MARRIAGE WITH THE INTENTION TO DIVORCE  
IN PUNCAK BOGOR, WEST JAVA – INDONESIA:  
A *MAQĀṢID AL-SHARĪ'AH* BASED ANALYSIS

BY

FADLLURROHMAN BIN NURUL ANWAR

A dissertation submitted in fulfilment of the requirement  
for the degree of Master of Islamic Revealed Knowledge and  
Heritage (Fiqh and Uṣūl al-Fiqh)

Kulliyyah of Islamic Revealed Knowledge and  
Human Sciences  
International Islamic University Malaysia

AUGUST 2014

## ABSTRACT

Marriage with the intention to divorce is a new phenomenon in Puncak Bogor, West Java – Indonesia. This kind of marriage has become a trend in this area due to cheap dowry (*mahr*), poverty, women's illiteracy and low cost of living. Because of these factors, this area has become a favorite spot for Muslims to enjoy sex in the name of religion. This kind of marriage is considered to be against *maqāsid al-sharī'ah* in Islamic family, especially due to its negative effects on women, children and society. The researcher has adopted a qualitative approach, by concentrating on a case study method. This study uses in-depth interview as a tool and instrument for data collection by involving five women respondents who were victims of marriage with the intention to divorce in Puncak Bogor, West Java – Indonesia. The items for the interview have been designed with open-ended and semi-structured questions of interview protocols. It aims to encourage the respondents to talk about whatever is important to them and helps to establish rapport, gather information and increase understanding. The study has arrived at a number of important findings. Foremost amongst those findings is that there are several factors that have influenced the respondents in such marriage. Among such factors, two elements appear to be the most outstanding, namely poverty and lack of religious education. Other factors reinforcing their involvement in such marriage include the indifference attitude of the parents in advising and guiding daughters in choosing their partner, and the attraction of the man's appearance. Another important finding is that all the above factors are not in line with the noble objectives of the *sharī'ah*.

## ملخص البحث

الزواج بنية الطلاق يُعدُّ ظاهرة جديدة في منطقة (بونشاك بوقور، جاوا الغربية، إندونيسيا). وهذا النوع من الزواج أصبح اتجاهًا سائدًا في هذه المنطقة نتيجة مجموعة من العوامل من بينها انخفاض تكلفة المهر، انتشار الفقر والامية خاصة في أوساط النساء، إضافة إلى انخفاض تكلفة المعيشة. لذلك أضحت هذه المنطقة وجهة مفضلة للمسلمين للإستمتاع الجنسي تحت غطاء الإسلام. يُعدُّ هذا النوع من الزواج مخالفاً لمقاصد الشريعة المتعلقة ببناء الأسرة وذلك نتيجة للآثار السلبية لهذا النمط من الزواج على المرأة والطفل والمجتمع بصفة عامة. استخدم هذا البحث تقنية البحث الكمي وذلك بالتركيز علىدراسة الحالة، تم جمع المعلومات المتعلقة بالبحث بإجراء مقابلات ميدانية مع النساء المتضررات من ظاهرة الزواج بنية الطلاق في منطقة (بونشاك بوقور، جاوا الغربية، إندونيسيا). هذه الوسائل المستخدمة في تجميع المعلومات المتعلقة بالدراسة تم تصميمها طبقاً لتقنية والنهاية المفتوحة من الأسئلة. ويهدف ذلك إلى تشجيع المشاركين في استطلاع الرأي للتحدث عما يتعبّر مهمًا بالنسبة لهم ويساعدهم على إنشاء رابطة، وتجميع المعلومات زيادة لفهم الظاهرة. هذه الدراسة أظهرت مجموعة من النتائج، من ضمن هذه النتائج أن هناك مجموعة من العوامل التي تؤثر في النساء والأسر التي تقبل بهذا النوع من الزواج. في مقدمة هذه العوامل، أمران أساسيان يعتبران أشدّ تأثيراً في هذه الظاهرة، وهما: الفقر، وضعف التعليم الديني. والعوامل الأخرى المؤثرة في الزواج بنية الطلاق تشمل عدم اهتمام الوالدين بتقديم النصائح والإرشادات لبناتهنّ لمساعدتهنّ فياختيار الزوج المناسب، إضافةً إلى مظهر الرجل. فضلاً عما سبق هناك نتيجة أخرى مهمة وهي أن كل هذه العوامل السابقة لا تتماشى مع مقاصد الشريعة الإسلامية.

## APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Uşūl al-Fiqh).

.....  
Sayed Sikandar Shah Haneef  
Supervisor

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Uşūl al-Fiqh).

.....  
Mohamed El-Tahir El-Mesawi  
Examiner

This dissertation was submitted to the Department of Fiqh and Uşūl al-Fiqh and is accepted as a fulfilment of the requirement for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Uşūl al-Fiqh).

.....  
Azman Mohd Noor  
Head, Department of Fiqh and  
Uşūl Fiqh.

This dissertation was submitted to the Kulliyah of Islamic Revealed Knowledge and Human Sciences and is accepted as a fulfilment of the requirement for the degree of Master of Kulliyah of Islamic Revealed Knowledge and Heritage (Fiqh and Uşūl al-Fiqh).

.....  
Ibrahim Mohamed Zein  
Dean, Kulliyah of Islamic  
Revealed Knowledge and Human  
Sciences

## DECLARATION

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

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Signature.....

Date .....

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## ACKNOWLEDGEMENTS

First and foremost, I thank and praise the Almighty Allah (swt) who empowered me to undertake and complete this thesis. Moreover, I acknowledge my sincere appreciation and profound gratitude to my supervisor, Professor Dr. Sayed Sikandar Shah Haneef, for his immeasurable patience and feedback which contributed greatly to the product of my thesis. Throughout my research, he supported me tirelessly and inspired me in various situations.

I must also thank my examiner, Associate Professor Dr. Mohamed El-Taher El-Mesawi for reading this thesis and providing his critical comments and suggestions to improve its quality.

My deepest appreciation is also extended to Associate Professor Dr. Azman Mohd Noor, Head of Dept. Fiqh and Uşūl al-Fiqh and all faculty members for their all kinds of help.

Again, I would like to thank all the respondents for their willingness to participate in this study and gave their valuable time for interviews.

I also owe much debt to all my friends who assisted me in administering the fieldwork of this study. May Allah (swt) bless them and amply reward them for their selfless efforts.

Likewise, this thesis is dedicated to my outrageously loving and supportive wife: Rabi'ah al-Adawiyah Ruqayyah binti KH. Saifuddin Amsir, and my beautiful daughter, Qanita Fadllurrahman, as my inspiration to keep on studying until I completed this thesis.

## TABLE OF CONTENTS

Abstract .....	ii
Abstract in Arabic.....	iii
Approval page .....	iv
Declaration.....	v
Copy right page.....	vi
Acknowledgements .....	vii
List of Tables.....	x
<b>CHAPTER ONE: INTRODUCTION.....</b>	<b>1</b>
1.1 Introduction .....	1
1.2 Statement of the Problem .....	3
1.3 Research Question .....	3
1.4 Objectives of the Study .....	4
1.5 The Scope of Study.....	4
1.6 Significance of The Study .....	5
1.7 Research Methodology.....	5
1.8 Justification of The Study .....	7
1.9 Literature Review .....	7
<b>CHAPTER TWO: MARRIAGE WITH THE INTENTION TO DIVORCE IN ISLAMIC JURISPRUDENCE .....</b>	<b>14</b>
2.1 Marriage and Its Purpose in Islam .....	14
2.1.1 The Meaning of “Marriage with the Intention to Divorce” in Islamic Jurisprudence.....	24
2.2 Means of Ascertaining the Hidden Intention .....	26
2.3 The opinions of Muslim Jurists on Marriage with the Intention to Divorce.....	30
2.4 The Preponderant View.....	42
<b>CHAPTER THREE: MARRIAGE WITH THE INTENTION TO DIVORCE IN PUNCAK BOGOR, WEST JAVA - INDONESIA .....</b>	<b>48</b>
3.1 Marriage with the Intention to Divorce in Puncak Bogor, West Java .....	48
3.2 Indonesian Legal Position on Marriage with the Intention to Divorce.....	55
3.3 Indonesian Muslim Scholars’ Views on Marriage with the Intention to Divorce .....	64
<b>CHAPTER FOUR: SURVEYING PEOPLE’S VIEWS, SUGGESTIONS AND SOLUTIONS.....</b>	<b>72</b>
4.1 Description of Research Setting .....	72
4.2 The Background and Life Experience of the Respondents .....	74
4.2.1 Marfu‘ah.....	76
4.2.2 Nisa .....	78
4.2.3 Wahyuni .....	80
4.2.4 Susan .....	82
4.2.5 Kartika.....	84



4.3 Analysis.....	87
4.4 Discussion .....	92
4.5 Conclusions and Suggestions .....	96
<b>REFERENCES</b> .....	99
<b>APPENDIX</b> .....	107

## LIST OF TABLES

<u>Table No.</u>		<u>Page No.</u>
4.1	Respondents' Profiles	75
4.2	Factors of Marriage with the Intention to Divorce	89

# CHAPTER ONE

## INTRODUCTION

### 1.1 INTRODUCTION

Living together is *Sunnat Allāh* for all of His creations on earth. He has created everything in the universe in pairs, such as male and female to live together and complementing each other. Hence, all that we see in this universe is the manifestation of Allah’s Majesty in His creation. Allah says in the Qur’ān:

﴿وَمِنْ كُلِّ شَيْءٍ خَلَقْنَا زَوْجَيْنِ لَعَلَّكُمْ تَذَكَّرُونَ﴾

*“And of everything we have created pairs: That ye may receive instruction.”*<sup>1</sup>(Qur’ān, 51:49).

Humans can reproduce progeny to keep their existence from extinction on earth. The Qur’ān says:

﴿يَتَأْتِيهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً﴾

*“O mankind! fear your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women;”*(Qur’ān, 4:1).

However, Allah does not allow humans to fulfill their desire without any rules. In other words, Allah made the appropriate rules for humans to create good relations and keep their dignity, which made humans different from other living creatures. Allah bestows human with *fiṭrah* (pure nature) and mind in order to achieve a happy life. That is why for humans to satisfy their carnal desires; Islam sanctifies marriage with certain lofty objectives as mentioned in the Qur’ān:

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<sup>1</sup> The translation of the Holy Qur’ān that will be used throughout this thesis is by Yūsuf ‘Alī.

﴿ وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ﴾

“He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts).” (Qur’ān, 30:21).

The above purpose is commonly achieved through a stable and continuous marriage without intention to separate on the part of the husband as he wishes. That is why the basic law of marriage is that it should be contracted with the intention of a permanent union between the two partners, unless it cannot be maintained due to unforeseen circumstances. Ironically, however, some jurists tend to be formalistic to the extent of allowing marriage with the intention to divorce.

This kind of marriage has become a trend in Puncak Bogor, West Java under the name of *nikah wisata* (tourism marriage), termed as *zawāj miṣyāf* or *zawāj siyāḥī*.<sup>2</sup> For this kind of marriage, Indonesia is the most favorite place for some rich people due to cheap dowry (*mahr*), poverty, women’s illiteracy and low cost of living. The consequences are pathetic for Muslims in Indonesia as it insults the dignity of women by treating them as sexual objects leading to child neglect, legalization of free sex and prostitution in the name of religion, etc.

Accordingly, the researcher feels that this issue needs to be given an insightful juridical exposition with two objectives in view: firstly, to give a true understanding to Muslims about marriage based on the higher purpose of the *sharī’ah*; secondly, to identify the controlling measures of the *sharī’ah* in dealing with marriage with intention to divorce. Therefore, this study tries to be an important attempt to enrich the existing academic discourse in this area.

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<sup>2</sup> Majelis Ulama Indonesia, “Nikah Wisata” in *Himpunan Fatwa MUI Sejak 1975*, (Jakarta: Penerbit Erlangga, 2011), 562.

## 1.2 STATEMENT OF THE PROBLEM

Marriage in Islam primarily aims at perpetuation of human race through a harmonious and continuous marriage relationship between a man and a woman. As a matter of principle, a marriage has to be contracted with the intention of permanently bonding together the two married couple.

Nevertheless, some of classical jurists, through their literal and formalistic approach to *ijtihad*, sanctioned temporary marriage with the intention to divorce. With the booming of tourism industry, this form of marriage has re-emerged as a means of enjoying sex which results in devastating effects on women, children, and society. Attractive tourist destinations with low cost of living in Puncak Bogor, West Java – Indonesia have become one of the most-visited places by Muslim tourists.

This study, therefore, attempts to critically analyze the causes of marriage with the intention to divorce in Puncak Bogor, West Java – Indonesia with the aim of proposing solutions to remedy this situation.

## 1.3 RESEARCH QUESTION

This study will answer the following questions:

1. What is the meaning of marriage with the intention to divorce?
2. What are the views of *fuqahā'* (Muslim jurists) on marriage with the intention to divorce?
3. What are the Indonesian laws on marriage with such an objective?
4. What are the causes for marriage with the intention to divorce in Puncak Bogor, West Java – Indonesia?
5. What are the proposed solutions based on *maqāṣid al-sharī'ah* to solve the problem?

## 1.4 OBJECTIVES OF THE STUDY

This study aims to address the following:

1. To expound the meaning of marriage with the intention to divorce.
2. To examine the views of *fuqahā'* (Muslim jurists) on marriage with the intention to divorce.
3. To find out the relevance of Indonesian laws on marriage with the intention to divorce.
4. To survey the reasons as to why some people marry with the intention to divorce.
5. To propose some solutions based on *maqāṣid al-sharī'ah* to remedy the situation.

## 1.5 THE SCOPE OF STUDY

Indonesia is a big country consisting of several islands such as Java, Sumatera, Kalimantan, Sulawesi, Irian Jaya, Nusa Tenggara and others. Java is an over-populated island with approximately 136 million people consisting of diverse ethnic groups, such as Indonesians, Arabs, Dutch and Chinese. Java is also divided into six districts, namely Jakarta, Yogyakarta, West Java, Central Java and East Java. This study will focus on one area only, namely West Java, by focusing the research on Puncak Bogor. This research deals only with marriage with the intention to divorce which is on the rise<sup>3</sup> in Puncak Bogor, West Java – Indonesia.

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<sup>3</sup> According to Dani Chandra, Chairman of Women's Empowerment and Child Protection in Cisarua – Bogor, marriage with the intention to divorce started at the beginning of 2008. During two periods between 2008 and 2009, those marrying with the intention to divorce grew up to approximately 25 people as well as in the last three years, while it continued increasing gradually at around 60 people. Overall, it can be clearly seen that those marrying with the intention to divorce have increased trends from 2008 to 2012. Dani Chandra, interview with the researcher, 15 November 2012. On the other hand, this number who marrying with the intention to divorce in Bogor generally, according to *Bogor Regent* namely Rahmat Yasin, attained at around 200 people in 2012. See also Angga Harja, "RY:

## 1.6 SIGNIFICANCE OF THE STUDY

The marriage with the intention to divorce in West Java, Indonesia is a new concern that needs to be studied and probed further. The study is necessary to examine the consequences of marriage with the intention to divorce from *maqāṣid al-sharī'ah* perspective. The study will be the first of its kind as far as Puncak Bogor is concerned.

## 1.7 RESEARCH METHODOLOGY

Given the nature of the problem, the most appropriate method of this study is the use of qualitative approach,<sup>4</sup> by concentrating on a case study method.<sup>5</sup> To collect the data, the researcher will use two methods:

### a. Library Research

The researcher will analyze textual materials related to marriage with the intention to divorce. The data will be taken both from electronic and traditional sources. In this process, the researcher will engage in deduction and induction processes in dealing with Islamic legal heritage and contemporary views to construct his thesis.

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Jumlah Imigran 200, Mungkin Termasuk Kawin Kontrak”, <<http://www.lingkarjabar.net/2012/12/ry-jumlah-imigran-200-mungkin-termasuk.html>> (accessed 5 January 2013).

<sup>4</sup> According to Creswell, the definition of qualitative research approach is “an inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem.” See John, W, Creswell, *Qualitative inquiry and research design: Choosing among five traditions*, (Thousand Oaks, CA: Sage, 1998), 15.

Strauss and Corbin also provided a generic definition of qualitative research, that is, “any kind of research that produces finding not arrived at by means of statistical procedures or other means of quantification.” See: Strauss, A., & Corbin, J., *Basics of qualitative research: Grounded theory procedures and techniques*, (Newbury Park, CA: Sage Publications, 1990), 17.

<sup>5</sup> According to Bruce L. Berg, a case study is “a method involving systematically gathering enough information about a particular person, social setting, event, or group to permit the researcher to effectively understand how the subject operates or function.” See Bruce L. Berg, *Qualitative Research Methods for the Social Sciences*, (Boston: Allyn and Bacon, 6<sup>th</sup> Edn., 2007), 283.

## b. Case Study

The case study will use in-depth interview method as an instrument for data collection. The items for the interview have been designed with open-ended and semi-structured questions of interview protocols. These questions will enable the researcher to encourage the respondents to talk about whatever is important to them. It helps to establish rapport, gather information and increase understanding.

Due to the sensitivity of the subject under investigation, this study will conduct individual interviews involving five women respondents who are victims of marriage with the intention to divorce in Puncak Bogor, West Java – Indonesia. The limitation of five respondents is based mainly on their willingness and convenience to participate; it aims to get much more detailed information.<sup>6</sup>

To facilitate the interview, the researcher develops interview guide that contains two types of questions: first, questions involving their understanding of the term marriage with the intention to divorce based on Islamic knowledge; second, questions concerning their views on marriage with the intention to divorce based on *maqāṣid* of family.

Since it is a descriptive research in a qualitative study, no statistical tests will be conducted. The open-ended questions will be analyzed in terms of the answer given by the respondents; these data will be analyzed

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<sup>6</sup> According to Neale P. and Boyce C., “a qualitative research technique involves conducting intensive individual interviews that is with a small number of respondents to explore their perspectives on a particular idea, program, or situation.” See Palena Neale and Carolyn Boyce, *Conducting In-Depth Interviews: A Guide for Designing and Conducting In-Depth Interviews for Evaluation Unit*, (Patfinder International, 2006), Vol.2, 3.

Zaidah Zainal also emphasized that case study can be a practical solution when a big sample population is difficult to obtain. See Zaidah Zainal, “Case study as a research method”, <[http://www.eprints.utm.my/8221/1/ZZainal2007-Case\\_Study\\_as\\_a\\_Research.pdf](http://www.eprints.utm.my/8221/1/ZZainal2007-Case_Study_as_a_Research.pdf)> (accessed on 13 May 2013).



manually and rechecked by the researcher to verify the validities of data.<sup>7</sup>

The result of the analysis will be presented in chapter four.

## 1.8 JUSTIFICATION OF THE STUDY

To the researcher, the reasons for choosing this topic are:

1. There is no paper or any other information related to marriage with the intention to divorce in the location of the study.
2. There is no comprehensive study by any Indonesian researcher to solve this problem based on *maqāṣid al-sharī'ah*.

## 1.9 LITERATURE REVIEW

Undoubtedly, the issue of marriage with the intention to divorce is a recurrent topic in *fiqh* literature on marriage and divorce. But to study this issue in the context of its implications in a modern nation state like Indonesia in the light of *maqāṣid al-sharī'ah* is almost non-existent. Nevertheless, some contemporary literature dealing with the theoretical framework of the subject includes, but not limited to, the following:

*Majmū' Fatāwā wa Maqālāt Mutanawwi'ah*, written by 'Abd al-'Aziz ibn 'Abd Allāh ibn Bāz, is a compilation of *fatāwā* in the contemporary Islamic discourse. There are several chapters discussing the term of marriage with the intention to divorce. For example, an Arab Muslim wanted to make sure what Shaikh ibn Bāz said regarding the statement of marriage with the intention to divorce. Ibn Bāz's opinion is that a Muslim is allowed to desert his wife after finishing his tenure or his job. He also

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<sup>7</sup> In qualitative research, a member check, also known as informant feedback or respondent validation, is a technique used by researchers to help improve the accuracy, credibility, validity, and transferability, (also known as applicability, external validity, of fittingness) of study. See <[http://en.wikipedia.org/wiki/Member\\_check](http://en.wikipedia.org/wiki/Member_check)> (accessed on 15 May 2013).

explains that marriage with the intention to divorce is the affair of Muslim's heart between him and Allah. If a Muslim gets married in other countries and intends to divorce his wife whenever he wants it, it is valid by the majority of Muslim jurists because it has already completed the conditions (*shurūṭ*) and pillars (*arkān*) of a valid marriage.<sup>8</sup> This book was also translated into Indonesian language in 2007, it has compelled some Indonesian Muslims to hold on to this *fatwā* to allow them to marry with the intention to divorce. They no longer look at the damages (*ḍarar*) that will ensue afterwards. Therefore, Ibn bāz's *fatwā* needs to be critically analyzed in the light of the objectives of marriage in Islam.

*Islamic Fatawa Regarding Women* compiled by Muhammad bin Abdul-Aziz, contains the current issues related to women. There is a chapter related to marriage in which one of the discussions is marriage with the intention to divorce. In the author's view, marriage with the intention to divorce is not *muṭ'ah* since it does not meet the definition of *muṭ'ah*. However, it is still forbidden since it is a type of deception to the wife and her family as the Prophet (saw) has forbidden deception and mendacity.<sup>9</sup> However, this book does not focus on our issue.

In his book, *al-Zawāj fi al-Fiqh al-Islāmī*, Kamāl al-Dīn Imām talks about the rights and obligations of husband and wife. A husband, for instance, has to fulfill his obligation of maintenance. Unfortunately, marriage with the intention to divorce is contrary to marriage based on the purposes of *sharī'ah*, because marriage with the

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<sup>8</sup> 'Abd al-'Aziz ibn 'Abd Allāh ibn Bāz, *Majmū' Fatāwa wa Maqālāt Mutanawwi'ah*, (Riyāḍ: al-Ri'āṣah al-'Āmmah li al-Idārat al-Buhūth al-'Ilmiyyah wa al-Iftā wa al-Da'wah wa al-Irshād, 2<sup>nd</sup> edn., 1411/1990).

<sup>9</sup> Muhammad bin Abdul-Aziz, *Islamic Fatawa Regarding Women*, (Riyadh: Darussalam Publishers & Distributors, 1<sup>st</sup> edn., 1996), 190-192.

intention to divorce is to waive the wife's several rights.<sup>10</sup> This book, however, does not deal with our issue which we try to expound.

*Mustajiddāt Fiqhiyyah fī Qaḍāyā al-Zāwāj wa al-Ṭalāq*, by Usāmah 'Umar Sulaymān al-Ashqar, deals with marriage with a time period such as *nikāh muṭ'ah* (contracted marriage) and *nikāh mu'aqqat* (temporary marriage). The purpose of these marriages is only sexual; a man who commits to this marriage has no intention to be held responsible to his wife and his children. Both *muṭ'ah* (contracted marriage) and *mu'aqqat* (temporary marriage) are forbidden in Islam because they will clearly harm the wife and children in the future. The author, therefore, does not agree that marriage with the intention to divorce is a normal marriage because marriage with the intention to divorce has many risks for the wife and children.<sup>11</sup> Nevertheless, this book does not approach the problem from our perspective.

In his book, *Hukum Islam: asas-asas dan pengantar studi hukum Islam*" (Islamic Law: the principles and introduction to the study of Islamic law), Suparman Utsman mentions Islamic Law in Indonesia. He explains the marriage laws and the wife's rights after she is divorced.<sup>12</sup> This may be useful in developing the theoretical background dimension of the study.

*150 Masalah Nikah & Keluarga* (150 Issues of Marriage & Family), written by Miftah Farid, discusses in detail marriage and family issues in Islam, such as marriage law, husband and wife issues, dowry (*mahr*), marriage contract (*'aqd al-nikāh*), two witnesses, guardian (*walī*), divorce, and so on. He also gives an example about marriage with the intention to divorce where a man stays overseas,

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<sup>10</sup> Kamāl al-Dīn Imām, *al-Zawāj fī al-Fiqh al-Islāmī*, (Iskandariyyah: Dār al-Jāmi'ah al-Jadīdah li al-Nashr, 1997), 154-173.

<sup>11</sup> Usāmah 'Umar Sulaymān al-Ashqar, *Mustajiddāt Fiqhiyyah fī Qaḍāyā al-Zāwāj wa al-Ṭalāq*, (Al-'Urdun : Dār al-Nafā'is, 1420/2000), 205-228.

<sup>12</sup> Suparman Utsman, *Hukum Islam: asas-asas dan pengantar studi hukum Islam* (Jakarta: Gaya Media Pratama, 1<sup>st</sup> edn., 2001).

and he has not taken along his wife. He suggested that this man should take his wife while he works abroad.<sup>13</sup> He, however, does not suggest solutions that can fit into the Indonesian context.

Ibn Ashur, the author of *Treatise on Maqāṣid al-Sharī'ah* which originally appeared in Arabic in 1946, divides his book into three parts. The first part is concerned with establishing *maqāṣid al-sharī'ah*; the second part examines the universal or general objectives of Islamic legislation; the third part deals with the particular objectives of different types of dealings related to *abwāb fiqh mu'āmalāt*, one of which is *maqāṣid al-sharī'ah* in dealing with the family affairs. He explains that the most important principle underlying any legislation for the family should consist in consolidating three aspects; first, the marriage bond; second, the lineage (*nasab*) and kinship (*qarābah*) bonds; and third, in-law relationship by marriage (*āṣirat al-ṣihr*). He also explains the ways of dissolving these three bonds.<sup>14</sup> Hence, this book is useful for developing the theoretical framework of the study.

*Towards Realization of The Higher Intentions of Islamic Law*, authored by Gamal Eldin Attia, provides a new conceptualization of *maqāṣid* that one of them is the concept of family. He differs from the traditional approach which only limits to the five essentials, namely, the preservation of religion, human life, reason, progeny and material. He proposes an alternative to conceiving the *maqāṣid* of family. In this way, he expands the spheres in which *maqāṣid* are given consideration and renders them more subject to practical application.<sup>15</sup> This book provides useful information to deep expand the conceptual framework of the study.

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<sup>13</sup> Miftah Farid, *150 Masalah Nikah & Keluarga*, (Jakarta: Gema Insani Press, 4<sup>th</sup> edn., 2004), 46-47.

<sup>14</sup> Ibn Ashur, *Treatise on Maqāṣid al-Sharī'ah*, translated and annotated by Mohamed El-Tahir El-Mesawi, (Petaling Jaya, Selangor: Islamic Book Trust, 2006), 241-263.

<sup>15</sup> Gamal Eldin Attia, *Towards Realization of The Higher Intentions of Islamic Law*, (Herndon USA: The International Institute of Islamic Thought, 1428/2007).

Şālih ibn ‘Abd al-‘Azīz al-Manşūr, the author of *al-Zawāj bi-Niyyat al-Ṭalāq min Khilāl Adillat al-Kitāb wa al-Sunnah wa Maqāşid al-Sharī‘ah*, discusses the meaning of marriage and its differences from the other forms of marriage relationships between a man and woman, such as *shighār* marriage, *muḥallil* marriage, and *misyār* marriage. He explains that a marriage must be in line with *maqāşid al-sharī‘ah*. The majority of Muslim jurists (*fuqahā’*) said “marriage with intention to divorce is valid based on *sharī‘ah* because this marriage has sufficient *shurūṭ* (conditions) and *arkān* (pillars)”. According to the author, this marriage, however, is not in accordance with the true understanding and the aims of *sharī‘ah*.<sup>16</sup> This work, though it raises some important points, does not cover the case study of the present research.

In a book entitled, *Himpunan Fatwa MUI sejak 1975* (The Collection of Fatwa(s) by The Council of Indonesian Ulama-MUI since 1975), Majelis Ulama Indonesia deals with “*Nikah Wisata* (Tourism Marriage)” in Indonesia generally. This kind of marriage is practiced by people while travelling as tourists to Indonesia. Majelis Ulama Indonesia views that it is forbidden (*ḥarām*) in Islam because it is similar to temporary marriage (*nikāḥ mu‘aqqat*) in terms of objective and goal.<sup>17</sup> Nevertheless, it does not address the issues by way of social survey.

A number of articles from the internet have been found relevant to the study. For example, the article entitled, *Menikah Dengan Niat Cerai* (Marriage with the intention to divorce) by Ahmad Zain al-Najah in which he discusses marriage with the intention to divorce as happens in Puncak Bogor, West Java – Indonesia. Although men and women have no intention to live together for a long time, they basically have

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<sup>16</sup> Şālih ibn ‘Abd al-‘Azīz al-Manşūr, *al-Zawāj bi-Niyyat al-Ṭalāq min Khilāl Adillah al-Kitāb wa al-Sunnah wa Maqāşid al-Sharī‘ah*, (al-Su‘ūdiyyah: Dār Ibn al-Jawzī, 1<sup>st</sup> edn., 1428/2007).

<sup>17</sup> Majelis Ulama Indonesia, *Himpunan Fatwa MUI sejak 1975*, (Jakarta: Penerbit Airlangga, 2011), 562-566.

already known that this marriage is temporary such as one week to one month only.<sup>18</sup> But this article does not deal with the problem in the way that we want to tackle it.

Ahmad Sarwat, in his article *Nikah dengan Niat Talaq* (Marriage with the intention to divorce), touches on marriage with the intention to divorce as occurs in Bogor, West Java. The writer also regrets the attitude of Indonesian women who simply want to marry with the intention to divorce with foreigners who are staying in Indonesia for a short time. This can be known by their visa in Indonesia written “only issued for few days till one month”. They come to Indonesia not with the intention to get married forever, but to get married solely with the aim of satisfying their lust.<sup>19</sup> This is a valuable point but it is short of answering the questions that this study raises.

Muhammad Šālih al-Munjid in his article, *Al-Zawāj al-Siyāhī*, details some forms of travel marriages such as *al-Zawāj al-Siyāhī*, *nikāh mu‘ah* (contracted marriage), *nikāh mu‘aqqat* (temporary marriage), *misyār* marriage, and marriage with the intention to divorce. He explains with more details the similarities between marriage with the intention to divorce and *nikāh mu‘aqqat* (temporary marriage), and their negative impacts on family.<sup>20</sup> Nevertheless, this article does not treat the subject as it is intended by this study.

*Wisata Seksual Berijab Kabul* (Sexual Tourism has *Ījāb* and *Qabūl*), is written by Asrori S Karni who mentions the phenomenon of marriage with the intention to divorce in Puncak Bogor, West Java – Indonesia. According to the author, this marriage which is also called *Nikah Wisata* is valid because it complies with conditions and pillars of marriage even if its intention is not permanent. Moreover,

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<sup>18</sup> Ahmad Zain al-Najah, “Menikah Dengan Niat Cerai”, <<http://www.ahmadzain.com/read/karya-tulis/225/menikah-dengan-niat-cerai/>> (accessed 18 February 2012).

<sup>19</sup> Ahmad Sarwat in his article, “Hukum Menikah Untuk di Ceraikan”, <<http://blog.re.or.id/hukum-menikah-untuk-diceraikan.htm>> (accessed 20 March 2012).

<sup>20</sup> Muhammad Šālih al-Munajjid, “al-Zawāj al-Siyāhī”, <<http://almunajjid.com/khotab/1373>> (accessed 20 March 2012).

this marriage is valid as it looks at the *zāhir* (the outward appearance), not to the implications which it entails on family and society. He also suggests to all tourists to take along their wives if they are afraid to indulge in *zinā* (fornication).<sup>21</sup>This work includes important points, but the author does not propose any framework of action.

In view of the above, the available studies though useful for the researcher are short of studying the phenomenon in a particular location as this study intends to undertake.

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<sup>21</sup> Asrori S Karni, “Wisata Seksual Berijab Kabul”,  
<[http://arsip.gatra.com/2010-08-09/versi\\_cetak.php?id=140413](http://arsip.gatra.com/2010-08-09/versi_cetak.php?id=140413)> (accessed 25 March 2012).

## CHAPTER TWO

### MARRIAGE WITH THE INTENTION TO DIVORCE IN ISLAMIC JURISPRUDENCE

#### 2.1 MARRIAGE AND ITS PURPOSE IN ISLAM

A sanctified and legal institution, marriage (*nikāḥ*) in Islam is the cornerstone of social order and communal harmony, for as an institution it simultaneously regulates sexual, moral and familial relationships.<sup>1</sup>

Islam attaches great importance to the question of marriage in its social system. In the Holy Qur’ān and the sayings of the Holy Prophet, we find that marriage has been greatly encouraged. The Holy Qur’ān says:

﴿وَأَنْكِحُوا الْأَيْمَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِن يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ﴾

*“And marry off those who are single among you and the righteous among your male slaves and female slaves. If they are poor, Allah will enrich them out of His grace, and Allah is all-Sufficient for His creatures needs and All-Knowing.”* (Qur’ān, 24:32).

In al-ḥadīth, Prophet Muḥammad (saw) says:

يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمْ الْبَاءَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَعْزُ لِلْبَصْرِ وَأَخْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّ الصَّوْمَ لَهُ وَجَاءٌ. (متفق عليه).

*“O young men! Those of you who can support a wife should marry, for it controls gaze and preserves one from immorality; but those who cannot should fast, for it is a means of suppressing the sexual desire.”* (agreed upon).<sup>2</sup>

<sup>1</sup> Wael B. Hallaq, *Sharī‘a: Theory, Practice, Transformations*, (Cambridge, UK: Cambridge University Press, 2009), 271.

<sup>2</sup> Muḥammad ibn Futūḥ al-Ḥumaidī, *al-Jam‘u Baina al-Ṣaḥīḥain al-Bukhārī wa Muslim*, (Bayrūt: Dār ibn Hazm, 1423/2002), vol.1, 210