

CHAPTER II

MARRIAGE IN SOCIAL LIFE

A. Definition of Marriage

Marriage naturally is a multifaceted institution. It is complex and cannot be defined only from one side. The definition of marriage has constantly changed over the centuries. It seems marriage has almost universally been defined as a social and legal union between men and women.¹

Anthropologists have proposed several competing definitions of marriage so as to encompass the wide variety of marital practices observed across cultures. In anthropology, marriage is generally defined as a union between a man and a woman such that children born to the woman are the recognized legitimate offspring of both partners. This definition is too restrictive in terms of recognized legitimate offspring. It is criticized by Edmund Leach by suggesting that marriage is viewed in terms of the different types of rights, it serves to establish.²

Leach expanded the definition and proposed that Marriage is a relationship establishment between a woman and one or more other persons, which provides that a child born to the woman under circumstances, not prohibited by the rules of the relationship, is accorded full birth-status rights common to normal members of his society or social stratum.³ Leach argued that there is no definition of marriage applied to all

¹Shirley A. Hill, *Families: a social class perspective*, (Los Angeles: Sage, Pine Forge, 2012), p. 4.

²Routledge & Kegan Paul, *Notes and Queries on Anthropology*, 6th ed., (London: Royal Anthropological Institute, 1951), p. 111.

³Stephen Gudeman, *Relationships, residence and the individual*, (New York: Routledge, 1976), p. 131.

cultures. He offered a list of ten rights associated with marriage with specific rights differing across cultures.⁴

According to Leach, marriage can serve to establish any of the following:

1. To establish the legal father of a woman's children.
2. To establish the legal mother of a man's children.
3. To give the husband a monopoly in the wife's sexuality.
4. To give the wife a monopoly in the husband's sexuality.
5. To give the husband partial or monopolistic rights to the wife's domestic and other labour services.
6. To give the wife partial or monopolistic rights to the husband's labour services.
7. To give the husband partial or total rights over the property belonging or potentially accruing to the wife.
8. To give the wife partial or total rights over the property belonging or potentially accruing to the husband.
9. To establish a joint fund of property –a partnership– for the benefit of the children of the marriage.
10. To establish a socially significant 'relationship of affinity' between the husband and his wife's brothers.⁵

Marriage is perhaps society's oldest institutions. From the beginning of human life, people have grouped themselves into clans and families to find emotional, physical, and communal support. This fact gives understanding that marriage is not only for getting children legitimation

⁴Edmund R. Leach, "Polyandry, Inheritance and the Definition of Marriage: with Particular Reference to Sinhalese Customary Law", *Man* 55, No. 199, (1955), p. 182-186.

⁵*Ibid.*

and establishing everyone's right in family's circumstance. Marriage is also about social interaction.⁶

According to sociologist Max Weber, as explained by Shirley A. Hill, marriage is a stable sexual relationship allowed and legitimized by the larger kin group and used to determine rules about property rights for children.⁷ Marriage is also defined as the emotional and legal commitment of two people to share emotional and physical intimacy, various tasks, and economic resources.⁸

This definition seems being supported by a former president of the National Council on Family Relations, Carlfred Broderick, which found nine characteristics of marriage to be common across income levels, educational levels, and ethnic and cultural groups in the United States:

1. Marriage is a demographic event. Each marriage creates a social unit in society.
2. Marriage is the joining of two family and social networks. When individuals marry, they marry not only each other but their partner's family and friends. Their social network may comprise friends of both partners, but only those friends liked by both partners tend to remain friends of the couple.
3. Marriage is a legal contract between the couple and the state. Each state specifies the rights and responsibilities of the partners.
4. Marriage is an economic union. A married usually becomes a single financial unit for most purposes. As a group, married couples are probably society's most important financial decision makers –buying, selling, borrowing, and sharing resources as one.

⁶David H. Olson & John DeFrain, *Marriage & Families: Intimacy, Diversity, and Strengths*, (San Francisco: The McGraw-Hill Companies, t.th), p. 2

⁷Shirley A. Hill, *Families: a social class perspective*, ... p. 4.

⁸David H. Olson & John DeFrain, *Marriage & Families: Intimacy, Diversity, and Strengths*, ... p. 3.

5. Marriage is the most common living arrangement for adults. Few people choose to live alone. Marriage is by far the most popular arrangement for adults.
6. Marriage is the context of most human sexual activity. Most married couple rate sexual activity positively, especially in the early years.
7. Marriage is a reproductive unit. Most married couples become parents and see parenting as an important goal and valued purpose in their lives.
8. Marriage is a unit that socializes children (although children can also be raised by single parents, extended families, grandparents, and other caregivers).
9. Marriage is an opportunity to develop an intimate, sharing relationship. Although many marriages fail, many other provide a supportive context in which people develop and maintain intimacy.⁹

It is similar with marriage definitions in Islamic jurisprudence (*fiqh*). *Fiqh* uses term *nikāḥ* or *ziwāj* for marriage. According to its original meaning, marriage is *damm* or *waṭi*, means squeeze, or suppress, or intercourse. Marriage is:

عَقْدٌ يَتَضَمَّنُ إِبَاحَةَ وَطْئٍ بِلَفْظِ النِّكَاحِ أَوْ التَّزْوِيجِ أَوْ مَعْنَاهُمَا¹⁰

“Contract (*akad*) which is containing law provisions on permitting doing sexual intercourse, and its contract are done by using *nikāḥ* or *ziwāj* word, or by word which has the same meaning with both.”

This definition is supported by Wahbah az-Zuhailī and many *fuqahā*. He defines marriage as a contract which allowing man to do *waṭi* or *al-istimtā* (sexual intercourse) with a woman, and live together with her. It

⁹*Ibid.*, p. 4.

¹⁰Sayyid Sabiq, *Fiqh Sunnah*, trans. by Nor Hasanuddin, (Jakarta: PT. Pena Pundi Aksara, 2007), p. 477-478.

also can be defined that marriage is a contract which is established by *syarī'ah* that has function to give ownership right for man to have a good time with woman, and to allow woman has a good time with man.¹¹

Marriage is contract between man and woman which is legally, socially and religious recognized. It provides both a chance to get biological relations. However, every legal action has goals and consequences or effects. It has important position on saving marriage and family life. It needs to be realized by both man and woman that marriage is not only about legal permission for sexual intercourse, but also about its goals and consequences. It generally leads to the establishment of family life. Both male and female live together having their respective responsibilities according to their roles as assigned by society.¹²

The Holy Quran says:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٢١﴾¹³

“And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect.”

Furthermore, according to *Undang-Undang Republik Indonesia* (the Statute of Indonesia) No.1 Section 1 in 1974 about marriage, marriage is defined as physical and spiritual bonding between a man and a woman as a

¹¹Wahbah az-Zuhaili, *Fiqh Islam (al-Fiqh al-Islām Wa Adillatuhū)*, trans. by Abdul Hayyie al-Kattani, vol. 9, (Depok: Gema Insani, 2011), p. 41.

¹²Direktorat Jendral Pembinaan Kelembagaan Agama Islam, *Ilmu Fiqh*, (Jakarta: Departemen Agama, 1985), p. 48.

¹³QS. Ar-Rūm [30]: 21.

couple with the aim to establish a happy and permanent family or household based on the provisions of God the Almighty.¹⁴

It can be assumed that each of those definitions contributes something to a general understanding of marriage. However, those definitions may form a starting point in an attempt to arrive at a more holistic approach that marriage is the emotional and legal commitment or a contract of two people in physical and spiritual bonding to share emotional and physical intimacy, various tasks, properties, economic resources, clarifying children legitimation, and others.

B. The Advantages and Disadvantages of Marriage

Marriage is full of paradoxes. According to Montaigne, marriage is like a bird and the cages: the birds without despair to get in, and those within despair of getting out. It means people who are not married have a big passion to get married, but many of those who are married feel despair and trying to leave it by getting divorced.¹⁵ Many people often fail to see the positive effects of marriage, which are numerous because the media so often focus on the negative aspects of marriage (marital violence and divorce).

The advantages and disadvantages have big role in determining marriage law and social life. It needs to be known that marriage benefits society by building and strengthening human relationships within the home (among couple and children) and beyond (involving relatives, neighbors, and communities). For this reason, the family has been understood as the fundamental unit of society, the foundation from which religious, civic, and

¹⁴Dewan Perwakilan Rakyat Republik Indonesia, "Undang-Undang Perkawinan", <http://www.dpr.go.id/id/undang-undang/1974/1/uu/PERKAWINAN>, accessed on 16/03/2013.

¹⁵David H. Olson & John DeFrain, *Marriage & Families: Intimacy, Diversity, and Strengths*, ... p. 303.

legal organizations naturally develop and flourish. Many researches support these beliefs about marriage, by demonstrating the benefits for the individual and consequently for the society.¹⁶

David H. Olson and John DeFrain describe Linda Waite's review in various studies that examined the positive effect of marriage on individuals.¹⁷ These benefits are as follows:

1. Married people lead a healthier lifestyle

That research demonstrates that a variety of physical and health benefits result for spouses and their families. Indeed, as the California Healthy Marriage Coalition indicates, a comprehensive review of research since 1990 by the U.S. Department of Health and Human Services shows that married people are healthier than those who are not married across a wide array of health outcomes. This is especially true for spouses who are in good quality of marriages. Classic literature reviews show that married men and women to be generally healthier. Other benefits include¹⁸:

- a. High levels of immune function among spouses who have good quality of marriages.
- b. Lower risk for death from heart attacks and longer life expectancy among married men and women with heart disease.
- c. Reduction of unhealthy behavior such as smoking, illegal drug use and abuse of alcohol.

2. Married people live longer

¹⁶Theresa Notare & H. Richard McCord, *Marriage and the Family in the United States: Resources for Society (A review of research on the benefits generated from families rooted in marriage)*, (Washington, DC: United States Conference of Catholic Bishops, 2009), p. 23.

¹⁷David H. Olson & John DeFrain, *Marriage & Families: Intimacy, Diversity, and Strengths*, ... p. 304.

¹⁸Theresa Notare & H. Richard McCord, *Marriage and the Family in the United States: Resources for Society (A review of research on the benefits generated from families rooted in marriage)*, ... p. 11-12.

At every age level, married people live several years longer than do single, divorced, or widowed persons. This is often because they have the availability of more economic resources and emotionally healthier, experience less depression and are less likely to attempt or commit suicide.¹⁹

3. Married people have a satisfying sexual relationship

The highest levels of sexual satisfaction were reported by individuals who were in married, monogamous relationships, while those who were single or cohabiting reported slightly lower levels of sexual satisfaction.²⁰ Married couples have sex about six to seven times per month, as compared to an average of seven times for cohabiting couples and only three to four times for single.²¹

4. Married people have more wealth and economic assets

Marriage is economically good for husbands, wives, children, and society. The majority of intact marriages keeps the married and their children out of poverty and does not stress government support programs, the health care system and the labor force.²² It happens because married couple can pool their economic resources, they tend to be wealthier. Married couples have greater wealth in part because two can live for the price of 1½ person by sharing the cost of housing, household appliances, furniture, utilities, and so on.

5. Children generally do better raised in a two-parent home

¹⁹ *Ibid.*, p. 23.

²⁰ Christopher F. Scott and Susan Sprecher, "Sexuality in Marriage, Dating, and Other Relationships: A Decade Review," *Journal of Marriage and Family*, Vol. 62, (November 2000), p. 999–1017

²¹ David H. Olson & John DeFrain, *Marriage & Families: Intimacy, Diversity, and Strengths*, ... p. 304.

²² Theresa Notare & H. Richard McCord, *Marriage and the Family in the United States: Resources for Society (A review of research on the benefits generated from families rooted in marriage)*, ... p. 16.

An abundance of research demonstrates that healthy psychological and social development is found among children who grow up in a home headed by the husband and wife in a healthy marriage. In fact, the best source of emotional stability and good physical health for children is the stable, happy marriage of their mother and father. Children raised in intact married families are more likely to attend college, and are physically and emotionally healthier than their peers raised in non-married families.²³

Since marriage and family life are part of almost everyone's experience, family life encompasses virtually the whole range of emotional experience. It gives possibility that family relationship –between wife and husband, parents and children, brothers and sisters, or more distant relatives– can be warm and fulfilling. But however they can equally be full of the most extreme tension, driving people to despair, or imbuing them with a deep sense of anxiety and guilt.²⁴

The disadvantages of marriage included in gender equality, financial problem, having new extended family, likelihood of relationship to split, and concerns about the divorce rate. Many people afraid of their autonomy will lose after they get married. The performance of dominant gender roles by men and submissive gender roles by women influence the power dynamic of a marriage. For example in many cultures, a married woman needs her husband's approval for almost all of economic activities, including employment, ownership of property, and even traveling away from home.

The other dark side of marriage and family life is extensive and belies the rosy images of family harmony frequently depicted in TV commercials

²³*Ibid.*, p. 5.

²⁴Anthony Giddens, Mitchell Duncier, &Richard Appelbaum, *Introduction to sociology*, sixth Edition, (New York: W. W. Norton & Company, Inc, 2007), p. 492.

and programs. It can take many forms. Among the most devastating in their consequences are the incestuous abuse and domestic violence.²⁵

The two board categories of family violence are child abuse and spousal abuse. Child abuse defined as serious physical harm (trauma, sexual abuse with injury, or willful malnutrition) with intent to injure. Spousal abuse does not distinguish between severe acts, such as beating up and threatening with or using a gun or knife, and less severe acts of violence, such as slapping, pushing, grabbing, or shoving one's spouse. The spousal violence is almost exclusively man-on-woman violence. Several studies indicated that the violence is more common among low-income couples. However, because of the sensitive and private nature of violence within families, it is difficult to obtain national data on levels of domestic violence.²⁶

These disadvantages of marriage then drive many people rejecting marriage and choose the alternatives to traditional forms of marriage and the family with intent to avoid the disadvantages of marriage. Several alternatives to substitute marriage which have become more common in recent years are cohabitation, gay-parent families, or staying single (celibacy).²⁷

C. Marriage in Islamic Jurisprudence (*Fiqh*)

1. Implementation of Law

Marriage is defined as contract which is done with an offer (*Ījāb*) and an acceptance (*Qabūl*). Before discussing it more in *fiqh* perspective, it needs to known that the decision of marriage law is

²⁵ *Ibid.*

²⁶ *Ibid.*, p. 492-495.

²⁷ *Ibid.*, *More detail, see* Anthony Giddens, Mitchell Duneier, & Richard Appelbaum, *Introduction to sociology*, 6th Ed., (New York: W. W. Norton & Company, Inc, 2007), p. 496-500.

based on individual's condition. So, marriage may be obligated, recommended, forbidden, allowed, or not recommended according to individual's condition.²⁸

Discussing about jurisprudence, it leads to discuss about everything around legal action, including its law, pillars and requirements, and legal consequences. Marriage implementation is

²⁸The nature law of marriage is allowed (*mubāh*). However the of marriage is change according to one's condition. Here, the law of marriage is divided into four:

a. Marriage is obligated (*wājib*); *Fuqahā* mostly state that marriage is is *wājib* if one's sure that he will fall in fornication if he does not get married. Whereas, he is capable to give earnings to his wife in the form of dowry, inner living, and other marriage rights. He also cannot safeguard his self by fasting or others, therefore, he fall in bad actions. This law is based on the legal thought that every Muslim must protect themselves against any forbidden things. If this kind protection only can be done by getting married, while protecting self is an obligation, so marriage is *wājib*. In *Qā'idah Fiqhiyyah* is mentioned:

مَا لَا يَسْتُمُّ الْوَاجِبَ إِلَّا بِهِ فَهُوَ وَاجِبٌ

“All the things which are part of medium to complete an obligation (*wājib*), so it is also *wājib*.”

b. Marriage is prohibited (*harām*); marriage is forbidden if one believes that he will abuse and make his wife in danger if he marries her. It is like condition where he cannot fulfill marriage needs, or cannot act fair among his wives. Because anything which cause one falls in forbidden things is also forbidden. It also forbidden (*harām*) for anyone who get married to hurt the others. For example one who get married to ensure that certain woman does not get married with another man. Then he gets married with this woman, but he does not behave well with that woman. This kind marriage is forbidden because it is far from *maslahah* (advantages).

c. Marriage is not recommended (*makrūh*); it is not recommended if one is worried about himself doing sinning and dangerous actions. This is for one who has capability to get married and protect his self; so that there is no anxious about adultery if he doesn't get married. But he doesn't have a strong desire to fulfill spouse obligations well. He afraid he cannot give earnings, doing evil toward family, or losing desire toward woman.

d. Marriage is recommended (*sunnah*). According to *jumhūr al-'ulamā'* except syāfi'i marriage is recommended if one is on stable condition, in case he is not worried about himself falling into fornication and doing cruel thing to his wife if he doesn't marry. The legal ground of this law is Allah's recommendation to get married in Qur'an:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِنْ يَكُونُوا فُقَرَاءَ يُعْطِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ

“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 encompasseth all, and he knoweth all things.” (QS. An-Nūr [24]: 32). This verse uses imperative sentence, by ordering anyone who are single to get married. However based on *qarinah*, this imperative sentence does not mean *wājib*, but *sunnah*. According to Syāfi'i, the law of marriage in stable condition like mentioned is allowed (*mubāh*); it is allowed to do or even leave it.

See, Wahbah az-Zuhaili, *Fiqh Islam (al-Fiqh al-Islām Wa Adillatuhū)*, trans. by Abdul Hayyie al-Kattani, vol. 9, (Depok: Gema Insani, 2011), p. 41-43.

part of religious law. Every implementation of law, there must be several pillars (*arkān*) and requirements (*syurūt*) in it. But before discussing the pillars and requirements of marriage, it is better to know the definition of both terms first.

Requirement needs and should be fulfilled before doing legal actions, it is not included as subject of legal action but having important role in implementation of legal action. The pillar is element attached to the legal actions or events (for example marriage contract). The legal actions or events consist of legal subject and legal object. The pillars determine the legitimacy or validity of a legal action or event. If one of pillar in legal event or action is not fulfilled, it gives legal consequence that this legal action or event is not lawful and has to be canceled.²⁹

According *jumhūr al-'ulamā'*, pillar is an essence or a part which have important role in an action, whether those pillars are part of the action or not. For example *'āqid* (someone who do contract), according to *jumhūr al-'ulamā'*, it is included in one of pillars because it determines the formation of the contract, therefore *'āqid* is not a requirement.³⁰

According to them, there are three pillars of contract; one who do contract (subject to law), something which are contracted (*ma'qūd 'alaih*), and *ṣigah*. Similarly in the case of marriage, the subject of contract are groom and guardian of bride, and the object of marriage contract or *ma'qūd 'alaih* is permissibility to have husband and wife relationship, and *ṣigah*, consist of *ijāb* dan *qabūl*.³¹

²⁹Neng Djubaidah, *Pencatatan Perkawinan dan Perkawinan Tidak Dicatat Menurut Hukum Tertulis di Indonesia dan Hukum Islam*, (Jakarta: Sinar Grafika, 2010), p. 90.

³⁰*Ibid.*, p. 92.

³¹*Ibid.*

In marriage case, when the pillar of marriage is not fulfilled, this marriage is legally canceled. If the requirement of marriage is not fulfilled, this marriage ceremony can be canceled or be delayed until that requirement is fulfilled.³²

There many opinions of *fiqh* scholars about the pillars and requirements of marriage. According to Hanafiyah, the pillars of marriage consist of *ṣīgah*, a bride and a groom, and witnesses. According to syafi'iyah, the requirement of marriage related to *ṣīgah*, trustees or guardian, a bride and a groom, and witnesses. By regarded to its pillars, for them there are five; a bride and groom, trustees, two witnesses, and *ṣīgah*. Malikiyah does not put witnesses as one of marriage pillars, while Syafi'i makes two witnesses as one of marriage pillars³³.

³²*Ibid.*, p. 93.

³³The pillars and requirements of marriage generally are as follows:

a. The trustees or guardian (*wālī*).

Marriage without guardian is illegal by the law. Prophet Muḥammad says:

عَنْ أَبِي مُوسَى، قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " لَا نِكَاحَ إِلَّا بِوَالٍ "

“It was narrated from Abū Mūsā that: the Messenger of Allah said: “There is no marriage except with a guardian.”” (HR. Ibn Mājah)

The requirements of marriage guardian are independent, sensible and mature. It means slaves, psychotics, and children cannot be a marriage guardian. The next requirement is Muslim. If the spouse candidate is Muslim, so the guardian must be a Muslim because non-Muslim cannot be a guardian of Muslim.

The guardian of marriage is done by men. Most scholars argue that woman cannot get married by herself; they also cannot be guardian of others. People who could be the guardian in marriage primarily is bride's father, if he cannot, it is replaced by one of these people; her grandfather (father's father), blood brother, half brother (same father), son of blood brother, son of half brother (same father), uncle (brother of father), or son of uncle. If no one cannot be her guardian, so she will be guarded by *wālī ḥakīm* based on request of the original guardian. These sequences should be maintained properly.

Before marriage contract is held, the guardian has obligation to ask the bride opinion first to know her readiness and her agreement. Marriage is an eternal relationship, so that Islam prohibits marriage by force. Marriage contract is not legal without the agreement of the bride. She has right to cancel marriage made by her guardian if it is done by force.

2. Legal Consequences

It was mentioned before that every implementation of law gives legal consequences. It plays a significant part in the description of the totality of marriage in Islamic law. When the marriage contract is properly licensed, it will lead to legal consequences, and the rights and obligations of spouses as well.³⁴

These legal effects consist of a number of rights, duties, and responsibilities. According to Wahbah az-Zuhaili, marriage contract which is properly completed and licensed will give several consequences³⁵:

عَنِ ابْنِ عَبَّاسٍ، أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " التَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَأْمَرُ وَإِذْنُهَا سُكُونُهَا " رواه مسلم

“Ibn ‘Abbās reported Allah's Messenger as saying: A woman who has been previously married (Ṭayyib) has more right to herself than her guardian. And a virgin should also be consulted, and her silence implies her consent.” (HR. Muslim)

b. Witnesses

Witnesses in marriage ceremony consisted of two men; Muslims, *bālig*, intelligent, capable to see and hear, and understand the purpose of marriage contract. According to the Ḥanafī and Ḥanbali, marriage can be done with a man witness and two women witnesses. Ḥanafī allows two blind men or two of the wicked (*fāsiq*) to be marriage witnesses.

Some scholars have argued that a witness is a requirement of marriage. That is why marriage without two witnesses is not allowed (invalid). It is intended for both parties and society good. For example if something unexpected happens, the witnesses could be questioned on his testimony.

c. *Ṣigah*

Ṣigah or *Ḥijāb* and *qabūl* is also called as *‘aqd an-nikāh* or marriage contract. On its practice, *Ḥijāb* and *qabūl* must be made conceptually “at the same time and meeting” are pronounced by the groom and bride’s guardian, or by an attorney (*hakim*) to act on their behalf, or by their guardians when they lack the capacity to contract themselves in marriage. Both of it are the unity and continuity of the contract, and it should be heard well by both witnesses.

More detail, See, Direktorat Jendral Pembinaan Kelembagaan Agama Islam, Ilmu Fiqh (Jakarta: Departemen Agama, 1985), p. 98-109. Sayyid Sabiq, *Fikih Sunnah*, vol. VII, trans. By Mahyudin Syaf, (Bandung: PT Alma’arif, 1982), p. 7-13.

³⁴Sayyid Sabiq, *Fikih Sunnah*, vol. VII, trans. By Mahyudin Syaf, (Bandung: PT Alma’arif, 1982), p. 43.

³⁵Wahbah az-Zuhaili, *Fiqh Islam (al-Fiqh al-Islām Wa Adillatuhū)*, trans. by Abdul Hayyie al-Kattani, vol. 9, (Depok: Gemma Insani, 2011), p. 95-103.

- a. Allowing spouse having sexual intercourse appropriate with *syarī'ah* guidance; forbidden to have sexual intercourse in anus, and also when the wife is on menstruation, *nifās*, on the middle of *ihrām*, and after doing *zihār* before paying *kafarat*.
- b. Right for husband to control over his wife. Wife is forbidden leaving home without husband's permission.
- c. Obligation for husband to pay dowry (*mahr*) for his wife. The dowry is a gift which given by husband to his wife. It is right of wife, obligatory for husband, and recommended to be mentioned in marriage contract.³⁶ Marriage would not be legal, according to *syarī'ah*, without dowry. Because dowry is substitute of right to have a good time with wife.

وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبَّرْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا

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“And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, Take it and enjoy it with right good cheer.”

- d. Obligation to give livelihood (*nafaqah*). It is obligated for husband. He has obligation to fulfil his wife needs, including food, residence, clothes, household needs, and others.³⁸
- e. Becoming *mahram*.
- f. Getting right to inherit each other. It means one become heir when another is dead.

³⁶Direktorat Jendral Pembinaan Kelembagaan Agama Islam, *Ilmu Fiqh*, ... p. 109-110.

³⁷QS. An-Nisā' [4]:4.

³⁸Sayyid Sabiq, *Fikih Sunnah*, vol. VII, ... p. 63.

- g. Obligation to act fair among wives when doing polygamy. When man has more than a wife, he must fair and treat his wives' right alike; for example in *nafaqah*, passing the night turn, clothes, residence, and others.
- h. Obligation for wife to obedient to husband when he ask her going to bed. It has been mentioned that the right of wife are dowry and livelihood, here, her obligation is obeying her husband and watching over his disgrace.
- i. Punishment limitation if wife disobedient to her husband. When wife is ignoring her obligation (*nusyūz*), leave home without husband's permission, ignoring Allah's right, and so on, punishment can be done step by step. Allah says on Quran:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنِ اطَّعْنَكُمْ فَلَا تَبْغُوا

عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٣٤﴾

“Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).”

- j. Behaving good, keeping from danger, fulfilling rights and making good relationship. Here means kindness; the husband

is admiring his wife, making communication in good way, prioritizing wife's interest to take her heart, and etceteras, and so does wife. One of proof of *akhlāq* perfection and faith is good manners and tender to his wife.³⁹ Prophet Muhammad said:

وعن أبي هريرة رضي الله عنه قال : قال رسول الله صلى الله عليه وسلم

"أَكْمَلُ الْمُؤْمِنِينَ إِيمَانًا أَحْسَنُهُمْ خُلُقًا، وَخَيْرُكُمْ خَيْرًاكُمْ لِنِسَائِهِمْ"⁴⁰

“Abū Hurairah (May Allah be pleased with him) reported: Messenger of Allah said, "The believers who show the most perfect Faith are those who have the best behavior, and the best of you are those who are the best to their wives".”

Regarding spouses, it is also important and obligated to provide intimacy and peacefulness in their relationship. Allah says in Qur'an:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا

آتَيْنَهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِعَاقِبَةٍ مُبَيَّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ

تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ﴿١٩﴾⁴¹

“O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may Take away part of the dower ye have given them,-except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good.”

³⁹Sayyid Sabiq, *Fikih Sunnah*, vol. VII, ... p. 82.

⁴⁰Muhammad b. Isā b. Saurah At-Tirmizī, *Al-Jami' aṣ-Ṣaḥīḥ Wa Huwa Sunan at-Tirmizī*, Juz 3, (Beirut: Dār al-Kutub al-'Ilmiyyah, t.th), p. 466.

⁴¹QS. An-Nisā' [4]:19.

D. The Virtue of Marriage

In initiating this discussion, the Quranic verse mentions that this world is good and created with a purpose, in line with its law which Allah has established for it. As long as Muslim devote to the natural purity (*fitrah*), endure by passing through the truth, and think about what lies behind, they will get the true happiness.⁴²

إِنَّ فِي خَلْقِ السَّمَاوَاتِ وَالْأَرْضِ وَاخْتِلَافِ اللَّيْلِ وَالنَّهَارِ لآيَاتٍ لِّأُولِي الْأَلْبَابِ ﴿١٩٠﴾
 الَّذِينَ يَذْكُرُونَ اللَّهَ قِيَامًا وَقُعُودًا وَعَلَىٰ جُنُوبِهِمْ وَيَتَفَكَّرُونَ فِي خَلْقِ السَّمَاوَاتِ وَالْأَرْضِ رَبَّنَا مَا خَلَقْتَ هَذَا بَاطِلًا سُبْحَانَكَ فَقِنَا عَذَابَ النَّارِ ﴿١٩١﴾⁴³

“Behold! in the creation of the heavens and the earth, and the alternation of night and day,- there are indeed Signs for men of understanding,- Men who celebrate the praises of Allah, standing, sitting, and lying down on their sides, and contemplate the (wonders of) creation in the heavens and the earth, (With the thought): "Our Lord! not for naught Hast Thou created (all) this! Glory to Thee! Give us salvation from the penalty of the Fire.”

Virtue or goodness is the ethical significant of what lies behind the actions. In Islamic terminology, the word *fadilah* is used for mentioning the virtue itself. virtue can be defined as a tendency to act rightly, nor even as a tendency to try to act rightly. Virtue involves and depends on appropriate emotions as well as actions. Even more importantly, virtue depends on motives and beliefs that shape actions.⁴⁴

⁴²Nurcholish Madjid, Masyarakat Religius, *Membumikan Nilai-Nilai dalam Kehidupan Masyarakat*, (Jakarta: Penerbit Paramadina, 2000), p.71.

⁴³QS. Ali ‘Imrān [3]: 190-191.

⁴⁴Roberts Merrihew Adams, *A Theory of Virtue: Excellence in Being on the Good*, (New York: Oxford University Press, Inc., 2006), p. 8-9.

Moral virtues are character traits that make someone a good person and allow him to lead a good life. It is persisting excellence in being good. There are four principle virtues, according to Plato mentioned by Mohamed Ahmed Sherif, called the cardinal virtues; temperance (moderation in pleasures), justice (giving each person their due), courage (doing right in spite of fear), and prudence (practical wisdom).⁴⁵ These four are the hinges of virtue itself.

In the term of marriage, it can be understood that the virtue of marriage is a tendency to get married and reason why marriage is really recommended and commendable in Islam.⁴⁶ Relate to recommendation of marriage, Prophet Muḥammad emphasized by saying:

وعن أنس رضي الله عنه قال: جاء ثلاثه رهط إلى بيوت أزواج النبي صلى الله عليه وسلم، يسألون عن عبادة النبي صلى الله عليه وسلم، مني فلما أُخبروا كأنهم تَعَالَوْهَا فَقَالُوا وَأَيْنَ نَحْنُ مِنَ النَّبِيِّ صلى الله عليه وسلم قد غُفِرَ لَهُ مَا تَقَدَّمَ مِنْ ذَنْبِهِ وَمَا تَأَخَّرَ. قَالَ أَحَدُهُمْ : أَمَا أَنَا فَإِنِّي أَصَلِّي اللَّيْلَ أَبَدًا وَقَالَ الْآخَرُ: أَنَا أَصُومُ الدَّهْرَ وَلَا أَفْطِرُ، وَقَالَ الْآخَرُ: وَأَنَا أَعْتَرِلُ النِّسَاءَ فَلَا أَتَزَوَّجُ أَبَدًا، فَجَاءَ رَسُولُ اللَّهِ صلى الله عليه وسلم فَقَالَ " أَنْتُمْ الَّذِينَ قُتِلْتُمْ كَذَا وَكَذَا أَمَا وَاللَّهِ إِنِّي لِأَحْسَنُكُمْ لِلَّهِ وَأَتْقَاكُمْ لَهُ، لَكِنِّي أَصُومُ وَأُفْطِرُ، وَأُصَلِّي وَأَرْقُدُ وَأَتَزَوَّجُ النِّسَاءَ، فَمَنْ رَغِبَ عَن سُنَّتِي فَلَيْسَ مِنِّي " ((متفق عليه)).⁴⁷

⁴⁵Mohamed Ahmed Sherif, *Ghazali's Theory of Virtue*, (Albany: State University of New York Press, 1975), p. 24.

⁴⁶Shahla Haeri, *Law of Desire Temporary Marriage in Shi'I Iran*, (New York: Syracuse University Press, 1989), p. 33.

⁴⁷Abī 'abdillāh Muḥammad b. ismā'il al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, juz 5, (Beirut: Dār al-kutub al-'ilmiyyah, 1992), p. 437

“Anas (May Allah be pleased with him) reported: Three men came to the houses of the wives of the Prophet (pbuh) to inquire about the worship of the Prophet (pbuh). When they were informed, they considered their worship insignificant and said: "Where are we in comparison with the Prophet (pbuh) while Allah has forgiven his past sins and future sins". One of them said: "As for me, I shall offer *Ṣalāt* all night long." Another said: "I shall observe *Ṣaum* (fasting) continuously and shall not break it". Another said: "I shall abstain from women and shall never marry". The Prophet (pbuh) came to them and said, "Are you the people who said such and such things? By Allah, I fear Allah more than you do, and I am most obedient and dutiful among you to Him, but still I observe fast and break it; perform *Ṣalāt* and sleep at night and take wives. So whoever turns away from my *Sunnah* does not belong to me".”

Marriage is a part of *Syariat* based on the principles of goodness and happiness of human which has basic value related to the creation of mankind. Since the purpose of *Syariat* is bringing goodness (*maṣlaḥah*) and preventing badness (*maḍarrat*). The purpose of marriage is not only beneficial for human, it also has purpose to avoid damage.⁴⁸

It is related to natural sexual desire which is created to be something urge and hardest thing to control and to overcome, marriage becomes the best solution to release this desire. Since sexual intercourse is acceptable only in marriage relationship. It gives big possibility to do sexual intercourse by the purpose of experiencing its pleasure and reproduction in the legal way.⁴⁹ Not only marriage bestows social prestige and status on man and woman, particularly on women, but it also incurs religious merit on its practitioners.⁵⁰

Rasūlullah said:

⁴⁸Wahbah az-Zuhailī, *al-Fiqh al-Islām Wa Adillatuhū*, vol 1, (Damsyiq: Dar al-Fikr, 1989), p.92

⁴⁹Ali Aḥmad al-Jurjāwī, *Falsafah dan Hikmah Hukum Islam (Ḥikmat al-Tasyrī' wa Falsafatuhu)*, trans. by Hadi Mulyo, et. al., (Semarang: CV. Asy-Syifa', 1992), p. 256.

⁵⁰Shahla Haeri, *Law of Desire Temporary Marriage in Shi'I Iran*, ... p. 33. See also, Wahbah az-Zuhailī, *Fiqh Islam (al-Fiqh al-Islām Wa Adillatuhū)*, trans. by Abdul Hayyie al-Kattani, vol. 9, (Depok: Gema Insani, 2011), p. 44.

عَنْ عَبْدِ اللَّهِ، قَالَ قَالَ لَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمْ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَحْصَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ" ⁵¹

“Abdullah reported that Allah's Messenger said to us: ‘O young men, those among you who can support a wife should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford It should observe fast for it is a means of controlling the sexual desire.’”

Al-‘Asqalānī explains this *ḥadīṣ* by mentioning another *ḥadīṣ*:

عَنْ أَنَسٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ قَالَ: مَنْ رَزَقَهُ اللَّهُ امْرَأَةً صَالِحَةً فَقَدْ أَعَانَهُ عَلَى شَطْرِ دِينِهِ، فَلْيَتَّقِ اللَّهَ فِي الشَّطْرِ الْبَاقِي. ⁵²

“Anas narrated: Rasūlullāh said, ‘Anyone who has been given a pious wife by Allah, it means Allah help him in keeping half of his religion. So just fear unto Allah in maintaining the other half’.”

Based on *ḥadīṣ* above, it can be concluded that marriage is a Salvationist half of human faith because *syahwat* is the biggest enemy of human faith if it is not controlled. When someone gets married, he saves himself from such sins and harmful thing. Marriage has purpose to save human from doing fornication. Marriage can protect lustful sight from anything that is not allowed. But if one ignores this provision, it would give two disasters; doing abjection and appearing enmity between fornicators. And it would destroy natural law.⁵³

⁵¹Muslim b. al-Ḥajjāj al-Qusyairī an-Naisābūrī, *Ṣaḥīḥ al-Muslim*, Juz 1, (Beirut: Dār al-Kutub al-‘Ilmiyyah, t.th), p. 583.

⁵²Syihābu ad-Dīn Aḥmad b. ‘Alī b. Muḥammad al-‘Asqalānī, *Fath al-Bari bi Syarḥ Ṣaḥīḥ al-Bukhārī*, (Beirut: Dār al-Fikr), it is the explanation of *ḥadīṣ* no. 4677.

⁵³‘Alī Aḥmad al-Jurjāwī, *Falsafah dan Hikmah Hukum Islam (Ḥikmat al-Tasyrī’ wa Falsafatuhu)*, ... p. 257-258.

As part of *syari'ah*, marriage has religious value because it gives benefits (*maṣlahah*). One of benefits is it can perpetuate the number of human existence. It is related to the purpose of human creation so that they can make earth prosper because the earth is created for them. So that maintaining human species is needed in order earth creation is not useless.⁵⁴

هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا ثُمَّ اسْتَوَىٰ إِلَى السَّمَاءِ فَسَوَّاهُنَّ سَبْعَ سَمَاوَاتٍ وَهُوَ
بِكُلِّ شَيْءٍ عَلِيمٌ ﴿٢٩﴾⁵⁵

“It is He Who hath created for you all things that are on earth; Moreover His design comprehended the heavens, for He gave order and perfection to the seven firmaments; and of all things He hath perfect knowledge.”

By having offspring, one will also have unbreakable blessing and merit even though he has dead. Prophet explained that a pious child is one's good deed that will give him much virtue if he has dead.⁵⁶

عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا
مِنْ ثَلَاثَةٍ مِنْ صَدَقَةٍ جَارِيَةٍ وَعِلْمٍ يُنْتَفَعُ بِهِ وَوَلَدٍ صَالِحٍ يَدْعُو لَهُ " .⁵⁷

“Abū Hurairah (Allah be pleased with him) reported Allah's Messenger as saying: ‘When a man dies, his acts come to an end, but three, recurring charity, or knowledge (by which people) benefit, or a pious son, who prays for him (for the deceased).’”

⁵⁴Ali Aḥmad al-Jurjāwī, *Falsafah dan Hikmah Hukum Islam (Ḥikmat al-Tasyrī' wa Falsafatuhu)*, ... p. 256.

⁵⁵QS. Al-Baqarah [2]: 29.

⁵⁶Ali Aḥmad al-Jurjāwī, *Falsafah dan Hikmah Hukum Islam (Ḥikmat al-Tasyrī' wa Falsafatuhu)*, ... p. 258.

⁵⁷Muslim b. al-Ḥajjāj al-Qusyairī an-Naisābūrī, *Ṣaḥīḥ al-Muslim*, Juz 2, (Cairo: Dār ihyā' al-Kutub al-'Ilmiyyah, t.th), p. 14.

It is not redundant that marriage life promising more chance to learn. Sacrifice and learning make a relationship work and last, but it takes time. Marriage requires work in the long term; to individually change, to be able to accept each other's faults, to guiding each other, and to live in harmony. Marriage and family life can bring both great joy and terrible pain.⁵⁸

Related to it, Allah says on an-Nisā' verse 19 mentioned before that the spouse should show mercy by behaving kind to each other. The foundation of establishment of household life is good relationship between husband and wife. It has big advantage to make marriage harmony. Although one of spouse dislike particular thing from his couple, behaving good can bring many virtues inside his household. Holding on Islamic ethical teaching is important factor to make marriage last forever with the purpose of getting the blessing of Allah.⁵⁹

⁵⁸David H. Olson & John DeFrain, *Marriage & Families: Intimacy, Diversity, and Strengths*, ... p. 2.

⁵⁹Abdul 'Aziz b. Fathi as-Sayyid Nada, *Ensoklopedia Etika Islam*, (Jakarta: Magfirah Pustaka, 2006), p. 615.