



PRE-MARRIAGE COURSE IN INDONESIA AND MALAYSIA IN THE PERSPECTIVE OF *MASLAHAH* AND HUMAN RIGHT THEORY

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Abstrak: Penelitian ini bertujuan untuk membandingkan aturan Kursus Pra-Nikah dan penerapannya di Indonesia dan Malaysia. Penelitian ini juga berupaya mencari jawaban dan menemukan titik temu antara teori *maslahah* dengan Hak Asasi Manusia dalam melihat Kursus Pra-Nikah. Penelitian ini merupakan penelitian kualitatif yang menekankan pada kajian literatur secara komprehensif. Dari kajian tersebut, ditemukan bahwa tidak ada pertentangan antara aturan dan praktik Kursus Pra-Nikah baik dengan teori *maslahah* maupun Hak Asasi Manusia. Akan tetapi, masih ada beberapa hal yang perlu ditingkatkan dan disesuaikan yaitu kecukupan infrastruktur, pelaksanaan yang profesional, komitmen dari calon pengantin, dan kecukupan dukungan finansial.

Kata kunci: Kursus Pra-Nikah, *Maslahah*, Hak Asasi Manusia

Abstract: This study aims to compare the regulations of the Pre-Marriage Course and its implementation in Indonesia and Malaysia. Furthermore, this research seeks answers and a meeting point between the theory of *maslahah* and human rights in looking at the Pre-Marriage Course. This is a qualitative inquiry relying on a comprehensive literature study. The result indicates that there is no contradiction between the Pre-Marriage Course and the notion of *maslahah* and human rights. However, improvements and adjustment are still needed, which include sufficient infrastructures; professional organization; the commitment of future brides and grooms; as well as adequate financial supports.

Keywords: Pre-Marriage Course, *Maslahah*, Human Rights

Introduction

After the promulgation of Law Number 1 of 1974 on Marriage, it was expected that the divorce rate would be reduced since the law contains a collection of marriage laws sourced from the Qur'an and hadith. However, the data shows that divorce rates are getting higher in Indonesia. Therefore, the authorities need to take strict actions regarding the issue of marriage. (Romlah, 2006, p. 16)

It is unavoidable that almost every household face problems, with divorce as the peak of the problem. Islam views divorce as something bad in the course of a marriage. Divorce is not a recommended path to take when there is a problem in a household. Divorce should be avoided as much as possible because it has psychological, sociological, economic and other implications.

One way to prevent divorce is to provide (pre) marriage counseling. Marriage counseling in Indonesia began in 1961 based on the Decree of the Minister of Religion Number 85 of 1961 along with the inauguration of the Marriage Counseling and Preservation Counsel (BP4). With the status of a semi-official body, BP4 has a duty to provide marriage advice and reduce divorce rates. Marriage counseling given before marriage is regulated in the Regulation of Director General of Islamic Community Guidance No. DJ.11/491 of 2009 on the Prospective Bride Course. Then in 2013, the regulation was perfected by Director General of Islamic Community Guidance Regulation No. DJ.II/542 of 2013 on Guidelines for Organizing Pre-Marriage Courses. In 2009 this family tutoring program was known as a bride-to-be course, but in 2013 this program was known as a pre-marital course.

In 2016 the Director General's Regulation was later amended by Regulation of the Minister of Religion No. 34 of 2016 on the Organization and Work Procedures of the District Religious Affairs Office. The Ministerial Regulation was later elaborated by Decree of the Director General of Islamic Community Guidance No. 373 of 2017 on Technical Guidance for Prospective Brides and the Decree of the Director General of Islamic Community Guidance No. 379 of 2018 on the Instructions for Implementing Pre-marital Marriage Guidance for Prospective Brides.

The Premarital Marriage Guidance Program has the task of providing material supplies to the bride and groom with the aim, among others,

at reducing divorce and domestic violence rates. Divorce and domestic violence are of particular concern, given the data shows that the number of domestic violence and divorce each year is always increasing.

The 2017 data released by the National Commission on Violence Against Women showed that there were 259,150 cases of violence against women reported and handled during 2016. The number consisted of 245,548 cases which were sourced from cases/case data handled by 359 Religious Courts and 13,602 cases handled by 233 institutions service provider partners spread across 34 provinces throughout Indonesia. (Komnas Perempuan, 2017). Sadly, the data increased the following year. Komnas Perempuan recorded that in 2018 there were 348,446 cases of violence against women reported and handled during 2017. The number consisted of 335,062 cases originating from cases handled by the Religious Courts and 13,384 cases handled by 237 partner service agencies, spread across 34 Provinces all over Indonesia.

Similar number applies for divorce rates. Based on data from BPS (Central Statistics Agency) in 2017, the divorce rate reached 374,561 cases from the total number of marriages that occurred in that year which were 1,936,934 marriages. (Badan Pusat Statistik, 2018, p. 202). Meanwhile, according to Supreme Court data, in 2018, divorce number reached 419,268 cases. (Mahkamah Agung, 2018)

One of the efforts taken by the Directorate General of Islamic Community Guidance of the Ministry of Religion of the Republic of Indonesia in responding to the high divorce rate is to provide knowledge and understanding to the bride and groom planning to get married. The guidance comes in the form of a course for prospective wedding couples called the Prospective Bride Course or abbreviated as SUSCATIN. This course is held at the Office of Religious Affairs in each sub-district (KUA) before the bride and groom enter into a marriage contract. The short course followed by the bride and groom is allocated as many as 16 hours of study provided through the lecture, discussion and question and answer method. (Peraturan Direktur Jenderal Bimbingan Masyarakat Islam No. DJ.II/542 Tahun 2013 tentang Pedoman Penyelenggaraan Kursus Pranikah).

The same thing happened in Malaysia. In Selangor, for example, divorce rates at the Selangor Syariah Court are very high compared

to other parts of the country. The divorce case data are as follows: (Mahkamah Tinggi Syariah Selangor (JAIS), 11 April 2018)

No	Type and Code of Cases	Year			Total
		2015	2016	2017	
1.	014-Claim of Fasakh	2.131	2.071	1.532	5.734
2.	054-Claim of Legalization of Divorce	5.173	4.560	4.108	13.841
3.	055-Divorce Claim	5.955	6.175	6.226	18.356
4.	056-Claim of Khuluk	41	37	25	103
5.	057-Claim of Divorce for Breaching the Promise	309	231	140	680
Total		13.609	13.074	12.031	38.714

Related to this problem, Malaysia also introduced a Pre-Marriage Course, although each region has its own statutory provisions. In Enactment 11 of 2003 Enactment of the Islamic Family Law (Negeri Sembilan) 2003 Part II on Marriage Section 16 on Requests for Marriage Right, for example, it is stressed that someone who is going to get married is required to take a pre-marital course. The implementation of the Pre-Marriage Course is regulated by the Malaysian Islamic Progress Position (JAKIM), which regulates the affairs of the Islamic Religion by creating an Integrated Islamic Marriage Pre-Wedding Course Module (MBKPPI). The module is a reference for extension of the State Islamic Religion Office (JAIN) in each region created with the aim of providing household knowledge to couples in order to have understanding and knowledge in fostering households and most importantly to make efforts to reduce the number of divorces. (Jabatan Kemajuan Islam Malaysia, 2016, pp. 1-2)

Based on the above description, the authors are interested in conducting comparative research on the practice of pre-marital courses carried out in Indonesia and Malaysia by using analysis of *maṣlāḥah* and human rights theory.

Pre-Marriage Course in Indonesia

Pre-Marriage course conducted in Indonesia is deemed as a briefing given to adolescent marriage age or prospective brides with a certain time that is 24 hours of study for three days or made several meetings with the same study hours. The implementation time can be flexibly adjusted to the opportunities of the participants. (Badaruddin, 2012, pp. 3-4)

The Guidelines for organizing a Pre-Marriage course are contained in the Regulation of Director General of Islamic Community Guidance No. 373 of 2017 on Technical Guidance for Marriage Guidance for Prospective Brides. The implementation of pre-wedding courses as regulated in this guideline is different from the advice for prospective brides. The courses are usually carried out by the KUA/BP4 Subdistrict on the tenth day after registering a marriage at KUA. Pre-marital courses have a broader scope and time by giving opportunities to adolescents of marriage age or prospective brides to conduct courses without being limited by time, i.e. ten days after registration at KUA Subdistrict. Thus, the course participants have ample opportunity to be able to take pre-marital courses whenever they can do until they register at KUA Subdistrict.

Based on the Regulation of the Director General of Islamic Community Guidance above, the implementation of Pre-Marriage courses can be carried out by institutions outside government agencies. However, these non-governmental institutions must meet the conditions set by the government. In this case, the government, i.e. the Ministry of Religious Affairs, acts as a regulator, guide and supervisor. The implementation of the Pre-Marriage course as regulated in this guideline provides broad opportunities for the public to participate in reducing the number of divorce and violence in the family. (Badaruddin, Petunjuk Teknis Penyelenggaraan Kursus Pra Nikah: Modul Kursus Pra Nikah, 2012, p. 7)

Five elements need to be considered in organizing a Pre-Marriage Course in Indonesia, namely learning facilities, learning materials and methods, resource persons or instructors, fees and certificates. These elements are contained in Chapter V Attachment of the Regulation of Director General of Islamic Community Guidance, Ministry of Religion Number DJ.II/542 of 2013 on Guidelines for Organizing Pre-Marriage Courses.

Means of the pre-marital courses include teaching and learning facilities, both in the form of syllabi, modules and other teaching materials needed for learning. Syllabus and modules prepared by the Ministry of Religion are used as a reference by the organizers of the Pre-Marriage course. The Pre-Marriage course material consists of basic groups, core groups and support groups. Speakers or lecturers who provide material to the bride and groom can be from family consultants, religious leaders, or psychologists who are professionals in their respective fields.

Meanwhile, funding for Pre-Marriage courses can be sourced from State Budget, Regional Budget, and other *halal* and non-binding sources. After attending a series of courses, participants who successfully pass the course will receive a certificate from the organizer. The certificate will become a condition for marriage registration requirement registered at KUA. Although this certificate is not mandatory, it is highly recommended to have it because having a certificate means that the bride and groom already have the knowledge about building a family. (Badaruddin, Petunjuk Teknis Penyelenggaraan Kursus Pra Nikah: Modul Kursus Pra Nikah, 2012, p. 12)

The program of pre-marriage course in Indonesia is formed based on a number of existing rules, include: (a) GBHN of 1999; (b) Law Number 1 of 1974 on Marriage; (c) Law Number 10 of 1992 on Development of Population and the Development of a Prosperous Family; (d) Decree of the Minister of Religion (KMA) Number 477 of 2004 on Providing Insight into Marriage and Households to Prospective Brides through Bride and Groom Courses; (e) Circular Letter of the Director General of Islamic Community Guidance Number DJ.II/PW.01/ 1997/2009 on Bride and Groom Courses; (f) Regulation of the Director General of Islamic Community Guidance Number DJ.II/542 of 2013; (g) Regulation of the Director General of Islamic Community Guidance Number 373 of 2017; and (h) Regulation of the Director General of Islamic Community Guidance Number 379 2018.

The concept of marriage in Islam actually existed before the existence of regulations regarding the pre-marital course. The contents in the material of the course are based on the concept of the science of *fiqh munakahat*. However, based on writers' analysis of marriage material contained in the pre-marital course, the materials tend to be

brief and only general matters raised by KUA officials. So, the objectives regarding the delivery and content of the concept of marriage contained in the science of *fiqh munakahat* are very few. If explored further, we can find abundant materials about marriage in the *fiqh munakahat* that can support the main purpose of holding the pre-marital course.

Pre-Marriage Course in Malaysia

Apart from Indonesia, Malaysia is another country that makes a rule with the aim of providing coaching for brides who will marry. The Pre-Marriage Course conducted in Malaysia is assisted by an institution called the Malaysian Islamic Progress Position (JAKIM). Through this program, pre-marital course participants will be given a module to make it easier to understand the material in the course. The module is called the Islamic Pre-Marriage Course Combined Module (MBKPI), which was published by the Malaysian Islamic Progress Office (JAKIM) in 1996 and obliged to implement in 1997. The material contained in this module is an illustrated slide content, a short video and income docudrama *Eternal Love*. This course is one of the initiatives taken by the Kingdom of Malaysia in an effort to provide initial household knowledge to couples who are going to get married. (Abdullah, 2002)

Marriage is a religious matter which is included in the field of state power in Malaysia. Like Indonesia, Malaysia also experiences problems related to marriage, such as high divorce rates and domestic violence. Therefore, the Malaysian Islamic Religious Office took the initiative to implement a pre-marital course program.

Every Malaysian citizen is required to undergo a pre-marriage course because, at the time of marriage registration, couples are required to attach a certificate of pre-marital course and an HIV-free letter. The implementation of the course was handed over to the Regional Religious Administration Officer (formerly called Kadi). The pre-marital course is held for three months, with eight to ten meetings. Pre-Marriage courses in Malaysia have different statutory provisions in each state. As stated in Enakmen 11 of 2003 Enakmen of the Islamic Family Law (Negeri Sembilan), 2003 Part II Marriage Section 16 on Requests for Marriage Right, anyone wanting to get married is required to take a pre-marital course.

Regulations of Pre-Marriage Course in the Perspective of *Maṣlāḥah* and Human Right Theory

The word "*maṣlāḥah*" comes from the word "*ṣalḥ*" which means "good", "proper", "benefit". (Dar al-Mashriq, 2007, p. 432) *Maslahah* is the opposite of "*fāṣd*" which means "broken", "perished", and "rotten". *Maṣlāḥah* is "something that can bring goodness" and "someone's actions that can bring benefits to himself or his community" "benefits" and "goodness." While "*mafsadah*" means "danger," "crime", "ugliness", "damage" and material and immaterial loss. *Mafsadah* also means "disaster," "catastrophe," "sorrow," and "distress," and "the means that cause it," both in worldly and hereafter life. (Dar al-Mashriq, 2007, p. 583)

In the Indonesian language, the word "*maṣlāḥah*" means "something that brings goodness (safety and so on), "benefit", and "use". *Maṣlāḥah* means "usefulness", "goodness", "benefit", "importance". *Mafsadah* means "destruction", "evil" (evil deeds). *Mafsadah* means damage or bad effects that befall a person (group) due to an act or act of violating the law. (Pusat Bahasa Departemen Pendidikan Nasional, 2002, p. 695-720)

Based on its priority system, *maslahah* can be categorized into three categories; first, primary category (essentials-*daruriyat*); second, secondary-complementary (*ḥajiyāt*) category; and, third, supplementary/tertiary category (embellishment-*taḥsīniyāt*). (Abdullah al-Kamali, 2000, p. 111-118) Primary *maslahah* (*maṣlāḥah daruriyah*) is a benefit that is needed by humans to protect human existence and humanity. If this benefit does not exist, human existence and humanity will be disrupted and can result in the threat of human existence and humanity. (Al-Syatibi, p. 3-5) While *maṣlāḥah ḥajiyāt*/complementary-secondary *maslahah* is a benefit whose absence will not threaten human existence and humanity. It's just that humans will experience difficulties in their lives. For this reason, God, as the lawmaker opens the opportunity for *rukḥṣah* (relief) in the implementation of a legal provision. (Al-Kailani, p. 165). Whereas tertiary *maṣlāḥah*/ *maṣlāḥah taḥsīniyāt* is a benefit whose absence will not threaten human existence and humanity, but humans will violate the principles of propriety or *akhlāq al-karimah*. (Muhammad al-Jauhari, 2013, p. 1-3)

In the implementation of *maqāṣid al-sharī'ah*, we must pay attention to the weight of the *maqāṣid* concerned, namely: (1) *Maqāṣids* which are primary must be prioritized over secondary *maqāṣids*, and secondary *maqāṣids* must prioritize over tertiary *maqāṣids*. (2) Preventing *mafsadah*

should be prioritized over realizing *maṣlaḥāh*. (3) *Maṣlaḥāh* that applies to the public must be prioritized over *maṣlaḥāh* that only have private reach. (4) Negating a *mafsadah* whose existence is determined based on consensus must be prioritized rather than negating a *mafasadah* whose existence is determined based on individual opinion. (Mas'ud Sha'nān, 2014, p.230-232).

Mas'ud Sha'nān further emphasized that *maqāṣidal-kulliyat* or *al-kulliyat al-khams* are religion (*al-dīn*), descendants (*al-naṣl*), honor (*al-'ird*), wealth (*al-māl*), and reason (*al-'aql*). All of these are included in the categories of civil rights, social economy, politics, and culture, (Mas'ud Sha'nān, 2014, p. 230) which are in the realm of human rights (HAM) (As'ad Said Ali, 2014, as contained in international instruments. Civil, political, economic, social and cultural rights are regulated in the International Covenant on Civil and Political Rights (ICCPR) on 16 December 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 16 December 1966. Civil and political rights in ICCPR are: (1) the right to life; (2) the right to be free from torture and inhuman treatment; (3) the right to be free from slavery and forced labor; (4) the right to liberty and security of person; (5) prisoners' right to humane treatment; (6) free from detention for debt reasons; (7) free to move and choose a place to live; (8) Freedom for foreigners; (9) the right to an honest trial; (10) the right to protection from the abuse of criminal law; (11) the right to the same recognition before the law; (12) Right to personal freedom (privacy); (13) the right to freedom of thought, belief and religion; (14) the right to freedom of opinion and expression; (15) prohibition of war propaganda and discrimination; (16) the right to assemble; (17) the right to association; (18) the right to marry and have a family; (19) children's rights; (20) political rights; (21) equality before the law; (22) rights for minorities. (Adnan Buyung Nasution, 2006, p. 155).

If we observe from its history, the consideration of *maṣlaḥāh* in determining the law basically had been done long before the science of jurisprudence has developed. At the time of the *Ṣahābat*, the era of Umar Bin Khattab was considered as the time of the most use of reasoning and transcending the *shorih* texts in the Qur'an due to consideration of *maṣlaḥāh*. Even the efforts to use reasoning through *ijtihād* existed in the time of the Prophet Muhammad. The seeds of

ushul fiqh already existed in the era of Prophet Muhammad, and the need for the study of these disciplines continued to exist because the legal ensuing in the society never stopped. An adage says that:

النصوص متناهية والوقائع غيرمتناهية

"Legal text is so limited while legal cases are unlimited". (Anwar, 2000, p. 273)

The Pre-Marriage course that has been described above has the goal of creating a *sakīnah*, *mawaddah*, *warrahmah* families through the provision of knowledge, increasing understanding and skills about domestic life. This course is very vital since the household is the gate in which the nation's generation is formed. Every husband and wife wants unity and harmony. These goals will be realized if husband and wife have good skills in building a household. In the Pre-Marriage Course, the prospective husband and wife who will build a new household will be guided by various knowledge about marriage, so that the purpose of marriage can be internalized.

The Pre-Marriage course materials both in Indonesia and Malaysia are quite comprehensive to equip prospective husbands and wives with knowledge and skills to start a family. Sufficient regulations support the course. Below is a comparison of pre-marriage course regulations between Indonesia and Malaysia:

Regulation of Pre-Marriage Course		
No	Indonesia	Malaysia
1	Article 6 of Circular Letter of Director General of Islamic Community Guidance the year of 2009 states prospective bride and groom who join the course will be given a certificate as a requirement of marriage registration.	Integrated Module of Pre-Marriage Course published in 1996 and obliged to be implemented since 1997.
2	The course is carried out by the Ministry of Religious Affairs in every Subdistrict Office and by other non-government institutions certified by the Ministry.	Carried out by accredited institutions.
3	Time of Course: 16 hours of study or two days.	Time of Course: conducted within three months with 8-10 meetings.
4	The Course financed by State/Regional Budget or other nonbinding sources.	Financed by the prospective husband and wife

Referring to the above table, Pre-Marriage Course in Indonesia is only a recommendation as stated by Circular Letter of Director General for Islamic Community Guidance in 2009. Circular letters are legally valid only for institutions under the Directorate General of Islamic Community Guidance, not covering all Indonesians. This means that if someone does not take a pre-marital course, then he/she does not violate the law and cannot be penalized. Contrastingly, Malaysia makes the pre-marriage course as a mandatory. JAKIM has required all citizens to take a pre-marriage course. When Malaysians want to have a marriage, then they are obliged to take a pre-wedding course. JAKIM regulations are equivalent to existing laws in Indonesia.

Comparing these two regulations based on the *Maṣlaḥāh* theory based on its urgency, the pre-marital course in Indonesia is categorized as *Maslahah al-Taḥsiniyah* because no law obliges people to follow the course. *Maṣlaḥāh al-taḥsiniyāt* is a complementary benefit in the form of freedom and appropriateness that can complement the previous benefit (*maṣlaḥāh al-ḥajiyāt*). If this *maṣlaḥāh* is not fulfilled, then human life will be less beautiful and enjoyable to feel but cannot cause damage.

Differently, in Malaysia, the course is included in the category of *maṣlaḥāh al-ḥajiyāt* because the regulation obliges people to join the course as a requirement to get married. *Maṣlaḥāh al-ḥajiyāt* is the benefit needed to perfect or optimize the basic benefit (*al-maṣḥāliḥ al-khamsah*) in the form of relief to maintain and foster basic human needs (*al-maṣḥāliḥ al-khamsah*). This *maṣlahah* is a primary need, and removing it will cause difficulties for human life, but will not cause the extinction of human life.

The Qur'an and hadith do not clearly stipulate the law of pre-marriage course as a requirement for marriage. This is due to the course is mainly the impact of the modernization era that continually develops, as a maxim says:

تغير الاحكام بتغير الازمنة والامكان والاحوال

"The law changes with the changes of situation, conditions, place and time."

Another maxim stipulates:

الضرر يزال

"The damage is eliminated."

Izzuddin Ibn 'Abd al-Salam argues that the purpose of the sharia is to achieve benefit and reject damage. If it is lowered to a more concrete level, the *maṣlahāh* bring benefits while the *maḍarāt* brings harm. Scholars are then more detailed by giving certain conditions and measurements of what is meant by *maṣlahāh* (Djazuli, 2006, p. 67).

Both maxims above if associated with the pre-marriage course are not contrary to Islamic law since Islamic law allows everyone to do everything that has an element of benefit. The pre-marital course required before the marriage ceremony is held in the view of Islam is also obliged based on an argument that Islam teaches the importance of knowledge in marriage. Starting family without having sufficient knowledge will eventually create a number of conflicts. This is also in line with the principles of *fiqh*, which reads:

ما لا يتم الواجب إلا به فهو واجب

"Something without which would not be perfect then it must be taken".
(Djazuli, 2006, p. 165)

In this case, the government, as the ruler has the authority to issue policies that must be obeyed by all citizens and eliminate all differences of opinion as a valid and binding decision. This is in accordance with the maxim of *fiqh*, which says:

حكم الحاكم إلزام ويرفع الخلاف

"Decisions of the authority are binding and eliminating differences."

In addition, the government is obliged to realize *maṣlahāh* for its people as a *fiqh* maxim asserts:

تصرف الإمام علي الراعية منوط بالمصلحة

"The leader's policy for its people should be based on maṣlahāh". (As-Syuyuthi, 1399 H/1979 M, p. 243)

In this case, pre-marital course aims to reduce the number of divorces and domestic violence in Indonesia. As in Islam, divorce is *halāl* but hated. Even the Prophet Muhammad states that wives who

ask for a divorce from her husband without a justified reason would not smell heaven. Domestic violence is also discussed further in *the fiqh of munākahāt*, namely the wife or husband's *nusyūz*. Allah says:

وَإِنْ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ﴿١٢٨﴾ وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمِيلِ فَتَدْرُوهَا كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا ﴿١٢٩﴾

“And if a woman is worried about *nusyūz* or indifference from her husband, then it is okay for them to make real peace, and peace is better (for them) even though man is according to his stingy nature. And if you get along with your wife well and take care of yourself (from *nusyūz* and indifference), then surely Allah is All-Knowing what you do. And you will never be able to behave fairly among your wives, even if you really want to do so, therefore do not be too inclined (to the one you love), so you let the others hang. And if you make *iṣlah* and look after yourself (from cheating), then surely Allah is Forgiving, Most Merciful”. (QS. An-Nisa: 128-129)

Pre-marriage course in Indonesia and Malaysia has advantage/benefit (*maṣlahāh*) and drawback (*mafsadah*). The drawback side of the course is the long time that should be taken by prospective brides and grooms to follow the course. A number of the couples admit to having an objection about the longtime. In addition, in many cases, couples want their marriage receptions to be hastened and taking the course will only hinder their marriage.

In terms of benefit, the Pre-Marriage Course will make the bride and groom be better equipped to deal with household problems because they have been given a deep understanding of marriage. The understanding plays a pivotal role since a civilization of state is built from a family. Good families are believed to help shape good societies. If this is underestimated, more significant damage will eventually emerge. A *fiqh* maxim says:

المصلحة العامة مقدمة على المصلحة الخاصة

“General benefit is prioritized than specific benefit” (Djazuli, 2006, p. 161)

The above principle asserts that if there is a conflict between public benefit and specific benefit, then general benefit must be prioritized because in the public benefit there is also a specific benefit, but not vice versa. In the context of the Pre-Marriage Course, taking the course is quite time-consuming. It is considered to slow the marriage even though when seen in the benefit it will be far more significant, among others creating a harmonious and happy family, producing good offspring, and producing a generation of people who excel in all fields.

Implementation of the pre-marital course is a benefit because these activities provide the provision of knowledge and understanding for the bride and groom, who want to enter into marriage life. Explicitly, Islamic Law does not stipulate regulation regarding the course nor prohibit it. Therefore the activities of the pre-marital course are included in the category of *al maṣlahāh al-mursalah*.

In the view of human rights, the government has a duty to protect the human rights of all its citizens. The main obligation to protect and promote human rights lies with the government. This can be seen in the formulation of the UDHR, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The obligations and responsibilities of the state in a human rights-based approach can be seen in three forms: (Budijanto, 2012)

The first is respecting. It is an obligation of the state not to interfere in regulating its citizens when exercising their rights. In this case, the state has an obligation not to take actions that will hamper the fulfillment of all human rights. The second is protecting. The government should act actively to guarantee the protection of the rights of its citizens, and the state is obliged to take measures to prevent violations of all human rights by third parties. The third is fulfilling. It is the obligation and responsibility of the state to act actively so that the rights of its citizens are fulfilled. The state is obliged to take legislative, administrative, legal, budgetary, and other measures to realize human rights entirely.

Of the three forms of state obligations and responsibilities, each of them contains elements of the obligation to act, namely requiring the state to take certain steps to fulfill right and obligation. The state requires people to achieve the target that the pre-wedding course

must be attended by all brides-to-be aiming to provide a provision of knowledge, skills, understanding and awareness-raising in a household. The organization has also been regulated in the Regulation of the Directorate General of Islamic Community Guidance of the Ministry of Religion in 2013.

The three forms of obligations and responsibilities of the state contain the main elements of obligation in the fulfillment of human rights. The state has an obligation to take steps to guarantee, believe, recognize and try to improve and advance human rights. Likewise, with the pre-marriage course program, efforts have been made by the government to provide an understanding of marriage to prospective couples and the skills to create a *sakinah, mawaddah, warrahmah* family and reduce the high divorce rate in society.

The implementation of the pre-marital course formally faces a number of obstacles. First, it frequently happens when making prospective couple attend the course is impossible due to the absence of the operational costs from the government. Subsequently, sometimes the pre-wedding course is conducted only in the form of regular consultations even sometimes in marriage sermon sessions after the contract marriage takes place. Secondly, couples are not able to attend the course due to work problems that cannot be left behind. The government states that the pre-wedding course is mandatory, but the government does not totally socialize the benefits of attending the course to society.

Responding to this fact, the National Commission for Human Rights provides two conditions regarding the pre-marriage course. First, the pre-marital course or the certification is carried out as long as it does not burden the bride and groom. Second, the time of the course should be agreed upon by the bride and groom in order to run effectively.

Conclusion

Based on the discussions above, a number of conclusions can be drawn. *First*, the Pre-Marriage Course in Indonesia has been in place since 2009 and has undergone several policy changes regarding the Course. The government also has not explicitly obliged couples to attend the Pre-Marriage Course. The Pre-Marriage Course in Malaysia

has been held since early 1994, but teaching materials are not yet integrated between one state and another. New teaching materials were integrated for the whole of Malaysia with the issuance of the Islamic Pre-Islamic Course Integrated Module (MBKPI) by JAKIM in 1997. All citizens who wanted to get married require to take the course.

Second, the Pre-Marriage Course in Indonesia is still not running optimally, because the government has not obliged the brides and grooms to follow it. Looking at Malaysia, the Pre-Marriage Course shows an excellent performance in suppressing divorce rates from year to year. Not only does it reduce the number of divorces, but it also plays a role in increasing the number of referral partners.

Third, the Pre-Marriage Course is included in the category of *maṣlaḥāh al-mursalah* which although there was no example at the time of the Prophet Muhammad, *Ṣahabat* and *T>ābi'in*, and there is no proposition that forbids it. The Pre-Marriage Course is an effort to institutionalize marriage education and counseling that is recommended to young people. The emergence of a Pre-Marriage Course to respond to high levels of domestic violence, divorce rates and neglected children due to divorce. The Pre-Marriage Course, therefore, strengthens the implementation of human rights, especially for vulnerable groups in marriage, namely women and children. The implementation of this course can be adjusted to the ability of the bride and groom according to the agreement. Therefore there is no contradiction between the implementation of the theory of *maṣlaḥāh* and human rights in the regulation of the Pre-Marriage Course.

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