



THE CONCEPT OF *ISTITĀ'AH AL-BĀ'AH* IN MARRIAGE

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Abstract: Islam has constituted of sharia a marriage between men and women in order to build a family that is *sakinah*, *mawaddah* and *rahmah*. In order to achieve the goal of marriage, Islam has set a requirement for married couples to have several abilities to marry which is termed as *istitā'ah al-bā'ah*. Practically, there are still many people in marriages understanding the concept of *istitā'ah al-bā'ah* partially and it is not applied. The objective of this study is to examine the concept of *istitā'ah al-bā'ah* as a requirement in marriage and to explain its types and criteria according to sharia perspective through library research on Fiqh Principle and content analysis of Fiqh books. This study deeply analyses the collective data. This study has successfully found the types and criteria of marriage recommended in marriage, firstly, non-material abilities including an ability to have sex, physical health from dangerous diseases, and age. The second is material ability including an ability to meet the cost of marriage consisting of paying dowry and living. This study contributes to the context of strengthening the ability standards for couples wishing to get married. Therefore, fulfilling the requirements of the abilities to marry is expected to minimize problems in marriage, including minimizing the divorce rate.

Abstrak: Islam telah mensyariatkan perkawinan antara laki-laki dan perempuan dengan tujuan membina keluarga yang *sakinah*, *mawaddah* dan *rahmah*. Untuk mewujudkan perkawinan tersebut maka Islam telah menetapkan persyaratan kepada pasangan yang akan menikah untuk memiliki kemampuan menikah terlebih dahulu yang diistilahkan dengan *istitā'ah al-bā'ah*. Dalam praktiknya banyak yang memahami konsep *istitā'ah al-bā'ah* secara parsial atau bahkan perkawinan yang tidak dilandasi konsep *istitā'ah al-bā'ah*. Kajian ini bertujuan untuk mengkaji konsep *istitā'ah al-bā'ah* sebagai sebuah persyaratan dalam perkawinan serta menjelaskan jenis dan kriterianya menurut perspektif syariah. Melalui kajian literatur (*library research*) terhadap kaidah fikih dan analisis kandungan terhadap kitab-kitab fikih. Analisis dilakukan secara mendalam terhadap data yang telah terkumpul. Kajian ini berhasil menemukan jenis-jenis dan kriteria kemampuan menikah yang dianjurkan dalam Islam, yaitu: pertama, kemampuan non material yang meliputi kemampuan melakukan hubungan kelamin, kesehatan fisik dari penyakit-penyakit yang berbahaya dan cukup umur. Kedua ialah kemampuan material yaitu kemampuan memenuhi biaya nikah yang terdiri dari kemampuan membayar mahar dan nafkah. Kajian ini berkontribusi dalam konteks penguatan standar kemampuan bagi pasangan yang ingin melangsungkan perkawinan. Sehingga dengan prasyarat kemampuan menikah tersebut, diharapkan dapat meminimalisir problem dalam perkawinan, termasuk meminimalisir angka perceraian.

Keywords: *Istitā'ah; Al-Bā'ah; Marriage; Concept; Requirement.*

INTRODUCTION

Islam has regulated the procedure of marriage since before marriage by having *istitā'ah al-bā'ah* first. The Prophet encouraged young people¹ who already has *istitā'ah al-bā'ah* to get married soon.² *Istitā'ah al-bā'ah* is the main requirement in the prerequisite of marriage for those who wish to have a marriage. The ability to marry has also been established in the Q.S. al-Nisa' (4): 25. Another factor in the need for *istitā'ah al-bā'ah* is to look to one of the purposes of marriage equality in Islam as a way of delivering sexual desire in a lawful place and to preserve human life³. In order to achieve the goal of marriage, the prospective husband and wife must have the physical health of various diseases that can hinder the relationship of the husband and wife.

Marriage also requires welfare guarantees. Husband as a head of family has a role to pay dowry and living cost to his wife and children.⁴ Husband's responsibility to make a living and treat his wife well⁵ is started from solemnization⁶. Meanwhile, in terms of the law of marriage, the majority of *fuqahā* argue that the law of sunnah is only aimed at those who already have the criteria of *istitā'ah al-bā'ah* and their circumstances are not feared to commit adultery if not married, but if they are worried, then it becomes mandatory⁷. The absence of the criteria for marriage will lead to the prohibition of marriage for both of them, because it can cause harm and misery to either party. However, there is a law on marriage for the purpose of sharing a living or for the purpose of helping each other between the two. However, the shortcomings that exist in each of the spouses must be addressed first before the marriage, if both parties accept each other, then the marriage is legal⁸. In contrast to the opinion of Hambali creed that it does not require a material ability to marry⁹.

¹ In case of exclusivity in mentioning the youths is because usually they have the ability and strong willingness to do *jima'* (sex) and get married compared to older people. However, that hadith is also presented for anybody who fulfills the requirement to get married either to youths, elderly, male, or female. See Ibnu Hajar al-'Asqalani, *Fathu Al-Bari*, vol. IX (Mesir: Maktabah Mizr, 2001), 12.

² Hadith riwayat al-Bukhari, *Sahih al-Bukhari*, no. Hadith 1905. See Ibnu Hajar al-'Asqalani, *Bulugh Al-Maram*, vol. III (Beirut: Dar al-Fikr, n.d.), 109.

³ al-Baqarah (2): 223. al-Nahl (16): 72 dan al-Baqarah (2): 223.

⁴ Al-Nisa' (4): 34. See also Lukman Santoso and Muhamad Fauzi Arifin, "Terobosan Hukum Hakim Terkait Pencabutan Surat Penolakan Perkawinan Dalam Masa Iddah," *Jurnal Yudisial* 12, no. 3 (2020): 381-398.

⁵ Hadith riwayat Abu Dawud, *Kitab al-Nikah*, Bab fi Haqqi al-Mar'ah 'ala Zaujiha, no. Hadith 2144. Al-Albani said this Hadith is hasan sahih. See Abū Dāud al-Sajastani, *Sunan Abi Daud*, vol. I (Beirut: Dar al-Fikr, 1994), 491.

⁶ Al-Talaq (65): 6. See also Al-Baqarah (2): 233.

⁷ Al-Nawāwī, *Al-Majmu'*, vol. XVII (Jeddah: Maktabah al-Irsyad, n.d.), 205.

⁸ Al-Nawāwī, *Al-Majmu'* (Jeddah: Maktabah al-Irsyad, n.d.), 206.

⁹ Ibn Qudamah Muwafiq al-Din Abu Muhammad 'Abdullah Ibn Ahmad, *Al-Mughni*, vol. IV (Beirut: Dar al-Fikr, 1992), 344. See also Manshur Ibn Yunis Ibn Idris al-Bahuti, *Sharh Muntaha Al-Iradat*, vol. V, 2000, 99.

Starting from these dialectics, this paper will focus on the issue of the conception of *istitā'ah al-bā'ah*, the types and criteria of non-material and material abilities that must be possessed in the context of marriage. Methodically, this paper is qualitative research. The fiqh books of the *fuqahā*, academic books, and articles will be used as reference materials to examine the matter. Based on the study that the author conducted, the study on sexual health and the age of marriage had been widely studied by several researchers including Azhar bin Abdul Aziz.¹⁰ These studies described the types of diseases, either described or not, mentioned by *fuqahā'* that allow the claim of *fasakh*. As for studies that examine the issue of underage marriage, they are: Hamzah,¹¹ Yusuf Hanafi,¹² Hasan Bastomi,¹³ Rahmatillah,¹⁴ Zanariah Noor,¹⁵ Achmad Asrori,¹⁶ Danu Aris Setiyanto¹⁷ and Edi Kurniawan¹⁸. Studies that examine dowry had been conducted by several researchers, among others: Masyhuri Rifa'i,¹⁹ Noryamin Aini,²⁰ Sandias Utami,²¹ Bambang Husni

¹⁰ Azhar bin Abdul Aziz, "Peranan Sains Perubatan Dalam Menentukan Hukum Keharusan Fasakh Kerana Penyakit" (Master Thesis, Kuala Lumpur, Universiti Malaya, 2002).

¹¹ Hamzah Hasan, "Pernikahan Dibawah Umur (Analisis Tentang Konsekuensi Pemidanaan)," *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 6, no. 1 (May 24, 2018): 86-120, <https://doi.org/10.24252/ad.v6i1.4869>.

¹² Yusuf Hanafi, "Perkawinan Anak Di Bawah Umur Dalam Perspektif Hukum Islam," *Ulumuna* 12, no. 2 (December 31, 2008): 249-74, <https://doi.org/10.20414/ujis.v12i2.381>.

¹³ Hasan Bastomi, "Pernikahan Dini Dan Dampaknya (Tinjauan Batas Umur Perkawinan Menurut Hukum Islam Dan Hukum Perkawinan Indonesia)," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 7, no. 2 (2016): 354-84, <https://doi.org/10.21043/yudisia.v7i2.2160>.

¹⁴ Rahmatiah Rahmatiah, "Studi Kasus Perkawinan di Bawah Umur," *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 5, no. 1 (June 6, 2016): 144-66, <https://doi.org/10.24252/ad.v5i1.1447>.

¹⁵ Zanariah Noor, "Perkawinan Kanak-Kanak Dan Tahap Minima Umur Perkahwinan Dalam Undang-Undang Keluarga Islam," *Jurnal Syariah* 21, no. 2 (August 30, 2019): 165-90.

¹⁶ Ahmad Asrori, "Batas Usia Perkawinan Menurut Fukaha dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Muslim," *AL-'ADALAH* 12, no. 2 (2015): 807-26, <https://doi.org/10.24042/adalah.v12i2.215>.

¹⁷ Danu Aris Setiyanto, "Discourse of Middle Way in Islamic Jurisprudence on Career Women in Achieving The Sakinah Family: Reconstruction of Roles and Women's Identity," *Justicia Islamica* 17, no. 1 (June 2, 2020): 148, <https://doi.org/10.21154/justicia.v17i1.1125>.

¹⁸ Edi Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid al-Shari'a Review," *Al-Risalah* 20, no. 1 (May 28, 2020): 1-15, <https://doi.org/10.30631/al-risalah.v20i1.565>.

¹⁹ Masyhuri Rifa'i, "Wawasan Hadis Nabi Muhammad SAW Tentang Mahar (Suatu Kajian Maudu'i)" (Master Thesis, Makassar, UIN Alauddin, 2016), <http://repositori.uin-alauddin.ac.id/1610/>.

²⁰ Noryamin Aini, "Tradisi Mahar Di Ranah Lokalitas Umat Islam: Mahar Dan Struktur Sosial Di Masyarakat Muslim Indonesia," *AHKAM: Jurnal Ilmu Syariah* 17, no. 1 (July 29, 2014), <https://doi.org/10.15408/ajis.v17i1.1239>.

²¹ Sandias Utami, "Rekonseptualisasi Kadar Mahar Berbasis Kesederhanaan dan Kemudahan: Studi Pasal 31 Inpres No 1 Tahun 1991 tentang Kompilasi Hukum Islam" (Thesis, Malang, Universitas Islam Negeri Maulana Malik Ibrahim, 2015), <http://etheses.uin-malang.ac.id/3332/>.

Nugroho,²² Muhammad Shobirin,²³ Raihanah Azahari,²⁴ Nora Abdul Hak,²⁵ Taufiq Hidayat,²⁶ Ishaq El-Mubarak, Attila Abrus and Mary K. Shenk.²⁷ As for the study of the provision of living in marriage, there are various forms of study, among others: Samsul Zakaria,²⁸ Bahiyah binti Ahmad,²⁹ Syh Noorul Madidah Syeh Husin³⁰. Similarly, Raihanah Azahari had studied the determination of *kifāyah* and *ma'rūf* for children and wives.³¹ Tengku Erwinsyahbana,³² Abdul Ghofur Anshori³³ and Khoiruddin Nasution³⁴ had discussed about marriage law. Although there are various studies have similar theme, those studies have not specifically examined the criteria of the ability to marry in Islam and the study was reviewed in different ranges and scopes. Therefore, a more comprehensive and systematic study to analyze the criteria of the ability to marry is needed, especially in the aspect of *istitā'ah al-bā'ah*. However, because it has relevance, the writings above will be made part of the reference in this paper.

ISTITĀ'AH AL-BĀ'AH CONCEPT: AN ISLAMIC LAW PERSPECTIVE

The Prophet Muhammad used the word *istitā'ah al-bā'ah* when advocating

²² Bambang Husni Nugroho, "Konvergensi Adat Dan Syarak Dalam Tata Upacara Pernikahan Masyarakat Melayu Jambi," *Al-Risalah* 17, no. 02 (July 3, 2018), <https://doi.org/10.30631/al-risalah.v17i02.63>.

²³ Muhamad Shobirin, "Studi komparasi penerapan mahar di Indonesia dan Malaysia" (Master Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2013), <http://etheses.uin-malang.ac.id/7819/>.

²⁴ Raihanah Azahari, *Pengaruh Budaya Dalam Penentuan Kadar Mahar Dalam Hukum Islam Dan Budaya Tempatan* (Kuala Lumpur: Departement of Fiqh dan Ushul, Akademi Pengajian Islam, Universiti Malaya, 2006). 316. See also Raihanah Azahari, Khairun Najmi Saripudin, and Raihana Abd Wahab, "Hubungan Di Antara Faktor Demografi Dengan Penentuan Kadar Hantaran: Kajian Di Perlis, Kedah, Pulau Pinang Dan Perak," *Jurnal Fiqh* 6 (December 1, 2009): 107-24.

²⁵ Nora Abdul Hak, "Right of Women to Mahr (Dower) under Islamic Law and Malaysian Family Law: Some Suggestions for Reform," *Journal of Islamic Law Review* 8, no. 1-2 (January 2012): 215-29.

²⁶ Taufiq Hidayat, Raihanah Azahari, and Fauzi Fauzi, "Jeulame in Marriage in Banda Aceh: Looking for a Common Thread between Culture and Sharia," *Al-Risalah* 20, no. 1 (June 1, 2020): 115-30, <https://doi.org/10.30631/al-risalah.v20i1.563>.

²⁷ Abdul Muqadas Ishaq El-Mubarak and Ahamad Faosiy Ogunbado, "Late Marriage In Islam: Malaysia as A Case Study," *International Journal of Innovative Knowledge Concepts* 5, no. 7 (July 29, 2017), <http://ijikc.co.in/sites/ijikc20/index.php/ijikc/article/view/536>. See also Attila Ambrus, Erica Field, and Maximo Torero, "Muslim Family Law, Prenuptial Agreements, and the Emergence of Dowry in Bangladesh," *The Quarterly Journal of Economics* 125, no. 3 (August 1, 2010): 1349-97, <https://doi.org/10.1162/qjec.2010.125.3.1349>. See also Shenk Mk, "Dowry and Public Policy in Contemporary India : The Behavioral Ecology of a 'Social Evil'.," *Human Nature (Hawthorne, N.Y.)* 18, no. 3 (July 17, 2007): 242-63, <https://doi.org/10.1007/s12110-007-9006-0>.

²⁸ Samsul Zakaria, "Ketentuan Nafkah dalam Kompilasi Hukum Islam (KHI) Perspektif Gender" (Master Thesis, Yogyakarta, UIN Sunan Kalijaga, 2018), <http://digilib.uin-suka.ac.id/32789/>.

²⁹ Bahiyah binti Ahmad, "Penentuan Kriteria Kifayah Dan Ma'ruf Nafkah Isteri Dan Anak Di Malaysia" (Ph.D Theses, Kuala Lumpur, Universiti Malaya, 2015).

³⁰ Syh Noorul Madidah Syed Husin, Raihanah Azahari, and Asmak Ab Rahman, "Konsep Al-Taysir Dalam Perbelanjaan Perkahwinan Islam," *Jurnal Syariah* 22, no. 3 (September 1, 2014): 323-54.

³¹ Raihanah Azahari, Bahiyah Ahmad, and Asmak Ab Rahman, "Penentuan Kadar Kifayah Dan Ma'ruf Nafkah Anak Dan Isteri: Kajian Terhadap Penghakiman Mahkamah Syariah," *Jurnal Syariah* 20, no. 2 (May 1, 2012): 145-62.

³² Tengku Erwinsyahbana, "Sistem Hukum Perkawinan Pada Negara Hukum Berdasarkan Pancasila," *Jurnal Ilmu Hukum* 3, no. 1 (2012).

³³ Abdul Ghofur Anshori, *Hukum Perkawinan Islam* (Yogyakarta: UII Press, 2011).

³⁴ Khoiruddin Nasution, *Hukum Perkawinan 1* (Yogyakarta: ACAdemIA & TAZZAFa, 2005).

marriage to a young man. The word *istitā'ah al-bā'ah* means the ability to marry. Some ulema of the Shāfi'ī creed give the meaning of *al-bā'ah* meaning *jimā'* (sexual intercourse)³⁵ and some of them give meaning by *mu'an al-nikāh* (the cost of marriage)³⁶. There is also Shafi'ī ulema who define *al-bā'ah* with *al-mu'an ma'a al-jimā'*³⁷. But according to Ibn Hajar the word *al-bā'ah* includes the intentions of both *jimā'* and *mu'an al-tazwij* (the cost of marriage). The *fuqahā*, in addition to the Shafi'ī creed, has almost the same view in interpreting *al-bā'ah*. As Maliki creed argue that the word *al-bā'ah* means *al-māl al-muwaṣṣil ilā al-waṭ'* which means to have the wealth to marry.³⁸ While Ibn Taymiyah argue that *al-bā'ah* means *al-qudrah 'ala al-mu'nah* (able to meet the cost of marriage)³⁹. The *fuqahā* understand the meaning of *al-bā'ah* based on their understanding of the meaning of the word *أَنْ يَنْزُوجَ* in the hadith which means *wat'* or *jimā'*.⁴⁰ As for the meaning of *al-bā'ah* as *mu'an al-nikāh*, they based on the meaning of the word *طَوْلٍ* in Hadith means another marriage recommendation that intends to be able to give dowry and living⁴¹.

From the explanation above, it implies that marriage is only intended for someone who has the ability to do *jimā'* and *طَوْلٍ* being able to give dowry and living. A person who does not meet the criteria of the ability to perform *jimā'* caused by a certain disease then he is not recommended to marry⁴². It is also not recommended to marry someone who does not meet the criteria of *mu'an al-nikāh*. Sharia instructs those who do not have the ability to seek halal earning, first for the cost of marriage, and to protect themselves from adultery⁴³.

Based on the opinion of the ulema above, it can be concluded that the understanding of *al-bā'ah* includes two things: firstly, the ability to do *jimā'* or referred to as sexual ability, the ability of the non-material aspect; and secondly, the ability to give *mu'an al-nikāh*, namely the giving of dowry and living as the ability of the material aspect⁴⁴. In another phrase, *al-bā'ah* means physical and conjugal needs. For prospective wives, they only need to have the ability from the sexual aspect, only to have sex, because the obligation to provide dowry and living is charged to the husband.

³⁵ Muhammad Ibn al-Khatib al-Sharbini, *Mughni Al-Muhtaj*, vol. III (Beirut: Dar al-Fikr, 2003), 161.

³⁶ Al-Nawāwī, *Al-Majmu'*, n.d., XVII:201.

³⁷ Muhammad 'Abd al-'Aziz al-Khalidi, *Hawashay Al-Sharwani Wa Ibn Qasim al-'Abbadi*, vol. IX (Beirut: Dar al-Kutub al-'Ilmiyyah, 1996), 4.

³⁸ Al-Qarafi, *Al-Nakhirahfi Furu' al-Malikiyyah* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2001), 4.

³⁹ Ahmad ibn Taymiyah, *Majmu' Fatawa*, n.d., 32-36.

⁴⁰ Hadith riwayat Tirmizi. See al-'Asqalani, *Fathu Al-Bari*, IX:12. See also Hadith al-Bukhari, Kitab al-Nikah, Bab al-Targhib bi al-Nikah, no. Hadith 4776. Hadith Muslim, Kitab al-Nikah, Bab Istihbab al-Nikah li man Taqat Nafsuhu ilaih..., no. Hadith 1401.

⁴¹ Hadith riwayat al-Nasa'i. See Sunan al-Nasai, *Sharh Al-Suyuti*, vol. III (Mesir: Dar al-Hadith, 1999), 366.

⁴² al-Sharbini, *Mughni Al-Muhtaj*, III:161. See also 'Abd al-Karim Zaydan, *Al-Mufassal Fi Ahkam al-Mar'ah Wa al-Bayt al-Muslim Fi al-Shari'ah al-Islamiyyah*, vol. VI (Beirut: Muassasah al-Risalah, 1994), 38.

⁴³ Al-Nur (24): 33.

⁴⁴ al-Sharbini, *Mughni Al-Muhtaj*, III:161.

1. Non Material Capabilities

Jimā' Capability

The word *jima'* has the same meaning as *al-waṭ'*: *Ilaj al-dhakar fi al-farj* (inserting male genitalia into the vagina)⁴⁵. Genital problem (*erectile dysfunction*) in men is often referred to as *impotence*. Medically impotence is always associated with sexual problems that mean the inability of a man to have sex through the genital because he is unable to arouse and maintain his erection properly when penetrating into the vagina⁴⁶. In women, there can also occurred sexual disorders called *frigid*. Sexual disorders in such women are characterized by low sexual arousal or libido so they cannot enjoy even being reluctant to have sex with their partner⁴⁷.

The *fuqahā* is differed on the minimum level of sexual intercourse in marriage. According to the Maliki creed, a husband is obliged to have sexual intercourse with his wife when the wife wants to have it as long as there are no obstacles or excuses. In contrast to the view of Shafī'i creed which says the obligation of the husband to have sexual intercourse with his wife is only once during the marriage. In this opinion, sexual intercourse is a husband's right. The husband is not obliged to fulfill it like the rights of wife. While Hambali creed holds that the minimum limit of husbands having sexual intercourse is once every four months. While according to Imam al-Ghazali, it is best to do it every four nights, but it can be done when there is an orgasm. He compared the polygamy limit to four wives⁴⁸. According to Ibn Hazm, it is obligatory for the husband to give sexual service to his wife at least once every time from menstruation (once a month).

Doing *jimā'* in marriage is highly recommended because it can prevent fights and disputes between husbands due to the absence of intense relationships. The Prophet once ordered 'Abd-Allaah ibn 'Amr ibn al-'Ash to deliver his wife's right to sexual intercourse because his wife complained that her husband had neglected her rights because he was busy worshipping.⁴⁹ From the above explanation it can be understood that sexual intercourse between the husband and wife must be conducted in a marriage even though the number differs based on the needs.

Diseases Hindering *Jimā'*

Marriage is a means of channeling sexual desire in a lawful and honorable way. The disease of one self can certainly prevent doing of one of the purposes of

⁴⁵ *Al-Qamus al-'Asri: 'Arabi-Injelizi*, vol. VII (Cairo: Elias Modern Press, 1994), 122.

⁴⁶ Hembing Wijayakusuma, *Mengatasi Impotensi Secara Efektif Dan Alami* (Jakarta: PT. Elex Media Komputindo, 2000), 5.

⁴⁷ Wijayakusuma, 5-6.

⁴⁸ al-'Asqalani, *Fathu Al-Bari*, IX:15.

⁴⁹ Hadith Al-Bukhari, Kitab al-Nikah, Bab lizaujika 'alaika Haq, no. Hadith 4903. and Muslim Kitab al-Siyam, Bab al-Nahyu 'an Saumi al-Dahr li man Tadharrara..., no. Hadith 1159.

the marriage. Failure to have sexual intercourse due to certain illnesses can lead to domestic conflict that eventually leads to divorce on demanding a divorce. Fasakh's claim is also permissible if a husband does not have sexual intercourse with his wife for a long time⁵⁰.

Shafi'i ulema specify seven types of diseases that can be used as a reason to demand *fasakh*; three types of diseases occur to both husband and wife, *judhām* (leprosy), *al-baraṣ* (*supak*) and epilepsy. Two types of special diseases are found in women, *al-rat'q* and *qar'n*. The other two types infect men, *al-jabb* and *al-'unnah*. All of these diseases are considered severe diseases because they can hinder intercourse. As for defects other than those mentioned above are considered as mild diseases and should not be used as a reason to demand *fasakh*, such as *farāj* (removing froth), *istihadah* (bleeding outside menstruation), festering urine, blindness, skin diseases and epilepsy. All types of disease are not allowed as an excuse for *fasakh* because they do not hinder sex.

According to Maliki ulema, the diseases that are permissible as a reason to claim *fasakh* are thirteen types of diseases with three classifications; Firstly, there are four types of diseases that can affect both men and women, namely: *epilepsy*, leprosy, *al-baraṣ* and unclean secretion (feces); when intercourse occurs. Secondly, diseases that are specific to men, namely *al-jabb*, *al-'unnah*, and *al-khisa'*. Thirdly, the diseases especially infecting women are *al-rat'q*, *al-qar'n*, *al-bikhar* (a type of disease that emits a strong odor from *faraj*), *al-afal* (flesh grows on vagina and always secretes fluid) and *al-ifda'*. Furthermore, Hambali creed classified into three categories; the first diseases specific to men are *al-jabb* and *al-'unnah*. Secondly, for women are *al-fat'q* (the uniting of urinary tracts and fluid) *al-qar'n* and *al-afal*, and the thirdly is applicable to men and women, such as epilepsy, leprosy and *al-baraṣ*. All types of the diseases are related to the genitals, types of severe diseases, and types of contagious diseases as well as disgusting.

In contrast to the opinion of Hanafi ulema who do not allow as a reason to sue *fasakh* against madness, leprosy, syphilis, *al-rat'q* and *al-qar'n* because the disability does not hinder sexual desire and it can be treated and cured⁵¹. They also do not allow the husband to sue *fasakh* because the right to claim *fasakh* is only on the wife's side. However, *jumhur* ulama argues that each husband and wife have a right to sue *fasakh* because through a divorce, the husband will bear the consequences of divorce such as the obligation to pay the entire living if the divorce is dropped after *dukhūl* (having sex) and half if before *dukhūl*.

Islamic jurisprudence ulema establish two conditions to claim *fasakh* if there is a disease suffered by one of the couples before solemnization. Firstly, one of

⁵⁰ Al-Nawāwī, *Al-Majmu'*, n.d., XVII:277.

⁵¹ al-Zuhayli, VII:515-18.

the parties do not know the other party's weakness before marriage was held. If one of the parties know and receive, it is not allowed to claim *fasakh* later on. Secondly, one of the parties does not accept the weakness of the spouse who has recently known after marriage.

Today, the medical world has also discovered a new disease that is confirmed as a disease that can be used as a powerful reason for *fasakh*. The diseases are (*human immuno defidiciency virus*) and AIDS (*acquired immuno deficiency syndrome*). This disease includes dangerous infectious because it still has not found a cure to prevent it. The disease can be transmitted through sexual intercourse⁵².

Based on the explanation, it can be understood that a person has criteria of capability in terms of sexual intercourse if he/she is physically healthy of the types of diseases or defects that allow the demands of *fasakh* as mentioned above, including HIV/AIDS disease because it can prevent the achievement of the goal of marriage and ensure the birth of a healthy generation.

Marriage Age

The willingness to have a sexual intercourse also needs to be supported by physical readiness in terms of age. An ideal marriage is a marriage which is being capable of achieving the purpose of marriage. Regarding the age limit of marriage, Qur'an and hadith do not explicitly specify a certain age for a person who will perform marriage. Qur'an only confirms that a person who will have a marriage must be those who are adult and mature⁵³. The lafaz of *balagh al-nikāh* (age to marry) is shown in Q.S. al-Nisa'(4): 6 accompanied by lafaz *rushd* (intelligence). Implicitly, the verse above acknowledges that marriage must be conducted after reaching adulthood or maturity. According to Muhammad Rashid Rida lafaz *balagh al-nikāh*, it is to have reached the age that makes himself ready to have sex, called as *ihtilām*⁵⁴.

The sign of puberty for men is *ihtilām* and menstruation for women. If there are no such two signs, according to the Hanafi creed, a man is considered to have reached puberty at the age of 18 and for a 17-years-old for woman. While Shafi'i creed set the age of 15 years for both men and women.⁵⁵In sharia law, the age of puberty is the limit for a person to bear the legal consequences of his actions or be referred to as *mukallaf*.

Based on the objective and wisdom of marriage, the future husband and wife must have good physically, mentally, emotionally, and required age to achieve this objective because a marriage is not only for having kids but also along with its responsibilities such as educating children, building a happy family, and so on.

⁵² Abu Jaafar Mukmir, *Keajaiban Organ Tubuh Manusia* (Kuala Lumpur: al-Hidayah, 2001), 211.

⁵³ Al-Nisa' (4): 6.

⁵⁴ Muhammad Rashid Rida, *Tafsir Al-Manar*, vol. IV (Cairo: Maktabah al-Qahirah, n.d.), 387.

⁵⁵ Ibrahim bin 'Ali bin Yusuf al-Shirazi Abi Ishaq, *Al-Mubatashdhab*, vol. II (Beirut: Dar al-Fikr, n.d.), 330.

2. Financial Ability

The financial ability that must be possessed by a man in a marriage are the payment of a mahar and a living (*mu'an al-nikāh*).

Mahar

A mahar is a gift that must be given by a man to a woman as mentioned in the marriage contract and as their agreement to live together as husband and wife. The obligation to give mahar is already stated in Q.S: al-Nisa (4): 4 and Q.S: al-Nisa (4): 24. This verse requires husband to give mahar to his wife due to the prevailing of marriage contract or sexual intercourse⁵⁶. Besides, the meaning of the pronoun *hunna* in this verse shows that the mahar belongs to the woman, not the father or mother's right as their reward for raising the woman. The wisdom of giving mahar to wife is the symbol of glory to women and as a guarantee for the handover of livelihood responsibility from her father to her husband⁵⁷.

The obligation to give a mahar in marriage based on the hadith which requires طَوْلٍ to marry, to give a mahar and a living⁵⁸. Based those statement, it shows that a mahar must be given in a marriage even with a pair of sandals. Although the mahar must be paid, it is not a part of marriage that must be mentioned on marriage contract. If it is not mentioned because there is no agreement on a mahar, then the mahar that must be paid is mahar *mithil*, which is the mahar having amount and shape compared to his brother or wife's family from his father's side as his sibling or sibling from the same father⁵⁹. The unpaid mahar will also be considered as a debt to his wife. If he dies, the mahar must be paid by the heir or taken from his property.

Minimum Form and Content of Mahar

Mahar can be completed with any valuable thing and beneficial property in Shari'a, whether it is in the form of objects or wages from a job, which is clear in characteristics and can be given to his wife. Assets that are worthless and useless in Islam, such as unclean animals, insects, and wine, should not be used as a mahar. The specifications of the mahar from the aspect of type and value also need to be known clearly to avoid the occurrence of obscurity that can lead to fraud on wife's side. Mahar is also required to be able to be given⁶⁰. It is illegal to pay a mahar with a flying bird because it is not certain whether owned by a wife or not. The mahar is allowed in many conditions as long as beneficial for women.

⁵⁶ Al-Qurtubī, *Jāmi' Li Ahkām al-Qur'an* (Beirut: Dār al-Fikr, 1997), 24.

⁵⁷ Mustafā al-Sibā'i, *Sharh Qānūn Al-Ahwāl Al-Shakhsiyyah*, vol. I (Beirut: Maktabah al-Islāmī, 1997), 180-81.

⁵⁸ Hadith riwayat al-Nasa'i. See Jalāluddīn al-Misrī al-Suyutī, *Sunan Al-Nasā'i Bi Sharh Al-Suyutī* (Mesir: Dār al-hadīth, 1999), 366.

⁵⁹ 'Abd al-Rahmān Tāj, *Al-Shari'ah Al-Islāmiyyah Fī Al-Ahwāl Al-Shakhsiyyah*, 1956, 135..

⁶⁰ Al-Māwardī, *Al-Hāwī Al-Kabīr* (Beirut: Dār al-Kutūb al-'Ilmiyyah, 1994), 403. See also Mustafā Sa'id al-Khin, *Athar Al-Ikhtilāf Fī Al-Qawā'id Al-Uṣūliyyah Fī Ikhtilāf Al-Fuqahā* (Beirut: Al-Risālah, 1998), 598.

It may be in the form of gold, silver and other stuff, such as money, a house, a garden, measurable objects, animals or clothes⁶¹.

In the practice of Rasulullah, he asked Ali bin Abi Talib to give his armor to Fatimah as mahar⁶². According to madhab Shafii and Hambali, they allow to give any mahar as long as it has clear benefit. This benefit must consist of something that can be paid for rent according to Shari'a, such as taking advantage of teaching science, teaching Al-Qur'an and wages from serving his wife for a certain period of time, such as sewing his wife's clothes, building a house, and becoming a servant for his wife for a month, all this can be used as a mahar because he has clear benefits. Different with Hanafi, they only accept mahar payments in the form of assets, such as wages from house rent, wages from animal rents, and so on⁶³.

Fuqahā agreed that mahar do not have upper limit, but they disagreed about the lowest limit. According to mazhab Hanafi, the amount of mahar that must be paid is not less than 10 silver dirhams or equivalent.⁶⁴ This level is based on a hadith which states that the mahar should not be less than ten dirhams. Meanwhile, Madhab Maliki equated the minimum amount of mahar with the minimum level for cutting off a hand in cases of theft, which is one fourth of the gold dinar which equals three silver dirhams or both of them⁶⁵. In another side, mazhab Shafi'i and Hambali do not set the mahar levels. According to them, all valuable things are allowed to become a mahar, either in the form of a ring of iron or in the form of wages or services⁶⁶. Their opinion is based on the Prophet's command to a friend to find something that could be used as a mahar even though it was only a ring made of iron⁶⁷. Based on Shari'a, any treasure can be used as a mahar without considering the amount. However, according to mazhab Shafi'i, mahar is recommended not to exceed 500 dirhams and not less than 10 dirhams⁶⁸. Meanwhile, the Indonesian Marriage Law does not specify the amount of mahar as described in the Islamic Law Compilation chapter V from articles 30 to 38⁶⁹.

Based on those explanation, it can be concluded that the mahar is something valuable and useful. The amount is adjusted according to the agreement between the two parties as the opinion of mazhab Shafi'i and Hambali.

⁶¹ Tāj, *Al-Shari'ah Al-Islāmiyyah Fī Al-Aḥwāl Al-Shakhsīyyah*, 127.

⁶² Hadith from Abu Dawud, Kitab al-Nikah, Bab fi al-Rajul Yadhkulu bi Imra'atihi Qabla an-Yanqidaha Shay'an, no. Hadith 2126. See Abu Dawud, Sunan Abu Dawud, in *Mausu'ah al-Hadith*, 1379.

⁶³ Muhammad Khudari Bik, *Al-Fiqh Al-Muyassar Fī Al-Mu'āmalah* (Beirut: Dār al-Fikr, n.d.), 126.

⁶⁴ Ibn 'Ābidīn, *Hāshiah Rad Al-Mukhtār* (Mesir: Shirkah Maktabah wa Matbā'ah, 1966), 100-101. See also Imam Sarakhsi, *Al-Mabsuth Li as-Sarakhsi* (Beirut: Dar Al-Kutub, 1993), 64.

⁶⁵ 'Ābidīn, *Hāshiah Rad Al-Mukhtār*, 101-2.

⁶⁶ al-Sharbini, *Mughni Al-Muhtaj*, III:22.

⁶⁷ Hadith riwayat Abu Dawud, Kitab al-Nikah, Bab fi al-Tazwij 'ala al-'Amal Yu'mal, no. Hadith 2111. Abu Dawud said, this Hadith sahih.

⁶⁸ Abū al-Qāsim 'Abd al-Karīm Ibn Muhammad al-Rafī'ī al-Qazwīnī, *Al-'Azīz Sharh Al-Wajīz Al-Ma'rūf Bi Sharh Al-Kabīr*, vol. VIII (Beirut: Dār al-Kutūb al-'Ilmiyyah, 1997), 231-33.

⁶⁹ Summa, *Hukum Keluarga Islam Di Dunia Islam*, 293-94.

Living

The ability to marry in other financial form is the provision of a living by the husband to his wife. This obligation is based on QS. al-Nisa (4): 34. This verse explains that men have a role as leaders in the household because Allah SWT has exaggerated their obligation to give mahar and all of their wives's needs. In other verse, Allah SWT commands the husband is obligatory to provide food and clothes adjusted with husband's ability according to their own customs.⁷⁰ The word رِزْقُهُنَّ in that verse means sufficient food and *ma'rūf* in community. The obligation to provide a place to live is based on Q.S. al-Talaq (65): 6. This verse command the husband to place his wife along with her husband's residence.

Rasulullah has also obliged husbands to provide food and clothes to their wife in a literal manner and of the same quality as those used by husbands and the prohibition against hitting the wife's face as lessons. The husband is also prohibited from criticizing his wife and moving her to another place outside his home.⁷¹ The *fuqahā* agreed that the husband is obliged to provide a living to his wife if a valid marriage contract has occurred on the condition that the wife does not perform actions that categorized as *nushūz* or disobedience to her husband⁷².

Minimum Types and Levels of Living

A living has many definitions: in terminology, living means "something that is providing sufficiently." According to 'urf, a living means food. As for syara', a living means "the fulfillment of clothes, food and shelter for the people who are supported"⁷³. In the dictionary, it is stated that a living is "the giving of someone in the form of food, clothes, shelter or peace/pleasure (inner peace) to someone because of marriage, family and property (servant) based on ability"⁷⁴. Moreover, the word a living means a shopping given in dirhams⁷⁵.

While the *fuqahā* provide the definition of a living; Madhab Maliki argues that a living is food that can meet human needs without exceeding limits.⁷⁶ Madhab Shafi'i states that a living is paying expenses to people under their responsibilities such as bread, side dishes, clothes, shelter and anything about them such as the

⁷⁰ Al-Baqarah (2): 233.

⁷¹ Hadith from Abu Dawud, Kitab al-Nikah, Bab fi Haqqi al-Mar'ah 'ala Zaujiha, no. hadith 2144. Al-Albani said, this Hadith hasan sahih. See al-Sajastani, *Sunan Abi Daud*, I:491. See also hadith from Ibn Majah. Ibnu Mâjah, *Sunan Ibnu Mâjah* (Damaskus: Maktabah Ibnu Hajr, 2003), 593. See also Hadith from Muslim, Kitab al-'Aqdiyah, Bab Qadiyyah Hindun, no. hadith 1714.

⁷² *Nushuz* such as disobeying the husband, not following the order or instruction from the husband, refusing to do sex without any rationale reason and leaving the house without the agreement or permit from the husband. See Sayyid Sabiq, *Fiqh Sunnah* (Beirut: Dar al-Fikr, 1983), 175.

⁷³ al-Zuhayli, *Al-Fiqh al-Islami Wa Adillatuh*, VII:765.

⁷⁴ M. Shodiq, *Kamus Istilah Agama* (Jakarta: Bonafit Cipta Pratama, 1991), 237.

⁷⁵ Luis Ma'luf, *Al-Munjid Fi al-Lughat Wa al-'Alam* (Beirut: Dar al-Mashriq, 1986), 828.

⁷⁶ Malik bin Anas, *Al-Mudawwanah al-Kubra*, vol. V (Uni Emirat Arab, 1422), 17.

bills of water, oil, lamps and others⁷⁷. In addition, Mazhab Hambali states that a living is needs in the form of bread, side dishes, a place to live and anything about them. Meanwhile, Sayyid Sabiq defines a living as a provision of all the needs of the wife such as food, clothes, shelter, providing assistant and medicine even though the wife is rich⁷⁸. Based on these definitions, it can be concluded that a living is all human needs including three important aspects consisting of food, clothes and shelter or anything about them.

Food and Beverage

One of living obligation provided by husband is food and beverage. Food and beverage is a basic necessities including food, drink, seasoning and anything related to them such as bread, side dishes, oil and so on⁷⁹. Al-Qur'an explains that the level of income is based on customs and adjusted to the ability of the husband⁸⁰. The absence of clearly mentioning the level of earning in the texts makes some husbands ignoring the provision of adequate living for their wife. Therefore, *fuqahā* agreed to provide a minimum size of income that must be given to their wives in case of disagreement between them. This also shows that a poor husband is inseparable from fulfilling his responsibility of providing support for his wife and children. If he is unable to provide a living when he is poor, then the provision of income will become a debt to his wife. If the wife is not willing or unwilling to abort this right, then the husband is obliged to pay the arrears when he can do that⁸¹.

Madhab Shāfi'ī set income level of rich husband that must give to his wife is two muds⁸² per day. For poor husbands, one mud of rice and for simple husbands is one and a half mud. It based on the amount of the fine in the *kifarat*.⁸³ However, the ijtiḥad of Imam Shafi'i at that time could change in the form of the scales and types according to the current situation. According to madzhab Hanafi, the husband is obliged to provide basic necessities of his wife needs including food, meat, vegetables, fruits, olive oil, and ghee, also all the necessities needed daily based on local community.⁸⁴ Meanwhile, mazhab Hanafi states that the amount of income for the wife is determined based on the ability of the husband; rich or poor, not based on his wife.

⁷⁷ 'Abd al-Rahman al-Jaziri, *Fiqh 'ala al-Madhahib al-Arba'ah*, vol. IV (Beirut: Dar al-Fikr, 1989), 553.

⁷⁸ Sabiq, *Fiqh Al-Sunnah*, (Beirut, 147).

⁷⁹ al-Zuhayli, *Al-Fiqh al-Islami Wa Adillatuh*, VII:765.

⁸⁰ Q.S. al-Talaq (65): 7.

⁸¹ Ibn Rushd, *Bidayat Al-Mujtahid*, vol. II (Cairo: al-Istiḳamah, 1938), 462.

⁸² One *mud* has same content size with five per six liters.

⁸³ al-Sharbini, *Mughni Al-Muhtaj*, III:559. See also Sabiq, *Fiqh Al-Sunnah*, (Beirut, 153).

⁸⁴ Mahmud Yunus, *Hukum Perkawinan Dalam Islam Menurut Mazhab Hanafi, Maliki, al-Syafi'i Dan Hambali* (Jakarta: Hidakarya Agung, 1990), 103.

The determination of the content of food that must be provided should be the staple food with the side dishes and other additional foods based on wife necessities and based on *'urf* in a place provided that it is neither excessive nor deficient based on husband ability.

Clothes

The second element of a living required for husband is to provide clothes based on Q.S. al-Baqarah (2): 233 and hadith. It can be understood that the husband is obliged to provide clothes for his wife to protect his wife from others. The majority of *fuqahā* recommends giving 2 pieces of sewn clothes that can cover their the aurat in a year or one piece of clothes every six months. This is based on two seasons; heat and cold are common in their place because changing clothes is done during the two seasons in order to protect the body from hot and cold weather⁸⁵. Moreover, it is also including part of clothes that is often used like *khimar* to cover his head, footwear, mattresses, pillows, mats and blankets. However, these types of clothes are not required to be provided every year but only if they are necessary⁸⁶. According to mazhab Shāfi'i, a wife has the right of having clothes that adjust with husband's financial ability. For a wife whose husband is rich, she deserves soft and beautiful clothes. For a wife whose husband in poverty, they can wear simple clothes and for a wife whose husband is modest, they have the right to get clothes between the two of them. According to mazhab Shāfi'i, the provision of such clothes based on the husband's financial ability, not his wife⁸⁷. If a husband is rich, the provision of income levels needs to be adjusted. Conversely, if the husband in poverty, the wife is not allowed to sue her husband beyond his limit. Therefore, it can be concluded that the determination of clothes to be used should be based on the wife's needs, which must be perfected with her jewelry based on the husband's financial ability, which is adjusted according to the *'urf* of local community.

Residence

The obligation of a husband to provide a residence for his wife and children as what stated on Q.S. al-Talaq (65): 6. Although this verse is addressed to wives who are in iddah talak, wives who are still married are more entitled to get this right, even they are more important than others. According to al-Mawardi, this verse is intended for wives while in the marriage and wives who are performing *'iddah* both *ṭalaq raj'i* and *ṭalaq ba'in*. Talking about residence, a husband must provide it along with all its equipment according to his wife's social status; rich,

⁸⁵ Ishaq, *Al-Mubatahdhab*, II:162. See also al-Zuhayli, *Al-Fiqh al-Islami Wa Adillatuh*, VII: 803.

⁸⁶ Shams al-Din Muhammad Ibn al-Khatib al-Sharbini, *Mughni al-Muhtaj*, 564.

⁸⁷ See 'al-Sharbini, *Mughni Al-Muhtaj*, III:563.

poor or simple, not according to the husband's situation because the status of the resident belong to the husband. The wife is only allowed to use them (haq al-intifa')⁸⁸. It is in contrast with provision of food and clothes as the wife's property⁸⁹. A husband must place his wife in his own house, by rent or loan.

Complementary Living

Fuqahā have already added a type of wives' living that is not clearly stated in the Qur'an and hadith based on customs. It named a complementary living. *First*, Personal hygiene tools (tools *al-tanzif*). The cleaning tools and jewelry for the wife to be clean from dirt such as combs, hair oil, bath soap, shampoo, perfume, extra food when sick, bathroom cleaning fees if needed, providing water for bathing and washing.⁹⁰ It is the husband's obligation to provide them to his wife. *Second*, household appliances (*mata 'al-bayt*) such as eating and drinking utensils, cooking, toiletries and washing clothes. *Third*, providing servant is a type of support for wives that must be fulfilled by husbands who are rich or poor following the wife's customs or family⁹¹. The obligation to provide a maid for the wife with the following conditions:⁹²

- a) The wife is unable to work alone to take care of the house.
- b) The wife's socio-economic status is appropriate to get a maid.
- c) The wife is sick.
- d) Having many children.
- e) Wives who need help when taking care of heavy work.

The inability to provide all the living conditions described above, according mazhab Hanafi, the wife should urge her husband to fulfill it or sue *fasakh* in court within one month from the beginning of ignoring. If the wife does not demand it within one month, her right to support her will be null and void⁹³. Meanwhile, based on mazhab Maliki, if the husband is unable to provide a living, he is postponed for up to two months. If more than two months are not fulfilled, the judge may divorce them⁹⁴.

Based on mazhab Shāfi'i and Hambali, the obligation of living is *yawman biyawmin* (per day). If the husband does not fulfill the obligations, they have agreed, the wife can postpone him for three days. If this time has passed, the wife

⁸⁸ Sabiq, *Fiqh Al-Sunnah*, (Beirut, 91).

⁸⁹ See al-Jaziri, *Fiqh 'ala al-Madhahib al-Arba'ah*, IV:563. See also al-Zuhayli, *Al-Fiqh al-Islami Wa Adillatuh*, VII: 803.

⁹⁰ al-Sharbini, *Mughni Al-Muhtaj*, III: 564-66.

⁹¹ Sulayman al-Ashqar, *Ahkam Al-Zawaj* (Urdun: Dar al-Nafais, 2008), 281.

⁹² al-Sharbini, *Mughni Al-Muhtaj*, III: 565.

⁹³ Satria Effendi M Zein, *Problematika Hukum Keluarga Islam Kontemporer: Analisis Yurisprudensi Dengan Pendekatan Ushuliyah* (Jakarta: Prenada Media Grup, 2015). 100.

⁹⁴ Ibn 'Asim, *Ihkam Al-Ahkam 'ala Tuhfat al-Hukkam* (Beirut: Dar al- Kutub al-'Ilmiyyah, n.d.), 123.

is allowed to choose between being patient or demanding *fasakh* on the grounds that the husband's inability to provide a living.⁹⁵ This is based on Q.S. al-Baqarah (2): 229 : "... hold onto his wife in a proper way or divorce her properly."

THE RECENT RELEVANCE OF *ISTITĀ'AH AL-BĀ'AH*

The author think that Islam has two points of view at once when describing the ability to marry; husband's perspective and wife's perspective. Based on the husband's perspective, Islam does not impose anything but according to his or her abilities with particular minimum limit. Based on the wife's perspective, family's life should be able to provide comfort and serenity with the fulfillment of primary and secondary needs. It will be better if tertiary needs are also met. Integrating the two perspectives is an effort to strengthen the guidance of *sakinah*, *ma'waddah*, *warahmah* in family.

The ideal marriage is a marriage with biological needs. Moreover, marriage has rights and responsibilities between husband and wife. The husband's responsibility is to give a mahar and a living, so that they have good marriage life. Based on the explanation above, the concept of marriage in Islam includes the ability of sexual intercourse and financial aspects of future husband and wife before getting married. The efforts of having this marriage concept can be completed by government intervention through medical check up and ensuring the health of the future husband and wife in aim to avoid malignancy before marriage. Moreover, the data on the groom's income and occupation also need to be assessed by the government to ensure the financial ability of the future husband. This provision, according to the author, needs to be one of the requirements that must be implemented before allowing marriage for the future husband and wife as government regulations. This is important to minimize the bad sides of marriage and to prevent the rise of divorce cases in community, including the marriage that is not following the law of marriage.

CONCLUSION

The concept of the ability to marry in this study becomes the criteria for the ability to marry before getting married as Sharia regulation. This criteria is to ensure that both parties has the ability and preparation. The abilities that must be possessed by a husband and wife consist of two parts: firstly, having non-material abilities, namely have ability to do intercourse; having no malignancy or disabilities; and mature. Secondly, having the financial ability, namely can give a mahar; and

⁹⁵ Ibn Abi 'Abdillah Muhammad bin Idris al-Shāfi'i, *Al-Umm*, vol. V (Beirut: Dar al-Kutub al-'Ilmiyyah, 1993), 132. See also 'Abdullah Ibn Qudamah al-Maqdisi, *Al-Kafi Fi Fiqh al-Ahmad*, vol. III (Dar al-Kutub al-'Ilmiyyah, 1994), 227.

provide a living. If all these abilities have been fulfilled, then a person is legally recommended to marry. In order to ensure that non-material and financial abilities above are fulfilled for the future husband and wife, the government needs to make regulations of medical check up and assessment of financial abilities before marriage as complementary requirements of the obligation and administrative requirements.

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