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THEMATIC HADITS STUDIES: A SYAR'I STUDY OF HADITS ON MARRIAGE WITNESS

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ABSTRACT

A valid marriage in Islamic law has a number of binding rules that must be fulfilled by the ummah, if the marriage is to be performed. These rules in addition to aiming to distinguish marriages performed before the arrival of Islam also distinguish the practice of marriage carried out by other religions. The study would like to discuss hadits on marriage witness. This study used library research. From the results of the study and reading of data sources, the researcher used and made the Literal Interpertation, namely legal discovery applied by explaining the legal texts of marriage witnesses in hadith related to marriage witness law. It means that the witness of marriage that becomes law already has a legal text despite it being unclear or incomplete. The study found out that the hadith about marriage witnesses, as Imam Tirmidzi mentions, that the narration is not judged marfu', except by Abdul A'la but he also judged mauquf to be more correct and did not cause this hadith to be flawed, because Abdul A'la was a tsiqah so that his marfu judgment and its additions were acceptable.

INTRODUCTION

A valid marriage in Islamic law has a number of binding rules that must be fulfilled by the ummah, if the marriage is to be performed. These rules in addition to aiming to distinguish marriages performed before the arrival of Islam also distinguish the practice of marriage carried out by other religions. The marriage rules consist of pillars and conditions of marriage born from the understanding of *fuqaha* scholars, against the propositions of the syar'i nash of the Qur'an and the Sunnah of the Holy Prophetsa relating to the validity of a marriage. According to Zuhaily (2011) there are 9 conditions required for the validity of a marriage, some have been agreed upon by scholars, and the rest are still disputed. Among them is testimony (marriage witness) which is an important part in determining the validity of marriage.

On the other hand, marriage witness is one of the five pillars of marriage according to the number of ulama and each pillar of marriage has certain conditions that must be fulfilled in marriage although some fuqaha scholars consider marriage witness as a condition for the validity of marriage (Nuruddin & Tarigan, 2004). Apart from the difference of opinion between marriage witnesses as a pillar or condition of marriage and as a function to announce to the public (*i'lan*) that a marriage has occurred or rather confirm a marriage in the future if there is a denial of marriage, Jumhur ulama is of the view that testimony is a legal requirement when carrying out the marriage contract process, so that marriage witnesses can hear the ijab and qabul pronounced by both parties (Zuhaily, 2011).

According to Wahba Zuhaily, the presence of such witnesses can distinguish between halal and haram. Usually something halal is revealed, while what is haram tends to be covered up. With

testimony, the marriage can be notarized so that records can be issued when needed (Zuhaily, 2011). That is why in the redaction of the Holy Prophet's hadith about marriage witnesses there is an emphasis on the word fair witness and consists of two witnesses.

As to whether the witness is of the male or female type, there is an effort by scholars, including contemporary Islamic jurists' understanding of reconstruction, interpreting the presence of witnesses in a marriage contract as (*i'lan*), then if there is a better and more efficient way to achieve this goal, namely marriage registration is a way of replacing the presence of witnesses as a pillar that must be fulfilled for validity marriage (Nasution, 2013). Then in the case of marriage, the harmony and conditions of both must complement each other, meaning that the marriage is invalid if both are incomplete.

Apart from the description, the thematic hadith study of marriage witnesses is important to be studied so that it can provide a comprehensive understanding of the hadith and the laws contained therein, including other aspects that influence it, due to changes in time and the development of times and social dynamics of society in the Islamic world, including Muslim communities in Indonesia. Therefore, the researcher conducted this study to analyze thematic hadits on marriage witness. However, please note that the presence of this hadith is not found for its reasons so there is no discussion about it. Thus in this paper, the author makes a discussion scheme consisting of: first, explaining the understanding of marriage witnesses as the main theme of the thematic hadith (*maudui*) discussed; second, collect and explain the meaning of the word hadith and the status of hadith about marriage witnesses; third, explaining the meaning of the hadith in detail, fourth elaborating the main legal concepts (*istinbat al-ahkam*) taken from the hadith about marriage witnesses according to the scholar's point of view; and concluding is to draw conclusions from the scheme of discussion of thematic hadith on marriage witnesses.

METHOD

This study used library research. From the results of the study and reading of data sources, the researcher used and made the Literal Interpertation, namely legal discovery applied by explaining the legal texts of marriage witnesses in hadith related to marriage witness law. It means that the witness of marriage that becomes law already has a legal text despite it being unclear or incomplete. The object of this method is the text of the law contained in the hadith by looking at it from several aspects. First, the aspect of light and vague meaning or legal statements, so that clear (*zahir ad-dalalah*) and unclear (*khafi ad-dalalah*) legal statements are found. Second, in terms of designation to the intended meaning. Third, judging from the narrow scope of meaning in a legal statement. Fourth, in terms of *taklif* forms include *amar* (commandment) and *nahi* (prohibition) (Riyanta, 2008).

The data here includes primary data sources, namely from *mu'tabar* hadith books which contain a number of hadiths about marriage witnesses, in addition to secondary data sources used, namely understanding and explanation from fuqaha scholars about marriage witnesses contained in fiqh books to strengthen legal understanding of marriage witnesses. In general, data collection

techniques can be taken by literature review, namely collecting books of hadith and jurisprudence that explain marriage witnesses.

Data analysis techniques in the research include: first, inventory the books of hadith and jurisprudence that are fundamental in nature to carry out preliminary activities towards the next stage; second, classifying the books of hadith and jurisprudence related to marriage witnesses with the stages: a) vertical synchronization, which seeks to see the suitability of the legal aspects of the meaning contained in the books of hadith and the understanding of fuqaha scholars; b) horizontal synchronization, which seeks to see harmonization of other legal aspects contained in the laws and regulations on marriage witnesses; Third, identifying data, namely the process of testing or selection of a number of books of hadith and jurisprudence that discuss marriage witnesses that have been categorized with the aim of knowing the existence of vague legal norms.

RESULT AND DISCUSSION

Witnesses in Arabic are called *shahida*. As in *Mu'jam al-Wasith*, the word *shahid* is the isim *Fa'il* form of *the word shahida* which means "who sees things perfectly and clearly" (Anis, 1972). In the Indonesian dictionary the word witness means a person who sees or knows an event (incident) himself; or people who are asked to be present at an event who are considered to know the event so that at some time, if necessary, can provide information confirming that the event really happened (Purwadarminta, 1985). Another meaning of the word shahida is the form of masdar *shahada* according to Al-Jauhari means definite news (news). While the word *shahid* is the one who brings the news and the perpetrator, because he witnesses things that are not witnessed by others (al-Shan'ani, 1991).

When viewed the meaning of witnesses based on their functions, Abu Zahrah (2005) argues, all jurisprudence scholars at all times agree that the ultimate purpose of the importance of marriage witnesses is as an announcement (*'ilan*) to the public about the existence of marriage. This opinion is based because there are several lines of hadith narrated by imams Ahmad, Tirmidhi and Ibn Majah. This view is in line with Wahba Zuhaily that the wisdom of witnessing in marriage is to give an understanding of how important it is for marriage to be shown to people in order to fend off negative rumors that may prejudice the existence of alleged extramarital sex on the bride and groom (Zuhaily, 2011).

Hadiths About Marriage Witnesses

In order to be directed at the study in discussing the theme of hadith about marriage witnesses, it is good in this paper, also describing a number of hadith texts related to the orders of the Holy Prophet SAW which are the focus of discussion, some of the hadith texts are as follows:

1) ينكحن أنفسهن بغير بينة
2) لا نكاح الا بشهود/بشواهده
3) اشهدوا النكاح واعلنواها
4) لا نكاح إلا بولي وخاطب وشاهدي عدل

From the texts of this hadith it is interesting to study as well as the importance of *athar* used to add to the treasures of study in this paper, relating to the marriage witness should be absolutely present and present when the contract is carried out, or whether what is meant to function as an announcement merely confirming that there has been a marriage event, and also includes differences of opinion among scholars whether the existence of marriage witnesses as a pillar or only a complementary condition for the validity of marriage. The following are the hadiths collected from the narrators of hadith in several books of hadith that are *mu'tabar*, namely:

1) Witness to his own marriage

عن ابن عباس أن النبي صلى الله عليه وسلم قال : البغايا اللاتي ينكحن أنفسهن بغير بينة. (رواه الترمذي)

"From Ibn Abbas, the Holy Prophet (peace be upon him) said: prostitutes are women who marry themselves off without evidence (witnesses)." (at-Tirmidzi, 2017)

Al-Turmuzi mentions, that this narration is not considered marfu' (the narration is not connected to the Prophet (peace be upon him) except by Abdul A'la, but he also judged *mauquf* (stopped at the companions) more correct, and did not cause this hadith to be flawed, because Abdul A'la was a *tsiqah* (trusted/credible) so that the assessment of his marfu and its additions could be accepted (al-Shaukani, 2006). The word *al-Bagaya*, synonymous *al-Zawani*, plural *Bugya* from the root al-Bagau and *al-Zaniyatu* from the root *al-Zzana* means penjina (prostitute). As for the phrase "*Biqairi Bayinah*" means without evidence it means without witnesses, then without being attended by witnesses is a jinahan, this is in the opinion of Shafi'i and Abu Haneefah. As explained in Kitab al-Tirmizi (2017).

عن أبي الزبير المكي أن عمر بن الخطاب أتي بنكاح لم يشهد عليه إلا رجل وامرأة, فقال : هذا نكاح السر, ولا أجيزه, ولو كنت تقدمت فيه لرجمت. (رواه مالك في الموطأ)

"From Abu al-Zubayr al-Makkiyyi, that once there was a marriage presented to 'Umar bin Khatab a marriage which was not witnessed except by a man and a woman, then 'Umar said: this is a secret marriage (secret marriage), and I do not allow it. If I had found it before, I would have stoned" (Anas, 1994).

When viewed the meaning of the redaction of the words of sayyidina Umar bin khatab, it can be said that sirri marriage is a marriage that is kept secret without witnesses, then this kind of marriage is categorized as "prostitution". Because the function of the witness is as an announcement, as the hadith of the Holy Prophet SAW: أعلنوا هذا النكاح (announce this marriage) (at-Tirmidzi, 2017) and Q.S al-Thalaq verse 2, which means "and testify with two just witnesses between you and let you establish that testimony for the sake of Allah".

2) Two Witnesses to a Fair Marriage

وعن عمران بن حصين عن النبي صلى الله عليه وسلم قال : لا نكاح إلا بولي وشاهدي عدل. (رواه أحمد بن حنبل في سننه) ذكره أحمد بن حنبل في رواية ابنه عبد الله. (صحيح بشواهده)

وعن عائشة قالت: قال رسول صلى الله عليه وسلم لا نكاح إلا بولي وشاهديْ عدل...,
(رواه الدارقطني) (صحيح بطرقه وشواهده) في السنن (225/3 رقم 23)

"From 'Imran bin Husain of the Prophet PBUH, there is no (unlawful) marriage except with the Guardian and two just witnesses" (al-Shaukani, 2006).

وأخبرنا أبو الفتح محمد بن عبد الله الريس بالري, ثنا جعفر بن عبد الله بن يعقوب, ثنا أبو خالد الأحمر, وعبيد بن زياد الفراء, عن حجاج, عن حصين, عن الشعبي, عن الحارث, عن علي رضي الله عنه قال : لا نكاح إلا بولي ولا نكاح إلا بشهود.
رواه يزيد بن هارون عن حجاج, وقال : لا نكاح إلا بولي وشاهدي عدل, وهذا شاهد لرواية مجالد. ورويناه عن عبد الله بن أبي رافع, عن علي

"Abu al-Fath Muhammad bin Abdullah al-Rays told us from al-Rayyi, according to Ja'far bin Abdullah bin Ya'qub, according to Abu Khalid al-Ahmar, and Ubayd bin Ziyad al-Farai, from Hajjaj, from al-Husayn, from al-Sha'bi, from al-Harith, on the authority of Ali (r.a), he said: there is no marriage except with guardians and no marriage except with witnesses. (al-Baihaqi, 2003)

عن أبي هريرة رضي الله عنه, عن النبي صلى الله عليه وسلم قال : لا نكاح إلا بولي وخاطب و شاهدي عدل.
عن ابن عباس قال : لا نكاح إلا بأربعة ولي وشاهدين وخاطب وله شاهد عن ابن عباس بإسناد منقطع. قال السوكاني, بسند ضعيف. وروى عند الدارقطنى بلفظ : عن عائشة قال : لا بد في النكاح من أربعة : الوليّ والزوج والشاهدين, وفي إسناده أبوالخصيب نافع بن ميسرة, هذا الحديث لدارقطني مجهول.

"From Abu Hurairata (r.a), the Holy Prophet (peace be upon him) said: There is no marriage unless it is attended by a guardian, fiancée (future husband), and witnesses" (al-Baihaqi, 2003; al-Shaukani, 2006).

Detailed Hadith Explanation

The word "*Laa Nikaha*" means the invalidity of a marriage. As is known the function of the word "*La*" in Arabic rules it has three benefits, namely: لا النافية, لا الزائدة, لا الناهية (Mushtofa, 2000). While the word "*La*" in this hadith is useful as لا النافية which means no. The reason is because after the word "*La*" is the number of ismiyah (nominal sentences) composed of mubtada' and Khabar. Therefore, the word "*La*" functions as the word ليس i.e. ترفع الاسم وتنصب الخبر (*isim* and *khabar*) (al-Ghalayiniy, 2001). In this case, the word that became the rumor ليس was discarded محذوف (*mahdzuf*) whose taqdir was the word "*maujudan*" (presence). The "*La*" affirmation shows the

validity of the marriage contract with the presence of a guardian and two witnesses. Therefore, the presence of witnesses in the marriage contract is absolutely necessary. If the witness is not present at the time the marriage contract is held, it will result in the marriage law being invalid.

The statement إلا بولي وشاهدي عدل means "unless (attended) a guardian and two witnesses". The word إلا is a letter that serves as a means of exception, while the sentence بولي وشاهدي as mustathna is that which is excluded from *mustathna minhu* i.e. (لا نكاح).

The word شهد which means "who sees things perfectly and clearly" (Anis, 1972) so شاهدين (two witnesses) in the text of the hadith has the interpretation that in a marriage must be seen perfectly and clearly by at least two men. Due to the interpretation that the witness in marriage is a man, as the hadith narrated by Abi Ubaid from al-Zuhri says: "The prevailing sunnah of the Holy Prophetsa is that the testimony of the woman is not permissible in matters of crime, marriage and divorce."

While the word عدل in the sentence وشاهدي عدل is an adjective describing the word martyr which means just. Therefore, witnesses who attend the execution of the marriage contract must be fair. Fair means being able to distinguish between good and bad, right and wrong, being able to put things in their place. *Jumhur ulama* argues that what is meant by fair is "a person who is always religiously obedient, always carries out the commands of Allah SWT. Never commit major sins and rarely commit small sins." And as Muslims agree that a just nature should be inherent in witnesses. As the postulate in Q.S. al-Bagarah verse 282, which means: "From the witnesses you are pleased with," (Departemen Agama RI, 2008) and in Q.S al-Thalaq verse 2, it means: "And bear witness with two just witnesses among you and let you establish that testimony for Allah's sake" (Departemen Agama RI, 2008).

Legal Decree in the Shari'ah of Marriage Witnesses

Regarding these hadiths about marriage witnesses, the scholars who postulated argue that testimony in marriage is a requirement. By al-Tirmizi said, this was practiced by scholars from among the companions of the Prophet SAW, tabi'in and generations after him. There are also those who say, it is not legal to marry without witnesses. There was no difference of opinion on this matter among later generations, except for a group of mutaakhirin scholars. The difference of opinion of scholars in this case is when the marriage is witnessed by one person after one person (not simultaneously). While the majority of scholars of Kufa and others say, there should be no marriage so that it is witnessed by two witnesses at the same time when the marriage contract is held. As it is narrated from some scholars of Medina, if one witness witnesses after another witness, then it is permissible, if the marriage is announced. This is the opinion of Imam Malik ibn Anas and others. Other scholars say, it is permissible to witness a man and two women in marriage, this is the opinion of Ahmad and Ishaq (at-Tirmidzi, 2017).

Ibn Taymiyah in al-Ikhtiyarat argues that an announced marriage is valid, even though there are no formal two witnesses. As for the clandestine marriage attended by two witnesses, the legal position is still questioned. Then if the marriage is formally announced and witnessed by two

witnesses, then there is no dispute about its validity, then if it is without witnesses and without being announced, it is clear that the marriage is void according to the number of scholars.

In addition to the differences of opinion described earlier, scholars also differ in opinion around the issue of the presence of witnesses in marriage contracts, the fairness of witnesses in terms of physical and mental aspects and male testimony. Jumhur fuqaha such as shafi'iyah, Hanafiah, Hanafiyah agreed that witnesses must be present in marriage and witnesses must be present and witness the marriage contract (*ijab-qabul*). Meanwhile, Malikiyah believes that witnesses are a legal requirement for marriage, both present during the contract and after the contract and before conjugal relations. According to Malikiyah, testimony is a condition for being allowed to have intercourse with his wife, not a condition for the validity of the contract. This is the point of difference between the Malikiyya schools of scholars and others (Zuhaily, 2011).

When we look at the opinions of the Abu Hanifa school, Shafi'i and Malik regarding marriage witnesses, it has been agreed that witnesses are a condition for the validity of marriage. However, there is a difference of opinion among the imams of the madhhab, whether the witness is included in the conditions of perfection that it is commanded when it comes to courting a wife or the conditions of his shah that are commanded when performing a marriage contract. However, the schools agree that it is not permissible to perform marriage in *sirri* (secret). Similarly, the imams of the madhhab dispute if they bring two witnesses, and then both are willed to keep it secret, whether the marriage is a secret marriage or not. According to Imam Malik, it was a secret marriage and had to be annulled. While Abu Hanifa and Shafi'i say that it does not include marriage in secret (Rusyd, 2016).

The reason for the difference of opinion of the imam of the madhhab is whether the witness in this case is a shari'a law, or the purpose of the testimony is to close the path of dispute or denial. Scholars who state that it is shari'i law, say that testimony is an invalid marriage contract without two witnesses other than a guardian, because it is based on the hadiths about marriage witnesses that have been described earlier. And scholars who argue that testimony is only for proof, say it includes the requirement of perfection. The basis in this regard, as the hadith that has been stated and elaborated earlier narrated from Ibn Abbas, is that none of the companions is disputing (Rushd, 2016). There are also narrations from 'Aisha, 'Ali, and Abu Hurairata and *Athar* from Umar Ibn Khatab.

In terms of the just nature of a witness, Shafi'iyah and Hanafiah agree that the just nature of a witness is a necessity that is considered sufficient in terms of birth only. Meanwhile, according to Malikiyah, if a just person is not found, then the testimony of an unknown person is valid. Then in the event that witnesses are required to be male, jumhur fuqaha (Shafi'iyah, Malikiyah and Hanafiah) agree in this matter. While Hanafiah argues that witnesses are not required to be men, it is valid the testimony of a man and two women, it is not valid only women without a man together. According to the jumhur ulama (Shafi'iyah, Hanafiah and Malikiyah) that people who are in a state of ihram are not valid witnesses to marriage, while according to Hanafi scholars a valid marriage contract with the testimony of a person who is ihram (al-Jauziah, 1996).

According to Wahba Zuhaily, the witness should have certain qualities such as the nature of al-ahliyyah (capacity) agreed and required in marriage testimony is *al-ahliyah al-kamilah* (perfect capacity), among others being able to hear the words of both parties who carry out the contract and understand it. Thus the witness must meet the following requirements (Zuhaily, 2011):

1) Reasonable: it is unlawful for a lunatic to testify in a marriage contract. For the purpose of testimony is to announce and establish future marriages, when there is denial of such marriages, so that the purpose of testimony for the insane will not be realized.
2) Baligh: it is not legal to witness a child even if it is *mumayyiz*. Because the presence of small children does not realize the purpose of witnessing, which is to announce and appreciate the sacred procession of marriage.

These two conditions have been agreed upon by jurists. Both conditions can be collected under one condition, namely that the witness must be a believer (a person who has been charged with the law).

3) Multiplied: This condition is agreed upon by jurists. The marriage contract will not be carried out with one witness only, because as the meaning contained in the hadith about marriage witnesses.

However, Zuhaily quotes in the book *Fathul Qadir*, that the Hanafiah scholars mention that whoever tells a man to marry his daughter, then marries her, while the father of the woman is present with one more witness, then the marriage contract can be done. But if the father is not in place, then the marriage contract is invalid. Similarly, if a father marries his puberty daughter in front of one witness, if the married woman is present at the contract assembly, it is permissible. However, if it is not present then it should not be.

4) Men: this is a requirement according to a number of scholars other than Hanafiah. The witnesses of the marriage contract should be two men. A marriage will not be valid with one female witness. Likewise it is not legal to testify one man and two women. Because considering how important the issue of this marriage contract is.
5) Independence: this is a requirement according to the number of scholars, except Hanafiah. Both witnesses should be free men.
6) Fair: what is meant by istiqamah and always follow the teachings of religion, even if only outwardly. This is a requirement according to the number of scholars in the strongest of the two opinions of Imam Ahmad and the correct opinion according to Imam Shafi'i.
7) Islam: this condition has been agreed upon by all scholars. Both witnesses must be confirmed to be Muslims.
8) Can see: this is a requirement according to Shafi'iyah scholars, in the most correct opinion. Although being able to see is not a requirement according to the number of scholars.
9) Witnesses can hear the words of the contracting party and understand them, this is a requirement according to the majority of jurists.

To answer the problems surrounding Islamic family law that is harmonized with the cultural and social culture of society in Indonesia, the birth of the compilation of Islamic law is a material law version of ijtihad fiqh to Indonesian. Therefore, in the compilation of Islamic law (KHI) part

four article 24 paragraphs 1 and 2 that marriage witnesses are the pillars of marriage (Kemenag RI, 2018). While the requirements for witnesses are contained in article 25, namely, "The one who can be appointed as a witness in a marriage contract is a Muslim man, just, *aqil*, *baligh*, not disturbed by memory and not deaf or deaf" (Ministry of Religion of the Republic of Indonesia, 2018). When understood from the meaning of law contained in the compilation of Islamic law (as a manifestation of jurisprudence to Indonesia) in article 24 paragraphs 1 and 2 affirms that marriage witnesses are the pillars of marriage, and in article 25 is an affirmation of the requirements of someone who will be a witness.

Just as the *fuqaha* set a number of requirements regarding witnesses such as Islam, legal ability, fairness, a minimum of two men, independence, even Shafi'iyah requires the witness to see. A number of requirements are established so that the role of the witness as *i'lan* disseminating information or announcing marriage can be optimally carried out. This requirement is important, in the event of a case against marital status, the marriage witness becomes a strong evidence tool in proving the truth of the marriage has taken place legally, both according to the provisions of religious sharia and the recognition of the al-mazalim (government) area which in this case is as a state that regulates to ensure the benefit and order of its people.

CONCLUSION

Witnesses in Arabic are called *shahida*. As in Mu'jam al-Wasith, the word shahid is the isim Fa'il form of the word shahida which means "who sees things perfectly and clearly." In Indonesian dictionary the word witness means a person who sees or knows an event (occurrence) himself; or the person asked to be present at an event who is presumed to know the event so that at some time, if necessary, can provide information confirming that the event actually occurred.

The hadith about marriage witnesses, as Imam Tirmidzi mentions, that the narration is not judged *marfu'*, except by Abdul A'la but he also judged *mauquf* to be more correct and did not cause this hadith to be flawed, because Abdul A'la was a *tsiqah* so that his *marfu* judgment and its additions were acceptable. Regarding these hadiths about marriage witnesses, scholars who postulate argue that testimony in marriage is a requirement. Tirmizi said, this was practiced by scholars from among the companions of the Prophet (Peace be upon Him), *tabi'in* and generations after him. There are also those who say, it is not legal to marry without witnesses. However, there needs to be other studies discussing this matter since the researcher realizes that his study still has gaps left to fulfill by others.

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