

# Islamic Ethical Value of Customary Basis of Marriage Proposal Application in Indonesia

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## Abstract

This community legal observance in the field of Islamic marriage is based on the concept of good deeds which can be said to be deontologically valid. The approach is based on *deon*/obligations arising from the principles of Islamic life. This research method is an empirical method that looks at social reality and is carried out with an ethical approach to understanding the meaning of deeds in the marriage process. Philosophical analysis is used to analyze values in the conduct of the marriage process of Islamic societies in Indonesia. The results showed that in Indonesian Islamic society, marriage and marriage registration had become a community culture that had a philosophical value of worship. This happens because there is enculturation in the form of symbols of Islamic teachings that make it easier for people to recognize the value of an action. Proposal and registration of marriage has become the culture of the Islamic community with the symbol of halal and worship in marriage. Thus the community's obedience to Islamic law and state law is not coercion carried out by state power, but is the legal culture of Islamic society.

**Keywords:** *charity, ethical approach, Islamic teachings, marriage.*

## Introduction

Good action theory according to Islamic teachings, has long been rooted in Indonesian society, and has an influence on the law-abiding behavior of the Indonesian people. This theory, academically can be said to enter into deontological ethics because it is based on an intention that gives rise to an obligation (*deon*) to act.<sup>1,2</sup> The approach used is normative ethics which looks at moral existence in a good deed. Morals become the principles to do good that encourage good intentions, so this theory can also be called the Islamic moral obligation theory. Philosophy of moral obligations in Indonesia does not originate from Immanuel Kant's teachings on obligation,<sup>3</sup> but comes from the teachings of Islam that entered Indonesia around the 7th century AD. The philosophy can be categorized as deontology because the approach is from the perspective of the intention that is in the act or often referred to as an obligation.<sup>1,4</sup> Human actions, depending on their intentions, in the sense that intention raises the obligation to obey the rules even though the morals contained in intention are different. These differences in intentions give rise to the quality of human actions so that some are seen as good deeds and some are seen as futile deeds. Good and bad actions are

not seen in the outcome or form but in their intentions, because this intention has a dimension of value.

An ethical approach to deeds in Islamic teachings was taught as part of Islamic morality. The root of that teaching is hadith of "*innamal' amalu bi niyat*", that one's actions depend on their intentions. It should be understood that in Islam the term "charity" only applies to good deeds legally not to bad deeds legally called immorality. Within the framework of fostering the good deeds of mankind that there is a hadith, so that the quality of good deeds becomes stratified, some are pious and some are in vain. For example, the act of marriage. In Islamic law marriage is included in charity or good deeds, but the quality of the deed depends on the intention. Intention is an invisible but real existence as a moral perspective that motivates actions. Formal intentions are formed in sentences which are the purpose and ethical basis of the action carried out. The purpose in the intention is built based on moral values, for example the moral value in marriage is to form a family, not just to justify sexual relations, then intentions that are not based on that value, have qualities as bad or vain actions in the dimensions of worship. The ethical basis in intention is a specific part of Islam which is the value of faith or

belief in God. This paper aims to examine the public understand the legal categories in their implementation of Islamic good deeds, and the effect of understanding on the compliance of religious and state law.

### Islamic moral teaching

Islamic teachings contain 3 parts of which all three are interconnected, one giving meaning to the other, namely: First, the doctrine of faith or belief. Second, sharia teachings or law and third, moral teaching. The perspective of legal theory, looking at all the rules and norms in the Qur'an and Hadith which are the source of Islamic teachings is the *ius constitutum*, which is the ideal rule, and will become the *ius constituendum* through the implementation of these teachings by each adherent. Jurisprudence, are detailed rules of Islamic teachings, which regulate the practice of actions which can be carried out directly by humans, both the order to do it and the command to leave it.<sup>5</sup> Every human deed regulated in Islamic jurisprudence law has a legal category related to morals and creeds, namely the categories of *wajib*, *sunnah*, *halal*, *makruh* and *haram*.<sup>6</sup> The first three categories of actions are philosophically the roots of good deeds, because these categories are taught to be moral as well as beliefs for Muslims in performing daily actions. The two other categories, namely *makruh* and *haram*, are orders to leave acts that are not legally permissible. The proposition of "*innamal a'malu bi niyat*" is that every act can be obligatory, *sunnah* and *halal* is still very dependent on its intention.<sup>7</sup> The introduction of Islamic teachings in Indonesian society through this category, so that people recognize it as a moral mindset of good deeds or charity.<sup>8</sup>

An ethical approach is taken to understand that Islamic law is not just a regulation regarding normative conduct, but has religious values and moral values, both of which are precisely the source of Islamic society's adherence to Islamic law. Community obedience to the law actually depends on the value of worship and moral values believed in the normative rules. The term Islamic is for a law whose normative rules do not deviate from Islamic creed and morals, including Indonesian national law. An assessment that a law is Islamic or not, is if the legal norm does not conflict with Islamic creed and morals, because in legal matters between members of the community, Islamic law adheres to the principle that the origin of all economic transaction (*muamala*) is lawful/permissible. except for those which clearly have restrictions in the shari'a. Therefore, even though there

is no prohibition in Islamic Sharia regarding economic transaction law rules governed by the state, it does not mean that the law is Islamic if it is contrary to Islamic creed and morals. This is the shape of the Islamic teachings between the Islamic theology, sharia and morals.

Islamic theology and moral also serve to provide a categorical imperative to the intention to carry out an act that obeys the law. Categorical imperative is a command that says what must be done from the point of view of purely reasoning; something is said to be categorical because what is ordered from the perspective of pure reason does not depend on plausible circumstances and always carries a primary value.<sup>9</sup> This is in the form of faith with the Islamic creed and noble character taught by Islam. Existing beliefs in adherents of Islam encourage to act in accordance with the faith and morals, in the form of a categorical imperative. This imperative ordered something not to achieve a certain goal, but because the command was good on him. In accepting this imperative, we are very much determined by ourselves, because we not only determine our actions freely, as Kant believes in humans in all the training of selected talents; we also accept a principle whose content is determined by what is very important to us as actors, namely our practical ratio.<sup>9,10</sup> We thus follow our own laws (which are in the faith and morals) and therefore have autonomy when we accept categorical imperatives.<sup>11</sup> Otherwise, we fall into heteronomy, or the acceptance of (free) principles whose contents are determined independently of the nature of our own rational existence.<sup>9</sup> Categorical imperative reveals the power of supernatural freedom within us so we must regard ourselves as part of a world that can be understood, that is a power that is ultimately determined not by natural law but by the law of reason.<sup>12,13</sup>

### Marriage Proposal Application

In the field of marriage, the Islamic community is familiar with the culture of Islamic law. All marital procedures are actually Islamic law which has become the morality of the community.<sup>14</sup> People recognize it from generation to generation and appreciate it as glory/dignity. Legal symbols make people understand actions very easily without having to understand the legal details, but are able to distinguish which good deeds are truly good, with deeds that are not good because of their intentions. Marriage in the Islamic community in Central Java must be morally preceded by an application or proposal, which is determined that someone who has

been applied for/proposed cannot accept someone else's proposal. This provision has become a moral culture of Islamic society.

In the Compilation of Islamic Law there are provisions regarding application, Article 1 letter a stated that stipulation that a proposal is an activity in the direction of an arranged marriage between a man and a woman. Chapter 3, articles 11-13 stated that proposition can be directly carried out by people who want to find a mate partner, but can also be done by intermediaries who can be trusted. Candidates can be carried out on a woman who is still a virgin or on a widow who has expired *iddah*, and women whose husbands are retained are in the period of *iddah raj'iah*, *haram* and forbidden to be married. It is also prohibited to propose a woman who is being married to another man, as long as the man's proposal is not broken or there is no rejection from the woman. Termination of proposals for men, due to a statement about the termination of discourse or secretly. The proposing man has shunned and left the woman he is asking for.

The proposal has not caused legal consequences and the parties are free to terminate the marriage relationship. Freedom to break the marriage relationship is done in a good manner in accordance with the guidance of local customs and customs, so that it is maintained harmony and mutual respect. The provisions have become the people's morality for generations, becoming the beliefs and rules of the people's habits. They implement these provisions for the common good and no single member of the community does not want to comply with these provisions, because marriage is something that is considered sacred and there must be a procedure. The role of intention that determines marital deeds starts from marriage. In theory, every good action depends on the intention, so also the value of the implementation of the proposal depends very much on the intention, even though the proposal is a good act legally. The act of marriage which is then carried out with worldly intentions is considered not a good deed because it does not intend to worship, only to justify mere sexual relations. Islamic teachings see that the intention can change depending on the consciousness of the person who is doing it, so that even at the time of marriage the intention is to be carnal but if there is then awareness of intention to worship, then the value of marriage becomes the value of worship to build a good household. The existence of this theory of good deeds is evident in Islamic societies, as evidenced in Islamic societies there are far more

harmonious households than divorced households.

### Registration of Marriage by the State

Marriage registration, is not an act that determines the legality of marriage, but determines the effect of the law that has been regulated by the state, both through the provisions of Islamic law and by the provisions of state law in general. In Indonesia there are general provisions regarding marriage because Indonesia is a multi-religious state, not only one religion is recognized by state law but there are some religions, namely Islam, Christianity, Catholicism, Hinduism, and Buddhism. These general provisions are contained in Law No. 1 of 1974 concerning Marriage. Therefore there are the same provisions that apply to all Indonesian citizens in marriage, namely marriage registration, which aims to provide legal protection to those who do marriages.

The results of research on the Islamic community in Central Java there are cases of marriage that are not recorded in a relatively small number compared to the Muslim population as a whole. It was caused by various factors, including lack of understanding of the function of marriage registration, social economic factors, and marriages that were conducted before the issuance of Law No. 1 of 1974. The Government has made efforts to improve through the population administration system that can cause marriage registration to become sociologically mandatory for every married population, namely with a population identification system in managing all socio-economic and legal needs. Identification of the population requires proof of marriage that can only be done with a marriage certificate, so that the recording of marriage among Islamic societies gradually becomes a culture of society that has social sanctions in the form of denunciation, in addition to obtaining legal sanctions in the form of neglect concerned in social and economic traffic that requires verification marriage.

Obedience in the law of marriage registration in Islamic society, mainly based on the concept of the deeds of "*innamal a'malu biniyah*". In this concept, marriage registration is seen as a variable of good deeds (or charity) and intention is seen as a determining factor of observance of marriage. The habit of the Islamic community in using the symbol of *halal* and *haram* causes the ability of the community to distinguish the value of the act of "registering marriage" into the value of social and religious necessity because registering marriage is not an act that is prohibited by Islamic teachings, even

encouraged by Islam. By viewing marriage registration as a variable determined by intention, it can be measured that people who do not register their marriages have ill intentions based on the assumption that: they understand the legal consequences of marital registration; and there are no socio-economic factors that hinder marriage registration.

The ethical perspective in this study shows that anatomically the act of recording marriage is a charity (good deeds) based on good intentions that have become a necessity/obligation from within the members of the Islamic community itself, is not a coercion from the state. To realize a society that has good faith must use a legal system that is rationally in accordance with the religious values of Islamic societies. The deed of *innamal a'malu biniyah* is the main basis of all observance of the Islamic community to the law, where the teaching has become public awareness that the nature of worship of an action depends on its intentions, not on the form of good deeds.

### Conclusion

The Islamic community in Indonesia basically already has the concept of “good deeds” based on the deed of “*innamal a'malu biniyah*” which academically can be said to be deontology because they see deeds based on “deon” arising from the principles of Islamic religious life. Legal awareness of the Islamic community in Indonesia is broadly legal awareness for worship, is a social culture that contains religious values of Islam. Based on reality, this awareness exists because the regulation by the state does not conflict with Islamic law, but instead is based on Islamic teachings which strengthen and provide legal certainty to the community. Arrangements regarding marriage registration have existed since Indonesia’s independence, so it can be concluded that the process of legal awareness requires a relatively long time depending on the socialization and enculturation in Islamic societies. The problem faced in other socio-economic sectors such as banking, economics and others is how to build people’s behavior through an ethical approach, not from the perspective of comparison between Islamic law and state law.

**Ethical Clearance:** This research was ethically approved by Faculty of Law, Universitas Diponegoro, Semarang, Indonesia

**Funding:** This research receives no external funding.

**Conflict of Interests:** There are no conflict of interests

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