

READING ON WOMEN ISSUES

MEK WOK BINTI MAHMUD

IIUM PRESS

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA



READING ON WOMEN ISSUES

Mek Wok Mahmud



IIUM Press

Published by:
IIUM Press
International Islamic University Malaysia

First Edition, 2011
©IIUM Press, IIUM

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without any prior written permission of the publisher.

Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Mek Wok Mahmud: Readings in Women Issues

ISBN: 978-967-0225-83-8

Member of Majlis Penerbitan Ilmiah Malaysia – MAPIM
(Malaysian Scholarly Publishing Council)

Printed by :

IIUM PRINTING SDN. BHD.

No. 1, Jalan Industri Batu Caves 1/3
Taman Perindustrian Batu Caves
Batu Caves Centre Point
68100 Batu Caves
Selangor Darul Ehsan

TABLE OF CONTENT

PREFACE & ACKNOWLEDGEMENT	i
INTRODUCTION	iii
CONTENTS	v

CHAPTER 1:	1
Women Involvement in Development from Maqasid Syariah Perspectives: A case study of Malaysian Women. <i>Dr. Mek Wok Mahmud, Dr. Ghalia Bouhedda and Dr. Akhtar Zaitie Abdul Aziz</i>	

CHAPTER 2:	41
The Role of Muslim Women in Generating Household Income Through Micro or Small Scale Enterprises: The Case Study of Amanah Ikhtiar Malaysia. <i>Assoc. Prof. Dr. M.Jarita Duasa and Assoc. Prof. Dr. Norma Md Saad</i>	

CHAPTER 3:	81
Opinions of Contemporary Muslims Jurists on Registration of marriages <i>Dr Mek Wok Mahmud</i>	

CHAPTER 4:	115
Misyar Marriage Between Shari'ah Texts, Realities and Scholars' Fatawa : An Analysis <i>Dr. Noor Mohammad Osmani</i>	
CHAPTER 5:	151
Contemporary Issues on Marriage: An Analysis <i>Dr Mek Wok Mahmud</i>	
CHAPTER 6:	175
Perception on Muslim Women as Judges in the Courts in Modern Context: A Critical Study of the Views of Muslim Scholars <i>Dr Md. Yousuf Ali</i>	
CONCLUSION	244

CHAPTER 3

OPINIONS OF CONTEMPORARY MUSLIM JURISTS ON THE REGISTRATION OF MARRIAGES

Dr Mek Wok Mahmud, Department of Fiqh and Usul al Fiqh,
Faculty of Islamic Revealed Knowledge and Human Sciences,
International Islamic University Malaysia, 53100 Gombak, Selangor,
Malaysia. Tel: 603 6196 5517, (email: mekwok@iiu.edu.my).

ABSTRACT

Registration of marriages is one of the debatable issues among contemporary Muslim scholars. Considering the fact that it was not implemented during the Prophet's s.a.w time, many scholars discuss the validity of its practice as one of Shari'ah requirements to recognize a marriage contract. Thus, the main objective of this paper is to critically analyze the opinions of Muslim contemporary scholars on the registration of marriage as a requirement for a marriage contract to be recognized and officially authenticated, as currently practiced in many Muslim countries. This paper will give adequate attention to the issue regarding the Shari'ah status,

as the registration of marriage has no basis among the *Sharī'ah* requirements for a valid marriage contract. At the end of this research, findings based on the general principles of *Sharī'ah* show that the registration of marriage, though not basically required for a *Sharī'ah* compliant marriage, cannot as such be regarded as alien to Islamic law, as it is comfortably fitted into those aspects of *Sharī'ah* meant for accommodation of contemporary issues. Prominent among these are *al-Qiyās*, *Sadd al-Dharā'i'*, *al-Istīlsān*, *Maqāsid al-sharī'ah* and *as-Siyāsah al-shar'īyyah* otherwise known in "the principles of Islamic Jurisprudence" as secondary sources of *Sharī'ah*.

Keywords:

Registration of Marriage, *Istīlsān*, *maqāsid al-Sharī'ah*, *al-Ma'ālīh al-mursalah*, *as-Siyāsah al-shar'īyyah*.

1. INTRODUCTION

For Muslims, the *Sharī'ah* is the law of God. God alone is the giver of law; the function of man is to comprehend the law and to obey its divine provisions. The *Sharī'ah* covers all aspects of life and every field of law – constitutional, international, criminal, civil, and commercial – but at its very hearth lays the law of the family.

Although by the mid-nineteenth century, many areas of traditional Islamic law had been swept away by, *inter alia*, the *Tanzimāt* reforms, the changes in the law of the family came later and were undertaken with great delicacy. The countries of the Islamic world which felt the need to effect changes in the law of the family in order to address contemporary requirements attempted to do so within the framework of Islamic legal principles, so preserving the Islamic context of the law.