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The Role of Penghulu in Harmonising the Marriage Age Limit Perspective of Imam As-Syatibi's Theory

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Abstract: *The regulation of marriage age limit is contained in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which is equalised to 19 years for men and women from the previous 19 years for men and 16 years for women. The Office of Religious Affairs as a government institution in charge and administratively responsible for the implementation of legal and recorded marriages is faced with the large number of early marriages recorded with Religious Court dispensation. This study aims to analyse the role of the headman in harmonising the age limit demanded by the law and the implementation of early marriage applications by the KUA in the maqāsid syarī'ah study of Imam As-Syatibi. This research is field research with qualitative descriptive method. Data were collected through interviews, documentation, and observation at 15 KUA sub-districts in West Lampung. The role of the penghulu in harmonising the demands of regulations and the implementation of early marriage, through three different patterns in the implementation of marriage and its recording. The first pattern is that the marriage is carried out at the same time as the dispensation application process at the Religious Court, while the recording is carried out after the dispensation decision. The second pattern is that the marriage is conducted after the decision of the marriage dispensation order while the registration is conducted at the same time. The third pattern is that both the marriage and the registration are carried out after a marriage dispensation decision that has permanent legal force.*

Introduction

The main purpose of marriage law in Islam is the maintenance of morality (Al-Maududi & Ahmed, 1987). Islam does not teach its adherents to behave indecently, commit adultery and so on, but on the contrary prescribes the importance of a legal marriage bond. Furthermore, this marriage will give birth to offspring, acquire property and others. According to the fiqh scholars following the four madzhab as quoted by Agus Hermanto in his book "Problematics of Islamic Family Law in Indonesia" that marriage is a

contract that brings the permissibility of sex between a man and a woman as a married couple (Hermanto, 2021).

The married couple is bound by the rights and obligations for each party that must be carried out (Anshari Thayib, 1993). The rights and obligations of husband and wife in household life are essentially the same, in the sense that the rights of a wife are an obligation for a husband, and vice versa, the rights of a husband are an obligation for a wife. This shows that the position of each sex before the law is the same (I Doi, 1996) to realise the purpose of marriage, namely the creation of domestic harmony. As mentioned in the Qur'an Surah Ar-Ruum verse 21 "And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed, in that are signs for a people who give thought.

The existence of comfort, happiness, and peace (*sakīnah mawaddah warahmah*) in family life in principle must be based on the commitment of each individual in the family to be able to devote all their affection, love and love to the whole family (Zaelani et al., 2021). This of course cannot be separated from the mental maturity and maturity of the husband and wife. Therefore, the age of eligibility in marriage is important because age maturity is one of the indicators for the creation of the purpose of marriage (Abror, 2019).

Islam does not definitively provide an age limit for marriage, but this is associated with the division of human development phases in terms of the level of ability to accept and implement the law, namely the *baligh* and *rusyd* (mental / reasoning) phases. The status of *baligh* can be indicated by the emission of semen for men, and menstruation for women. If the *baligh* indicator is not obtained, the general indicator is mental or reasoning (*Rusyd*) as a condition where a person has perfect reasoning and an adult attitude so that he is able to understand and be responsible for all the risks of his legal actions (Hermanto, 2021).

On the other hand, in positive law in Indonesia as contained in Law Number 1 of 1974 and the Compilation of Islamic Law as a *mecca* or source of law for all legal rules relating to marriage in Indonesia (Zaelani, 2012), mentioning among the important requirements that must be met to obtain legal legality for a marriage is related to the age of the prospective bride and groom who will carry out the marriage. The provision of the age limit for marriage is contained in Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which is equalised to 19 years for men and women from the previous 19 years for men and 16 years for women (Law on Marriage in Indonesia, t.t.). Article 15 of the Compilation of Islamic Law also states that for the benefit of the family and household, marriage may only be carried out for a prospective bride and groom who have reached the age stipulated in article 7 of Law No. 1 of 1974 (Compilation of Islamic Law in Indonesia, 2000).

Furthermore, Article 7 also states that in the event of a deviation from the age requirement, the parents of the male party and/or the parents of the female party may request dispensation to the Court on very urgent grounds

accompanied by sufficient supporting evidence. The granting of dispensation by the Court must listen to the opinions of both prospective brides and grooms who will marry. The granting of marriage dispensation is part of the characteristics of a state of law, namely equal treatment before the law, by providing guarantees and protection to each of its citizens from legal problems without any difference in treatment (Zaelani, 2020).

Thus, the provision of filing an application for marriage dispensation with the Court is an exception granted by law to parties who wish to carry out marriage but are hindered by the age that is not yet allowed by the Laws and Regulations. It is in this regard that among researchers, various researches and studies have emerged in the form of scientific works that intersect with the age limit of marriage.

Among the scientific studies that intersect are research conducted by Mirwan in his article entitled "Problematics of Marriage Age after the Amendment to Law Number 1 of 1974 concerning marriage in the Religious Courts in West Sumatra Province", which focuses on the problem of the minimum age of marriage and the views of judges in deciding dispensation applications at the Religious Courts in West Sumatra (Mirwan, 2021). Furthermore, Wisono Mulyadi and Anjar Sri Cipto Rukmi Nugraheni wrote in their journal "Legal Consequences of Determination of Dispensation for Marriage of Minors (case study at the Pacitan Religious Court)" with the object of study being more on the legal consequences of the judge's consideration in granting or rejecting the dispensation application (Mulyadi & Nugraheni, 2017). Likewise, in other studies such as Noer Azizah's research which focuses on the implementation of Law No. 16/2019 at the KUA and the Sumenep Religious Court (Azizah, 2021), Ita Dalila Azizah Kurniati which is more about the consideration of judges in granting marriage dispensation applications due to pregnancy outside of marriage (Kurniati, 2021). 16 of 2019 at the KUA and the Sumenep Religious Court (Azizah, 2021), Ita Dalila Azizah Kurniati, which is more about the judge's consideration in granting a marriage dispensation application due to pregnancy outside of marriage (Kurniati, 2021), and Dieta Mellaty Hanafy with the object of study focusing on the judge's consideration in processing and granting marriage dispensation (Hanafy, 2020), with the general conclusion that with the change in the age limit for marriage from the previous 19 years for men and 16 years for women to 19 years for both men and women, the application for marriage dispensation at the Religious Court has increased.

Some of these studies, if associated with the research that the author examines in this article, although they have the same basis regarding the age limit of marriage, are different in terms of the substance of the analysis used. This is because to implement the regulations on marriage, the Government of Indonesia has created an institution that is administratively responsible for everyone who will legally marry, namely the Office of Religious Affairs (KUA) located in each sub-district, which is headed by a penghulu appointed by the relevant parties in the Ministry of Religion. Among the duties of the KUA is

the implementation of services, supervision, recording and reporting of nikah-rujuk, as well as guidance services for sakinah families.

Even though the law has regulated the age limit for marriage, in reality, the head of the KUA is often confronted with the problem of recorded early marriage applications which are still high among the community. This can be seen from the recap list of the number of events recorded with the requirement of marriage dispensation at the Office of Religious Affairs at the Ministry of Religious Affairs of West Lampung Regency in 2021 and 2022. Of the total number of marriage registrations in 2021, namely 1895 pairs, 77 pairs were recorded as marriage partners under the age of 19 by attaching a marriage dispensation or 4.06% of the total number of marriage registrations in the current year. Meanwhile, in 2022, 1835 pairs were recorded, and 58 pairs of them were recorded as marriages under the age of 19. Judging from the quantity of perpetrators of marriages with marriage dispensation requirements, the majority are dominated by the bride, namely 69 female catin and 8 male catin or 89.6% are female catin of the total number of catin who have not reached the age of 19 in 2021, as well as in 2022, 83% of underage catin are female. Therefore, this article is aimed at examining how the role of the head of the religious affairs office in West Lampung harmonises the demands of the age limit in the marriage law on the one hand and the application for early marriage registered on the other.

Research Methods

This research is a type of field research, with a qualitative descriptive method, namely research aimed at describing and analysing the role of Penghulu in harmonising the demands of the age limit of marriage based on the applicable laws and regulations with the application for early marriage registered at the religious affairs office in West Lampung, so as to get an overview of the pattern of recording and implementing early marriage carried out by the KUA, and then the pattern is studied using the Islamic legal theory of maqāsid syarī'ah Imam As-Syatibi based on the level of need, namely al-dharūriyyat, al-hajjiyyat, and al-tahsini. The data source of this research consists of two types, namely primary data sources which are data obtained directly in the field through documentation, observation, and interviews with resource persons, namely the head of 15 sub-district KUAs in West Lampung who are given additional duties as head of the KUA. Meanwhile, secondary data sources are data sources that provide additional information by strengthening the main data (Suryabrata, 1995), which includes research locations and other supporting data (Hasan, 2002).

Marriage Age Limit According to the Law

According to Article 7 section (1) of Law No. 1 of 1974, marriage is only permitted if the man reaches the age of 19 years and the woman is 16 years old. This regulation lasted for approximately 45 years until the issuance of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 which raised the age of marriage for women to 19, resulting in an equal age for women and men, namely 19 years. The existence of this marriage age limit

provision is also mentioned in the Compilation of Islamic Law in article 15 paragraph (1), which is based on considerations of the benefit of the family and marriage household. This is in line with the basic principle laid down by the Marriage Law that the prospective husband and prospective wife must be mature in body and soul in order to realise the purpose of marriage and obtain good and healthy offspring (Abror, 2019).

The determination of the age limit of 19 years for men and women as the minimum age of marriage in Indonesia contains several reasons, including: 19 years of age is an ideal age in the form of the accumulation of physical, economic, social, mental, and psychological readiness, as well as religion and culture (Candra, 2021). In this case, it adheres to the principle of mental maturity because marriage requires maturity which is not only biological, but also psychological and social maturity so that it adjusts more quickly in behavior and will be able to face the household problems that will be undertaken (Hermanto, 2021).

Marrying under the age of 19 biologically, especially for women, is prone to risks, such as damage to reproductive organs, early pregnancy, and psychological risks in the form of inability to carry out reproductive functions properly. Even pregnancy under the age of 19 can also cause complications for mothers and children such as anemia, hypertension (high blood pressure), abortion (miscarriage), paratur prematurus (birth that occurs before the 37th week of pregnancy), death, preterm, bleeding and obstetric surgery (handling pregnancy and childbirth) more often than those aged 20 years and over (Candra, 2021). In terms of education, men or women who have entered into marriage under the minimum age of 19 cannot continue their education, because the time that should be used for learning is shifted to the problems of married life. (Hermanto, 2021).

However, Law Number 16 of 2019 still provides an opportunity for one or both prospective brides who have not reached the age of 19 to be able to enter an early marriage by means of the parents of the male party and / or the parents of the female party requesting or applying for dispensation to the Religious Court on very urgent grounds accompanied by sufficient supporting evidence and following the procedures established by the relevant regulations. If the request or application is accepted and granted by the Court, the marriage is categorized as an underage marriage or registered early marriage, because the marriage and its registration are carried out by the head of the KUA by obtaining a marriage certificate in the form of a marriage book as proof that the marriage is recorded.

The Phenomenon of Early Marriage in West Lampung

The number of marriage registration events at each Religious Affairs Office in West Lampung Regency in 2021 and 2022 can be seen in the table below:

Number of Marriage Registration Events
In all sub-district KUAs of West Lampung Regency
2021-2022

No	Name of KUA	Marriage Registration Event Data		Description
		Year 2021	Year 2022	
1	KUA Kec. Sumberjaya	162	151	
2	KUA Kec. Kebun Tebu	116	118	
3	KUA Kec. Gedung Surian	95	87	
4	KUA Kec. Way Tenong	248	227	
5	KUA Kec. Air Hitam	77	69	
6	KUA Kec. Sekincau	133	126	
7	KUA Kec. Pagar Dewa	85	92	
8	KUA Kec. Batu Ketulis	82	81	
9	KUA Kec. Belalau	66	89	
10	KUA Kec. Suoh	107	107	
11	KUA Kec. Bandar Negeri Suoh	161	140	
12	KUA Kec. Batu Brak	98	75	
13	KUA Kec. Balik Bukit	263	258	
14	KUA Kec. Sukau	157	174	
15	KUA Kec. Lumbok Seminung	45	41	
AMOUNT		1895	1835	

From the number of marriage registration events mentioned above, there were several marriage registrations with marriage dispensation from the Religious Court because the age of one of the prospective brides was less than 19 years old as can be seen in the table below.

Number of Marriage Registration Events
With Marriage Dispensation by Gender
In All KUAs in the District of West Lampung Regency
2021-2022

No	Name of KUA	Year 2021		Year 2022		Desc.
		Male	Female	Male	Female	
1	KUA Kec. Sumberjaya	1	5	-	5	
2	KUA Kec. Kebun Tebu	1	11	-	2	
3	KUA Kec. Gedung Surian	-	1	-	2	
4	KUA Kec. Way Tenong	-	2	-	1	
5	KUA Kec. Air Hitam	1	1	1	3	
6	KUA Kec. Sekincau	1	4	1	-	
7	KUA Kec. Pagar Dewa	-	7	-	7	
8	KUA Kec. Batu Ketulis	1	6	3	6	
9	KUA Kec. Belalau	-	4	2	4	
10	KUA Kec. Suoh	-	1	-	1	
11	KUA Kec. Bandar Negeri Suoh	-	7	-	2	
12	KUA Kec. Batu Brak	1	3	-	3	
13	KUA Kec. Balik Bukit	2	11	3	5	
14	KUA Kec. Sukau	-	4	-	7	
15	KUA Kec. Lumbok Seminung	-	2	-	-	
AMOUNT		8	69	10	48	

Based on the data above, it can be seen that early marriage registration in 2021 was dominated by prospective brides, totaling 69 people or 89.6%. Meanwhile, there were 8 prospective grooms. Similarly, in 2022, the bride-to-be still dominated with 83%. However, this number decreased compared to 2022, while the number of prospective grooms aged less than 19 in 2021 was less than in 2022.

Among the most common reasons for early marriage is that the bride-to-be is already pregnant. Another reason is that the two prospective brides have established a very close relationship that cannot be separated anymore so that their respective parents are afraid of adultery. The fear of these parents is based on the fact that the social environment such as promiscuity is very visible due to the development of technological advances / social media so that it can plunge their children into injustice such as getting pregnant outside of marriage (Yusman, 2023).

The next reason is the desire of each parent of the prospective bride and groom to immediately marry off their children, especially after deliberations between the two families concerned (Milton, 2023). According to Muslim, the head of the KUA in Kebun Tebu Subdistrict, the last reason for early marriage arises from the community's understanding of marriage that marriage can be carried out if the pillars and conditions of marriage have been fulfilled in accordance with religious regulations and there is no age limit according to both local customs and religion (Muslim, 2023).

This understanding arises due to several factors. Among them is the level of education, the higher the level of education, the community's understanding of the importance of age in marriage is increasing, on the contrary, the lower the level of education, the more vulnerable early marriage is. According to the data above, the prospective brides who are recorded as having entered into early marriage are those with low levels of education and even dropping out of school (Darlis, 2023). Another factor is economic factors, the low economic capacity followed by the increasing needs of life makes parents choose to immediately marry off their children even though they are under 19 years of age (Efendi, 2023). The last factor is the low understanding of Islam and state regulations related to marriage (Sumantri, 2023). This understanding arises due to the less than optimal role of the KUA in providing socialization or enlightenment to the community regarding marriage from the perspective of religion and law (Eristo, 2023).

The Role of Penghulu (Head of KUA) Towards Early Marriage Requests

A headman with his knowledge and understanding of the marriage law, its changes and developments has its own influence on the implementation of headship duties, so that what is the desire and expectation of the community regarding the marriage registration process for prospective married couples can be implemented without violating the basic rules outlined by the applicable laws and regulations.

However, the process of registering marriages for prospective spouses who have not reached the age of 19, the headmen in West Lampung Regency still use dispensation opportunities. As explained earlier, marriage dispensation is a legal remedy for prospective brides and grooms who wish to enter into marriage but both or one of them has not reached the minimum age limit for marriage. The provision of marriage dispensation above indirectly opens the door for early marriages recorded at the Office of Religious Affairs.

Normatively, for prospective brides and grooms who are not yet 19 years old, the headmen instruct them to apply for dispensation of marriage to the Religious Court in the local district by bringing a letter of refusal to register marriage from the local KUA known as the N7 model letter along with other requirements. Furthermore, after the trial is conducted and the application is granted by the Religious Court, the prospective bride and groom re-register the marriage intention to the KUA by attaching the ruling/dispensation of marriage that has been issued by the Religious Court. With this, their marriage can then be carried out and recorded by obtaining a marriage certificate (NA) or what is known as a Marriage Book (Wizef, 2023).

However, for the 15 KUA headmen at the Ministry of Religious Affairs in West Lampung Regency, there are several different patterns that are carried out regarding prospective brides who have not reached the age of 19 years. All headmen still ordered the person concerned to apply for marriage dispensation to the Religious Court of West Lampung Regency by bringing a letter of refusal of marriage registration from the local KUA known as the N7 model letter along with other requirements. However, the headmen have different patterns in terms of the implementation and recording of marriages.

The first pattern is for the marriage of the bride and groom to take place while waiting for the dispensation application to be heard. This pattern means that after the refusal letter is issued by the KUA, then the parties register their application with the Religious Court and it is registered, then by showing or providing the registration number of the application, the marriage can take place while the marriage registration will be carried out after the ruling of the marriage dispensation decision is issued by the Religious Court and has permanent legal force.

This pattern is specifically for couples who have experienced pregnancy first, considering the urgent situation and there is no other choice but to marry them off, besides that there is also pressure from the two families concerned. Of course, the headmen do not necessarily accept the mere acknowledgment from both parties that the bride is pregnant, but it also needs to be proven by a certificate issued by the relevant parties, in this case the Puskesmas or Midwife. In addition, the headmen have confidence that the application submitted to the Religious Court will be granted because the pregnancy factor on the part of the prospective bride is real. In short, according to this pattern, the implementation of *ṭjāb Qabūl* is still carried out with the record that the dispensation application has been registered with the Religious Court. Meanwhile, the marriage registration, in this case the marriage certificate, will only be processed after the ruling of the marriage dispensation decision is issued by the Religious Court and has permanent legal force.

The second pattern is the implementation of the marriage of the bride and groom after the decision of the marriage dispensation determination from the Religious Court even though it has not yet reached permanent legal force (*inkrah*). This pattern is applied to all marriage dispensations received. This means that after the decision is read out by the judge of the Religious Court and the applicant has received the dispensation determination, then the

applicant gives it to the head of the KUA, then the head of the KUA immediately schedules the implementation of the marriage together with the families of the bride and groom, so that it can take place on the same day if it is delivered in the morning, or according to the agreement of the families of both parties with the head of the KUA. Marriage registration in this second pattern is generally carried out in two ways, namely that the registration is carried out at the time of the marriage, or is carried out when the decision on the dispensation determination is final, so that both can obtain a marriage certificate / marriage book.

The third pattern is the implementation of marriage after the marriage dispensation decision is legally binding or after a period of 14 days from the reading of the decision by the judge at the Religious Court. Meanwhile, marriage registration is carried out simultaneously so that immediately after the implementation of *ijāb qabūl*, the bride and groom immediately get a marriage certificate quotation in the form of a marriage book.

The implementation and recording of different early marriages by each of the 15 headmen at the Religious Affairs Office at the Ministry of Religious Affairs of West Lampung Regency in order to harmonize with the demands of the marriage age limit in the law are influenced by the level of understanding of each headman who is not solely based on normative juridical rules but also looks at Islamic legal theory. Procedurally in the law that the implementation and registration of marriage in the first pattern is actually not in line with the intent of Article 12 of Law Number 1 of 1974 and Article 4 paragraph (1) of the Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 20 of 2019 which states that the application for the implementation of marriage registration must attach a marriage dispensation letter from the Religious Court.

However, the different patterns applied by the head of the 15 KUAs seem to be based more on the theory of Islamic law, namely Imam As-Syatibi's *maqāsid syarī'ah*. *Maqāsid syarī'ah* is related to the benefits aimed at mankind to achieve good in this world and in the hereafter in the best way (Ash Syatibi, t.t.). Imam As-Syatibi divided *maqāsid sharī'ah* based on the level of need, namely *al-dharūriyyat*, *al-hajiyat* and *al-tahsini*. *Al-dharūriyyat* is an urgent need or something that is urgent to do for the continuity of religious affairs in life properly. Neglect of this will result in chaos and injustice. Therefore, the first pattern of early marriage due to pregnancy even though the dispensation is still in process at the Religious Court is included in the level of *al-dharūriyyat* or urgent to do because there is no other choice but to carry out the marriage. This is done to avoid continuing sin, and to avoid abortions that might be carried out if the marriage is not immediately married. It is also to uphold legal certainty for the child to be born. Thus, by implementing the first pattern, the objectives of sharia can be fulfilled, namely to maintain or safeguard religion (*hifzu ad-dīn*), protect the soul (*hifzu an-nafs*), and protect offspring (*hifzu an-nasl*).

Al-hajiyat is the need to achieve a benefit whose level is below *al-dharūriyyat*. The benefit is intended to avoid difficulties and constraints so that the law can be implemented properly. However, without fulfilling the

needs of *al-hajiyah* will not make the totality of the benefit neglected, but will only cause difficulties (*masyaqqah*). In the context of the implementation of early marriage with the second pattern, namely the implementation of marriage after the decision to determine marriage dispensation from the Religious Court, even though it has not yet reached permanent legal force (*inkrah*), it can be categorized as being at the *al-hajiyat* level. This reason is based on the fact that the existence of the decision to determine the marriage dispensation can provide convenience in recording the marriage of the prospective bride and groom concerned so that they will not experience difficulties and constraints, which in the end the law can be implemented properly. Conversely, if the Religious Court has not received the decision, it will cause various difficulties (*masyaqqah*).

Furthermore, *al-tahsini*, namely complementary needs that without fulfilling these needs will not cause difficulty or constriction (*masyaqqah*). However, its existence is only complementary to *al-dharūriyyat* and *al-hajiyat*. Therefore, the third pattern, namely the implementation of early marriage after the decision on the determination of marriage dispensation with permanent legal force, is included in the category of *al-tahsini* level. This is based on the understanding that even though there is a marriage dispensation decision that has not yet been legally binding (*inkrah*), early marriage can be carried out, especially if the marriage dispensation decision has been in effect, the implementation of early marriage becomes perfect in accordance with the demands of the law.

Conclusion

The role of the head of the KUA in harmonizing early marriage is carried out through three different patterns, namely (1) The implementation of the marriage is carried out simultaneously with the process of filing an application for marriage dispensation at the Religious Court, (2) The marriage is carried out after the decision on the determination of marriage dispensation, and (3) The implementation of the marriage is carried out after the decision on the determination of marriage dispensation from the Religious Court and has permanent legal force. Theoretically, these findings are in line with Imam Asyatibi's maqāsid syarī'ah theory based on the level of need, namely *al-dharūriyyat*, *al-hajiyat* and *al-tahsini*. The implementation of pattern (1) is based on the needs of the *al-dharūriyyat* level or urgent to do because of the first pregnancy factor, and in order to preserve religion (*hiḏu ad-dīn*), protect the soul (*hiḏu an-nafs*), and to protect offspring (*hiḏu an-nasl*). Pattern (2) is at the level of *al-hajiyat*, because the existence of dispensation even though it is not yet *inkrah* will provide convenience in marriage registration, otherwise its absence will cause difficulties (*masyaqqah*). Pattern (3) is at the *al-tahsini* level, because the implementation of the marriage is in accordance with what is desired by the law.

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