

Political Culture of Madurese Community in Marriage Law: from the Perspective of Utilitarianism and Structuration Theories and Maqasidi Interpretation

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Abstract: This research delves into marriage law of Madurese community seen from the purview of its culture and nature. The practice of such marriage contravenes the formal restrictions of the legislation concerning marriage as ruled by the state. Several facts show that some marriage norms were spoiled, sparking the popularity of sirri (unregistered) marriage which further leads to istbat nikah and underage marriage that triggers an exemption. This research employed a qualitative method by garnering information from the judges of a religious court, kiai (a respected and religious Javanese expert in Islam), and the members of the public. The primary data were collected from data on unregistered marriage and exemption in marriage. The data were reductively analyzed, discovering that, first, the political culture of the marriage in Madurese community is captured in a particular pattern: 1) political administration is a measure taken to manipulate the administrative process; 2) political prevention is defined as a legal objective (masalah, avoiding the likelihood of sharia violations with the basis of hifdz an-nasb) which is a milestone of a legal politics referred to by people, 3) political family and political culture were shaped by the people's view believing that securing familial relationships from breaking is far more important than what the legislation regulates, 4) political authority represents the presence of a kiai that works like a shield and an escape thoroughfare from the law of the state for the sake of the tradition; second, 1) from the aspect of utilitarianism, there is a point at which political culture of Madurese community and justice meet, 2) the structuration theory views political culture in Madurese community as inevitability, involving religious roles, public, and legal materials, and 3) within maqasidi scope, a law enforcement is seen as preventive (dar'u al-mafasid) as congruent with the aspect of lawmaking objective

Keywords: political culture, marriage, Madurese community, law enforcement.

Introduction

The sensitivity in Islamic law and state law has always been an intriguing topic to study. A number of legal experts believe that exemption practices in marriage seem to have resulted from “forced” positivization.¹ This relaxation is referred to as a binding rule in marriage law, but the reality goes a different way, implying that many do not comply with marriage law. Many factors underlie this disobedience: the presence of living law and double mixed law born from the same body of law. Such reality will be hampered at the point where social conditions are getting quite problematic.

Problematic issues in marriage law that seem endless comprise both classical and endless problems and contemporary ones. The first issue to highlight is an exemption in marriage. Law Number 16 of 2019 allows people to get marriage if they are 19 or older, in comparison to the earlier law (Law Number 1 of 1974) allowing males and females to get marriage at the age of 19 and 16 or older respectively. Surprisingly, this difference leads to another serious problem. When the exemption in marriage is yet to be approved, the age limit of marriage is raised, making the cases of exemption dramatically rise in number.²

However, the legal problem not only lies in the statistical figures, but it also verges on evasion of law that takes place legally. Marriage law sets the minimum threshold of age at which people are allowed to get marriage. However, if a marriage takes place before the person concerned reaches his/her minimum age, he is subject to an opportunity to propose for an exemption to a religious court. That is, this “seemingly elicit tendency” —requesting exemptions— is protected by law, giving rise to paradoxical dualism.

¹ Fauzan, “Professive Paradigm in Islamic Law Renewel in Indonesia”, *MIZANI: Wacana Hukum, Ekonomi dan Keagamaan* 7, 2(2020): 191-192.

² Amsari Damanik, “Implikasi Pembatasan Usia Perkawinan terhadap Dispensasi Kawin”, *Jurnal Syntax Transformation* 2, 8(2021): 1068.

Second, itsbat nikah (more like legalizing a marriage to gain recognition from the state) has been a chronic issue in marriage law because the regulation of this marriage only applies to those whose matrimony took place in 1974 (Article 64 of Marriage Law). In other words, matrimony taking place after this year was not subject to *itsbat nikah*.³ This shifting policy was intended to comply with the provision of Article 2 Paragraph (2) of Marriage Law, implying that every matrimonial ceremony must be registered—meaning that *sirri* marriage is not encouraged. Unregistered marriage, however, can be subject to *itsbat nikah*, making it common in society.⁴

There seem to be dissenting views of two different laws, specifically between Article 2 of Marriage Law, encouraging marriage to be registered and Article 7 of Islamic Law Compilation paragraph (2) asserting that unregistered marriage is not subject to *itsbat nikah* in a religious court. It indicates that Article 2 of Marriage Law does not carry any binding force, making it hard to control the cases of unregistered marriage in society.⁵ It seems that this illicit tendency is even given a solution by the problematic provision of Article 7 of Islamic Law Compilation.

Third, sirri polygyny follows this problematic situation, where the second wife was married under an unregistered marriage. In this sense, *sirri* is seen as an opportunity to evade the law. Polygyny entails strict processes. Thus, marrying the second wife and making this second marriage unregistered will seemingly relax the processes required in polygyny, making marriage law seemingly fragile.

³ Nur Khamidiyah, "Isbat (*Marriage Determination*) in Sirri Marriage in the Form of Komplikasi Hukum Islam According *Maqasid as-Shari'ah*" *Sharia: Journal of Indonesian Comparative of Sharia Law* 3, 1(2020): 3-4.

⁴ Rachmadi Usman, "Makna Pencatatan Perkawinan dalam Peraturan Perundang-Udnangan Perkawinan di Indonesia", *Jurnal Legislasi Indonesia* 14, 3(2017): 259.

⁵ Sisca Ferawati Burhanuddin, "Civil Law and Juridical Aspects in the Distribution of Marriage Joint Property", *Budapest International Research and Critics Institute (BIRCI-Journa)* 4, 3(2021): 34.

The picture given regarding evasion of law as above is parallel to social reality growing in Madurese community. Underage marriage (early marriage) in Madurese community is an established phenomenon commonly happening in the community. Before the enactment of law Number 16 of 2019, males and females must be at least 19 and 16 to get married. With this provision, marriage exemption-related issues seem to be the logical consequence of underage marriage that young couples have often requested. Especially after the shifting age limit to 19 for females, the number of young people requesting early marriage was mounting rapidly.⁶

The tendency to marry young has led to requests for marriage exemption and takes place for two reasons. First, marrying a daughter at an early age is generally seen as a sacred impetus for the sake of the benefit of all. This early marriage is also intended to avert libel, and it represents a legacy from ancestors. Second, marrying young is also linked to religious authority. Religious figures uphold the law they make, and people believe more in it.⁷ These two grounds make political culture.

Unregistered marriage (*sirri*) and *sirri* polygyny have been common in Madura, and this has reached to a structural level. Unregistered marriage is taken as a shortcut for young couples due to traditions.⁸ Those believing that doing unregistered marriage is not harder than fulfilling demanding marriage requirement set forth in the legislation will make them choose the former to be later declared official with their marriage.

⁶ Mughniatul Ilma, "Regulasi Dispensasi dalam Penguatan Aturan Batas Usia Kawin bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019", *al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 2, 2(2020): 137.

⁷ Mohammad Manaf Badri, "Kedudukan Kiai sebagai Wali Muhakkam dalam Pernikahan Perspektif Masalah Mursalah dan Kompilasi Hukum Islam", *Sakina: Journal of Family Studies* 4, 3(2020): 6-7.

⁸ Abd Aziz Faiz, "Pola Logika Nikah Sirri dalam Kultur Masyarakat Madura", *Musawa* 12, 1(2016): 122-123.

This phenomenon also represents political cultural lag in Madurese community.

The situation above is an example of evasion of law. Theoretically, evasion of law is within the scope of the theory of international law, as compared to the theory of legal order dubbed *Lex Fori* as the opposite of the theory *dislex fori*—a theory of evasion of law, implying that when juridical law set by an international institution fails to put society in order, the members of the public, in such a situation, can refer to another law with similar objectives. Nevertheless, not all juridical laws fit the needs of the people. From this point, the presence of an initiator to act further in terms of *dislex fori* to give harmony to the law is necessary.⁹

The problem in juridical interpretation in line with social reality departed from an entity of religion, tradition, characteristics, traits, authority, and orthodoxies, all of which raise political cultural lag in society, where law can be played and disseminated as propaganda. Thus, to reveal this phenomenon and political cultural lag problem, studies involving mix combinations are required. This theory was initiated by Qadry Azizi, saying that:

Law is not always resolved by the rule of law, justice is also not always obtained from the rules. So, directing people to obey the law is wrong. Sometimes in society there are laws that are considered fair and then become traditions. However, according to the rules, the opinion of the community violates the rules. Therefore, when in society there are legal acts that are considered to be violating, it is necessary to explore three things, namely legal psychology, social structure and culture.

⁹ Zulfa Djoko Basuki, "Teori-Teori Umum Hukum Perdata Internasional yang Dapat Mengesampingkan Berlakunya Hukum Asing dengan Memberlakukan Hukum Nasional sang Hakim", *Jurnal Hukum dan Pembangunan* 26, 3(2016): 200-2002.

*All three will avoid conflicts between people's behavior and the law which often leads to political cultural lag.*¹⁰

The issues of political culture of the people, either those related to the exemption of marriage (as in early marriage) or those related to *itsbat nikah* (*sirri* marriage/unregistered marriage) stem from the psychology, culture, and structure of the society, as in line with substantivism theory initiated by Said Aqil Husin.¹¹ Thus, this research will delve into the trilogy of legal theories of utilitarianism, where the justice of law can be measured according to how happy or not the persons adhering to this law can be. In terms of socio-cultural aspect, people refer to a structuration theory initiated by Antony Giddens, arguing that law living in society is supported by agents and structures serving as the references of studies for socio-structural aspect.

Previous studies have been observed, indicating that there has not been any previous research carrying an in-depth analysis that leads further to the basis of socio-legal trilogy. Sri W. Bachtiar, Ma'ruf Hafidz and Dachran S. Busthami once conducted research in Makassar regarding the quantity of marriage exemption cases following the enactment of Law Number 16 of 2019. The research results revealed that the rising cases of marriage exemption resulted from economic factors, not social surroundings. This research, however, only studied to what extent marriage exemption-related cases increased and its motives, not the political cultural lag living in society; it only observed the outer hull.¹² Tambunan, Sriono and Siregar studied the legality of the child from an unregistered marriage, revealing that the clash of

¹⁰ Muhammad Shohibul Itmam, "Indonesian Jurisprudence Ahmad Qadri Azizy's Perspective", *Justicia Islamica* 16, 2(2019): 18-19.

¹¹ Said Aqil Husin al-Munawar, *Hukum Islam dan Pluralitas Sosial* (Jakarta: Paramadani, 2004), 7.

¹² Sri Wayhuni Bachtiar; Ma'ruf Hafidz; Dechran S. Busthami, "Permohonan Dispensasi Perkawinan setelah Berlakunya Undang-Undang Nomor 16 tahun 2019 Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan", *Journal of Lex Generalis (JLS)* 2, 3 (2021): 1162-1174.

unregistered marriage between Marriage Law and Islamic Law Compilation can only be settled by considering the interest of all parties involved.¹³ Similarly, Aulia Mubarak, Adli, and Jauri, in their study on *itsbat nikah* in Aceh, discovered that judges also took into account the interest of both parties in granting their request of marriage. These studies, however, only looked at the contents of social and juridical motives.

Considering the juridical problem parallel to social reality regarding the evasion of law and paradoxical interpretation of marriage law and the absence of in-depth studies expected to give solution, this research is deemed to carry its novelty. With the area to be observed, political cultural law, as an example of the evasion of law in society and the focus on juridical analysis using the trilogy of legal theories: legal psychology (utilitarianism), culture, and structure (structure and benefits), this research has its high novelty value and significant contribution to coping with marriage issues.

This research is within the purview of phenomenological law system, focused more on political culture and utilitarianism, with a social phenomenon to be further observed.¹⁴ A phenomenological research method and a descriptive analytical approach¹⁵ were employed. Research data were obtained using purposive sampling¹⁶ by carefully selecting the samples. The primary data were garnered from documents of 1) unregistered marriages in several samples representing the samples taken from the village where the research took place, 2) underage marriages, 3)

¹³ Khairani Amalia Tambunan; Sriono Sriono; Risdalina Siregar, "Legal Respect for Children from Sirri's Marriage in the Perspective of Islamic Marriage Law and Regulations Indonesian Law in the District Labuhanbatu", *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities* 4, 2(2021): 2043-2052.

¹⁴ Cik Hasan Bisri, *Pilar-Pilar Penelitian Hukum Islam dan Pranata Sosial* (Jakarta : Grafindo Persada, 2004), 56.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. Ke-7 (Jakarta: Kencana, 2011), 132.

¹⁶ Sample is characterized by the following: (1) sample design appearing cannot be determined or retracted in advance; (2) sample selection is performed in order; (3) further adjustment is required for the sample; and (4) selection stops if repetition exists. See Lexy J. Meleong, *Metodologi Penelitian Kualitatif Edisi Revisi*, Cet. Ke-22 (Bandung : PT REMAJA ROSDAKARYA, 2006), 225.

argumentations given by political culture informants, 4) argumentation given by practitioners, public figures regarding the political culture of evasion of law. Interviews with informants were conducted to get the information needed.¹⁷

Socio-Cultural Marriages in Madurese Community

Piety and religious nature seem to run in the blood of Madurese people; they strongly adhere to religious traditions and their behavior represents religiosity. Religion even serves as the fundament in political, social, economic, and cultural activities.¹⁸ The logic of the understanding of religion in Madurese community is at the highest level. Their strong piety and adherence to the religious traditions label them religious fanatics.

Not only to religion, they are known for their adherence to their customary tradition that marks the identity of the Madurese people.¹⁹ Their obedience to religious teaching and customary tradition of the local community are resistant to changes unless *pangaseppo* (senior Madurese figures) and religious figures²⁰ expect it to happen since they hold the authority. Similarly, in marriages, the order given by parents and religious figures often cannot be opposed by the rejection of the married sons/daughters especially within the context of an unregistered or underage marriage.

A marriage not only represents a social ritual intended to build a small unit in society, but a marriage represents more than just a personal entity that the parties concerned have the right to

¹⁷Burhan Bungin, *Penelitian Kualitatif : Komunikasi, Ekonomi, Kebijakan Publik, dan Ilmu Sosial lainnya* (Jakarta : Kencana Prenada Media Group), 108.

¹⁸ Tabrani ZA, "The Theological Transformation of Indonesian Democratic Politics. (Telaah Singkat Tentang Masyarakat Madani Dalam Wacana Pluralisme Agama Di Indonesia)," *AL-IJTIMA: International Journal of Government and Social Science* 2, no. 1 (2016).

¹⁹ Umiarso El-Rumi, "The Young Kyai (Lora) and Transformation of the Pesantren in Madura," *Islam Realitas: Journal of Islamic and Social Studies* 6, no. 2 (December 31, 2020): 121, https://doi.org/10.30983/islam_realitas.v6i2.3484.

²⁰ Sudarman Sudarman and Mohammad Hidayaturrahman, "RELATION OF RELIGION, ECONOMY AND POLITICS: Islamization of Malay Community through Trade and Kingdom," *Al-Tahrir: Jurnal Pemikiran Islam* 20, no. 2 (June 20, 2020): 175–94, <https://doi.org/10.21154/altahrir.v20i2.2007>.

decide. In a particular context, marriage involves the interest of the whole family members, close relatives, and social status.²¹ The relationship built between a man and woman is within the logic of patriarchy, positioning the man as a superior entity above the woman. Both the man and woman serve as a subject or a leader and an object respectively within the logic of such a tradition.²² This positioning has been sacredly regulated as part of social consensus, where women are responsible for running the household and the men take care of public activities. Their established position is not changeable, as it has been planted deeper into the tradition and culture of Madurese people since a long time ago.

The marital culture in Madurese community carries its strong sacredness, reaching out to social, economic, and religious entities. Traditional sacredness in marriage among Madurese people was shaped by the culture along with its sacred and established values.²³ Thus, it is not surprising when marital ties are strong among Madurese people, considering that these ties have been planted deep into the social aspect. In Madurese community, marriages are not easily broken and extend beyond economic and social matters; they are coated with religious touch.

There are three logical forms of sacred marital traditions in Madurese community. First, Madurese people are known for their strong adherence to Islam, their piety, and they uphold religious traditions passed by their earlier generations. Religion is more than a ritual brought by *ustadz* (religious teachers in Islam), teachers,

²¹ Putu Sekarwangi Saraswati and I Nengah Susrama, "PERAN PEREMPUAN DALAM KELUARGA UNTUK MELINDUNGI SERTA PEMENUHAN HAK ANAK DIMASA PANDEMI COVID-19," n.d., 8.

²² Ricka Handayani, "MULTI PERAN WANITA KARIR PADA MASA PANDEMI COVID-19" 04, no. 1 (2020): 10.

²³ Nurfitriani Nurfitriani, Suparman Abdullah, and Buchari Mengge, "Conflict and Violence among Religious People: A Case Study of Conflict and Violence Against the Ahmadiyah Congregation in Makassar City," *International Journal of Multicultural and Multireligious Understanding* 7, no. 11 (January 2, 2021): 497, <https://doi.org/10.18415/ijmmu.v7i11.2280>.

kiai, but it is rather both religious resources and tradition.²⁴ Their belief in tradition is taken as part of ritual and religious representation they strongly cling on to, and they believe this strong adherence leads to blessings and safety later in Hereafter. An understanding of religion and highly sufficient knowledge represent the dignity and respect in a family, and, thus, the absence of knowledge will present a further problem finding acceptance in the community.

Marriage is seen as part of a ritual process to perfectly reach a religious life. Either men or women are deemed defected in their religion. Similarly, those failing to maintain their marriage and experiencing divorce are regarded as incapable of keeping the stability in their family by the community.²⁵ Divorce represents failure in upholding religious orders; it, as they believe, stands against the order given by Rasulullah, labelling them who fail with a social stigma. That is, a marriage is taken as symbol of dignity and perfection in religion, while divorce is regarded as a social stigma and oddity. Marital ties in Madurese community are strongly built and they hold social and religious sacredness.²⁶

Second, a man in a family serves as a leader responsible for policies built in the family. The portrait of a leader is reflected in his responsibility to feed his family and protect dignity. In other words, a man in a marriage represents the symbol of respect and dignity in a family.²⁷ For Madurese people, a man is responsible for the economy of the family, while the woman takes care of the

²⁴ Limas Dodi, "POWER-BASED ECONOMIC POLITICS IN PERSATUAN ISLAM (PERSIS) IN SAPEKEN, SUMENEP-MADURA," *Madania: Jurnal Kajian Keislaman* 25, no. 1 (2021): 14, <http://dx.doi.org/10.29300/madania.v25i1.4226>.

²⁵ Zakiyah Zakiyah, "Manuscripts in Sumenep Madura; the Legacy of Pesantren and Its Ulama," *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 6, no. 1 (June 30, 2017): 21–42, <https://doi.org/10.31291/hn.v6i1.133>.

²⁶ Zubaidi, *Wawancara* (Sumenep, 12 Mei 2022)

²⁷ Universitas Pembangunan Nasional Veteran Jawa Timur, Indonesia et al., "The Synergy of Islamic Da'wah and Madura Culture Programmes on Nada FM Sumenep Radio, Indonesia," *Jurnal Komunikasi: Malaysian Journal of Communication* 37, no. 2 (June 30, 2021): 111–29, <https://doi.org/10.17576/JKMJC-2021-3702-08>.

domestic household. This role split starts soon after a man spoke his solemn promises in the wedding, and these roles have been part of tradition, meaning that leaving one of these roles or switching roles may seriously affect social status. For instance, a career woman in a marriage may raise social pathology.²⁸

Third, religious pattern and piety of Madurese people are heavily affected by religious authorities such as *kyai* and *ustadz*. The religious tendency towards a *kiai* applies in almost all aspects. The role of *kiai* is not only restricted to being a legal mediator or Islamic doctrine, but *kiai* also serves as an agent responsible for social change and as cultural broker. *Kiai* has the widest space to reach all aspects in society.

This seemingly limitless authority held by *kiai* in the society gives rise to the foundation of a sacred religious cult in terms of marital matters. In the community, a matrimonial tie will be regarded as odd when no blessing from *kiai* is involved. As a consequence, a *sirri* marriage with a bless from *kiai* is even considered more sacred and lawful from the perspective of Islamic law, and marriage certificate is regarded as something only representing formality. *Kiai* holds the power of authority, and a religious and marital ritual cannot be deemed perfect unless a *kiai* witnessed and declared it valid.²⁹

This issue is not only restricted to the matter of marriage law, but it applies to all aspects. For instance, a person needs the presence of a *kiai* before he/she starts up his/her business. *kiai*, in terms of wedding preparation, also serves as a shaman who predicts a good day for a wedding. Candidacy in a political party also considers the advice from *kiai* and *kiai* should also be present when a person is sick to give him/her a bless of recovery. The presence of a *kiai* is a symbol of sacredness, a blessing. He is magical. A *kiai* is regarded as a figure having the closest connection

²⁸ Hasani, *Wawancara* (Sumenep, 13 Mei 2022)

²⁹ H. Kusumawati; I. Innayah, I. "Tindak Tutur Dalam Tradisi Pernikahan Masyarakat Madura Pada Era Millennial: Kajian Sosiopragmatik", *GHANCARAN: Jurnal Pendidikan Bahasa Dan Sastra Indonesia*. <https://doi.org/10.19105/ghancaran.v0i0.3761>

to Allah; he is seen as a legitimate inheritor of the messages of prophets, overshadowing us as ordinary human beings.³⁰

Political Culture in Underage Marriages in Madurese Community

Viewed from the perspective of practical phenomenology, Madurese people are often labeled as fanatics for their culture and the legacy from ancestors. Being endogenous and heterogenous has left Madurese people with abundant values of local wisdom.³¹ These characteristics are strongly embedded in the personality of each individual in the community and the spiritual and religious unity. The religious sacredness is connected to cultural, social, and religious tendencies not only in marriage but also in other aspects of life.

An underage marriage is a social phenomenon for over generations in Madurese community,³² standing robust against the coming laws that often fail to make any significant changes. Both culture and tradition of underage marriages hold their spiritual values up to the level of fanatic concern backed up with theological belief. Inequality between underage marriage practices and state law spark a chance where evasion of law might happen. This situation needs the work of political culture as tradition-based belief.

Political culture refers to a practice conducted by people, and it is manifested into a marital tradition without involving any adherence to outer laws (state law) if this law is found restricting and contravening the tradition. This tendency has further transformed to strategies, ways, thoughts, and habits adopted by Madurese people. The following are some of the pictures of

³⁰ Djazuli, *Wawancara* (Sumenep, 15 Mei 2022)

³¹ Awatiful Azza, "Pernikahan Dini dalam Perspektif Budaya dan Kesehatan (Studi Kasus pada Masyarakat Madura-Jember)", *National Multidisciplinary Sciences* 1, 4 (2022): 601-602.

³² Imam Hanafi, "Administrasi Perkawinan dalam Mencegah Pernikahan Dini di Kecamatan Pakong Kabupaten Pamekasan Madura", *Journal of Indonesian Islamic Family Law* 3, 1(2021): 1-21.

political culture growing in Madurese community regarding underage marriages:

First, an underage marriage often faces rejection in terms of political administration, simply because the parties or one of them involved has not reached the maturity at the age set forth in Article 7 paragraph (1) of Law Number 16 of 2019 requiring both parties to be at least 19. Underage persons will need to request for an exemption of marriage to a religious court. Nevertheless, the locals of this community prefer having it done outside religious court bureaucracy.

This impeding factor, thus, encourages people to find ways to make this marriage legitimate, and this attempt is referred to as political culture, where an underage marriage can still take place notwithstanding the prohibition set out by the law. The presence of law can still exist without injuring the pre-existing tradition living in a community.³³ It indicates that there are some patterns of political cultures amalgamating law with the tradition into one reality. These patterns are obvious in how marriage administration is modified as told by informants. Looked more closely, 'validating' an underage marriage usually involves a written statement issued by a village instrument declaring that the underage couple has reached age limit, or this statement is referred to as "aging statement" that is further submitted to a local religious court to obtain permit. With this system, the local people can easily get their marital ties in no time.³⁴

From this situation, it can be said that at a grassroots level, there is political culture touching administrative domains. In Madurese community, underage marriages go beyond solemn promises said during the wedding ceremony, but these have reached out to established tradition. This established tradition is captured in two assumptions of reality growing in society: 1) marrying children (despite their being underage) is regarded as a need in a sense that parents will not expect to die without seeing

³³ Rahmatullah, an interview (Sumenep, 18 July 2022)

³⁴ Rahmatullah, an interview (Sumenep, 18 July 2022)

their sons and daughters marry. This concern means that not marrying their children soon will spoil inheritance split, tradition along the race, and familial dignity. 2) marrying young helps settle family and keep lineage. These two fundamentals shape the tradition resistant to any force.

Second, in the scope of political prevention, a tradition to marry a daughter to a man has been living in the Madurese community for long. People believe that it is not good for a girl not to get married soon after she reaches a maturity. The term maturity in this case is differently understood as the moment when a girl menstruates at 15. In this period, parents often think to marry their daughter soon. Marrying children when they are underage has been a tradition living in the society, contravening the law in Indonesia banning underage marriages. This gap leads further to the birth of political culture.³⁵

The information given by an official of a religious court clearly indicates that concern growing among parents to marry their daughters soon have reached a legal preventive level. There are two logical grounds with negative tendency for daughters advised to be married soon; 1) a daughter is a symbol of dignity for her family, and she is protected to an extent that no single stigma or sharia violation ruins her life since social libel is a great concern in the community; 2) females carry the quality of motherhood responsible to serve their husbands later when they are married. Their circle should be restricted to domestic responsibilities. These two grounds are strongly established in the Madurese community, encouraging underage marriages.

This phenomenon indicates that their tradition must not be opposed simply because it is part of the norm as a legal principle. Thus, political emerges as a phenomenon uniting the characteristics of the locals and the law, which further shapes a legal objective (*maslahah*/benefits, averting the likelihood of sharia

³⁵ Abd. Syakur, an interview (Sumenep, 23 July 2022)

violations based on *hifdz an-nasb*) as a milestone for legal politics in society. Underage marriages are regarded as seemingly relevant to law.³⁶

Despite the existence of the law governing marriage, rural community often favors religious tradition over positive law. people in Akkor village respect their religious law that has implications on their later life in Hereafter. In marriage, the burden is often shared, meaning that the husband is not solely responsible to settle the family, but his parents is often involved in settling his new family up until he can live an independent life with his new family members. It also involves education, teaching and even a company for this new family to live a new life. Selecting a good matrimonial day is certainly inextricable from the involvement of a *kiai* whose bless is needed. All Madurese people, especially those living in Akkor village leave their trust in the hand of a *kiai* to pick a good matrimonial day.

Third, in the scope of political aspect in a family, there is always concern, as told by an informant, that another proposal may come from a different person if the marriage does not immediately take place. A kinship relationship also affects this marital concern, and the informant also told that marriage represents happiness and harmony. Similarly, Abdul Qodir shared that his decision to immediately marry the woman who is his wife now is because of his concern believing that another man would have had her as his wife.³⁷

The above example indicates that political culture emerges from a view believing that saving family from any disharmony is paramount over heeding the legislation although this way is considered legally insufficient. The tradition to marry a daughter with someone of the closest relative has been common in Madurese community to keep the lineage in a family. This proposition is regarded as reasonable to oppose the law and serve as the principle of political culture of Madurese community.

³⁶ Moh. Saied, an interview (Sumenep, 18 July 2022)

³⁷ Muhammad, an interview (Sumenep, 18 July 2022)

Fourth, this matter is related to political authority. Before the state law was enacted, an Islamic law existed earlier, and now this authority is represented by a *kiai*, a religious figure in a community. The presence of a *kiai* serves as a shield and a way out for the sake of the tradition against the law of the state, and this way out is commonly known as political culture, allowing people to implement the “*kiai* law” as the fundament in marriage tradition. By adhering to the authority allowing underage marriages, the community believe more that such marriages can still take place due to the influence of the presence of such a religious figure in addition to the strong legal principle that was locally made.³⁸

This notion is not only expressed by an individual, but it is rather accepted as tradition in Madurese community, believing that adhering to the *kiai* law is a way to grant a wish and a strategy to stand against a textual law made by the state. First, *kiai* law has paramount sacredness in community over all other laws and, second, *kiai* law refers to the basis of interest and benefits parallel to the spiritual values of Madurese people.³⁹

Thus, the existence of this figure in the law living in society sets him as an authority of power in bringing about political culture to Madurese community. Underage marriages can have legal informal aspect although facing issues brought by the law of the state. However, they believe that it is not impossible to escape from this bureaucracy by adhering to social tradition growing from the law shaped by *kiai* and living in the society. As a consequence, the law goes parallel to the tradition of a strong and established tradition although evasion of law seems inevitable. This situation is referred to in this study as political culture of authority in Madurese community.

³⁸ Anita, an interview (Sumenep, 18 July 2022)

³⁹ Abd. Syakur, an interview (Sumenep, 18 July 2022)

Analysis of Utilitarianism of Political Culture in Madurese Community

The theory of utilitarianism was introduced by Jeremy Bentham, arguing that law must be capable of guaranteeing happiness for its followers.⁴⁰ This theory is more emphasized on the aspect of “happiness”. In other words, whether or not law succeeds will depend on how much happiness a law can guarantee for its people.⁴¹ Every Article in a law not only pays attention to the interest of individuals, but it also takes into account happiness. If people in a community are obviously happy despite the conflict between reality and the law, this law is deemed effective in its implementation.⁴²

Utilitarianism emphasizes happiness, and, thus, this aspect of happiness requires some indicators to elaborate farther. In terms of human rights serving as a starting point in law enforcement, there are two indicators measuring the accomplishment of happiness:

First, the need is met. Psychologically, a person with his interest to become a teacher is deemed happy when he can be what he expects to be. Similarly in marriage, parents wishing to marry their daughter will be much happier when their wish comes true. On the other hand, this happiness fades away when this wish fails.⁴³

Second, satisfaction in life is more than just reaching an objective, but it is rather related to the expectation to reach a material need to the aspect of spirituality.⁴⁴ John Stuart Mill once expressed that happiness existed in the aspect of human psychology, not in realistic material. Thus, as referred to in these two theories, happiness in a marriage lies in the accomplishment of

⁴⁰ W. Friedman, *Teori dan Filsafat Hukum: Idealisme Filosofis dan Problema Keadilan*, Muhamad Arifin (Terj.) (Jakarta: Rajawali Press, 1990), 111.

⁴¹ Jeremy Betham, *Introduction to the Principle of Morals and Legislation* (Oxford: Clarendon Press, 1907), 12.

⁴² Bryan Magee, *the Stoty of Philosophy*, Marcus Widodo (Terj.) (Yogyakarta: Kanisius, 2012), 184.

⁴³ Alan Carr, *Positive Psychology the Science of Happiness and Human Strengths* (USA and Canada: Brunner, 2004, 42.)

⁴⁴ G. Myers David, *Social Psychology* (Jakarta: Humanika, 2012): 120.

sakinah mawaddah wa rahmah principle, as stipulated in Law Number 1 of 1974 concerning Marriage.

Thus, the satisfaction in life in marriage (in this case referring to *sirri* (unregistered) marriage and underage marriage) is not in the administrative order, the registration of the marriage, or order, but it is rather living in the aspect of marriage that can bring peace, create affection and happiness in a family. The tradition encouraging underage marriages represents evasion of law as a legal practice that encourages happiness in life.

Bentham amalgamated law and punishment. The utility principle offered: the greatest happiness of the greatest number can be achieved only if we obey the law. Law is intended to improve happiness for the entire community, and this message must take into account taking down any conduct that results in negative consequences (underage marriages), but how to maximize happiness? Sanctions represent justice, and sanctions coerce in law. There are four sanctions in this case, including physical, political, moral, and religious sanctions. Bentham further explained as follows:

A man's good, or his person, are consumed, by fire. If this happened to him by what is called an accident, it was calamity; if by reason of his own imprudence (for instance, from his neglecting to put his candle out), it may be styled a punishment of the physical sanction; if it happened to him by the sentence of the political magistrate, a punishment belonging to political sanction; that is, what is commonly called a punishment, if for want of any assistance which his neighbor withheld from him out of some dislike to his moral character, a punishment of the moral sanction; if by an immediate act of God's displeasure, manifested on account of some sin committed by him a punishment of the religious sanction.⁴⁵

⁴⁵ G. Myers David, *Social Psychology...*, 122.

All sanctions a threat that leads violators in despair. People in reality will feel they are bound to something only when the activities they do are linked to sanctions towards those activities. Bentham described the portion between punishment and a violation: (1) punishment must be aggravating to be fair, or in a sense that punishment must be equal to the crime committed; (2) the more serious the crime is, the more aggravating the punishment must be. In other words, when two violations take place, more serious punishment must apply, and aggravating law must be able to change the offender into a better person; (3) when violations become tradition, the punishment must take into account the interest of others not only restricted to the present time but also in the time to come.⁴⁶

Analysis of *Maqasidi* Interpretation of Political Culture regarding the Implementation of Law in Madurese Community

Maqasidi represents a legal objective, more understood as a conduct verging more on the beneficial values and the interest of all human beings. That is, something good, beneficial, and harmless is defined as *Maqasidi* terminologically. Therefore, *Maqasidi* is divided into *Maqasidy dhuririyat* (primary benefits), *Maqasidi hajiyyat* (secondary benefits), and *Maqasidi tahsiniyyat* (tertiary/decorative benefits).⁴⁷ The level of *Maqasidi* is considered essential in Islamic law because it determines the quality of law within the scope of *taklifi* and *ijtima'i*.

The concept of *Maqasidi* indicates that both Islamic and positive law in Indonesia, including any law governing *sirri* and underage marriages are for the sake of the benefits of the people (*maslahat li an-nas*). Therefore, in order to gain an in-depth view of *Maqasidi* and to determine the level of *Maqasidi* from each phenomenal subject, *Maqasidi* structure was established by as-Syatibi from five concepts of *syara'* objectives (*maqasid as-syariah*) or

⁴⁶ Jeremy Betham, *an Introduction to the Principle of Morals and Legislation*...17.

⁴⁷ Halil Thahir, *Ijtihad Maqasidi: Rekonstruksi Hukum Islam Berbasis Interkoneksitas Maqasidi* (Yogyakarta:LKIS Pelangi Aksara, 2020), 4-5.

hifdz ad-din (protecting religion), *hifdz an-nafs* (protecting soul), *hifdz al-aql* (staying sensible), *hifdz an-nasl* (maintaining lineage) and *hifdz al-mal* (protecting assets). All these five *syara'* foundations serve as the components to guarantee the benefits of the whole people.⁴⁸

Therefore, behaving in a way that is parallel to all the five principles of *maqasid as-syariah* as above is considered *Maqasidi*, while, on the contrary, any violations to these principles are considered *mudharat*. Lawmaking in Indonesia is, therefore, intended to bring benefits, not problems that may lead to *mudharat*, for the life of the people as a whole.

The concept of *hifdz ad-din* in an unregistered marriage or underage marriage is understood within the social context and the objectives written in Quran or hadiths. *Mujarrad al-amr wa an-nahy al ibtida'I at tasrihi* is a method developed to see the relevance between unregistered marriage and underage marriage practices in a community, especially Madurese people. This is an order in *nash* demanding orders to be executed and prohibitions to be averted.⁴⁹ Thus, if an order and prohibition as in *nash* are obeyed, this obedience complies with the order of Allah as a representation of *hifdz ad-din*. If an order and prohibition is followed, *Maqasidi* will emerge. Conversely, any violations to this provision will spark *mudharat*. Thus, every legal provision carries *Maqasidi* and every prohibition carries *mafsadat* or *mudharat*.

Referring to this method, the order of Allah is reflected through the *nash* of the Quran, as in Surah an-Nisa verse 3 implying that a man is allowed to have his marriage unregistered and perform underage marriage by marrying up to four women as long as he can act fairly to all four, but if he is incapable of acting fairly, he should marry only one wife simply because it is easier to

⁴⁸ Muhammad Abu Zahrah, *Ushul Fiqh* (Jakarta: Pustaka Firdaus, 2003), 548.

⁴⁹ Achamad Cholili, "Urgensi dan Relevansi al-Maslahah al-Mursalah sebagai Metode Ijtihad Kontemporer", *at-Tahdzib* 1, 2(2013), 204-207.

act fairly with one wife.⁵⁰ In other words, if either unregistered marriage or underage marriage can encourage fairness as a whole, this tendency will lead further to *Maqasidi*, but if he cannot act fairly to all his four wives, it is better to marry only one woman since it will encourage *mafsadat*.

This is how *hifdz ad-din* works, bringing the social concept to the surface, implying that Islam will not easily allow unregistered marriage and underage marriage to take place, considering that it takes into account the dignity of women entitled to the right to live a fair life. The rights of a wife must be met by her husband to avert any likelihood of intimidation and inhumanity. The law of Allah highly respects women and protects them from any intimidation and inhumanity. This understanding indicates that unregistered and underage marriages can be allowed under emergency circumstances to ensure that Islamic teaching is well maintained.

Other objectives of *syara'*, namely *hifdz al-maal* and *hifdz al-aql*, are not included as the objectives of unregistered and underage marriages in Pamekasan community in Madura because in the aspect of *hifdz al-maal*, orphans and widows who are tied under unregistered marriage and underage marriage are from poor families with no jobs at all. In terms of *hifdz al-aql*, the purpose of unregistered and underage marriages are not intended to direct the thought.⁵¹ This analysis excludes these two *syara'* objectives.

Therefore, the level of the benefits brought about in unregistered marriage and underage marriage taking place in Madura, can be categorized as *dhururiyah* and *tahsiniyat*. However, all the practices of these two types of marriage are intended to avert the *mudharat*. The level of Maqasidi *dhururiyah* is reflected from the intention to marry a widow along with her children under a polygyny system amidst the difficult time to earn money. In this case, the man marrying the widow is financially sufficient.

⁵⁰ Husain Hamid Hasan, *Nadzariyyah al-Maqasidi fi al-Fiqh al-Islam* (Kairo: Dar an-Nahdhah al-'Arabiyah, 1971), 304.

⁵¹ Halil Thahir, *Ijtihad Maqasidi: Rekonstruksi Hukum Islam Berbasis Interkoneksi Maqasidi...*, 15.

The polygyny encouraged by the fact that the first wife fails to give son or daughter from this marriage will lead it to the category of *Maqasidi dhururiyah*. On the other hand, *Maqasidi tashiniyah* is reflected in these both types of marriage intended to reduce the population of women, or it is due to a personal willingness as part of social factor. What is important about this marriage in the community is that either unregistered marriage or underage marriage is simply intended to bring about benefits and stand against *mudharat*.

Conclusion

This research concludes that, first, political culture in Madurese community is believed to be the way that leads the family to a blessed and *sakinah* entity. Moreover, the political culture has been the tradition to guarantee the interest to achieve legal objectives. Second, the result of the analysis of utilitarianism and structuration theories, and the interpretation of *maqasidi* concludes that the practice of political culture in the marriage of Madurese people indicates the parallel connection to social functions. It also reflects the value of happiness for people and takes place as a preventive measure (*dar'ur al-mafasid*) as in line with the aspect of the objective of legal act, justice, and the benefits of all.

References

- Bachtiar, Sri Wayhuni; Ma'ruf Hafidz; Dechran S. Busthami, "Permohonan Dispensasi Perkawinan setelah Berlakunya Undang-Undang Nomor 16 tahun 2019 Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan", *Journal of Lex Generalis (JLS)* 2, 3 (2021): 1162-1174.
- Badri, Mohammad Manaf. "Kedudukan Kiai sebagai Wali Muhakkam dalam Pernikahan Perspektif Masalah

- Mursalah dan Kompilasi Hukum Islam”, *Sakina: Journal of Family Studies* 4, 3(2020): 6-7.
- Basuki, Zulfa Djoko. “Teori-Teori Umum Hukum Perdata International yang Dapat Mengesampingkan Berlakunya Hukum Asing dengan Memberlakukan Hukum Nasional sang Hakim”, *Jurnal Hukum dan Pembangunan* 26, 3(2016): 200-2002.
- Bisri, Cik Hasan. *Pilar-Pilar Penelitian Hukum Islam dan Pranata Sosial* (Jakarta : Grafindo Persada, 2004), 56.
- Burhanuddin, Sisca Ferawati. “Civil Law and Juridical Aspects in the Distribution of Marriage Joint Property”, *Budapest International Research and Critics Institute (BIRCI-Journa)* 4, 3(2021): 34.
- Carr, Alan. *Positive Psychology the Science of Happiness and Human Strengths* (USA and Canada: Brunner, 2004, 42.)
- Cholili, Achamad. “Urgensi dan Relevansi al-Maslahah al-Mursalah sebagai Metode Ijtihad Kontemporer”, *at-Tahdzib* 1, 2(2013), 204-207.
- Damanik, Amsari “Implikasi Pembatasan Usia Perkawinan terhadap Dispensasi Kawin”, *Jurnal Syntax Transformation* 2, 8(2021): 1068.
- Faiz, Abd Aziz. “Pola Logika Nikah Sirri dalam Kultur Masyarakat Madura”, *Musawa* 12, 1(2016): 122-123.
- Fauzan, “Professive Paradigm in Islamic Law Renewel in Indonesia”, *MIZANI: Wacana Hukum, Ekonomi dan Keagamaan* 7, 2(2020): 191-192.
- Friedman, W. *Teori dan Filsafat Hukum: Idealisme Filosofis dan Problema Keadilan*, Muhamad Arifin (Terj.) (Jakarta: Rajawali Press, 1990), 111.
- Hasan, Husain Hamid. *Nadzariyyah al-Maqasidi fi al-Fiqh al-Islam* (Kairo: Dar an-Nahdhah al-‘Arabiyah, 1971), 304.
- Ilma, Mughniatul. “Regulasi Dispensasi dalam Penguatan Aturan Batas Usia Kawin bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019”, *al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 2, 2(2020): 137.

- Itmam, Muhammad Shohibul. "Indonesian Jurisprudence Ahmad Qadri Azizy's Perspective", *Justicia Islamica* 16, 2(2019): 18-19.
- Khamidyah, Nur. "Isbat (*Marriage Determination*) in Sirri Marriage in the Form of Komplikasi Hukum Islam According *Maqasid as-Shari'ah*" *Sharia: Journal of Indonesian Comparative of Sharia Law* 3, 1(2020): 3-4.
- Limas Dodi, "POWER-BASED ECONOMIC POLITICS IN PERSATUAN ISLAM (PERSIS) IN SAPEKEN, SUMENEP-MADURA," *Madania: Jurnal Kajian Keislaman* 25, no. 1 (2021): 14, <http://dx.doi.org/10.29300/madania.v25i1.4226>.
- Magee, Bryan. *the Stoty of Philosophy*, Marcus Widodo (Terj.) (Yogyakarta: Kanisius, 2012), 184.
- Marzuki, Peter Mahmud. *Penelitian Hukum*, Cet. Ke-7 (Jakarta: Kencana, 2011), 132.
- Munawar, Said Aqil Husin. *Hukum Islam dan Pluralitas Sosial* (Jakarta: Paramadani, 2004), 7.
- Nurfitriani Nurfitriani, Suparman Abdullah, and Buchari Mengge, "Conflict and Violence among Religious People: A Case Study of Conflict and Violence Against the Ahmadiyah Congregation in Makassar City," *International Journal of Multicultural and Multireligious Understanding* 7, no. 11 (January 2, 2021): 497, <https://doi.org/10.18415/ijmmu.v7i11.2280>.
- Rahardjanto; N. Nurwidodo, "Implementasi Teknologi Tepat Guna untuk Mengatasi Permasalahan IRT Ramuan Madura di Kabupaten Sumenep", *International Journal of Community Service Learning* 3, 4(2020): 173-185. <https://doi.org/10.23887/ijcsl.v3i4.21788>
- Sudarman Sudarman and Mohammad Hidayaturrahman, "RELATION OF RELIGION, ECONOMY AND POLITICS: Islamization of Malay Community through Trade and Kingdom," *Al-Tahrir: Jurnal Pemikiran Islam* 20, no. 2 (June 20, 2020): 175-94, <https://doi.org/10.21154/altahrir.v20i2.2007>.

- Tabrani ZA, "The Theological Transformation of Indonesian Democratic Politics. (Telaah Singkat Tentang Masyarakat Madani Dalam Wacana Pluralisme Agama Di Indonesia)," *AL-IJTIMA': International Journal of Government and Social Science* 2, no. 1 (2016).
- Tambunan, Khairani Amalia; Sriono Sriono; Risdalina Siregar, "Legal Respect for Children from Sirri's Marriage in the Perspective of Islamic Marriage Law and Regulations Indonesian Law in the District Labuhanbatu", *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities* 4, 2(2021): 2043-2052.
- Umiarso El-Rumi, "The Young Kyai (Lora) and Transformation of the Pesantren in Madura," *Islam Realitas: Journal of Islamic and Social Studies* 6, no. 2 (December 31, 2020): 121, https://doi.org/10.30983/islam_realitas.v6i2.3484.
- Usman, Rachmadi. "Makna Pencatatan Perkawinan dalam Peraturan Perundang-Udnangan Perkawinan di Indonesia", *Jurnal Legislasi Indonesia* 14, 3(2017): 259.
- Zahrah, Muhammad Abu. *Ushul Fiqh* (Jakarta: Pustaka Firdaus, 2003), 548.
- Zakiyah Zakiyah, "Manuscripts in Sumenep Madura; the Legacy of Pesantren and Its Ulama," *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 6, no. 1 (June 30, 2017): 21-42, <https://doi.org/10.31291/hn.v6i1.133>.