PRACTICE OF UNDER-AGE MARRIAGE: MARRIAGE REGISTERS' AND JUDGES' ATTITUDES TOWARD REGISTRATION AND DISPENSATION OF MARRIAGE

Euis Nurlaelawati
State Islamic University/UIN Jogjakarta
201*5*

Rules on marriage: sources

- □ Fiqh
- Law of Marriage
- □ The Kompilasi Hukum Islam

Rules on marriage: requirements and conditions

- Required Elements and Conditions: following Islamic classical texts
 - Spouses: bride and groom
 - No preventing causes
 - Both Muslim
 - Reaching marriageable age; 16 for girls and 19 for boys
 - Contract: ljab (transfer) and qabul (acceptance)
 - Clear words/clarity of words
 - Consistency of words
 - In the same place
- Guardian
- Witnesses
- mahr

Rules on marriage: additional novel rules

- □ Also,
 - Marriage should be registered
 - KHI, art: not found in classical texts
 - Spouses should meet required marriageable age
 - KHI, art 15: not defined in classical texts: 16 for female and 19 for male

Divergent rules related to age of marriage: law, discourse and proposals

- Minimum age of marriage
 - 16 for girls
 - 19 for boys
 - Recommendation and proposal
 - BKKBN 20 (girls) and 25 (boys) years old
 - Equal age for boys and girls (CLD KHI:))
 - HMPA: 16 and 19
 - Amendment of the Law of Marriage:

Rules on dispensation

- Spouses of underage could propose dispensation
- Dispensation: judges' discretionary power
 - Proposed to court
 - No rule on minimum age for dispensation regulated

Practice of marriage of underaged couple

- Based on statistical data or books of marriage (Karawang, Depok, Tangerang)
 - Couple marry in quite higher age: above 18
 - Some couple or one spouse marry before the age: not registered
 - Few registered their under age marriage through dispensation procedure

Practice of marriage of under-aged couple

- KUA's attitude: Tegal Waru, Teluk Jambe
 (Karawang), cikaret, Beji (Depok), Tangerang
 - Many parents come to KUA to marry their under-aged children: registration
 - Understand that the official registrar is KUA's officials
 - KUA's officials advise them to come to court for dispensation
 - Few did, most did not
 - Married therefore their children without registration

- Few manipulated documents
 - Some cases went through
 - Some did not, recently

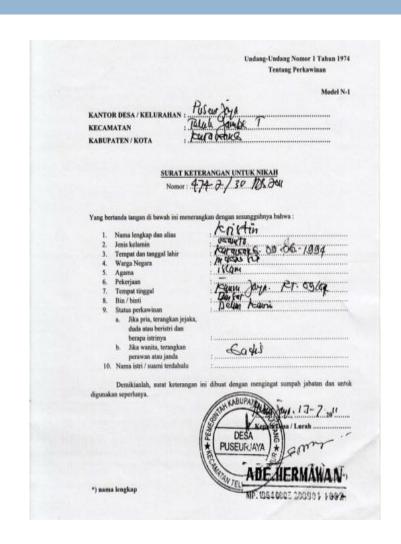
Cases:

- □ Case 1 (tegal waru)
 - A couple came with parents and 'ulama to KUA to propose to marry
 - Rejected, girl cried, the 'ulama was upset
 - Married couple without registration

□ Case 2 (Teluk jambe)

- A couple came, manipulated one document stating their agreement to marry where age was mentioned and upgraded
- Checked cross with Kartu Keluarga,
- Age of the girls mentioned in N1 was not as what is put in KK

N1 (Surat keterangan untuk nikah); manipulating age of the girl (to be 17)



Kartu Keluarga of the family of the girl: showing the correct age (13)



- Case 3 (Teluk Jambe)
 - A convert boy, aged 17, wanted to marry his girl friend
 - Came to court for dispensation
 - Judges disagreed:
 - rejected as dispensation should be proposed by parents (parents are non-Muslim)
 - Accepted, as non-Muslim parents could not come
 - Agreed to accept non-Muslim parents who for temporal time abide to Islamic law

- Case 4 (Tangerang)
 - A pregnant girl, aged 14 and 2 months, proposed dispensation to marry her boy friend
 - Conceived baby for 5 months
 - Parents agreed
 - Approved to marry

Proposal for dispensation: Reasons

- Propagating and observing religious doctrines:
 avoiding committing sins
 - Illicit sexual inter-course
 - Pregnancy
- Local culture
 - Elder parents' urgent need to see their children marry
 - Children's leisure and stigma





Judges' attitude: dispensation

- Dispensation in practice
 - Permissive attitudes of judges
 - Stress on accidental needs, not long term effects
 - Age where dispensation is given varied: 13, 14, 15
 - ljtihad, sumplementary
 - Dilemmatic argument
 - For the sake of public good.interest (kemaslahatan), which is to them preferred to be upheld, but,
 - Also to avoid 'mafsadat' is considered to be preferred than to take 'maslahat'
 - Child (daughter) from marriage of under-age marriage is considered to have no right to have guardianship from her father, following the legal opinion of minimum age of pregnancy

Isbat nikah and under age marriage: legal hole and concurrance

- A number of proposals of istabt nikah result from unregistered under age marriage
- Judges are not very much concerned about the legal qualification of spouse when conducting nikah sirri
- Isbat nikah and dispensation of marriage solution or problem?
- The regulation of nikah hamil

THANKS