

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

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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: Ijab (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 under-aged 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

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- 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)

Undang-Undang Nomor 1 Tahun 1974
Tentang Perkawinan

Model N-1

KANTOR DESA / KELURAHAN : Puseur Jaya
KECAMATAN : Taloh Jambi T
KABUPATEN / KOTA : Bura Betika

SURAT KETERANGAN UNTUK NIKAH
Nomor : 474.2/30.108.2011

Yang bertanda tangan di bawah ini menerangkan dengan sesungguhnya bahwa :

1. Nama lengkap dan alias : Kristin
2. Jenis kelamin : wanita
3. Tempat dan tanggal lahir : Karasas, 06.06.1994
4. Warga Negara : Indonesia
5. Agama : Islam
6. Pekerjaan : Kawan Jaya RT. 05/09
7. Tempat tinggal : Kawan Jaya RT. 05/09
8. Bin / binti : Belum pernah
9. Status perkawinan : Belum pernah
 - a. Jika pria, terangkan jejak, dada atau beristri dan berapa istrinya
 - b. Jika wanita, terangkan perawan atau janda
10. Nama istri / suami terdahulu : Sahid

Demikianlah, surat keterangan ini dibuat dengan mengingat sumpah jabatan dan untuk digunakan seperlunya.

Jaya, 17-7-11
Kantor Desa / Lurah
ADE HERMAN
NP. 1064000220090110002

*) nama lengkap

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



KARTU KELUARGA

No. 3215032609070014

K 32150691833

Nama Kepala Keluarga : SAPNAH
 Alamat : DUSUN KALIMAJAYA
 RT/RW : 009/004
 Desa/Kelurahan : PUSEURJAYA

Kecamatan : TELUKJAMBE TIMUR
 Kabupaten/Kota : KARAWANG
 Kode Pos : 41361
 Provinsi : JAWA BARAT

No.	Nama Lengkap	NIK	Jenis Kelamin	Tempat Lahir	Tanggal Lahir	Agama	Pendidikan	Jenis Pekerjaan
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	SAPNAH	321503488700002	PEREMPUAN	KARAWANG	05-06-1970	ISLAM	TAMAT SD/SEDERAJAT	MENGURUS BLANJA TANGGA
2	RUKI LEONARDO	3215031919340003	LAKI-LAKI	KARAWANG	11-06-1994	ISLAM	SL TRISEDRAJAT	PELAJAR MAHASISWA
3	KRISTIN	321503488700008	PEREMPUAN	KARAWANG	08-09-1999	ISLAM	BELUM TAMAT SD/SEDERAJAT	PELAJAR MAHASISWA
4	KALINASH	3215032398220006	PEREMPUAN	KARAWANG	13-08-2002	ISLAM	BELUM TAMAT SD/SEDERAJAT	PELAJAR MAHASISWA
5								
6								
7								
8								
9								
10								

No.	Status Perkawinan	Status Hubungan Dalam Keluarga	Kewarganegaraan	Dokumen Imigrasi		Nama Orang Tua		
				No. Paspor	No. KITAS/KITAP	Ayah	Ibu	
(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	
1	CERAI MATI	KEPALA KELUARGA	INDONESIA			EDOKASO	EMI	
2	BELUM KAWIN	ANAK	INDONESIA			TENGAH SMATUPANG	SAPNAH	
3	BELUM KAWIN	ANAK	INDONESIA			TENGAH SMATUPANG	SAPNAH	
4	BELUM KAWIN	ANAK	INDONESIA			TENGAH SMATUPANG	SAPNAH	
5								
6								
7								
8								
9								
10								

Dikeluarkan Tanggal : 22-10-2009
 LEMBAR : I. Kepala Keluarga
 II. RT
 III. Desa/Kelurahan
 IV. Kecamatan

KEPALA KELUARGA

 SAPNAH
Tanda Tangan/Tempat

KEPALA DINAS KEPENDUDUKAN DAN PENCATATAN SIPIL

 H. DADANG B.I. SH
 NIP. 19550301198503 1009

□ 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



PROGRAM NIKAH SIRRI MENUJU KEHIDUPAN SURGAWI

**DARI PADA KITA BERDOSA BERPACARAN SELALU, BUKANKAH LEBIH
BAIK SEGERA NIKAH SECARA SIRRI DAHULU? BURUAN!!!
BARULAH TAHAP BERIKUTNYA, DIRESMIKAN DIHADAPAN PENGHULU.
BAGI YANG BELUM ADA CALON, INSYA ALLAH JUGA TERBANTU
JODOHNYA EXTRA CEPAT.**

BIAYA RP. 400.000,-

PROF. KYAI H. [REDACTED]

JL. [REDACTED] DAERAH BUKIT DURI / [REDACTED] KEC. TEBET
JAKARTA SELATAN. BUKA : 07.00 - 19.00 WIB IZIN : 2.293/0994/PK.SDP.261/1.755

HP. 0817 [REDACTED] [REDACTED] LP.(G21) [REDACTED]

MENGIKHTIARI PULA KEMENANGAN PILKADA/POLITIK/EKONOMI DLL

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
 - Ijtihad, supplementary
 - 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 concurrence

- 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