


The Phenomena of Kabalutan In The Highlights of Islamic Marriage Law

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Abstract

Introduction: The ease of carrying out marriages and divorces in Kabalutan Village, Talatako District, Tojo Una Una Regency. One of the local residents was reported by the mass media that for marriage or divorce it is enough to bring it to the Penghulu. Whereas the real task of the Penghulu is to provide supervision and registration of marriages. Can get married if the bride does not have a Guardian.

Purposes of the Research: It is important to know and analyze how the implementation of marriage in Kabalutan Village is viewed from the perspective of Islamic law.

Methods of the Research: The method used is an empirical legal research method with primary data sources from religious leaders, community leaders, and the community in the village.

Results of the Research: So that the validity of a marriage is realized and in accordance with the objectives of the Marriage Law and also the Compilation of Islamic Law which states that marriage is a marriage, namely a very strong contract or *mitsaqan ghalizhan* to obey Allah's commands and carry them out is worship. The people of Kabalutan Village generally have unregistered marriages or marriages that are not registered due to the long distance and the cost of accommodation which is quite expensive to report and register their marriages to the relevant agencies.

Keywords: Marriage; Kabalutan; Islamic Law

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INTRODUCTION

Marriage is a sacred event. Its sanctity demands that all areas of life participate in governing it. Starting from religion, country, custom, and society itself. The settings must be harmonious, not conflicting. If it is contradictory then what happens is conflict in society. So that the state is also very careful in providing rules for this marriage. Evidenced by the slow amendments to the Marriage Law, from 1974 to 2019. The community waited 45 years for amendments, and even then only 1 article, namely Article 7 regarding the minimum age for marriage. Initially 19 years for men and 16 years for women. Now both are 19 years old, both for men and for women. However, people are still hobbled in practicing it. Based on the research results show this.¹

¹ Susi Susilawati, Ashar Ridwan, and Sitti Fatimah Madusila, 'CRIMINAL LIABILITY AGAINST PERPETRATORS OF FRAUDULENT CRIMINAL ACT BY HYNOSIS Susi Susilawati 1, Ashar Ridwan 2, Sitti Fatimah Madusila 3', 6.1 (2021), p. 40-49.

Article 2 of the Marriage Law confirms that a marriage is valid if according to the religion and belief of the bride and groom it is legal and registered at the Marriage Registrar. Therefore, the state surrendered the validity of a marriage to the respective religious laws. For Muslims, Islamic marriage law is the guideline.

There are 5 pillars of legal marriage in Islamic Law based on the consensus of the scholars, namely the existence of the groom and bride, the guardian of the bride, 2 witnesses, the pronouncement of consent and qabul.² While the requirements for a valid marriage are as follows: Muslim, not a mahram, marriage guardian for women, attended by witnesses, not in ihram or pilgrimage, and not forced.³ For a Muslim is required to obey the law wherever it is and at any time. It is not permissible to be half-hearted in carrying out its shari'at. In accordance with the word of Allah QS. Al-Baqarah Verse 208, which means "O you who believe, enter into Islam as a whole, and do not follow the steps of satan". A theory of *receptio a contrario* coined by Hazairin states that if there are customs that conflict with Islamic law, then Islamic law will apply. A fact illustrates the opposite situation, as happened in the Togean Islands Widow Village. If seen from the picture below, the people use Muslim clothing. Islamic marriage law should be practiced there.

Some information from the mass media states that women in the village cannot be taken out of the village even though they are already the wife of the husband who will take her from the village.⁴ So that many men left her and became known as the widow's village because many women who were abandoned by their husbands left their hometowns. In fact, many of them are still young.⁵ In addition, 60 percent of the population are women as stated by the Tempo media.⁶

It is as if the Office for Religious Affairs and the Religious Courts are not functioning there, because getting married is easy and divorce is the same. To get married if it is according to the rules, even though it is made easy, there is a specified time period so that it doesn't seem rushed. For example, an application for marriage at the Office for Religious Affairs must be at least 10 days before the marriage takes place. So that there is notification to the public if there are objections or other matters related to the bride and groom. As for divorce. The state and religion have agreed to make it difficult, because there are things that must be protected, especially those who already have children. Sometimes, the cause of divorce is just a trivial factor that actually has a solution so that the divorce doesn't happen. Therefore, the state handed it over to the Religious Courts for Muslims. The divorce process is not easy, as easy as what happened in the Widow's Village. However, it takes time to mediate and present evidence as well as witnesses for the accusations filed by the requesting party. So it's not only not easy, it's also not the Penghulu who can marry and divorce a family, as mentioned by one of the residents in the Widows Village.⁷ The task of the Penghulu can marry if the guardian of the woman cannot be the marriage guardian. So, getting married is not the main task. Especially divorce. Only through a Court Decision can

² HR. Buhkari: 5136, Muslim: 3458

³ HR. Buhkari: 5136, Muslim: 3458

⁴ Imam Kusnin Ahmad, 'Kampung Janda: Boleh Dikawin, Dibawa Jangan', *CoWasJP*, 2016 <<https://www.cowasjp.com/read/1685/20161016/050522/kampung-janda-boleh-dikawin-dibawa-jangan/>>..

⁵ *Ibid*

⁶ Fahmi Ali, 'Potret "Kampung Janda" Di Kepulauan Togean', *TEMPO.CO* (Pulau Kabalutan, 2016) <<https://foto.tempo.co/read/43935/potret-kampung-janda-di-kepulauan-togean#foto-2>>.

⁷ Imam Kusnin Ahmad. *Loc.Cit.*

a married status be changed to a Widow or Widower. Based on that, the research team will analyze how their marriage in the widow's village is according to Islamic Marriage Law. If their marriage is invalid, the legal consequence is that they commit adultery. Adultery in Islamic Law is included as hudud finger, because the punishment is written in the Koran, and it is a major sin.

METHOD

The research method used is an empirical legal research method. The approach is qualitative because in the process it uses data in the form of words, sentences and pictures.⁸ as well as researching natural objective conditions with the Research Team as the key instrument, using inductive data collection techniques and results that emphasize meaning rather than generalizations.⁹ The location of this research is in Kabalutan Village, Talako District, Tojo Una-Una Regency, Central Sulawesi Province. The determination of Kabalutan Village, Talako District, Tojo Una-Una District, Central Sulawesi Province as the research locus was based on the consideration that the area is known for its large number of widows and for divorce events it is very easy.¹⁰

RESULTS AND DISCUSSION

The implementation of marriages in Kabalutan Village is often only based on the law of religious marriage. In this village, all the people embrace Islam. Therefore, Islamic marriage law is complied with for the validity of their marriage. "Because all of them are Muslim so we married in Islam".¹¹ Indonesia has national regulations regarding marriage, namely the Marriage Law. Law Number 1 of 1974 concerning Marriage is a unification of marriage laws in Indonesia. The UUP has been amended by Law Number 16 of 2019, although only one article, namely changing the minimum age for marriage for women to 19 years. In the previous Article 7 Paragraph 1, 19 years for men and 16 years for women.

The definition of marriage etymologically comes from Arabic which means marriage or *zawaj*. These two words are commonly used in the daily life of Arabs and are found in the Al-Quran and the Hadith of the Prophet. *Al-Nikah* means *Al-Wath'i*, *Al-Dhomm*, *Al-Tadakhul*, *Al-Jam'u* or like '*an al-wath wa al aqd* which means intercourse, intercourse, gathering, intercourse' and contract. Whereas marriage in terminology is a contract that allows *istimta'* (coitus) to occur with a woman, as long as the woman is not with something that is forbidden either because of heredity or because of breastfeeding.¹² Article 1 of the Marriage Law states that marriage is a physical and spiritual bond between a man and a woman as a wife with the aim of forming a family (household) that is eternally happy based on Belief in One Almighty God.¹³

The meaning of the term marriage is broader than the term marriage. Marriage is a word that refers to matters related to a marriage bond or relationship. If marriage refers to a bond made or made by the husband and wife to live together, and or refers to a process of the

⁸Sugiyono, 2008, *Metode Penelitian Administrasi*. Alfabeta, Bandung, p. 15.

⁹Sugiono. 2009, *Metode Penelitian Kualitatif*. Alfabeta, Bandung, p. 1.

¹⁰ Imam Kusnin Ahmad, *Loc. Cit.*

¹¹ Arifuddin Manna, interview date 29 Juli 2022, Mosque Priest in Kabalutan Village.

¹² Mardani, 2011, *Hukum Perkawinan Islam Di Dunia Islam Modern*, Graha Ilmu, Yogyakarta, p. 4.

¹³ Undang-Undang RI Nomor 1 Tahun 1974 tentang Perkawinan, 2012, Citra Umbara, Bandung., p. 2.

bond, while marriage refers to matters that arise related to the implementation process and the consequences of marriage.¹⁴ By him, marriage includes not only the conditions and pillars of marriage and how marriage should be carried out, but also issues of rights and obligations of husband and wife, divorce maintenance, child care, guardianship and others. Thus, in this paper only marriage is used. The legal basis for marriage in Indonesia is Article 5 paragraph (1), Article 20 paragraph (1), Article 27 paragraph (1) and Article 29 of the 1945 Constitution; Decree of the People's Consultative Assembly Number IV/MPR/1973. Meanwhile, in Islam the legal basis is:

1) Proof of the Koran

Allah swt says in the letter An-Nisa Verse 3 and Al-A'raaf verse 189 which means in the following order: "And if you will not treat orphans fairly, then marry other women that you like, two, three, or four and if you are afraid that you will not be fair, one person is enough", and "He is the one who created you from a substance and from it he created his wife so that he would be happy". So that marriage is creating family life between husband and wife and children and parents in order to achieve a life that is safe and peaceful (*sakinah*), association that loves each other (*mawaddah*), and supports each other (*rahmah*).

2) Proof of As-Sunnah

From H.R. Bukhari Muslim narrated by Abdullah bin Mas'ud r.a from the Messenger of Allah who said: "O young people, whoever among you has the ability, then marry, because it can better hold the gaze and maintain honor. And whoever does not have that ability, let him always fast, because fasting is a control for him.

Marriage is an institution / institution. Thus, it takes commitment between the two parties who carry out the marriage in order to create a harmonious and loving family, so that the goal of getting offspring and fostering a harmonious family will also make it an ultimate goal in life as a form of fulfilling one's needs. biology and inner satisfaction. Marriage events in Kabalutan Village are rarely recorded. Most of them are not even recorded. This is because their area is far from the place of marriage registration or the Office of Religious Affairs. The closest figure is the Imam of the mosque and the easiest way is to fulfill the conditions and pillars of marriage according to Islam. For a marriage book, it is taken care of if things happen that require a marriage book or for people who want it. "I don't have a marriage book yet".¹⁵ Said a village secretary in the village. On that basis, it can be said that the village apparatus does not pay attention to the issue of registering marriages, let alone the residents. However, that does not mean the marriage is invalid.

A valid marriage is the fulfillment of the pillars and conditions for a valid marriage. Rukun is something that must exist, because it determines whether a job (worship) is valid or not, and something that is included in the series of jobs, such as the presence of a prospective bridegroom/groom in marriage. While conditions are something that must

¹⁴ Jamhari Makruf dan Asep Saefudin Jahar, 2013, *Hukum Keluarga, Pidana dan Bisnis Kajian Perundang-undangan Indonesia, Fikih dan Hukum Internasional*, Kencana Prenadamedia, Jakarta, p. 24.

¹⁵ Muhrir, interview date 30 Juli 2022, village secretary, Kabalutan Village.

exist, because they determine whether a job is valid or not. According to Islam, the bride and groom must be Muslim.

1) Marriage Pillars

Jumhur Ulama agreed that the pillars of marriage consist of:

- a) There are prospective husbands and wives who will carry out the marriage.
- b) There is a guardian from the bride's side.

The marriage contract will be considered valid if there is a guardian or his representative who will marry him off, based on the words of the Prophet saw:

أَيُّمَا امْرَأَةٍ نَكَحْتُ بِغَيْرِ إِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ (أَخْرَجَهُ الْإِسْبَاطُ لِلنِّسَاءِ)

Meaning: "Any woman who marries without the permission of her guardian, then her marriage is void".

- c) There are two witnesses. The implementation of the marriage contract will be valid if two witnesses witness the marriage contract.
- d) *Sighat* of the marriage contract, namely the consent granted by the Wali or his representative from the woman's side, and answered by the groom-to-be.

According to Hanafiah, the pillars of marriage are only consent and qabul (ie contracts made by the female guardian and the groom-to-be).¹⁶ Different from the previous statement, more than two conditions.

2) Conditions for Legal Marriage

The conditions of marriage are the basis for the validity of the marriage. If the conditions are met, then the marriage is valid and gives rise to all rights and obligations as husband and wife. Broadly speaking, there are two conditions for the validity of a marriage: 1) The prospective bride is lawful to be married by a man who wants to make her his wife. So, the woman is not a person who is illegitimate to marry, either because it is illegitimate to marry temporarily or permanently; 2) The marriage contract was attended by witnesses.

The conditions for the bride and groom are as follows:

a) Groom conditions:

- 1) The prospective husband is Muslim
- 2) Clear that the husband-to-be is indeed a man
- 3) The person is known and certain
- 4) The prospective groom is clearly lawful to marry the prospective wife
- 5) The prospective groom knows the future wife and knows very well that his future wife is lawful for him.
- 6) The prospective husband is willing (not forced) to carry out the marriage
- 7) Not doing ihram
- 8) Not having a wife who is forbidden to be married to a future wife
- 9) Not having four wives

b) Bride conditions:

- 1) Islamic religion
- 2) It is clear that she is a woman, not a *khuntsu* (sissy)

¹⁶ Abdul Rahman Ghozali. 2003, *Fiqh Munakahat*, Kencana, Jakarta, p. 45-48.

- 3) The woman is of course the one
- 4) Halal for future husband
- 5) The woman is not in a marriage bond and is not still in 'iddah
- 6) Not forced / *ikhthiyar*
- 7) Not in a state of ihram for Hajj or Umrah.¹⁷

Ijab Kabul in marriage has the following conditions. First, consent and qabul are done verbally. This is what is called *akad nikah* (marriage bond or agreement). According to Hanafiah, it is also permissible for the bridegroom's or his representative to accept the consent and the woman's (guardian's representative) to grant it if the woman is mature and wise. Second, consent and *qabul* are carried out in one assembly, and there should not be a long distance between the *ijab* and *qabul* which damages the unity of the contract and the continuity of the contract, and each *ijab* and *qabul* can be properly heard by both parties and two witnesses. Imam Hanafi allows a gap between consent and acceptance as long as it is still in the same assembly and there are no things that indicate one of the parties has turned away from the intent of the contract. The lafadz that is used for the marriage contract is the lafaz *nikah*, which translates to marry and get married. Because these sentences are found in the Book of Allah and the Sunnah. Whereas hanafi allows other sentences that are not in the Koran, for example using the sentences grant, alms, ownership and so on, with the reason, these words are figures of speech which are also commonly used in literary language or usually which means marriage.

Examples of marriage contract sentences are as follows: أَنْكَحْتُكَ.....بِنْتِ.....بِمَهْرٍ أَلْفٍ رُبِّيَّةٍ حَالًا.

Meaning: I will marry you to.....*binti*.....with a dowry of IDR 1,000 in cash. The answer or consent sentence that is used must be in accordance with the consent. The marriage ceremony must be attended by two witnesses who meet the requirements as witnesses, because witnesses are a requirement for a valid marriage.

As for the basis of marriage, it is obligatory to enter into a marriage contract and with certain words or sentences based on the words of the Prophet Muhammad SAW, which means: "Fear all of you to Allah in the case of women, in fact you make their genitals lawful with the words of Allah. (HR. Muslim).¹⁸

Meanwhile, the requirements for guardians in marriage are as follows. But before that, we will discuss the meaning of Wali. The word "Wali" according to the language comes from Arabic, namely *al-wali* with the plural *Auliyaa* which means lover, brother, or helper. Meanwhile, according to the term, the word "Guardian" implies a person who according to law (religion, custom) is entrusted with taking care of the responsibilities of an orphan, before the child becomes an adult the party that represents the bride at the time of marriage (that is the one who performs the marriage contract with the groom). The guardian in marriage is the one on whom the validity of the marriage contract lies, so the marriage is invalid without a guardian.

From some of the meanings above, it can be concluded that the guardian in marriage is the person who performs the marriage contract on behalf of the bride, because the guardian is a pillar of marriage, and a marriage contract carried out without a guardian is declared

¹⁷ *Ibid.*, p. 49-50.

¹⁸ Sayyid Sabiq, 2008, *Fiqh Sunnah*, Pena Pundi aksara, Jakarta, p. 72.

null and void. Guardians are the pillars of the five pillars of marriage, and marriage is not valid without a male guardian. According to Jumhur Ulama, it is of the opinion that the Wali is one of the pillars of marriage and there is no marriage if there is no Wali. Therefore, marriages carried out without legal guardians are invalid (canceled).

In addition, the Jumhur Ulama are of the opinion that marriage has several purposes, whereas women are usually influenced by their feelings. Therefore, he is not good at choosing, so he cannot obtain the main goals in this matter of marriage. This results in him not being allowed to take care of the contract directly but should be handed over to his guardian so that the purpose of this marriage is truly achieved perfectly.

According to Imam Hanafi, he is of the opinion that if the woman is mature and wise, she has the right to marry herself without a guardian. In addition, Abu Hanifah saw again that the Wali is not a requirement in the marriage contract. He made an analogy where when women are mature, intelligent and intelligent they are free to enter into *mu'amalat* laws according to *syara'*, then in a marriage contract they have even more rights, because marriage concerns their interests directly. In particular, women (widows) are given full rights regarding their own affairs and eliminate the interference of others in matters of their marriage. According to him, even though a guardian is not a requirement for a valid marriage, if a woman carries out her marriage contract with a man who is not in the same league as her, then the guardian has the right to *i'tiradh* (prevent marriage).

Requirements to become a Guardian:

- a) Islam (infidels are not valid as Wali)
- b) Baligh (illegitimate children to be Guardians)
- c) Reasonable (crazy people are not legal to be Guardians)
- d) Male (female is not legal to be Guardian)
- e) Just (unlawful wicked person to be Guardian)
- f) Not currently in ihram for Hajj or Umrah. ¹⁹

The marriage contract must be witnessed by two witnesses so that there is legal certainty and to avoid objections from the contracting parties at a later date. Witnesses in marriage must meet the following requirements:

- a) Reasonable, not insane
- b) Baligh, not children
- c) Free, not slave
- d) Islam
- e) The two witnesses heard. ²⁰

Marriage is a sacred event. Therefore, marriage must be carried out in accordance with the provisions of religion and the State. Article 2 Paragraph (1) of the Marriage Law states that marriage is valid if it is carried out according to the laws of each religion and belief. This article requires legalization of marriage from religious and spiritual aspects which results in individual legal consequences. Himself with his God. In Islamic Law, marriage is included in the category of worship. However, there is an opinion which states that

¹⁹ *Ibid.*, p. 73-74.

²⁰ Slamet Abidin dan H.Aminuddin, 1999, *Fiqh Munakahat*, CV.Pustaka Setia, Bandung, p. 46.

marriage is a *mu'amalat*.²¹ Paragraph (2) states that every marriage is recorded according to the applicable laws and regulations. If a marriage has been legalized by religion but is not recorded in the State Gazette, then the marriage is deemed not to have taken place. Thus, an unregistered marriage is a marriage that does not result in state law consequences. Therefore, the state cannot protect and guarantee and provide legal certainty to its citizens who enter into unregistered or unregistered marriages.²²

The principles adopted in the Marriage Law are as follows:²³

- a) Marriage aims to form a happy and eternal family.
- b) Marriage is legal if it is carried out according to the law of his religion and belief.
- c) Marriages must be recorded according to statutory regulations.
- d) The marriage is based on open monogamy.
- e) Prospective husband and wife must have entered their body and soul to get married.
- f) The minimum age for marriage is 19 years.
- g) Divorce is complicated and must be done before a court hearing.
- h) The rights and position of husband and wife are equal.

Based on the principles above, one of them is the minimum age for marriage, which is 19 years. To get the legality of marriage, all procedures must be carried out, including if there is a violation. If something urgent happens as described above and it befalls one of the bride and groom or both are under 19 years old, submission of a marriage dispensation application to the Court cannot be avoided.



Picture 1: Atmosphere in Kabalutan village

One of the areas far from the city center and government center in Indonesia is Kabalutan Village. Apart from neglecting the registration of marriages, child marriage has also become a habit. Whereas for the registration of child marriages or spouses/one of them is still under the age of marriage, the procedure is longer than the usual marriage procedure. Ordinary marriages only require notification to the village head and the local Office of Religious Affairs. Meanwhile, child marriages must first obtain dispensation from the Religious Courts in order to register their marriage at the Office of Religious Affairs. To go to the Office of Religious Affairs which oversees Kabalutan Village it is at the Office of Religious

²¹ A. Kadir. 2020. *Perspektif Baru Hukum Perkawinan Islam Nikah, Talak, Rujuk*. Fatawa Publishing, Semarang, p. 7.

²² Siri comes from Arabic which means secret. Serial marriages in Indonesian society are usually pinned to marriages that are not registered with the Marriage Registration Officer.

²³ Hilman Hadikusuma, 2007. *Hukum Perkawinan Indonesia menurut:Perundangan, Hukum Adat, dan Hukum Agama*. Print III, CV. Mandar Maju, Bandung, p. 6.

Affairs Walea Islands with a distance of 21.2 km and to the Religious Court which is in Ampana City which is 78.9 km.

On that basis, they only rely on "Penghulu" to marry off local residents so that their religion and society are recognized. The meaning of "Penghulu" there is different from the true meaning of Penghulu. Penghulu in Kabalutan Village is not appointed by the Government or the State, but is taken from a religious figure who is seen as able to apply for a marriage consent.

Penghulu according to the Big Indonesian Dictionary is derived from the word "hulu" which means head, it can be interpreted that the penghulu is a head who specifically handles matters related to Islamic religious affairs.²⁴ The existence of princes as officials in government has existed since the existence of Islamic kingdoms both in Java and outside Java, including the Dutch colonial government.

As stipulated in Law no. 22 of 1946, that the duty of the PPN (Marriage Registrar) who is called Penghulu, is as a servant of marriage registration for Muslims. In the Marriage Law number 1 of 1974 as amended to Number 16 of 2019, rules have been established regarding the existence of marriage registrars as officials of the Ministry of Religion in carrying out the duties of service, supervision and fostering of marriages.²⁵

The legal basis of the Principality is:

- a) The legal basis of the Principality is:
- b) Law No. 32 of 1954 concerning the stipulation of RI Law dated 21 November 1954 No. 22 of 1946 concerning the registration of marriages, divorces and reconciliation throughout Java and Madura;
- c) Law Number 1 of 1974 as amended in Law Number 16 of 2019 Concerning Marriage;
- d) RI Government Regulation Number 9 of 1975 Concerning the Implementation of Law No. 1 of 1974 concerning Marriage;
- e) Joint Regulation of the Minister of Religion and the Head of the State Civil Service Agency No. 20 of 2005 and No. 14 A of 2005 concerning Instructions for Implementing the Functional Position of the Penghulu and Credit Score;
- f) Minister of State Apparatus Empowerment Regulation Number: Per/62/N.PAN/6/2005 Concerning the Functional Position of the Penghulu and Credit Score;
- g) Regulation of the Minister of Religion of the Republic of Indonesia Number 11 of 2007 Concerning Marriage Registration.²⁶

As regulated in Law no. 22 of 1946 Jo. UU no. 32 of 1954 concerning Registration of Marriages, Divorces and Referrals, states that for Indonesians who are Muslim the registration of marriages is carried out by P3NTR. This condition applies to all of Indonesia, in accordance with Law no. 32 of 1954 according to Article 1 paragraph (1) of Law no. 22 of 1946 marriages carried out according to the Islamic religion are overseen by officials appointed by him. Based on this provision, the position of the prince is still maintained as a

²⁴ Tim Penyusun Kamus, Pusat Pembinaan dan Pengembangan Bahasa, Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia*, Third Edition, Balai Pustaka, Jakarta, Print IV, 2007, p. 850.

²⁵ Yufi Wiyos Rini Masykuroh, *BP4 Kepenghuluan*, (Bandar Lampung: Fakultas Syari'ah, 2014), p. 2-3

²⁶ *Ibid*, p. 3

government employee, but his job is only to supervise marriages, which means that the duties and functions of the prince are narrowing.

Provisions regarding the duties and functions of princes as princes are getting stronger with the existence of Law no. 1 of 1974 as amended by Law no. 16 of 2019, along with No. 9 of 1975. Based on Article 1 letter e PMA No. 2 of 1990 that the head of the PPN is the head of the subsection of kepenghuluan at the office of the Regency or Municipal Religion Department, the obligation of the PPN or the headman to supervise the implementation of the duties of a marriage registrar.²⁷ As well as the principal duties of the penghulu based on Chapter II article 4 of the Regulation of the Minister of Administrative Reform No. PER/62/M.PAN/6/2005 concerning the functional position of the prince and his credit score, including recording the activities of the penghuluan, supervising the registration of marriages and reconciliation, implementing marriage and reconciliation services, counseling and counseling on marriage and reconciliation, monitoring violations of marriage provisions and refer, munakahat legal fatwa services and muamalah guidance, sakinah family coaching and leadership development.²⁸ Meanwhile, according to PMA No. the principal duties of the headman. 11 of 2007 as follows:

- a) Article 3 paragraph (1) that the VAT referred to in Article 2 paragraph (1) in carrying out their duties can be represented by the headman or the PPN.²⁹
- b) Article 4 paragraph (1) implementation of the duties of the penghulu or PPN as stipulated in Article 3 paragraph (1) is carried out based on the mandate given by the PPN.

Then the Penghulu has a function as a functional position based on minister of empowerment and state apparatus Regulation No. PER/62/M. PAN/6/2005 as follows:

- a) Implementation of registration of marriage or reconciliation for Muslims,
- b) Implementation of marriage guardian judge,
- c) Supervision of the truth of marriage events or reconciliation,
- d) *Munakahat* and *Ahwal Syakhsyiyah* law development,
- e) *Bride and Groom Coaching*,
- f) *Sakinah Family Development*.³⁰

Regarding the main tasks and functions of the headman, which in fact contributes to the development of a prosperous family. Even in the newest structure, the headman is also emphasized to establish cross-sectoral relations with the apparatus and the community in the fields which are the main tasks and functions of the headship.³¹ Based on the principal duties and functions of the prince above, the prince is also in BP4 Kepenghuluan, the prince has the following powers:

- a) Provide guidance, advice and information regarding marriage, divorce, divorce and reconciliation to the community, both individuals and groups;
- b) Provide guidance on laws and regulations related to the family;

²⁷ Waisul Qurni, "Sanksi Bagi Penghulu Ilegal dalam Undang-undang No. 22 Tahun 1946 Jo. Undang-undang No. 32 Tahun 1954". (Islamic Family Law Study Program Thesis Universitas Islam Negeri Syarif Hidayatullah, Jakarta, 2014)., p. 56-57.

²⁸ Yufi Wiyos Rini Masykuroh., *Op. Cit.*, p. 7-8.

²⁹ Peraturan Menteri Agama No. 11 Tahun 2007 About Marriage Registration

³⁰ Yufi Wiyos Rini Masykuroh., *Op. Cit.* p. 16

³¹ Waisul Qurni, *Op. Cit.*, p. 57.

- c) Provide mediation assistance to parties who have litigation outside the Religious Courts;
- d) Provide advocacy assistance in overcoming marital, family and household disputes outside the Religious Courts;
- e) Reducing the occurrence of disputes and divorce, irresponsible polygamy, underage marriages and unregistered marriages;
- f) Cooperate with agencies, institutions and organizations that have the same goals both at home and abroad;
- g) Publish and distribute marriage and family magazines, books, brochures and electronic media as deemed necessary;
- h) Organizing bride and groom courses, upgrading or training, discussions, seminars and similar activities related to marriage and family;
- i) Organizing family education to increase appreciation and experience of the values of faith, piety and good morals in order to foster a sakinah family;
- j) Play an active role in cross-sectoral activities aimed at fostering a sakinah family;
- k) Increase efforts to empower the family economy;
- l) Efforts and other efforts deemed beneficial for the benefit of the organization as well as for the happiness and welfare of the family.³²

Thus the main tasks, functions and authority of the penghulu are very strategic in determining the success of implementation, as well as Religious Affairs office services in the field of marriage and fostering a sakinah family in welfare and facilitating Muslim communities to register marriages.³³



Picture 2: House in Kabalutan

By looking at their situation and condition in Kabalutan Village. Livelihoods as fishermen and living on the beach with inadequate housing standards and their simple lives, so the long distance and of course the costs are quite expensive to carry out marriage registration according to statutory regulations, is very burdensome for them. However, when asked about its validity, they acknowledge and try to follow Islamic teachings. Based on the explanation above, it is true that the rumor there is that getting married and divorced in

³² Asep Sihabul Millah, 2014, "Peran Penghulu dalam Implementasi UU No. 1 Tahun 1974 Tentang Perkawinan", 14-15, <http://www.scribd.com>.

³³ Yufi Wiyos Rini Masykuroh, *Op. Cit*, p. 4

Kabalutan Village is so easy. Due to the situation and condition of the people who are far from the center of government and financial constraints are quite high. The only way of transportation is by sea. The cheapest boat schedule is not available every day. Speedboard fees are only for visitors whose planned budget can only reach them.

Apart from being Muslim, the people of Kabalutan Village are also mostly Bajo.³⁴ In the implementation of community marriage, there are three laws that regulate namely religious law, positive law, and customary law. Marriage is an inseparable part of the customs and culture of the Bajo people. In the marriage custom of the Bajo people, the traditions are the most complex and involve a lot of emotions. How could it not be, starting from the application ritual to the completion of the wedding reception, all families related to the bride and groom will be involved.

In the marriage customs of the Bajo tribe, the term botteh is known. Botteh in the implementation process is not much different from the marriage process in general which is in accordance with Islamic Shari'a, among others, the process is :³⁵

1) *Massuro*

The first process is an application or in the Bajo language, massuro. Massuro is not much different from an application in general, namely with the aim that the time of entering into marriage is based on the willingness obtained from research, knowledge, and awareness of each party.

2) *Sibukke*

Second, the deliberations, which in the Bajo language are busy reconciling or discussing previous agreements such as wedding expenses and dowries.

3) *Madutai*

Third, the provision of dowry, which in the Bajo language is madutai, is a mandatory gift from the prospective husband to the prospective wife as the sincerity of the prospective husband to create a feeling of love for a wife for her future husband.

4) *Kurintinigi*

Fourth, the night of henna leaves or what is commonly called self-cleaning which in the Bajo language is kurintinigi. This process is carried out at night right before the wedding day.

5) *Law Pabbotengang*

Fifth, the marriage contract or in the Bajo language, namely Law Pabbotegang and Reception. Law Pabbotegang is an agreement between the two parties to form a family.

6) *Resepsi*

Sixth, the reception is an event or a sign of gratitude and gratitude. In the Bajo tribe, receptions are divided into two, namely, day and night receptions. During the day it

³⁴ Drama Muluk, interview date 24 Juni 2022 with the Head of the Office of the Ministry of Religion Tojo Una Una.

³⁵ Amson Patanda, interview date 25 Juni 2022, Chairman of the Indonesian Penghulu Association Ampana Tojo Una-Una Regency.

is allocated for the elderly while the evening one is for young people or what the Bajo people call young people.

7) *Namarola*

Seventh, the bride's return visit to the groom's house or in the Bajo language is *namarola*. The bride's party during the visit brought several gifts to be handed over to the groom.

The interpretation that appears in the understanding of some Bajo people regarding gifts from the man to the woman which includes financing in marriage is still lacking. In the marriage customs of the Bajo tribe, especially in Kabalutan Village, there is a term for giving, namely *gindes*. Giving *Gindes* (white cloth) to prospective women from the Bajo community in Kabalutan Village, Talatako District, Tojo Una-Una Regency, Central Sulawesi Province is one of the stages in the traditional *Botteh* wedding tradition of the Bajo tribe. If the person you want to ask for is a girl, then the *Gindes* brought by the groom is about 20 m long. However, if the betrothed is a widow, then the length of the *Gindes* is only 10 m. The meaning of determining the length of the *Gindes* is a form of respect for the prospective bride. Then the *Gindes* is worn around the neck of the prospective groom. And *Gindes* is given to the prospective bride when the Day of the dowry process arrives.³⁶ There is a culture that has developed in the village that men who marry Bajo women cannot be taken out of the village even if they have children. Likewise, if both are from the Bajo tribe, the woman also cannot leave their island. Other regulations also include men and women who are found together (dating) outside the home will immediately be married according to custom. The term there is "mate in the hands of *Hansip*".³⁷

Mr Arsan told the story of his marrying a Bajo person. He could not take his wife out of the island because of the customary traditions that still apply. He really wanted to go out to improve his fortune however, he could not take his wife with him. Like it or not, like it or not, Mr Arsan must accept the customary provisions set forth on the island that anyone who wants to marry a Bajo must live on the island. Another factor is the belief of the Bajo tribe that when a Bajo woman leaves the island, she will be sick that cannot be cured and how long it cannot be determined if they do not touch salt water. Until now the custom is still valid and believed to be hereditary.³⁸ Based on that too, many newcomers marry women from the Bajo tribe and then leave them because of their provisions and beliefs. Thus, the term "widow village" appeared. Given that at that time many widows were left behind by migrants. Although now, the title is no longer desired by its citizens. "that was before, now so no".³⁹

CONCLUSION

The people of Kabalutan Village are Muslim. The majority tribe is the Bajo Tribe. The marriage tradition of the Bajo tribe with Islamic marriage law is in harmony because the customs of the Bajo tribe are based on Islam. Especially his marriage. Unregistered marriages or unregistered marriages are still common. Likewise child marriage is a local

³⁶ Saleng naibu, interview date 26 Juni 2022 with the religious leader of 2 Kabalutan Village.

³⁷ Arsan Busurah, interview date Tanggal 31 Juli 2022 with the residents of Kabalutan Village.

³⁸ *Ibid*

³⁹ *Ibid*

custom. Especially if caught red-handed making love between a man and a woman. In general, both are still young, puberty. Then the term "mate in the hands of Hansip" appeared. Long distances and expensive accommodation costs cause them to be reluctant to arrange marriage registration according to statutory regulations

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