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Dates:

Received 16 April, 2023
Revised 22 Mei, 2023
Accepted 29 June 2023
Published 30 June 2023

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A FEMALE LEADERS IN THE PERSPECTIVE OF ISLAMIC LAW AND LEGAL REGULATIONS

Abstract: *Penghulu is a profession with the function and task of representing the Government in registering and supervising marriages. Then how women become rulers is seen in Islamic laws and regulations. This writing uses library research methods with a qualitative descriptive approach. The results of this discussion stated; First, from a juridical-normative perspective, if a woman is appointed as an upstream, her position will be questioned if she performs her duties as a guardian judge, which in fiqh must be male. Second, it is considered that there are still problems in entering the public sphere for women, such as supervising and registering marriages in mosques when they are impure and attending marriage contracts carried out outside the office and outside working hours. Then in PMA Number 20 of 2019 concerning Marriage Registration, it has been explained that both men and women can hold leadership. Likewise, the Regulation of the Minister of State Apparatus Empowerment Number 9 of 2019 concerning the Functional Position of Upstream also does not require that a male Penghulu hold the Penghulu.*

Keywords: *Penghulu, Women, Islamic, Law*

INTRODUCTION

Many women occupy strategic positions in the legislature, executive, and social life. As is the case with eight city/regency regional leaders, fourteen are held by women, including; Dewi Hanjati Regent of Tanngamus (Lampung), Ade Munawaroh Yasin Regent of Bogor (West Java), Anne Ratna Mustika Regent of Purwakarta (Central Java), Ade Uu Sukaesih Mayor of Banjar, Umi Azizah Regent of Tegal (Central Java), Khofifah Inda00r Paranwansa (East Java) Puput Tantriana Sari Regent of Probolinggo (East Java), Mundjidah Wahab Regent of

Jombang (East Java), Anna Munawarah Regent of Bojonegoro (East Java), Ika Puspitasari

Mayor of Mojokerto (East Java), Iti Octavia Jayabaya Regent of Lebak (Banten), Paulina Haning Bullu Regent of Rote Ndao (NTT), Erlina Regent of Mempawah (West Kalimantan), and Tatong Bara Mayor of Mobagu (South Sulawesi).

If women can occupy the position of the regional head, what about the female State Civil Apparatus (ASN) in Office work units Affairs Religion? KUA Subdistrict is an extension of the duties of the Regency/City Ministry of Religion Office in the field of Islamic Religious Affairs in the sub-district area. This government agency also organizes cross-sectoral activities in the sub-district area. As is the case with the sub-district KUA local government, it also requires an ideal distribution of roles and positions from a gender perspective because the users of KUA services are not only men but also men. Weather.

However, from its inception until now, structural positions at the KUA have always been filled by men, and women have never occupied them. One of the reasons is that the available positions within the KUA are considered the domain of men, such as the head of the KUA, besides being the head office official appointed as a judge's guardian: which is assumed to be the domain of men. So it is only natural that there is an assumption that female ASNs will only be on staff forever because, at the KUA, there are only two structural positions, namely head of office and staff. There are no other structural positions in it. Even if there is a functional position of the headman or the position of religious instructor, that, too, so far, has only been occupied by men.

This hope appeared when the Minister of Religion Decree (KMA) 477/2004 was issued concerning Marriage Registration. According to this KMA, the head of the KUA is not the headman nor the guardian of the judge. Women have the opportunity to serve as heads of KUA. The PMA 30/2005 concerning Guardian Judges was issued shortly after that. The last-mentioned PMA reappointed the head of the KUA as the judge's guardian. Since then, the opportunity for women to occupy the position of head of the KUA has been closed. Are there still other opportunities for women to devote and actualize themselves at KUA through their capacities and capabilities? To respond to this problem, religion does not impede any development as long as human life cannot be separated from its devotion to God. As in today's reality, there are many women who carry out public

activities, and muamalah transactions, share in the burden of providing for the family, and take part in practical politics as well as being judges, directors, sub-district heads, lurahs, ministers, mayors, and others. Based on his view on the role of women, religion does not criticize or hinder women from having a profession; this can be an important element for studying the profession of female rulers.

The task of the *Penghulu* is not specifically assigned to take care of religious affairs but has metamorphosed into a profession in the public space as a practitioner. *Penghulu* is a profession in Government with the function and duty of representing the Government in recording and supervising weddings.¹

The prince should ideally be the sole actor in carrying out his administrative duties in marriage registration, especially on urgent matters that require legal certainty for the community. In addition to being mandated by law, the *Penghulu* is also related to the ideals of legal certainty and protection of the parties.²

The development of the *Penghulu* profession that has occurred to date is the presence of female chiefs in the Palestinian State. She is Tahrir Hammad, a graduate of the Master of Contemporary Islamic Studies who has made history by becoming the first woman to be recognized by the Palestinian Government as the head of a marriage, which was previously only done by man.³

In the current context, the presence of female rulers is debatable, especially when faced with global issues such as gender. Of course, this is a form of discrimination against a woman, especially in the current context of the incessant struggle for women's rights. Based on the background description above, the writer formulates the problem: How are female rulers from the perspective of Islamic law and legislation?

¹ Regulation of the Minister of Religion of the Republic of Indonesia Number 11 of 2007 Concerning Marriage Registration, Article 1 paragraph 3.

² Law Number 32 of 1954 concerning Determination of the Applicability of the Republic of Indonesia Law of November 21, 1946 Number 22 of 1946 concerning Registration of Marriages, Divorces, and Reconciliation.

³ Gita Amanda, *Palestine Recognizes the Profession of Female Leaders*, <http://www.republika.co.id/berita/world-Islam/Islam-Nusantara/15/09/24/nv65re301-palestina-acknowledged-female-prince-profession>, Accessed September 24, 2015

RESEARCH METHODOLOGY

This paper's research method and approach use a qualitative method with a descriptive-analytic system. In this study, researchers did not need a research location and did not need research instruments, but researchers made direct observations of the existence of the headmaster to be studied. The author uses documentation techniques both journals, books, the internet, and other documents. Then the data analysis technique used in this study is a qualitative data analysis technique. Then the data is reduced by concluding the data, then sorting the data into certain conceptual units. The results of the data reduction are processed in such a way that the form looks more intact. This form can be in a synopsis, matrix, sketch, or other forms; this is necessary to facilitate the presentation and confirmation of conclusions.

RESULT AND DISCUSSION

Penghulu

Penghulu in the Big Indonesian Dictionary comes from the word "Hulu," which means head, chairman, or traditional head, so it can be interpreted that the *Penghulu* is the head who specifically handles matters relating to Islamic religious affairs in the district or municipality or also known as the official. Or a marriage registrar official who takes care of marriage administration by statutory provisions.⁴The existence of princes as government officials have existed since the existence of Islamic kingdoms both in Java and outside Java, including the colonial Government Dutch.

The term *Penghulu* is defined as a person assigned by the State to attend wedding ceremonies, carry out administrative checks, and register marriages. In the Regulation of the Minister of Religion and the head of the state civil service agency regarding instructions for implementing the functional position of the prince and his credit score in Chapter 1,

⁴Ministry of National Education, *Big Indonesian Dictionary*, Edition III (Jakarta: Balai Pustaka, 2007), p. 850.

article 1, it is emphasized that the prince is a civil servant as a marriage registrar who is given the task, responsibility, full authority and rights by the Minister of Religion or an appointed official by the applicable laws and regulations to supervise marriages and reconciliation according to the Islamic religion and pastoral activities.⁵

As stipulated in Law Number 22 of 1946 concerning the registration of marriages, divorces, and reconciliation, the duty of the PPN (Marriage Registrar), the *Penghulu*, is to serve as a marriage registration servant for Muslims. ⁶The position of *Penghulu* was born based on articles 2 and 3 of the law. The *Penghulu* was originally named "Deputy Marriage Registrar," appointed by the Minister of Religion and placed in the regional Religious Office at the residency level. ⁷In Marriage Law Number 1 of 1974, Article 2 paragraph (2), a rule has been established regarding the existence of marriage registrars as officials of the Ministry of Religion in carrying out service, supervision, and development duties in marriage.⁸

In matters of state civil service, the chief is a functional position in the religious family, having the position as a technical executor in carrying out headship activities at the Ministry of Religion. The Government authorizes *Penghulu* to oversee the implementation of the marriage law (UUP) and record marriages according to applicable laws. It has a special responsibility and role in serving the community in the field of *munakahat*.⁹ According to the Regulation of the Minister of Religion (PMA) Number 20 of 2019 concerning Registration of Marriages Article 1 paragraph 5 by the Regulation of the Minister of Administrative Reform and Bureaucratic Reform Number 9 of 2019

⁵Ministry of Religion of the Republic of Indonesia, *Guidelines for Implementing the Functional Position of the Penghulu and Credit Score* (Jakarta: Directorate of Islamic Religious Affairs and Sharia Development, Directorate General of Islamic Community Guidance, 2008), p. 3.

⁶Khoiruddin Nasution, *Indonesian Islamic Civil (Family) Law and Comparison of Marriage Law in the Muslim World: Historical Studies, Methods of Renewal, and Material & Status of Women in Islamic Marriage/Family Law* (Yogyakarta: Faculty of Sharia, Sunan Kalijaga State Islamic University, 2009), p. 332-333.

⁷ Law Number 22 of 1946 Concerning Marriage Registration, Divorce, and Reconciliation, Articles 2 and 3.

⁹ Regulation of the Minister of Administrative Reform Number PER/62/M.PAN/6/2005 Concerning the Functional Position of the *Penghulu* and his Credit Score.

concerning the Functional Position of the *Penghulu*, giving the understanding that the *Penghulu* is a civil servant who is given tasks, responsibilities, the authority and rights to carry out activities of marriage guidance and guidance or reconciliation, spiritual development, and Islamic community guidance.¹⁰

So the existence of a *Penghulu* as a functional position appointed by the Minister of Religion has a very heavy and noble task. It can function and play an active role in providing services to the community regarding marriage, especially those related to marriage services/relationships, professionally.

Legal basis Principality

In carrying out its main duties, the headman is guided by the legal basis for registering marriages which includes:¹¹

- a. Law Number 22 of 1946 concerning the Registration of Marriages, Divorces, and Reconciliation;
- b. Law Number 32 of 1954 regarding the determination of its validity Constitution RI date November 21, 1946 Number 22 of 1946 concerning Registration of Marriages, Divorces, and Reconciliation in all Regions Outside Java and Madura;
- c. Law Number 1 of 1974 concerning Marriage;
- d. RI government regulation Number 9 of 1975 regarding the implementation of Law Number 1 of 1974 concerning Marriage;
- e. Law Number 7 of 1989 concerning the Religious Courts as amended several times, most recently by Law Number 50 of 2009 regarding the second amendment to Law Number 7 of 1989 concerning the Judiciary Religion;
- f. Regulation of the Minister of Religion Number 2 of 1989 concerning VAT Assistants;
- g. Joint Regulations of the Minister of Religion and the Head of the State Civil Service Agency Number 20 of 2005 and Number 14A of 2005 concerning Instructions for

¹⁰Regulation of the Minister of Religion of the Republic of Indonesia Number 20 of 2019 Concerning Marriage Registration, Article 1, paragraph 5.

¹¹Yufi Wiyos Rini Masykuroh, *BP4 Penghuluan* (Bandar Lampung: Faculty of Sharia and Law, Raden Intan State Islamic University, 2014), p. 3.

- Implementing the Functional Position of the *Penghulu* and Credit Scores ;
- h. Regulation of the Minister of Administrative Reform Number: Per/62/N.PAN/6/2005 concerning the Functional Position of the Headmaster and Figures Credit;
 - i. Regulation of the Minister of Religion of the Republic of Indonesia Number 11 of 2007 concerning Registration Marry;
 - j. Regulation of the Minister of Religion Number 13 of 2012 concerning Organization and Work Procedures of Vertical Ministries Religion;
 - k. Presidential Regulation Number 7 of 2015 concerning Organization of State Ministries;
 - l. Regulation President Number 83 the Year 2015 about the Ministry of Religion;
 - m. Regulation of the Minister of Religion Number 34 of 2016 concerning Organization and Work Procedure of the District Office of Religious Affairs;
 - n. Regulation of the Minister of Religion Number 42 of 2016 concerning Organization and Work Procedure of the Ministry of Religion;
 - o. Regulation of the Minister of Religion of the Republic of Indonesia Number 19 of 2018 concerning Registration of Marriage;
 - p. Regulation of the Minister of Administrative Reform and Bureaucratic Reform of the Republic of Indonesia Number 9 of 2019 concerning the Functional Position of the *Penghulu*;
 - q. Regulation of the Minister of Religion of the Republic of Indonesia Number 20 of 2019 concerning Registration Wedding.

Main Duties, Functions, and Authorities Chief

As stipulated in Law Number 32 of 1954 concerning the stipulation of the enactment of Law Number 22 of 1946 concerning registration of marriages, divorces, and reconciliation states that for Indonesians who are Muslim, the registration of marriages is carried out by Assistant Officers for Registrar of Divorce and Referral Marriages (P3NTR). This provision applies to all of Indonesia by Law Number 32 of 1954. According to Article 1 paragraph (1) of Law Number 22 of 1946, marriages carried out according to the Islamic religion are supervised by officials he appointed. Based on this provision, the prince's position is still maintained as a government employee, but his job is only

supervising marriages.

Provisions regarding the duties and functions of princes as princes are getting stronger with the existence of Law No. 1 of 1974 concerning marriage, along with PP No. 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning marriage. Based on Article 1 letter e PMA Number 2 of 1990 that the head of the PPN is the head of the subsection of the *Penghulu* at the office of the Regency or Municipal Religion Department, the obligation of the PPN or the *Penghulu* is to supervise the implementation of the duties of a marriage registrar.¹²

According to the Regulation of the Director General of Islamic Community Guidance No. Dj.II/426 of 2008 concerning technical instructions for carrying out tasks and evaluating credit scores for functional positions of princes, the principal duties of the prince are to plan the activities of the *Penghulu*, supervise the registration of marriages or reconciliation as well as monitor and evaluate the activities of the *Penghulu* and the development of ke*Penghuluan*.

In PMA Number 20 of 2019 concerning Registration of Marriages Article 1 paragraph (5) in accordance with the Regulation of the Minister of Administrative Reform and Bureaucratic Reform Number 9 of 2019 concerning the Functional Position of the *Penghulu* Article 5, this regulation explains in detail the duties and powers of the *Penghulu* as executor of government duties domiciled as a civil servant. The principal duties of the principal include:¹³

- 1) Carry out marriage service and guidance activities or refer;
- 2) Leadership development; And
- 3) Community guidance Islam.

In carrying out their duties and functions, the *Penghulu* is divided into four groups: the first expert *Penghulu*, the junior expert *Penghulu*, the middle expert *Penghulu*, and the

¹² Regulation of the Minister of Religion Number 2 of 1990 Concerning Obligations of Marriage Registrars, Article 1.

¹³ Regulation of the Minister of Administrative Reform and Bureaucratic Reform Number 9 of 2019 concerning the Functional Position of the *Penghulu*, Article 5.

main ahi *Penghulu*.¹⁴

Regarding the main tasks and functions of the prince, who contributes to the development of a prosperous family, even in the newest structure, the prince is also emphasized to establish cross-sectoral relations with officials and the community in areas that are the *Penghulu*'s main tasks and functions.¹⁵

Thus, the *Penghulu*'s main tasks, functions, and authority are very strategic in determining the success of implementation, as well as KUA services in the field of marriage and fostering a *sakinah* family in prospering and facilitating Muslim communities to register marriages.¹⁶

Analysis of Appointment of Female *Penghulu* and Head KUA

Women in Islam get a noble position, and their rights and obligations are equal to men. This is emphasized in the Koran verses and the Prophet Muhammad's hadith.

The Word of Allah SWT in QS, Ali Imran: 195, which means: *Verily, I do not waste the deeds of those who do good deeds among you, whether male or female (because) some of you are descendants of others* ; QS. Al-Nahl: 97, which means *Whoever does good deeds, both men and women in a state of faith, then indeed We will give him a good life*.

The Prophet SAW also said: *A friend came to the Prophet SAW. Then asked: "Which human being has the most right to be treated well in friendship? The Prophet PBUH replied: Your mother! Then the friend asked again: Who else?. The Prophet PBUH replied: Your mother! Then the friend asked again: Who else?. The Prophet PBUH replied: Your mother! Then the friend asked again: Who else?. The Prophet then answered: Your father!* (HR. Bukhari-Muslim). Likewise, the Messenger of Allah, may God bless him and grant him peace, said: *Indeed, women are like brothers*. (HR. Ahmad, Abu Dawud and Tirmidhi)

¹⁴Regulation of the Minister of Administrative Reform and Bureaucratic Reform Number 9 of 2019 Concerning the Functional Position of the *Penghulu*, Article 5 Article 4, paragraph 2.

¹⁵Waisul Qurni, *Sanctions for Illegal Chiefs in Law No. 22 of 1946 Jo. Constitution No. 32 Year 1954* , (Jakarta: UIN Sharif Hidayatullah, 2014), p. 57.

¹⁶Yufi Wiyos Rini Masykuroh, *BP4 Penghuluan* (Bandar Lampung: Faculty of Sharia and Law, IAIN Raden Intan Lampung, 2014), p. 4.

The verse and hadith above are the basic principles of Islam's recognition of women's rights and the grace of glory God gave to Eve. Although Islam has based the integrative principle of women being equal to men, the fact is that the understanding of distortion between men and women has developed.

This distorted thinking is also based on the Koran verses and the Prophet Muhammad's Hadith. It is like in QS. Al-Nisa's: 34, which means: *Men are protecting women because of the advantages of one over the other and because of living Which they must give.* Then in QS. Al-Baqarah: 282: *Witness to a two-person man in between you guys, If No There is a two-person man, then a man, And a two-person girl.*

Meanwhile, the hadith used as a basis for subordinating women is, among others: *Unlucky is a nation that leaves its leadership to women.* (HR. Bukhari); and the words of the Messenger of God: *Don't once in a while a person female to be a priest prayer for men* (HR. Ibnu and Majah).

The distorted understanding between men and women is strengthened by the culture of a patrilineal society and the fact that the male generation is proportionally superior socially, economically, and politically compared to the female generation. This can be seen in the discussion of fiqh in women's leadership matters.

Ibn Rushd, in *Bidayat al-Mujtahid*, commented on the difference of opinion between Al-Tabari, who allows women to be judges in all matters, and Abu Hanifah, who only allows dispute treasure on one side and side other, with the majority of scholars who absolutely do not allow women to become judges:¹⁷According to Ibn Rushd, the scholars who reject women judges are they equate the problem of the position of women judges with leaders highest Country (*Al-Imamat al-kubra*) and enslaving women with slaves because of their lack of honor. Scholars who allow female judges for property matters (Abu Hanifah) then equate it with women's testimony in property matters. Another scholar (Al-Tabari), who allows women in all things, stated that the original law in this matter is that every

¹⁷ Ibn Rusyd, *Bidayat al-Mujtahid wa Nihayat al-Muqtashid* , juz II, (Beirut: Dar al-Kitab al-Arabi, 2006), hlm. 707

case is easily decided between humans. The law is permissible except in the case of the highest leadership of the State has been set apart by *ijma'* (for his impermissibility)."¹⁸

Difference of opinion between the three Imams (Maliki, Shafi'i, and Hanbali) who did not enable judging female _Ashes Hanifah, which allows female judges in the civil field. Muhammad b. Jarir al-Tabari, who enable judging female in everything affairs, was also commented on by Abdul Wahhab al-Sya'rani in *Al-Mizan al-Kubra*. According to him, the opinion of the majority of the school's imams is a strict opinion held by the Salaf and Khalaf scholars. While the second opinion presented by Abu Hanifah is light, and the third opinion expressed by Muhammad B. Jarir al-Thabari is very light. Based on Abdul Wahhab's analysis of al-Sya'rani, Abu Hanifah's, and Al-Thabari's argument that allows women to become judges is because the judge has to determine the law on dispute that includes *chap warning ma'ruf Nahi Munkar*. Meanwhile, amar ma'ruf and nahi munkar by the scholars themselves are not conditioned by the gender of male or female required.¹⁹

In particular, Abdul Wahhab al-Sya'rani also criticized the argument that is usually used as a reference to justify the ban on female judges. Namely, the hadith of Rasulullah SAW: *There will never be luck for people who leave their affairs to women's leadership*.²⁰ The criticism of the hadith is that the Prophet's words were motivated by the appointment of a queen from his daughter King Kisra (Persia). So this hadith does not explicitly prohibit judging Women.

Likewise, Abdul Wahhab al-Sya'rani criticized the opinion that forbidding female judges based on the empirical facts of the *murshid* (mentor tariqah-tasawuf), Which is generally from circles men. He said it was true that he had never heard of a woman in period *al-salaf al-shall* Who came on stage to become mentors Who

¹⁸ Abdul Wahhab al-Sya'rani, *Al-Mizan al-Kubra* , juz II, (Mesir: Mushtafa al-Halabi, t,th), hlm. 189

¹⁹ Abdul Wahhab al-Sya'rani, *Al-Mizan al-Kubra* , juz II, (Mesir: Mushtafa al-Halabi, t,th), hlm. 189

²⁰ Al-Imam At-Tirmidzi, *Sunan al-Turmudzi* : "Kitab al-Fitan an Rasulullah" no. 2188, Al-Imam An-Nasa'i, *Sunan al-Nasai* : "Kitab Adab al-Qudhat" no. 5293.

guided the tarekat students because of the lower degree of women. However, some are perfect among them, like Maryam, the daughter of Imran, and Asiyah, the wife of Pharaoh. So their perfection is related to piety and religion, not the establishment of laws among the people, and guides them to seclusion (treading) the tombs of saints.²¹

What Abdul Wahab al-Sya'rani put forward implies that there are cultural factors in women's subordination. In this case, the distorted understanding between men and women is also influenced by the culture of patriarchal society. This tendency can also be seen in the interpretation of the great scholar al-Hasan al-Bashri, regarding the judiciary being metamorphosed into a legislative body that is allowed to be occupied. *Clan Woman*, as listed in *Mughni al-Muhtaj* by Muhammad al-Khatib al-Syirbini. "When there are differences of opinion and contradictions in the arguments in a law, it is sunnah for the fuqaha to consult, according to the word of Allah SWT: "And consult with them in this matter" (QS. Ali and Imran: 159). Al-Hasan al-Basri said: The Prophet, it is not necessary to consult, but he wanted to make it a tradition for judges, until his words that what is meant by Fuqaha are those whose fatwa is accepted, then they include the blind and woman."²²

In other words, women are not allowed to be Islamic jurists but can be legal experts who are asked for a fatwa. Even in the beginning, when there was no separation between judges and jurists, women might have also been allowed to become experts in that field. This possibility can be seen from the view of Hanafiyah scholars who allow women to be judges. Likewise, in the case of marriage guardianship, where the Hanafiyah scholars differ from the other three scholars of the school, namely allowing women to be the guardian of an underage bride or the guardian of an underage son, or the guardian of a man who is not of sound mind, if not there is a male guardian. ²³This means that from

²¹ Abdul Wahhab al-Sya'rani, *Al-Mizan al-Kubra Juz II* (Mesir: Mushtafa al-Halabi, t,th), hlm. 189

²² Muhammad al-Khatib al-Syrbini, *Mughni al-Muhtaj Jilid IV*, (Mesir: Dar al-Kutub al-Arabiyyah, 1329 H) , hlm. 371

²³ Abd al-Rahman al-Jaziri, *Kitab al-Fiqh 'ala al-Mazahib al-Arba'ah* , Juz IV, (Mesir: Al-Maktabat al-Tijariyah al-Kubra, 1969), hlm. 53

the point of view of the provisions of judges and provisions of guardians, according to Hanafiyah scholars, female guardians are allowed.

The strong influence of patriarchal culture in the development of distorted understandings between men and women can also be seen in the development of fatwas regarding whether or not women are allowed to leave the house to the involvement of women in the public world. This is as revealed in *I'anat al-Thalibih 'ala Syarh Fath al-Mu'in*: "And among other things, if the (wife) leaves to make a living by trading, begging, or working when the husband is poor or unable to provide a living. What is meant (among them) in Syekh Zainuddin al-Malibari's statement are things that are allowed for a wife to leave the house (because of an emergency)."²⁴

The emergency reason for leaving the house is an exception from the main provisions of what law? It turns out that women are not allowed to leave the house because of fear of defamation. The question is, is the fear of defamation a decision or a guess? Ibn Hajar al-Haitama in *Al-Fatawa al-Kubra al-Fiqhiyyah* says that what is meant by fitnah is adultery and its *prelude* (which provokes adultery).²⁵ In other words, the fear of defamation is stronger than the suspicion factor. Because the thing that anyway concerns arising slander that also gives rise to the perception that a woman's voice is *aurat*, even though Abdul Karim al-Mathari al-Dimyathi disputes this in *Syarh al-Sittin*: "Women should not raise their voice when reciting the Qur'an in order to avoid the appearance of slander, although the correct opinion stated that the woman's voice was not *aurat*."²⁶

Analysis Of Appointment of Female Chiefs in Regulations Legislation _

KUA duties based on KMA No. 517 of 2001 are to carry out some of the tasks of the Regency/City Ministry of Religion Office in the field of Islamic Religious Affairs in the

²⁴ Muhammad Syatha al-Dimyathi, *I'anat al-Thalibih 'ala Syarh Fath al-Mu'in* , Jilid II, (Mesir: al-Tijariyah al-Kubra, t.th), hlm. 73-74

²⁵ Ibn Hajar al-Haitami, *Al-Fatawa al-Kubra al-Fiqhiyyah* , Jilid I (Beirut: Dar al-Fikr, 1493 H), hlm. 203

²⁶ Abdul Karim al-Mathari al-Dimyathi, *Sharh al-Sittin*, (Singapore: al-Haramain, t.th.), p. 109

sub-district area and organize cross-sectoral activities in the sub-district area. Meanwhile, the KUA function refers to the function of the Islamic Religious Affairs Section as stipulated in Article 88 KMA No. 373 of 2002 is providing services in the fields, namely (1) ke*Penghulu*an; (2) *sakinah* family guidance; (3) halal food; (4) social worship; and (5) the development of Muslim partnerships. Based on these duties and functions, each KUA holds positions that include the structural position of Head of KUA and the functional position of *Penghulu*.

The head of the sub-district KUA is a civil servant with the lowest and lowest structural position in the organizational structure of the Ministry of Religion who is domiciled at the sub-district level and is assigned the role of Marriage Registrar (PPN) and Judge Guardian as well as assisting some of the tasks of the Regency/City Ministry of Religion Office in the field of Islamic Religious Affairs within the sub-district area and organize cross-sectoral activities in the sub-district area. That includes providing services in the field of religion, fostering religious life, religious counseling, fostering a *sakinah* family, fostering social worship, fostering community partnerships, coaching zakat, waqf, pilgrimage, and others.

At first, the head of the KUA was in a high position because, in the early days of independence, the Ministry of Religion had two spearheads, namely the Religious Courts (PA) and the Office for Religious Affairs (KUA). PA officials are called religious judges, while KUA officials are called *Penghulu* or *naib*, specifically at the sub-district level, and are called *ketib*. The position of the head of KUA is tiered from the central to the sub-district level. However, along with the development of the Ministry of Religion organization, the position of head of KUA is only at the sub-district level. In contrast, those at the central, provincial, and district/city levels are integrated into the organizational structure of the Office of the Ministry of Religion. So, only the head of the sub-district KUA is still on duty in the field of marriage administration, especially since the promulgation of Law No. 1 of 1974, where the head of the sub-district KUA was appointed as a Marriage Registration Officer (PPN).

Then, in 2001 the Minister of Religion restructured the organization of the Ministry of Religion, including the Office of Religious Affairs. Based on KMA No. 517 of 2001, the

KUA's duties were expanded, namely carrying out some of the tasks of the Regency/City Ministry of Religion Office in the field of Islamic Religious Affairs in the sub-district area and organizing cross-sectoral activities in the sub-district area. Meanwhile, the function of the Islamic Religious Affairs Section, as regulated in Article 88 KMA No. 373 of 2002, is providing services in the fields, namely (1) *kePenghuluan*; (2) *sakinah* family guidance; (3) halal food; (4) social worship; and (5) the development of Muslim partnerships. Thus the head of the KUA does not only handle marriage administration but also other religious fields.

With this consideration, the assignment of the head of the KUA as VAT in the field of marriage administration is deemed inappropriate. The VAT position attached to the position of head of KUA through KMA No. 477 of 2004 about Recording Marry has revoked task as well as diverted to governing institutions. The consideration is that the head of the KUA is in a structural position while the *kePenghuluan* is in a functional position. However, as regulated by PMA No. 30 of 2005, the head of the KUA is still positioned as a judge's guardian, along with the position of the headman.

However, in 2007 the regulations binding the position of the head of the KUA were changed again. PMA No. 11 of 2007 explicitly states that the Head of KUA holds VAT. The rules regarding Marriage Registrar (PPN) are referred to in Chapter II Articles 2, 3, and 4 PMA No. 11 of 2007. Article 2 Paragraph (1) reads: "Marriage Registrar, in the future referred to as PPN, is an official who checks the requirements, supervises and records marriage/reconciliation events, registers divorce divorces, contests divorces, and carries out marriage guidance." Paragraph (2) states: "The Head of KUA holds VAT." While the prince's position according to PMA 11/2007 article 1 (3), the prince is a functional official of the Civil Servants who is given the task, responsibility, and authority to supervise marriage/reconciliation according to the Islamic religion and activities of the *Penghulu*. In the Joint Regulations of the Minister of Religion and the Head of the State Civil Service Agency Number 20 of 2005 and Number 14 A of 2005 and the Regulation of the Minister of Administrative Reform Number PER/62/M. PAN/6/2005 concerning the Functional Position of the *Penghulu* and his Credit Score, also explained that the *Penghulu* is a Civil

Servant as a Marriage Registrar who is given full duties, responsibilities, authorities, and rights by the Minister of Religion or an appointed official by statutory regulations which applies to supervising marriages/reconciliation according to the Islamic religion and pastoral activities.

Based on article 4 of MENPAN Regulation Number: PER/62/M. PAN/6/2005 concerning the Functional Position of the *Penghulu* and his Credit Score, the *Penghulu* has the main tasks, namely: (a) Planning the activities of the *Penghulu*, (b) Supervising the registration of marriages/arrivals, (c) Implementation of marriage/reconciliation services, (d) Advising and marriage/referral consultations, (e) Monitoring violations of the provisions of marriage/reconciliation, munahakat legal fatwa services and muamalah guidance, (h) Sakinah family development, (i) Monitoring and evaluation of *Penghulu* activities; (j) Leadership development.

In its development, the provisions regarding the registration of marriages have become clearer with the issuance of RI Government Regulation No. 9 of 1945 concerning the Executor of RI Law No. 1 of 1974 concerning Marriage even though using the term marriage. It has stipulated rules regarding the existence of marriage registrars as officials of the Ministry of Religion in carrying out the duties of service, supervision, and marriage fostering.²⁷

Furthermore, provisions regarding the registration of marriages specifically can be found in the Regulation of the Minister of Religion (PMA) Number 20 of 2019 concerning the Registration of Marriages used by Marriage Registrars in the guidelines for the implementation of marriages article 1 paragraph (5) it is emphasized that the prince is a civil servant as a registrar employee marriage that is given full duties, responsibilities, authorities and rights by the Minister of Religion or an official appointed by applicable laws and regulations. ²⁸To supervise marriages and reconciliation according to the Islamic

²⁷Yufi Wiyos Rini Masykuroh, *BP4 Penghuluan* (Bandar Lampung: Faculty of Sharia and Law, IAIN Raden Intan Lampung, 2014), p. 2-3

²⁸ Regulation of the Minister of Religion Number 20 of 2019 Concerning Marriage Registration, Article 1 paragraph (5).

religion and carry out administrative checks and registration of marriages.²⁹

As stipulated in the Regulation of the Minister for Administrative Reform and Bureaucratic Reform (PERMENPAN) Number 9 of 2019 concerning the Functional Position of the *Penghulu*, it has been determined that the *Penghulu* as a functional official is by the provisions of Government Regulation Number 16 of 1994, to oversee the implementation of the Marriage Law (UUP) as well as registering marriages according to applicable laws, having special responsibilities and roles in serving the community in the field of *mukahaah*.³⁰

To carry out the duties and responsibilities of the upstream functional official, it is mandatory to follow the provisions that apply in PMA Number 20 of 2019 regarding the registration of marriages stipulated in Article 1, paragraph 5 by the Regulation of the Minister of Administrative Reform and Bureaucratic Reform of the Republic of Indonesia Number 9 of 2019 concerning the Functional Position of the *Penghulu*, which states, among other things:³¹

1) Carry out marriage service and guidance activities or refer

Usually, ordinary people who want to get married come to the sub-district KUA to inquire and consult/guide on marriage registration procedures. In this case, the function of the functional *Penghulu* is as a service provider and marriage consultation/guidance. Likewise, if someone wants to make a referral.

2) development mastership

The development of this managerial activity is carried out in a plan. There are long-term plans, and there are short-term plans. The long-term plan is the annual activity plan (RKT), and the short-term plan is the one-month activity plan. So functional *Penghulu* is a planner for ke*Penghulu*an activities at the sub-district KUA.

This activity is carried out to make corrections and assess what activities have been

²⁹Ministry of Religion of the Republic of Indonesia, *Guidelines for Implementing the Functional Position of the Penghulu and Credit Score* (Jakarta: Directorate of Islamic Religious Affairs and Sharia Development, Directorate General of Islamic Community Guidance, 2008), p. 3.

³⁰Ahmad Rofiq, *Islamic Law in Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 2003), p. 11.

³¹ Regulation of the Minister of Religion Number 20 of 2019 Concerning Marriage Registration

carried out and what have not. The activities that are good and relevant to the situation conditions are maintained and improved, while those that are less relevant are omitted.

3) Community guidance Islam.

Penghulu provides guidance, advice, and information regarding marriage, divorce, divorce, and reconciliation to the community, individually and in groups.

From these regulations, it is understood that the *Penghulu* is in charge of two things: Providing guidance/advisory regarding marriage laws and wedding materials for brides and grooms who are about to marry and teenagers. *Second: Penghulu* activities are marriage service and guidance/referral activities as well as ke*Penghuluan* development, namely activities or efforts carried out by the *Penghulu*, including studying munakahat legal issues, developing advisory methods, counseling, and carrying out marriages /ref.³²

That the duty of the prince in the registration of marriages is very important because the prince is a Marriage Registrar who has a role in carrying out marriage registration, namely, notification of the will of marriage, registration of the will of marriage, examination of documents of the will of marriage, rejection of the will of marriage, prevention of rejection of cancellation of marriage, announcement of the will of marriage, approval permits and dispensations, marriage agreements, implementation of marriage registration at the KUA and outside the KUA until the final document to be given to the husband and wife, namely in the form of a marriage certificate.³³

Historically, the chieftain has been primarily tasked with dealing with religious matters. However, in its development, the chieftain was not specifically tasked with dealing with religious matters but has metamorphosed into a profession in the public sphere as a practitioner.³⁴In its development, the *Penghulu* has become a profession in Government with the function and duty of representing the Government in recording and supervising

³²Regional Office of the Ministry of Religion, *Association of Laws and Regulations in the Field of Religious Affairs* (Banda Aceh: Regional Office of the Ministry of Religion of Islamic Affairs, 2006), p. 448-449.

³³M. Irfan Fauzi, *Views of the Head of the Office of Religious Affairs, Wonosari District, Malang Regency for Helping Marriage Registrars After the Regulation of the Minister of Religion, Number 20 of 2019*, Sakina: Journal of Family Studies, Vol. 4, No. 3, 2020. <http://urj.uin-malang.ac.id>.

³⁴ Regulation of the Minister of Religion Number 11 of 2007 Concerning Marriage Registration, Article 1, paragraph 3.

marriages with the status of a "functional civil servant who is given the duties, responsibilities, authorities, and rights to supervise marriages/reconciliation according to the Islamic religion and activities mastership."³⁵

Regarding the main tasks and functions of the prince, who has contributed to developing a prosperous family in his newest structure, the prince is also emphasized to establish cross-sectoral relations with officials and the public in areas which are his main tasks and functions. Mastership.³⁶

So the existence of the headman as a functional position appointed by the Minister of Religion has a very heavy and noble task because he can function and play an active role in providing services to the community regarding marriage, especially related to marriage/referral services in a professional manner. Ideally, the *Penghulu* is the sole actor in carrying out the presiding role in marriage registration, especially on urgent matters that require legal certainty for the community and protection for the parties.³⁷

In the development of the headman in the Islamic world, the position of the headman is not only held by men but can also be held by women. The development of the prince's profession until now is the existence of a female leader in Palestine named Tahrir Hammad. She became the first female priest appointed by the Palestinian Government as a quality marriage priest. Tahrir Hammad admitted that he wanted to show that women can also do the job.³⁸This shows that the position of *Penghulu* can not only be held by a man but also by a woman.

Indonesia, as a democratic country, certainly very possible for this to happen; the possibility of having a female chief is very open when viewed from the principal duties of

³⁵Ibnu Qoyim Isma'il, *Javanese Penghulu Kiai: His Role in the Colonial Period*, (Jakarta: Gema Insani Press, 1997), p. 82-83.

³⁶Waisul Qurni, *Sanctions for Illegal Chiefs in Law No. 22 of 1946 Jo. Law No. 32 of 1954*, (Jakarta: UIN Syarif Hidayatullah, 2014), p. 57.

³⁷ Law Number 32 of 1954 concerning Determination of the Applicability of the Republic of Indonesia Law of November 21, 1946 Number 22 of 1946 concerning Registration of Marriages, Divorces, and Reconciliation.

³⁸Gita Amanda, *Palestine Recognizes the Profession of Female Leaders*, <http://www.republika.co.id/berita/dunia-islam/Islam-Nusantara/15/09/24/nv65re301-palestina-akui-profession-principal-women>, Retrieved September 24, 2015.

the chief. Of course, there is no prohibition if a woman also holds the position of the headman and does not require a man to be the headman. Practically, the task of *Penghulu* can be carried out by both men and women because it only deals with the process of marriage administration and marriage counseling. In addition, the law also does not require that the priest, as a marriage registrar, must be a male.

Referring to Regulation of the Minister of Religion (PMA) Number 20 of 2019 regarding marriage registration, it is stated that the prince is a Civil Servant who does not have clear provisions regarding the duties and functions of a prince, where the position of the prince is a civil servant/ASN who has his own SOP. Based on the law that refers to this, a woman is allowed to become a *Penghulu* in the administrative area. Included in Law Number 1 of 1974 concerning Marriage also does not specifically mention the prince, only mentioning the prince as a marriage registrar. Meanwhile, as previously discussed in the Regulation of the Minister of Religion, there are so many other tasks that a woman can do, especially in terms of her duties and functions.

The existence of female rulers and the possibility that women can hold female princes have also received the author's attention. However, there are not many references that can be used as references regarding this female prince. There are at least two scientific studies that have examined female rulers, namely the work of Saidah Nafisah and the work of Muhammad Masrur Rum. In Saidah Nafisah's work, she discusses the existence of female princes in Indonesian legal regulations, which explains that legally, the presence of female princes is possible in Indonesia because, in the Law on *Penghulu*, there is no obligation if the position of *Penghulu*, is held by a woman. After all, the law -The law only explains that the requirements to become a prince must be civil servants, where women or men can hold civil servants. The duties of a prince are not only to be the guardian of a judge in a marriage; many other tasks can be carried out by women who do not intersect with the duties of a magistrate.³⁹

Meanwhile, Muhammad Masrur Rum's work discusses the differences in views and

³⁹Saidah Nafisah, *The Existence of Female Leaders in Indonesia in the Perspective of Islamic Law*, (Yogyakarta: Faculty Shari'ah And Law UIN Sunan Kalijaga Yogyakarta, 2016).

arguments of members of the Tarjih and Tajdid Muhammadiyah Councils regarding female leaders in Indonesia. The research results from members of the Tarjih, and Tajdid Muhammadiyah Councils have opinions that allow female rulers and those that do not. Opinions allow the *first*, with the theory of hierarchy/levels of norms in Islamic law, to become princes up to the principles of women's equality. Second, the position of a chieftain, whose level is under the law up to the president, is also permissible. Third, the role of the female lead as the judge's guardian has a different function from the lineage guardian. Also related to the contradictory arguments about guardians through the *al-jam'uwat-taufiq method*, that women are also can If they become guardians, and women can also become princes to marry off. Meanwhile, the opinion that does not allow it is that the current law in Indonesia makes it impossible for women to become princes.⁴⁰

From a woman's perspective, having a female leader is necessary to guarantee women's rights as well as protection for women from the arbitrary actions of men. However, those who are against it say that it is unnecessary or should not be implemented.

CONCLUSION

In appointing women as *Penghulu* or head of KUA, there are two perspectives: juridical-normative and sociological-psychological. *First*, juridically-normative Article 3 Regulation of the Minister of Religion No. 30 of 2005 concerning Judges' guardians states that the judge's guardians are the Head of the Sub-District Office of Religious Affairs, *Penghulu*, and Assistant *Penghulu*. In other words, if female ASNs are appointed *Penghulu* or Head of the KUA, their position will be questioned if they carry out their duties as guardians of judges, who in fiqh must be a man. Even if using the opinion of Abu Hanifah and Muhammad B. Jarir al-Tabari, women may become juris, especially if they only handle marriage

⁴⁰Muhammad Masrur Rum, *Views of Members of the Muhammadiyah Tarjih and Tajdid Council on Female Leaders*, (Yogyakarta: Faculty of Sharia and Law UIN Sunan Kalijaga Yogyakarta, 2018).

administration. This is also contained in PMA Number 20 of 2019 concerning Registration of Marriages article 1, paragraph 5; it has been explained that the *Penghulu* is a PNS functional official (PNS) where both men and women can hold Civil Servants. Whereas the Regulation of the Minister of Administrative Reform and Bureaucratic Reform of the Republic of Indonesia Number 9 of 2019 concerning the Functional Position of the *Penghulu*, it also does not require that a male *Penghulu* must hold the *Penghulu* as a marriage registrar. As has been explained in the principal duties and powers of the *Penghulu* that in the main duties and powers, there is no prohibition against the female prince himself, while the prince himself is only related to the process of administering marriage and counseling. Wedding. *Second*, in a patriarchal society, it is considered that there are still obstacles to entering the ASN public space for women, such as supervising and recording marriages in mosques. At the same time, they are in an impure condition and attending marriage ceremonies that are held outside the office and outside working hours, and so on.

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