



THE CHALLENGING ROLE OF PENGHULU AND MARRIAGE ADMINISTRATORS IN BORDER AREAS OF INDONESIA: ENTIKONG AND SEKAYAM, WEST KALIMANTAN

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Abstrak: Studi ini menganalisis tantangan yang dihadapi oleh Kantor Urusan Agama yang menangani administrasi perkawinan di wilayah perbatasan Indonesia, Entikong dan Sekayam, Kalimantan Barat. Berdasarkan studi empiris di kedua wilayah tersebut, studi ini menemukan bahwa KUA belum dapat menjalankan perannya secara optimal. Hal ini karena daerah perbatasan menjadi wilayah yang tidak mudah dijangkau birokrasi karena lokasi yang terpencil dan sumber daya yang terbatas. Ketidakefektifan layanan KUA di daerah perbatasan telah menyebabkan berbagai masalah administrasi perkawinan, seperti perkawinan yang tidak terdaftar; dan praktik perkawinan yang dilarang, yaitu perkawinan berdasarkan pesanan atau kontrak (penyewaan rahim) dan menyembunyikan perkawinan sebelumnya dalam kasus poligami.

Kata kunci: Penghulu, Pernikahan, KUA, Entikong-Sekayam

Abstract: This study analyzes challenges faced by the Religious Affairs Office dealing with marriage administration in the Indonesian border areas, Entikong and Sekayam, West Kalimantan. Based on an empirical study in those two regions, this study finds out that KUA has not been able to play its role optimally as border areas are not an easy field to work it due to the remote location and limited resources. The ineffectiveness of KUA services in the border areas have led to problems related to unregistered marriages, and the practice of prohibited marriages, such as the marriage by order or contract (womb renting) and hiding of previous marriage in the case of polygamy.

Keywords: Penghulu, Marriage, KUA, Entikong-Sekayam

Introduction

Penghulu plays an important role in the enforcement of the marriage law. Indonesian laws and regulations (Marriage Law and Government Regulation No. 9 of 1975 regarding the Implementation of Law No. 1 of 1974) stipulate that every marriage should be registered by the state. For Indonesian Muslim citizens, the marriage registrar is called *penghulu*. The role of *penghulu* is stated based on Law No. 22 of 1946 on the Marriage, Divorce and Referral Registration. This means that *penghulu* should be available in every region in Indonesia. However, the task of *penghulu* in border areas can be challenging due to the limited infrastructures and the location in remote areas.

Among the border areas of Indonesia are Entikong and Sekayam. These two regions are sub-district located in the border of Indonesia and Malaysia and directly bordered with Kuching Sarawak District, Malaysia. By Government Regulation No. 26 of 2008 regarding the National Spatial Planning (RTRWN), the border area consists of one outer line and one inner line. The Outer Line is started from Point 0 to 4 km (in the direction of Indonesia), while the Inner one is started from 4 km to 10 km. On that basis, if it is calculated from the National Cross Border Post (PLPN), the sub-districts of Entikong to Sekayam are included in the border area of Indonesia. As the form of state presence in these two sub-districts, PLPN was established as an *exit/entry point* connecting Indonesia and the neighboring country.

The commitment to develop the border areas is outlined in the 2004-2025 National Long-Term Development Plan (RPJPN) and the 2004-2009 National Mid-Term Development Plan (RPJMN). In the 2004-2025 Long-Term Development Plan, it is stated that the national development should reach every Indonesian citizen, including in the border areas. The development of border areas is stated explicitly in the 2004-2009 National Medium-Term Development Plan (RPJMN), especially the agenda to reduce inequality among the regions. One of the goals is to accelerate the development of fast-growing, strategic, underdeveloped, and border areas within the integrative and synergistic system.

To achieve this goal, the mid-term development policy is directed toward the development of border areas, by turning from inward to outward-oriented. This outward orientation is defined as the utilization of border areas the national gate for economic and trade activities with

neighboring countries. As for the development approach, apart from the security approach, there is also a need to emphasize on welfare and environmental aspects.

In the National Mid-Term Development 2004-2009, the Border Area Development Program is established to achieve two main objectives, such as 1) maintaining the integrity of the Unitary of the Republic of Indonesia by determining Indonesia's sovereignty rights, guaranteed by the International law; and 2) increasing the welfare of the society by the exploration of economic, social, and cultural potencies, as well as the geographically strategic areas to develop relationships with neighboring countries.

Referring to the basic purpose of border region development, it seems that most of the development orientation solely emphasize on physical aspects. Nonetheless, this is not entirely appropriate, because the emphasize on welfare often negates the necessity of spiritual values such as nationalism, divinity, and morality, as the pillars of human character development. Therefore, there is a need to also pay attention to religious aspects in the development of the border regions.

In 2000, the Indonesian government established the Office of Religious Affairs (KUA/ Kantor Urusan Agama) and Marriage Centers in Entikong and Sekayam sub-districts. These institutions are intended to serve 70 to 80 Muslim families in the regions. The infrastructure in this KUA is similar to the one in Sanggau Regency of West Kalimantan. In sum, there are 15 offices in the province. However, these offices have not been supported by adequate human resources. Of the 15 KUA in the sub-districts in the outermost regencies, only three of them are supported by staff, while in the other KUAs, the office heads work by themselves. Two KUAs even do not have office heads. One of them is in Entikong sub-district.

The objective of the KUA establishment in the border areas is to provide equal access to justice services for the society, especially those that are related to Islamic affairs. Permanent residents, who are Muslims, in Entikong and Sekatam are considered a minority group. Muslims become the second largest population after Catholics.

The Entikong and Sekayam people have particular terms for permanent and non-permanent residents. They call permanent residents

as “day residents”, while non-permanent residents as “night residents”. The day residents refer to those who inhabit the villages. Meanwhile, the night residents refer to the migrant workers who deliberately transit in Entikong and Sekayam. They are outsiders, waiting for an opportunity to be a migrant worker in Malaysia. They mostly live for months in these two sub-districts. Among them are freelance workers in palm oil plantation and other informal sectors; and they possess legal documents allowing them to work legally. There are also some Indonesian workers who do not possess legal documents due to abandonment by their employers or their negligence to process legal documents that enable them to cross the Cross-border Post (PLBN). Among day residents, Muslims are the minority, but they are majority among the night residents.

With the length of the residential period of the migrant workers, marriage often occurs between them and the natives. However, their attempts to register their marriage often face constraints. One of which is the absence of marriage registrars in the KUA/ Balai Nikah in the regions. This has caused some numbers of unregistered marriage known as *nikah sirri* and marriage under the order/ contract. Among other related problems is the marriage of couples who are prohibited by law to marry; contract marriage between the natives and foreign citizens; the difficulties in marriage renewal (*tajdid al-nikah*) and request for marriage verification (*isbat nikah*); and illegal issuance (buying and selling) of marriage books.

Based on the abovementioned problems, this paper attempts to answer the following questions: 1) How do penghulu play their role in the border regions of Indonesia; 2) How is the practice of marriage based on the customary law of the border community which are not in accordance with the Indonesian civil law?

Research Methodology

This research uses a law case approach with the assumption that the penghulu and marriage practices in the border areas are the objects of a legal case study. With the approach, the needs to understand the *ratio decidendi*, which is the legal reasons used by the Penghulu and the community to reach their perceptions. According to Goodheart, the *ratio decidendi* can be found by paying attention to material facts. Those facts include person, place, time and everything that is involved. This

ratio decidendi is the key in case research, which has to be perspective, not descriptive (Marzuki, 2005: 119).

In social science, legal research of perspective is often called phenomenology. As a phenomenon, the objects of the sociology of law can be collected, managed, and analyzed with other related factors such as social mobility and belief that underlies the process of civilizing society (Schur, 2013: 39). In this case, a community is a group of individuals who interact each other since they have values, norms, ways, and procedures that constitute a shared need in the form of a particular customs system that is continuous and engaged by a shared identity.

The main data of this study is related to perception, attitudes, experiences and legal actions of the people in the border regions. In a legal society, there is usually the main actor (key person) that his/ her information can be extracted and is related to others. The results will yield facts that can show the *ratio decidendi* from a reflection of the legal perspective of society.

Theoretical Framework

This study uses 3 (three) theoretical approaches. First, the theory of utilities (the theory of expediency) is able to explain the role of penghulu in carrying out the duty of marriage registration and supervision to provide the greatest benefits to the community. Marriage registration provides protection and guarantees to the xxx of marriage, and the rights of the couple resulted from the marriage. Dyah Ochtorina Susanti uses the utility theory in her study entitled: “The Urgency of Marriage Registration (Perspective Utilities)”.

Second, the theory of continuity, change and authority help to analyze the importance of agents, institutions, and actors as the holders of authority, and other legal aspects in the society, especially concerning marital affairs. This theory was developed by Wael B. Hallaq through his work “Authority, Continuity, and Change” (Hallaq, 2001).

Third, the theory of Physical Presence is used to explain the physical presence of the state in the border areas. This is because the people in the border areas, referring to François Lyotard (2004), are relatively free from the big narrative of totalitarianism (Lyotard, 2004: 71). Therefore, the physical presence of a country in the border areas is a representation and

for national sovereignty. In this case, the physical presence is not only the presence of buildings and other physical symbols, such as KUA building but also the state apparatus as well as other cultural symbols. This particular theory is usually applied to the study of marketing and product services.

Entikong - Sekayam As A State Border

Geographically, Entikong is a hilly area across the Sekayam river which has a winding shape. The region is located along the winding river path (nikung/nikong). Hence, the local community named the area as Entikong. Even though Entikong is located in the Sekayam river, the Indonesian government determined Entikong to be a part of the Indonesian territory. This is because historically Entikong was an inseparable part of Sekayam which belonged to the Sanggau Sultanate. The Sultanate, itself was established in the 14th century AD (Lontaan, 1975: 23).

Before 1950, Entikong was an uninhabited forest area because the Malays and Dayaks preferred Sekayam as a place to live. In 1956, Entikong was inhabited by six families, one of the whom was the Thalib family - who became a key person in this study. The rest were prisoners from followers of Chris Soemokil, a figure in the Republic of South Maluku (RMS) who committed a rebellion in November 1950. They were suspected of being part of the Indonesian Communist Party, which resulted in their banishment in 1965.

According to Thalib, Entikong and Sekayam began to be connected by land in the 1970s. This started when President Soeharto visited Entikong and ordered the Indonesian National Military (TNI) to pave a road from the Entikong bridge to Bonti, then directly to Parindu sub-district in 1971. Meanwhile, those who built the border road from the Entikong bridge to Tebedu was Australia in 1977. However, still, TNI played a major role in the development of Entikong.

In 1979, the Indonesian government, together with Malaysian government, agreed to build a border post as a sign of the two countries bordering (Hidayat, 1975: 17). This agreement was issued along with with the increasing tension between the two countries, resulting from the connection of the land route from the District Parindu, Bonti, Entikong to Tebedu (Kuching Sarawak district boundaries). Since then, Entikong has become a gateway for Indonesians and Malaysians to Tedebu, Kuching District of Sarawak State, and vice versa.

Currently, Entikong and Sekayam have become designated as priority locations for border area development by the government of Indonesia. Based on Government Regulation No. 26 of 2008 concerning the National Spatial Planning (RTRWN), the border area consists of one outer line and one inner line. The outer one line is started from Point 0 to 4 km (in the direction of Indonesia), while the inner line is started from 4 km to 10 km. On that basis, the sub-districts of Entikong to Sekayam are included in the border areas, from the National Cross Border Post (PLPN).

The designation of Entikong and Sekayam as the primary locations in for the border area development leads to several consequences. First, both have an entry/exit point that is directly bordered with the neighboring country. The Indonesian exit/ entry point is built in Entikong and Bale Karangan Sekayam, which is located in the northernmost tip of Sanggau Regency. Meanwhile, the exit/entry point of Malaysia is built in the Serian area of the State of Sarawak.

Second, the people of Entikong and Sekayam have developed intensive interactions socially, culturally and economically with the people of the neighboring country. In terms of social and cultural aspects, the native people of Sanggau Regency and Serian region are Dayaks—or in Sarawak called Iban and Malays. As for the economic activities, the region has a dry port to load and unload goods from Indonesia and overseas.

Even though the development of Entikong-Sekayam is not as fast as the development of Sarawak in Malaysia, these two regions have become significant for the Indonesian citizens in general. Indonesian people can cross to Malaysia for work, shop and doing other businesses. This has led to the population growth in Entikong-Sekayam, which is 9.51% per year. The increase in Entikong-Sekayam's population beats the increase in Sanggau District, which is only 1,44% per year (Hidayat, 1975: 28).

Entikong and Sekayam underwent regional expansion based on the Regulation of the Government of Indonesia No. 39 of 1996, which was implemented by the Governor of West Kalimantan on 6 January 1997. Since then, Entikong has become a separate district from Sekayam. The total area of Entikong is 506.89 km². In the north, Entikong is bordered with East Malaysia. The east and south part of Entikong is bordered with Sekayam, while its west is bordered by Landak Regency.

Entikong Subdistrict consists of 5 (five) villages, namely: (a) Entikong Village; (b) Nekan Village; (c) Palaidal Village; (d) Semanget Village; and (e) Suruh Tembawang Village.

The total population of Entikong Subdistrict in 2015 was 18,878 people, and the gross population density was 29 people / km². They consist of people from several ethnicities in Indonesia, such as Dayak, Malay, Banjar, Javanese, Madurese, Sundanese, Betawi, Padang, Batak, Palembang, Bugis, Manado, Lombok, Bima, Tator, Sasak, NTT, and China. From the religious side, the religions of the Entikong inhabitants are; (a) Islam (6,036), (b) Christianity (3,198), (c) Catholicism (9,618), (d) Hinduism (1), (e) Buddhism (7), and (g) indigenous religion (18 people). Catholicism became the religion of the majority, while Islam was only spread in the village of Entikong and was adhered by several families in Suruh Tembawang Village.

Administratively, Entikong Subdistrict consists of 5 villages and 18 hamlets. This sub-district is approximately 147 km from the capital city of Sanggau Regency. The existing infrastructures include 14.5 km of State roads, 41.7 km of district roads, and 83.37 km of village roads. The available education facilities are 1 unit of kindergarten, 18 units of elementary school, two units of junior high schools, and two units of senior high schools. Health facilities consist of 1 unit of local health center (Puskesmas) and 1 unit of auxiliary Puskesmas. Several banks have been opened to provide financial services, such as National Bank of Indonesia (BNI), Mandiri Bank and West Kalimantan Bank.

Besides education and health facilities, there are also worshipping facilities, in which the number of churches is greater than mosques and *Surau* (small Muslim prayer building). The Government offices, exclude village and sub-district head offices, are also widely established in Entikong, such as KUA, Customs Office, Immigration Office, Quarantine Station Office, Entikong Border Area Management Office (UP3LB), Police station and Military Offices, the national radio (RRI), ministry of education representative office, and Anak Bangsa NGO. This NGO deals with the supervision of Indonesia migrant workers, etc. In total, there are 41 offices to support the region. There are more offices in Entikong Subdistrict compared to Sanggau District.

The government office in Sekayam District is located in Balai Karangan village. The total area is 841.01 km², and bordered directly

with: (a) Entikong in the North; (b) Beduai in the east; (c) the Sintang Region in the southern area; and (d) the Landak region. Administratively, Entikong Sub-district consists of 10 villages and 35 hamlets. This sub-district is approximately 128 km from the capital of Sanggau Regency.

The total population of Sekayam Subdistrict in 2016 was 35,421 people, and the gross population density was 35 people/km². The people originated from several ethnicities such as Dayak, Malay, Banjar, Javanese, Madurese, Sundanese, Betawi, Padang, Batak, Palembang, Bugis, Menado, Lombok, Bima, Tator, Sasak, East Nusa Tenggara, and Chinese. These people are spread out in ten villages: (a) Bale Karangan; (b) Bounty; (c) Frame; (d) Kenaman (e) Lower the Belt; (f) Malenggan; (g) Sword; (h) Muara expression; (i) Tekam River; and (j) Sotok.

In terms of religion, the inhabitants of Sekayam consist of; (1) Muslims (14,047 people), (2) Christians (3,173 people), (3) Catholics (18,080 people), (4) Hindus (11 people), (5) Buddhists (59 people), (6) Confucians (6 people) and (7) indigenous believers (45 people). The majority of the people are Catholics. Muslims mostly inhabit the village of Bale Karangan.

The existing infrastructures include 17 km of state roads, 65.7 km of district roads and 102,027 km of village roads. The available education facilities consist of 3 Kindergarten units, 28 elementary school units, four junior high school units, and two senior high school units. Health facilities consist of 1 unit of Local Health Center (Puskesmas), four units of auxiliary Puskesmas and two units of polyclinics. There are telecommunication facilities in the form of STO Balai Karangan with the installed capacity of 978 SST and used the capacity of 528 SST. The banks that are available in the area are BRI (Indonesian People Bank), BNI (National Bank of Indonesia) and West Kalimantan Bank.

Social And Civil Issues In Entikong-Sekayam

The indigenous inhabitants of Entikong-Sekayam and Serian, which are Dayaks (or Iban) and Malays, have a strong kinship relationship. They have traditions called “cempalik”, “plepasan”, and “komponan” - which are highly respected until now - as a symbol of intimacy and openness between the two groups in the border areas.

Considering the socio-economic inequality between Indonesia and

Malaysia, the agreement of the two countries still unable to limit the interaction between people in the border areas. One of the most violated regulation is the limitation of the value of goods in and out of the countries, which is limited to 69 Malaysian Ringgit only. Many Malaysian products, such as sugar, chocolate, LPG, are traded in Indonesia.

For people who live in Entikong and Sekayam, Malaysia us a place to make a living. The existence of an exit/entry point at the border areas opens the possibility for the people to cross over the country.

According to the Entikong community leader, Thalib, there are 400,000 Indonesian migrant workers officially living in Sarawak, and every day no less than 300 people commute from Sarawak to Entikong. That number does not include illegal workers. The existence of migrant workers in Sarawak is like a motor for industrial sectors, especially in the plantation and processing of palm oil.

Malaysian businesspeople need Indonesian workers. Some are treated well, while others are not. A good example is a businessperson who allows his workers to commute daily from Sarawak to Entikong-Sekayam. Meanwhile, workers, who are unfortunate, obtain employers who illegally keep the workers' documents so that they cannot return to their home regions. In this case, the workers become illegal due to the absence of legal documents with them (Interview Entikong March 23, 2016).

Sometimes, some of these illegal migrant workers remain in the Sarawak region, while some leave Malaysia via the shortcut route. Even though they have left Sarawak, they remain to stay in the Entikong-Sekayam waiting for more work opportunities to come. Sometimes, the transit periods take times. During those times, they will have various working activities. Among them are working on peddling money exchange; switching professions to become migrant workers' drivers and distributors; and some even involved in human trafficking practices (Fatah, 2016).

The perpetrators of human trafficking refuse to be called so. They believe what they do is merely becoming mediators between two parties who need each other. Many women leave their hometowns, Entikong-Sekayam or others, to enhance their standard of living by working in the neighbouring country. However, there are more works for men compared to women.

Most of the prospective female workers (TKW) need to wait for

months to have a job in Sarawak. This term is different from male workers who are highly needed in Sarawak. Male workers need to wait only for days. This unfortunate situation for women has made some women to accept marriage by contract offer or to marry migrant worker fellows from Indonesia or other nationality.

For this reason, the perpetrators do not consider themselves committing human trafficking. They also argue that those marriages have taken place based on their respective religion and belief. For Muslims, the marriage usually takes place with the presence of (former) Maid Registration Employees (P3N) - now called Maid Registration Employees (P4) (Interview Entikong March 23, 2016). Their marriages are also registered in the marriage registration book –seemingly original but fake. The book is original because it is issued by the state. However, the book is fake due to the absence of penghulu's signature and has a fake stamp. Thus, social and economic problems in the Entikong-Sekayam boundary area also affect the practice of Islam in the area.

Penghulu And Service Problem In Entikong-Sekayam

Penghulu is placed in the Office of Religious Affairs (KUA) with the main duty of dealing with marriage registration. The functional assignment of Penghulu is based on the Regulation of the Minister of Administrative Reform No. PER / 62 / M.PAN / 6/2005 and Regulation of the Minister of Religion No. 30 of 2005. Those regulations mention the duties of Penghulu are: 1) to conduct marriage/referral registration for Muslims; (2) to play role as the magistrate guardian (*wali hakim*) for brides in special cases; (3) to provide marital/referral supervision; (4) to monitor the implementation of marriage law; (5) to conduct the training for brides-grooms-to-be; and (6) to provide counselling in creating harmonious family.

According to the Head of Ministry of Religion Office of Sanggau, Natsir, the KUA in that region is located in the area with adequate infrastructures. However, the problem is in the number of human resources (HR). Overall, there are 15 KUAs, including in Noyan sub-district, where the Muslim population are only 70-80 family. In those 15 KUAs, there are only 3 KUAs that have staff. In the rest of the KUAs, each head of KUA works alone without any assistant. There are even 2 KUAs that do not have an office head, including the KUA of Entikong District.

The Head of Sanggau Ministry of Religion Office assigns a staff member named Eko Setyo Nugroho to work in the Entikong KUA. This is because the office had been left without personnel for two years. Nugroho is the one who connects the Entikong KUA with Bale Karang KUA (Sekayam). Nevertheless, Nugroho does not meet the requirements to be a Penghulu. Therefore, the role of Penghulu is handled by Jamhadi, the Head of KUA Sekayam. This method is also practiced in the KUA of Noyan and Beduai Districts. Both KUAs have been handled by Tafsirudin (Head of KUA Noyan). This is because, Jamiun, the Head of KUA Beduai, has been seriously ill (Interview Head of Ministry of Religion March 21, 2016).

In Entikong and Sekayam, it cannot be denied that the people face some obstacles to access KUA services. Entikong KUA is located in Entikong Village, while the Sekayam KUA Sub-district is located in Bale Karang Village. The penghulu, who is assigned in Sekayam District, is also assigned in Entikong. This has led to the poor services provided by the KUA.

Thoyib, the Head of Hajj and Umrah section, states that he was first appointed as a civil servant and became the staff of KUA in 1993. Since then until 2000, he was assigned as Penghulu in two sub-districts. The means that he has to serve people from to regions at once. At the beginning of the establishment of Entikong KUA in 2000, Thoyib was promoted to be the leader in that office. He served until 2002 because of his further promotion to the head of KUA in Sanggau District. After that, there have been three people who work as head of KUA in Sekayam District such as M. Jafar (2002-2006), H. Nasri (2006-2010), and Jamhadi (2010-present) (Interview Thoyib, March 21, 2016).

To assist the head of KUA in Entikong District, a staff was appointed in 2012, named Raini. Raini was active for two months only because of the illness. From 2012 to 2013, there was a vacant position for a staff. The institution was then reactivated in 2014, after the appointment of Eko Setyo Nugroho, a graduate for State Islamic University of Sunan Kalijaga Yogyakarta.

As staff on KUA, Nugroho served people, especially for marriage registration. As stipulated in Government Ordinance No. 9 of 1975, people who want to get a marriage registration must notify the marriage plan themselves/their children/relatives by bringing N1 (a form required for

registering marriage status) from the Secretary of sub-district to the KUA. However, many people, including the village apparatus, who are mostly not Muslims, do not understand the procedure of marriage registration.

In a year, 20 prospective couples come to KUA and Entikong. This number is much smaller than that coming to Sekayam district, which approximately reaches 60 couples annually. According to Nugroho, the number of married couples in Entikong is unreasonable, which reaches 6,036. According to the statistical calculation, the ratio of marriage age is usually 1:1000 population. If the number of Muslims in Entikong is around 6,000, then, the assumption is that there are only six people or three married couples in one month. In other words, there should be around 36 couples in 12 months in Entikong and not 20 pairs.

This irregularity has been recorded by the Entikong KUA guest book. In 2013, there was only one person who applies for marriage application. Meanwhile, in 2014 and 2015, there were only three people who submitted the application. When this issue is discussed, Nugroho revealed that the people usually came to KUA without taking the requirements with them. Generally, people come to KUA to know the cost of marriage registration. In this case, their visits are not recorded in the guest book. Some of them are unaware of the provisions of marriage registration in KUA. In the case, the unrecorded visits are to prevent illegal marriage. Nugroho thinks that he has followed Article 68 of the Compilation of Islamic Law: "Employees in Marriage Registration are not permitted to enter into or assist in marriage if he is aware of violations of the provisions of article 7 paragraph (1), article 8, article 9, article 10 or article 12 of the Law No 1 of 1974 although there is no marriage prevention."

To some people, marriage registration procedures are more difficult than paying someone to deal with the registration. According to Nugroho, marriage registration costs only IDR 30,000. People do not object to this cost. This cost is much cheaper than the cost to obtain a driving license. Because of the difficulties they assumed, people tend to be reluctant to complete the requirement of marriage registration (Interview Entikong, March 22, 2016). Instead, the people chose to use a short cut by using marriage registration services provided by former of P3N officers or outsiders. They need to pay for IDR 500,000 to IDR 1,000,000 for such services. People who find it difficult to meet the requirement of marriage registration determined by KUA, they will use those services and obtain

a marriage book, which seems genuine but it is fake.

The former of P3N (now P4), named YM, confirmed these issues. The following is the excerpts of interviews with the former of P3N, who still serves marriage requests outside the KUA:

“I realized that the thing I have done is breaking the law. I am no longer a P3N officer but people still often come to me to get married. The reason is that KUA Entikong does not have a Penghulu and an office head yet. For this reason, I lead several marriages of the people who want to protect their *nasab* (line of descent). After that, I register the marriages to the Setayam KUA. I have been permitted by the Head of KUA Setayam. This is because it is much better that I lead the marriage and register it at the KUA later after that, rather than the Head of KUA comes here himself and commutes miles away from his home. I will ask and call the guardian of people who express their willingness to marry. Likewise, for the prospective bride who is Muallaf (Muslim convert), I ask the Head of KUA Sekayam to be her magistrate guardian (*wali hakim*). The point is, I do not serve to lead a marriage that does not in accordance with the religious law. Regarding the immigrants who want to get married, in my opinion, helping them to marry is better than waiting for long administration process that makes them vulnerable to commit adultery. This is including Malaysian citizens who want to marry Indonesians. The Law in Malaysia does not allow them to do so, so they chose to get married in Indonesia. I explained to them about the provisions of mixed marriage law. However, if they are unable to fulfil the conditions, I will lead the marriage, even though it is unregistered, to avoid adultery. (Interview P3N)”

He admitted that since he was dismissed from his position as P3N in Entikong in 2011, he still serves for marriage registration. The reason is that many people still ask for his services to marry couples in an Islamic way. In addition to this service, people also ask him to take care of the marriage registration. This practice is also due to the vacant employees in the Entikong KUA. This year, there is only one staff at the KUA and visit the office only once a month.

This staff cannot do the marriage registration procedure as a whole. He only has access to check the files submitted by the people. He cannot carry out the role of penghulu and sign the marriage book. In this case, the marriage registration cannot be completed even though the requirements have already been completed by the people. Usually, the marriage certificate is taken to KUA Sekayam, in which the head of the office also plays a role as penghulu. In the end, the Sekayam KUA

has dealt with the marriage registration of Entikong people. Due to the problem in the Entikong KUA, people have taken a short cut the register their marriages.

The inadequacy of the Sub-district KUA services in the border areas has been caused by several factors. First, there is a vacancy in KUA offices in the Border Districts of Indonesia, in terms of penghulu or marriage registrars, and supporting staff. Second, there is an anggapan that the KUA office in the border regions is a 'disposal' post for the official violating disciplines in other places. Third, this sub-district KUA does not have operational service standards, ranging from marriage registration requests, requirement examination and announcement and determination of marriage contract (*akad*)

Problems

The number of marriages registered in 2013 to early 2015 is only five couples in Entikong KUA. From 6,000 Muslims in the area, there are many unregistered marriages. This problem is admitted by the Entikong figure. Entikong people still celebrate the marriage of their children, even though the marriage is unregistered. This is proven that unregistered marriage is not intended to hide someone's 'illegal' marriage.

There are many factors underlying this marriage administration problem. First, the people consider the religious leaders in their village as the assistant to marriage registrars or P3N, even though this institution was abolished in 2011. Second, people consider dealing with marriage registration procedure in KUA difficult. Some even say that marriage procedures in Indonesia are more difficult than in Malaysia. These propositions may not be completely true. Marriage procedure in Malaysia is considered easier because it only needs the presence of religious leaders, and without having to come to the office of Islamic Religious Services (JAIS) Third, the KUA of Entikong. Third, the inactive status of KUA for a long time makes people choose unregistered marriage. Forth, there has been a conflicting provision between customary law and Islamic civil law.

The first three problems have been discussed before in this paper. The following will analyze the final problem related to the conflict between customary and Islamic civil law. The conflicting issue is related to "those who are prohibited from marrying each other". It is stated

in Article 8 and 10 of the Marriage Law that a man and woman are prohibited from marrying because of nasab or kinship relationship, and because of particular conditions.

The provisions in Article 8 of Marriage Law contradicts the custom of indigenous people of Entikong and Sekayam with regards to the adopted children. Entikong-Sekayam people are accustomed to adopting children from rural tribes. These children have the intention to leave their parents and hometown and live in the sub-districts. The adoption parents often show their loves by recognizing their names in a birth certificate, identity card, family card, and diplomas.

Moreover, adopted children often marry their adopted siblings. In this case, the KUA staff will automatically refuse the marriage registration application because both names are in the family card with the status of children to the same parents. For these reasons, parents choose to avoid marriage registration for their children to marry each other. (Interview P3N)

Another conflicting matter is related to polygamy. Entikong and Sekayam women let their husbands do polygamy for the sake of maintaining their offspring. According to Law No. 1 of 1974 on Marriage, in a polygamous marriage, a husband needs to obtain permission from the wife as well as the Religious Courts (Article 5 (2)). Article 56 of the Compilation of Islamic Law states “without a Religious Court permit, and a polygamous marriage is not recognized by the law.”

Women, who become second wives, are mostly outsiders. They come from Pontianak and other regions. They usually are prospective migrant workers or former or migrant workers who have an immigration problem. This marriage is considered “contract marriage”. In this case, the women’s womb is rented to bear babies. After they deliver the babies, they will be divorced, and the babies are taken care by the first wives. These divorced women are often not reluctant to accept other men’s marriage proposal, either for womb renting practice or other purposes.

There are also Indonesian women who marry Malaysian men. Fauzan dealt with one of them. He became a penghulu of a marriage between a Malaysian man and Indonesian woman, who formerly was a problematic migrant worker. Once a week, this man goes to Entikong to get involved in Quranic recitation event in Darul Falah Sekayam,

Yayasan Mushalla Al-Ikhlâs, during his visit to his Indonesian's wife. He admits that his wife is an Indonesian former migrant worker with immigration problems.

Fauzan's story is not different from the experience of M. Shodiq Nur Fatah, a former migrant worker who is now living and become a community leader in Entikong. He is also the administration of al-Muhajirin Mosque. He maintains that his house, located on the main road of Entikong-Serian, has become a shelter for the migrant workers with immigration problems. Fatah also talks about the non-marital relationship between the migrant workers with the local people. Due to the fear of committing adultery, they get married without considering each other's previous marital status (Interview Fatah).

The ignorance of someone's marriage status becomes one of the most common violations against the existing marriage provisions in Entikong-Sekayam. There is a common understanding among people that if a husband has left the wife for six months, then the marriage nearly breaks up. It seems that there has been a misunderstanding about the concept of *ila'* and *iddah* in Islam or the provision of *ta'liq talak*, which in some occasion is able to cause a divorce if it is violated).

In the context of *ila'* divorce, people do not consider the existence or the absence of the husband's oath. Meanwhile, Islamic law requires both of them (Al-Dasuqi, 1987: 732-733). In terms of *ta'liq talak*, people understand that divorce happens with the husband's absence for six months. The Compilation of Islamic Law mentions that *ta'lik talak* needs to be followed by *khulu'*, brought by the wife to the court. However, in reality, people believe that if a wife is left by her husband for six months, then, the divorce automatically happens, and another man can marry her.

The misunderstandings of Islamic law on marriage happen because the people's knowledge of those issues is still limited. Entikong-Sekayam people are more obedient to their tribe leaders than Islamic scholars (*ulama*) and preachers from the outsiders. Most of these scholars and preachers are mostly from Islamic School in Bangil. Regarding people's attitude towards those scholars and preachers, Fatah maintains:

“Never mind their habits and customs are considered heresy. They feel offended when their mistakes in prayer are corrected. For example, many of their religious leaders who often become imam (leader in prayers) still read “*Rairil mardhubi*” for “*Ghairil maghdhubi*”. They

also mispronounce Allah that comes after *kasrah* (the vowel in Arabic pronounced *i*). In *tahlil*, they read “*Bihilloh*” when they are supposed to read it “*Bihillah, Yaghfirulimayyasya*”. For young preachers, they must be patient to be here. Or else, they will leave. (Interview Fatah)”

Due to such responses, some Islamic teachers and preachers prefer to return to their origins. Some remain living in Entikong-Sekayam. Those who return to their origins are usually rejected by the people, while those who survive are the ones who can tolerate and understand the local community.

Viewing those problem, it is necessary to strengthen KUA services, especially the role of penghulu whose duty is not only dealing with marriage registrations but also conducting marriage supervision. The presence of the ruler in the border areas also plays roles in fostering community’s understanding of marriage law and regulation according to state law and Islamic law and supporting the creation of *sakinah* families.

Conclusion

KUA of Entikong and Sekayam Sub-Districts have adequate infrastructures but lack human resources, especially the head of the office and the Penghulu. Entikong Sub-District KUA has suffered from human resources vacancy for many years. Marriage services are mostly carried out by a former P3N officer. To perform their duties, the penghulu needs to go to another KUA located in Sekayam District. The ineffectiveness of KUA services in the border areas have led to problems related to unregistered marriages, and the practice of prohibited marriages, such as the marriage by order or contract (womb renting) and hiding of previous marriage in the case of polygamy. Thus, the government should place an official to become a head of KUA in the border regions and make this as a policy in the development in the foremost regions of Indonesia.

References

- Abdullah, Irwan. (1995) *Privatisasi Agama: Globalisasi atau Melemahnya Referens Budaya Lokal?*. Makalah seminar, Balai Kajian sejarah dan Nilai Tradisional Yogyakarta, 9 November 1995.
- Al-Dasuqi (1987), *Hasyiyah al-Dasuqi ‘ala al-Syarh al-Kabir*, Beirut: Dar al-Fikr
- Appadurai, Arjun. (1991) “Introduction: Commodities and the Politics of Value” dalam Arjun Appadurai (ed.), *The Social Life Things*. Cambridge: Cambridge University Press.

- Baker, Chris. (2000), *Cultural Studies: Theory and Practice*. London: Sage Publication.
- Baudrillard, Jean. (1983), *Simulation*. New York: Semiotext (e).
- Beyer, Peter. (1991) "Privatization dan Public Influence of Religion in Global Society" dalam Mike Featherstone (ed.), *Global Culture: Nationalism, Globalization and Modernity*. London: Sage Publication.
- Ewen, Stuart. (1990), "Marketing Dreams: The Political Element of Style", dalam Alan Tomlison (ed.), *Consumption Identity and Style: Marketing Meanings and the Packaging of Pleasure*. London New York: Routledge.
- Featherstone, Mike. (1991) *Global Culture: Nationalism, Globalization, and Modernity*. London: Sage Publications.
- Hallaq, Weal B. (2001) *Authority, Continuity and Change* (Cambridge: Cambridge University Press
- Hidayat, Herman (2005), *Dari Entikong sampai Nunukan: Dinamika Daerah Perbatasan Kalimantan-Malaysia Timur, Sarawak dan Sabah*, Jakarta: Pustaka Sinar Harapan
- Koentjaraningrat (1994), *Metode-metode Penelitian Masyarakat*, Jakarta: Pt. Gramedia Pustaka Utama
- Lev, Daniel S., (1971), *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, London: University of California Press
- Lontaan, J.U. (1975), *Sejarah Hukum Adat dan Adat Istiadat Kalimantan Barat*, Kalbar: Peemerintah Tingkat I Kalimantan Barat
- Lyotard, Jean-François. (2004) *Posmodernisme: Krisis dan Masa Depan Pengetahuan*, Yogyakarta: Teraju
- Marzuki, Peter Mahmud (2005), *Penelitian Hukum*, Jakarta: Prenada Media Group
- Musa Pabali H. (2003), *Sejarah Kesultanan Sambas Kalimantan Barat*, Pontianak: STAIN Pontianak Press
- Nata, Abuddin, (2013), *Metodologi Studi Islam*, Jakarta: Rajawali Pers
- Rafiq, Ahmad (2003), *Hukum Islam di Indonesia*, PT. Raja Grafindo Persada
- Schur, Edwin M. (1968), *Law and Society: A Sociological View*, New York: Random House
- Interview with M. Shodiq Nur Fatah, in Entikong on 03/24/2016
- Interview with former P3N with the initial YM, in Entikong, on 28/3/2016
- Interview with Natsir, at the Ministry of Religion in Sanggau Regency on 21/3/2016
- Interview with Fauzan, at Mushalla al-Ikhlas Sekayam, 25/03/2016
- Interview with Thoyib, in Sanggau, on 3/21/2016
- Interview with Eko Setyo Nugroho, in Entikong, on 22/03/2016
- Interview with Thalib, in Entikong on 23/03/2016

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