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## **Aligning religious law and state law: street-level bureaucrats and Muslim marriage practices in Pasuruan, Indonesia**

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## CHAPTER 4

# Everyday Practice: Roles of *Kyai* and *Pengarep*

### 1. Introduction

In Muslim societies, marriage is a legal act, an exchange of a contract regulated by a code of law rooted in religious precepts. In social practice, it is imbued with the variety of local norms and influenced by the diversity of local actors throughout the Muslim world.<sup>1</sup> This chapter examines how these norms and actors interact with each other to shape these marriage practices. Its aim is to broaden our understanding of the entanglement of different norms governing marriage and the roles of the actors involved in everyday marriage practice in a village. This chapter seeks to answer the following questions: What do locals consider the fundamental norms which constitute a marriage? In what ways do individuals negotiate with these norms? To what extent do local actors such as *kyai* (religious leaders) and *pengarep* (marriage intermediaries) become involved? What are their orientations? What changes have taken place?

The material in this chapter is the fruit of my fieldwork in Summersari, a religious sub-district in rural eastern East Java. As mentioned in the previous chapter, at first glance Summersari society

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<sup>1</sup> Ali, 'Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines'; Alami, *The Marriage Contract in Islamic law in the Shari'ah and Personal Status laws of Egypt and Morocco*.

looks fairly homogenous. First and foremost it can simply be identified by its strong attachment to a certain form of Islam, generally referred to as 'traditionalist Islam',<sup>2</sup> characterized by what is known in Indonesia as '*santri* culture'.<sup>3</sup> Nevertheless, despite its homogeneity in terms of Islamic orientation and practices, contemporary Summersari presents an interesting spectacle of heterogeneity in marriage practices. For this reason, this chapter offers some narratives which reveal the complicated relationship between the norms, the agency of the actors involved and the social structure so as to expose some recent changes.

Below I commence with an overview of the intermixture of Islamic and cultural norms in Summersari. To illustrate this, I present a brief sketch of how a young man dealt with localized norms and the social actors which impacted on the social process prior to his marriage, namely: the finding of a potential spouse. His experience leads me to an overview of the broader spectrum of social life in Summersari. Here I identify issues that are key to marriage practices: the centrality of informal Islamic education compared to other institutions and economic life. The next section seeks to demonstrate the ways in which the virtues of an ideal spouse are determined by the complicated relationship between social actors. The last section presents a summing up of my thoughts.

## 2. Presenting Munir-Ulfa

Munir was a twenty-nine-year-old married man when I first met him in early 2017. Wearing sarong and a fake jersey of an English football club, he welcomed me to the house in which he lives. The house is not

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<sup>2</sup> Dhofier, *The Pesantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java*; M. Bambang Pranowo, 'Pesantren, Traditional Islam in Contemporary rural Java: The case of the Tegal Rejo Pesantren', in *Islam in the Indonesian social context*, ed. by M.C. Ricklefs (Clayton: Monash University Centre of Southeast Asian Studies, 1991), pp. 39–56; Mun'im Sirry, 'The Public Expression of Traditional Islam: the Pesantren and Civil Society in Post-Suharto Indonesia', *The Muslim World*, vol. 100, no. 1 (2010), pp. 60–77.

<sup>3</sup> Dhofier, 'Kinship and Marriage among the Javanese Kyai'; Pribadi, 'Religious Networks in Madura: Pesantren, Nahdlatul Ulama, and Kiai as the Core of Santri Culture'.

his own, but belongs to his parents-in-law, which is in line with the still fairly common uxorilocal tradition, requiring that, after marriage, a husband lives in the bride's house. I was introduced to his family by my local female collaborator who was a classmate of Munir's wife when they studied in the same *pesantren* during the period of 2006 to 2012. When I visited them, it was in the expectation of having an initial glimpse of the allegedly popular practice of *nikah sirri* (unregistered marriage). Interestingly, he tried to convince me that this custom has begun to decrease, although he did mention some of his female neighbours whose (re)marriages had been concluded without the benefit of official registration. We then suddenly moved on to a very personal talk about his life trajectories up to the moment of his marriage.

Munir graduated from a local junior Islamic high school (*madrasah tsanawiyah*) in 2002. He did not go on to study in a *pesantren*, but has instead continued his religious education since in an Islamic primary school (*madrasah ibtidaiyah*), in which he spends almost all the afternoon learning about Islam. Munir has been studying various subjects associated with Islam, ranging from *akidah* (theology), *fiqh*, *akhlak* (ethics) to Arabic grammar (*nahwu*). He is fairly familiar with the classical *fiqh* doctrines like those documented in 'yellow' Islamic treatises (*kitab kuning*).<sup>4</sup> After graduating from junior high school (*sekolah menengah pertama*), for a number of reasons, Munir decided not to continue his studies, despite the fact he was assured of his parents' support. One important hindrance was the problem he had making sense of what higher formal education could contribute to his life. Acquiring a thorough understanding of Islamic matters has seemed to him to be more important. Munir explained in more detail:

"The expectation of those who study at senior high school is to find a job in a factory. This idea does not appeal to me. You have to follow strict rules, especially those dictating the working hours. This severely curtails your flexibility. What if one of your family

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<sup>4</sup> Bruinessen, 'Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu, Comments on a New Collection in the KITLV Library', p. 227.

falls ill and you need to accompany him/her to a medical centre? [In a factory] You have to submit a letter asking for permission to do so. That is too awkward. My younger brother who has just received a letter of acceptance from the factory has decided not to take up the offer. He prefers to run a street stall.”

For the period of three years, Munir was employed as a teaching assistant (*guru bantu*) at the *madrasah ibtidaiyah* in which he studied. After the holy month of Ramadhan 2006, Munir chose to follow his uncle and head to Jakarta, the capital city. After a while working in Jakarta as a builder’s labourer, he moved to Subang (West Java), working in a small restaurant (*warung*) owned by a man from Malang, East Java. From there he moved on to other cities in East Java, first Jember and later Surabaya. While he was in Surabaya, he was happy as he was able to manage to visit his parents in his home village once every two weeks. However, in the mid-2010 he decided to leave his job, because he needed to take care of his father who was growing older and weaker.

Meanwhile, his father was worried about his son’s future family life. At twenty-three, Munir was still not married. Villagers generally consider a bachelor of this age to be rather too old to marry, especially as he was in a position to support a family.<sup>5</sup> Aware of his predicament, Kholil, their neighbour offered to help him seek a suitable wife. The former was thinking of a close relative of his in his natal village, who had a daughter called Ulfa. At that time she was fifteen and studying in a renowned *pesantren* in a suburb of Pasuruan. Munir and his parents accepted Kholil’s offer. Subsequently, Kholil paid Ulfa’s parents a visit conveying them the message that a man would approach them with a proposal asking their daughter to be his wife. Kholil played the role of marriage broker, referred to locally as a *pangadek* or *pengarep*. A *pengarep* is commonly perceived to be undertaking a worthy mission because he or she is facilitating the communication between the two

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<sup>5</sup> Geertz, *The Javanese Family: A Study of Kinship and Socialization*, p. 56.

families concerned.<sup>6</sup> This social process is what local people refer to as *ngen-angen* (literally winds, spreading the word).

Ulfa was the only daughter in her family. Her parents were happy to receive the proposal. Neither Ulfa nor Munir were known to one another before. Ulfa's parent eagerly anticipated Munir's visit. This visiting stage, called *namu* in Javanese, signifies a kind of preliminary negotiation.<sup>7</sup> Culturally speaking, the parent's agreement to the man's visit implies their approval of him taking their daughter as a wife. Following the approval of Ulfa's parents, Munir visited her house accompanied by the *pengarep*. In traditional Javanese society, this stage is called *nontoni* (viewing).<sup>8</sup> The purpose of the visit is to give both the prospective husband and the girl a chance to see each other. In this *nontoni* stage, Ulfa did not join the meeting. Instead, she was asked to serve guests a cup of coffee, bringing it from the kitchen to the front room. It was in this very short encounter which enabled them to see each other. Munir made up his mind to marry Ulfa. Religious considerations, particularly the idea of the purity (*kesucian*) of a girl,<sup>9</sup> were a fundamental reason in his decision. Ulfa was studying in a *pesantren* which Munir, and local people in general, assumed would strictly guard the sexual morality of its pupils. Ulfa was then engaged (*neket*).

The choice of Ulfa's prospective husband was made by her parents. Ulfa depended on her parents whom she believed were in a position to decide the worth of her potential spouse so as she and he might enjoy a blessed life together. The marriage proposal was accepted, but the marriage contract was suspended until she had completed her studies. In some cases, when there is a big age gap

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<sup>6</sup> Anke Niehof, *Women and Fertility in Madura (Indonesia)* (Leiden: Instituut voor Culturele Antropologie en Sociologie der Niet-Westerse Volken, 1985), p. 115.

<sup>7</sup> Geertz, *The Javanese Family: A Study of Kinship and Socialization*, p. 62.

<sup>8</sup> Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth', p. 446.

<sup>9</sup> Middle-class rural women in numerous parts of the world also have the tendency to accept patriarchal norms of honour and purity. See Santi Rozario, 'Islamic Piety against the Family: From "Traditional" to "Pure" Islam', *Contemporary Islam*, vol. 5, no. 3 (2011), pp. 285–308; Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth', p. 453.

between the bride and the groom, parents marry their daughter off directly although, after the initial introduction, the prospective groom and bride generally have a chance to meet in private, under supervision. This was not the case with Ulfa and Munir, because Ulfa returned to the *pesantren*. They could not really be said to have had a proper courtship period involving a series of private meetings. During the waiting period prior to the wedding, Munir was occasionally invited by her parents to join them in a visit to give money (*ngirim*, Javanese) to Ulfa in the *pesantren*. The locals jocularly refer to the man's participation as *ngredit* (paying off a loan). It is essential for a young man to become involved in this process so as to build his reputation as a good person with his potential parents-in-law and to socialize with their extended families.

Munir's ideas of what he expected of his future spouse give a strong hint of the significance of norms constraining women's sexuality imposed by *pesantren*. The *pesantren* education of a girl is important since it symbolizes purity. Over the centuries, Islamic norms on marriage have been an inseparable part of people's daily lives and have become embedded in the customary social system. In the process, the division between the two has somehow blurred. Like so many other aspects of Javanese society, when referring to early scholarly works on cultural norms (*adat*), it is difficult to identify which belong exclusively to Islam and which derive from the pre-existing tradition prior to the coming of Islam.

Clifford Geertz, referring to Mohamed Koesnoe, stressed the significance of the notion of propriety in any discussion about *adat*. He states: *Adat* is constructed as "the form of life of the Indonesian people as founded in their sense of propriety."<sup>10</sup> Therefore, Bowen has underlined that the term 'law' cannot be used to exemplify the complicated norms surrounding marriage and other matrimonial matters. In rural settings, legal matters are usually bound up with older people, religious commitment and a sense of propriety.<sup>11</sup> In the

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<sup>10</sup> Clifford Geertz, 'Local Knowledge: Fact and Law in Comparative Perspective', in *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), p. 210.

<sup>11</sup> Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 18.



next section, we shall see how the sense of propriety operates in everyday practice and how local actors, such as *pengarep*, are key figures in the implementation of this strategy.

### 3. *Pengarep* and Cultural Norms

This section elucidates the role expected of a *pengarep* and examines the influence of different local norms on the social processes set in train prior to marriage. These norms are dependent on to which social category a family is considered to belong. Each narrative which follows represents one of these social classes. While the first story exemplifies a lower-class family, the second story reveals the process in middle-class families.

#### 3.1. Case 1: Kulsum's Marriage

This is the story of the marital experiences of Kulsum. When I met Kulsum in early 2007, she was thirty-one and was married to her second husband. Her first marriage had been concluded in 2001, a couple of months after she graduated from an Islamic junior high school (*madrasah tsanawiyah*). Kulsum was raised in a religious family and claimed to be the only girl in the village at the time who had enjoyed any formal schooling. However, she did not pursue her education to a higher level and was eventually married off. She told me the following:

“My father insisted that I keep studying. He accompanied me when I handed in a registration form at a *madrasah aliyah* in the centre of Summersari. This despite the fact my older sister had said *binek noapah asekola, monduk beih rapah* (for a woman's education, studying in *pesantren* is enough). Unfortunately, not long after, our beloved father was fatally injured in an accident. It was a destiny which changed my life dramatically.”

Sometime after the accident, Kulsum was married to a man from the same village. The family's decision to marry her was unquestionably a direct consequence of her father's death. No one in the household was able to assume his mantle in providing the financial

support for her education. Kulsum had no other options available to her, as she herself succinctly said *neser reng tuah* (out of consideration for the parents). She did not make any verbal declaration giving her consent but simply acquiesced in the marriage arrangement. Her only recourse was to register her thoughts by remaining silent (Javanese, *manut*). Certain Shāfi'ī jurists have deemed that the silence of an unmarried woman can be taken as her consent.

Kulsum had reached the age of puberty when she was married. After the wedding, Kulsum was considered to be legally an adult and, therefore, competent to manage her marital life. The marriage was assumed to set the seal on her maturity. Hildred Geertz has remarked that marriage is an important rite of passage which marks the transition from social puberty to adulthood,<sup>12</sup> in a cycle of rites of passage set out in Van Gennep's framework.<sup>13</sup> Adulthood here denotes the stage at which women are considered capable of managing their own household affairs. The latter is congruent with the notion of *rushd* (legal capacity to contract or financial competency) in the classical *fiqh* doctrine. There is no exact demarcation line which determines the age of *rushd* of a woman but it does crucially involve reliance on the opinion of the *walī*. Some classical jurists, the Mālikī in particular, decree that marriage is an essential requirement for a woman to have financial competence.<sup>14</sup>

In fact, Kulsum began a family with very little knowledge about either sex or household management. Islamic marriage is a contract of exchange which involves a set of rights and obligations incumbent upon each party. Kulsum had the obligation to submit to husband

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<sup>12</sup> Geertz, *The Javanese Family: A Study of Kinship and Socialization*.

<sup>13</sup> Van Gennep designated the ritual ceremonial patterns which mark an individual's transitions in his/her life as rites of passage. The concept of "liminality" was introduced to indicate the time in which people are teetering on the threshold of entering a new phase in their lives. Rites of passage include rites of separation, transition and incorporation. Marriage is part of the rite of incorporation, while rites of separation are most apparent in funeral ceremonies. Meanwhile, transition rites are found in the rituals surrounding betrothal and pregnancy. Arnold van Gennep, *The Rites of Passage* (London: Routledge & Kegan Paul, 1960), p. 11.

<sup>14</sup> Nayel Badareen, 'Identity and Authority: Changes in the Process of Debates over the Islamic Marriage Contract among Contemporary Muslim-Arab Intellectuals' (PhD Dissertation. The University of Arizona, 2014), p. 58.

because, reciprocally, she was assumed to have the right to maintenance. Under the umbrella of a marriage contract, she moved from her birth family to come under her husband protection. After marriage, Kulsum requested her husband and his family to be allowed to remain close to her mother. This was granted as she and her husband went to live in a house next door to her natal family's dwelling. The marriage unfortunately survived less than two years. She admitted that the husband was rude and disrespectful. When she encountered a problem with the husband, she lost no time in complaining about this to her mother. Moreover, her views about his bad behaviour were confirmed by remarks like *mak kerreng lakennah be'en jeh* (What a rude man your husband is) made by her older sister. It was suggested to Kulsum that she ask for a divorce from her husband. He granted her an out-of-court *talak* (pronouncement of divorce), witnessed by a religious leader and her family. Despite the social stigma of being a divorcée, Kulsum decided not to remarry. She preferred to continue her studies in the equivalent to a senior high school (*kejar paket C*) and participated in social activities. Only ten years later, in 2012, did she seek and obtain a legal validation of the divorce after lodging a divorce petition (*gugat cerai*, Indonesian) with the regional religious court. The divorce certificate enabled her to remarry legally.

### **3.2. Case 2: The Marriages of Fahim and Her Sister**

Ibu Fatimah is a descendant of a local *kyai* whose family has played a respected role in the development of Islam in her village. Her first marriage ended in divorce. She then remarried to a man from a *pesantren* family and gave birth to two daughters. The first daughter, Fahim (now 22 years), studied in a *pesantren* in Pasuruan. After finishing the first two years, at the age of fifteen, she was unexpectedly brought home to be married-off to a man whom she had never even met before. Fahim was raised in a conservative family, in which the doctrine that a good daughter should never say no to her parents was inculcated in her. She was not allowed any room to negotiate and was married at the end of 2010. The very reason the parents wanted her to get married was, unquestionably, the man's social background and his

competency in knowledge of Islam. Her husband had studied for many years in a prestigious *pesantren* in the town and his current activities are still affiliated with that *pesantren*. Initial communications between the two families were mediated by a *pengarep* who was Ibu Fatimah's neighbour.

Fahim marriage was not the end of the story. In 2016, her younger sister, Anis (16 years), was subjected to the same experience. Ibu Fatimah was impressed by the personality of one of the teachers at a *madrasah diniyah* near her house. Mahmud, the teacher, was believed to be well mannered and be skilled in reciting the Quran (*pintar ngaji*). Somehow or other it reached Mahmud's ears that Ibu Fatimah wished to make him her son-in-law. It all began when Anis suffered a small accident in the *pesantren* in which she was studying. This necessitated that she had to return home in order to receive intensive medical treatment. Mahmud visited her and Ibu Fatimah rejoiced in the happy accident which gave Mahmud the chance to become better acquainted with her daughter. Unaware of any ulterior motive, Anis had no suspicion that this was an initial step would lead to her being married off. Not long afterwards, Mahmud came with his family to propose to her (*lamaran*). Her father agreed to the proposal as long as the marriage could be postponed for two years after Anis had finished her studies. Unfortunately, the father passed away a year later and his condition was thrown to the winds. Anis ended up marrying Mahmud a couple of months after her father's death.

### **3.3. The Important Role of *Pengarep***

In a society like that of southern Summersari whose culture is heavily permeated by influences from Madura, marriage is generally thought to be the prerogative of families. Obedience to one's parents, particularly the father, is the most important norm. This cultural norm is enshrined in a well-known Madurese dictum *bhuppa' bhabhu' ghuru rato* (father, mother, teacher and formal leader respectively). However, although the power over the household and landed to delegated to male authority, the marriage pattern tends to be uxorilocal. A husband moves to live with his wife's family after marriage, especially when he does not own his own house. This custom

means that it is relatively easy for a woman to get the protection and support of her natal family.

Both the cases just cited exemplify the practice of arranged marriage. In a nutshell, it is a form of marital union in which the parents, usually the fathers, choose appropriate spouses for their daughters or sons. This pattern tends to be even stronger and more frequent when the female spouse is young and the male is much older. Summersari people refer to this type of marriage arrangement as *ajuddhuagi* (married-off). This local term implies not only the decision about the choice of a spouse, but also the decision about the timing of the marriage is firmly in the hands of the parents. Furthermore, the arrangement is found whatever the type of marriage, registered or unregistered. However, it should be borne in mind that any decision to register is dependent upon multiple factors, such as whether or not the girl is of an age to enter into a legally registered marriage and the presence of a legal document in the case of remarriage.

Nilan argues that marriage among middle-class families is influenced by the two-pronged values of faith and family. However, faith is generally considered less important than family.<sup>15</sup> Furthermore, in different Asian contexts, the practice of arranged marriage is also justified by the juxtaposition of the ideologies of family honour and shame.<sup>16</sup> Local people usually opt for an arranged marriage, seeing it as a manifestation of control and an ability to ensure the preservation of social honour. As was Ibu Fatimah, parents of a certain class in Summersari are concerned about ensuring that their daughters marry a suitable man. For this reason, girls' mobility is subject to stringent control. The concept of who constitutes a possible husband is primarily based on the man's religious orientation and estimates of his moral capital. When a man well versed in religion comes to ask their daughter's hand, there is a feeling of afraid that the man will be married to another woman (*takok ekalak orang*,

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<sup>15</sup> Pam Nilan, 'Youth Transitions to Urban, Middle-Class Marriage in Indonesia: Faith, Family and Finances', *Journal of Youth Studies*, vol. 11, no. 1 (2008), pp. 65–82.

<sup>16</sup> Santi Rozario, 'Islamic Marriage: A Haven in an Uncertain World', *Culture and Religion*, vol. 13, no. March 2015 (2012), pp. 159–75.

Madurese) if they do not soon accept the marriage proposal, Wealth and social standing do not count as highly as the notion of good manners.

In the East Javanese context, Beatty has revealed that an understanding of the social sentiments helps us to recognize the roles of the undercurrents of emotions beyond the purview of the family but still within in the context of a community. Emotions such as shame, reluctance and respect construct a societal relationships in which the concept of *apik* [innate goodness, virtue], in opposition to ugly, not to play by the rules (*elek*), plays an ineluctable part.<sup>17</sup> The most visible embodiment of the notion of *apik* in the everyday practice of marriage is best revealed in the selection of a potential spouse. The scales are tipped by the emphasis placed on the degree of religious behaviour and moral character (*oreng bhagus*, Madurese: a good man), without the consideration that this could be superficial behaviour. An identity as a *santri* (a graduate of *pesantren*) is highly preferable. If someone presents a girl's parents a young man with this qualification, the latter will not decline the proposal. They believe in Islamic doctrine, based on the Prophetic tradition, which gives religion (*lidīnihā*) precedence above everything else when selecting a spouse.<sup>18</sup>

My fieldwork materials suggest that the financial resources of the groom frequently trail in as the least consideration. However, we cannot ignore that pragmatic considerations about the social background and economic circumstances of the potential husband do not escape the parents' attention. Therefore, despite the prominence given to the concept of *apik*, the economic motivations of a woman and her family sometimes do seem to offer the best reason to explain her decision to marry. The ideal situation is on in which the husband plays

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<sup>17</sup> Andrew Beatty, 'Feeling Your Way in Java: An Essay on Society and Emotion', *Ethnos: Journal of Anthropology*, vol. 70, no. 1 (2005), pp. 53–78.

<sup>18</sup> One Prophetic tradition relevant to this issue is recorded in Islamic books, such as *Bulūgh al-marām*: "*Tunkaḥ al-mar'atu li'arba'in, lidīnihā, linasabihā, lijamālihā, wa limālihā.*" This means that "marry a woman for the intensity of her religious devotion, kin reputation, beauty and wealth. Aḥmad b. 'Alī Ibn Ḥajar al-'Asqalānī, *Bulūgh al-Marām min Adillat al-Aḥkām* (Riyadh: Maktaba al-Rushd, 2005), p. 350.

the role of breadwinner and the wife acts as a financial manager of the household.<sup>19</sup>

The concept of *apik* in marriage also infiltrated ideas about sexuality. It has to do with the notion of a woman's chastity. Chastity is culturally deemed an essential symbol of the family honour. Local people express this in the word *praban* (maiden or virgin),<sup>20</sup> which specifies the ideal condition of a possible wife. It is imposed by a social mechanism which prevents women from publicly indulging in interaction with unrelated members of the opposite sex. Those who breach this mechanism are labelled incapable of self-discipline (*ta' tao thenka*, Madurese). Likewise, when he chose Ulfa, Munir confessed that Ulfa's purity (*kesucian*) was the principal reason for his choice.

Moreover, it is impossible to reduce marriage to a simple, Islam-based-contract legitimating sexual intercourse between the bride and the groom.<sup>21</sup> It is just one part of a wide spectrum of social contexts. Hallaq has described the position of Islamic marriage as the cornerstone of communal harmony.<sup>22</sup> Looking at the issue more pragmatically, it is worth noting that numerous marriages in my research site have involved marriage partners from the same family. This sort of marriage is considered to be a good strategy by which to consolidate familial relationships and landownership. Described as *mapolong tolang* (collecting the scattered bones),<sup>23</sup> on a down-to-earth level this sort of marriage is intended to preserve the property of a family from depredations by outsiders (*oreng lowar*).<sup>24</sup>

Another aspect of the influence of the local culture on a marriage is the age of marriage. Summersari locals consider that nineteen is too late for women to embark on matrimony. Without a doubt, the

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<sup>19</sup> Not confined to, this principle also applies to other cultures. See Nurul Ilmi Idrus, *Gender Relations in an Indonesian Society: Bugis Practices of Sexuality and Marriage* (Leiden: Brill, 2016), p. 82.

<sup>20</sup> Niehof, *Women and Fertility in Madura (Indonesia)*, p. 107.

<sup>21</sup> Ali, 'Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines', p. 12.

<sup>22</sup> Hallaq, *Shari'a: Theory, Practice, Transformations*, p. 271.

<sup>23</sup> Mansurnoor, *Islam in an Indonesian world: Ulama of Madura*, p. 84.

<sup>24</sup> A. Latief Wiyata, *Carok: Konflik Kekerasan dan Harga Diri Orang Madura* (Yogyakarta: LKiS, 2002), p. 58.

significance of marriage for women is bound up with the concepts of marriageability and “saleability”. Society perceives an adult woman who is unmarried to be an unsaleable maiden or old spinster (*perawan tua*). Meanwhile, men are not tarred with this saleability stereotype when they remain unwed. Instead, the people in a circle around a bachelor will make fun of him, taunting him with being timid (*tak bengal*), *banci* (effeminate) or other allusions to sexual potency.<sup>25</sup>

Kulsum’s marriage, and her divorce, underline the local notion of *juddhu* (*jodoh*, Indonesian; divine destiny). In the context of a spouse, *juddhu* has to do with the principle of *mompong* (good fortune). Parents, not necessarily the father, are more committed to the concept of *mompong bedheh se mentah* (feeling fortunate that a male is proposing marriage). The application of the principle enjoying good fortune is claimed to be justified by the Islamic ideas which circulate among the local people. Kyai Hidayat, a respected ulama of southern Summersari, argued that a woman should not accept anyone but a man who is religiously committed and of good character. He referred to a *hadith* narrated by al-Tirmidhī (d. 892) stating that, if there should come to a father to marry (his daughter) one who is religiously committed and of good character, he is pleased, then he should marry her to the man. If he does not, there will be tribulation (*fitnah*) in the land and widespread corruption.<sup>26</sup>

The notions of *mompong* and *apik* have proved to be decisive factors in determining the selection of a spouse. Besides these ideas, the role of the *pengarep* appears to be an important facilitating factor in the implementation of these notions. As in Munir’s case, proposals of marriage are commonly conveyed to the girl’s parents through the offices of a *pengarep* (marital intermediary), who sometimes also referred to as *pelantar*. A *pengarep* is a person, usually a family member or a close neighbour, who performs the role of brokering marriage between the two families concerned. Although this brokerage is undertaken voluntarily, once the role is assumed a

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<sup>25</sup> Idrus, *Gender Relations in an Indonesian Society: Bugis Practices of Sexuality and Marriage*, p. 82.

<sup>26</sup> Abī ʿĪsā al-Tirmidhī, *Jāmiʿ al-Tirmidhī* (Riyadh: Bayt al-Afkār al-Dawliyya, 1999), p. 192.



*pengarep* carries the responsibility of finding a suitable wife for a young man. The *pengarep* will do his/her best to answer her parents' requirements. Whatever the answer is, acceptance or rejection, the *pengarep* will communicate it to the man or his parents. Some people still believe that to reject the first marriage proposal for their daughter is a social solecism. There is a local belief that it can lead to *sangkal* (karma), the daughter to whom the proposal has been made will be doomed to remain a spinster. Based on Niehof's research findings in Madura in the 1980s, the concept of *sangkal* articulates concern about a girl's marriage prospects which contributes significantly to the perpetuation of the custom of early marriage.<sup>27</sup>

The role of a *pengarep* is essential in many ways, particularly when women's mobility and social interaction between the genders are strictly controlled. Gus Raibin, my key informant, indicated that, upon receiving an affirmative answer from the girls' parents through the *pengarep*, the man's family has the confidence to organize a betrothal (*peneket*). In other words, the presence of a *pengarep* might curtail the risk of embarrassment to the man's parents should the proposal be rejected. It underscores that the local notion of shame encompasses not only controlling girl's sexuality but also upholding family's dignity. In the case of a remarriage, the function of *pengarep* is also important. When a divorcée or a widow is approaching the end of the period of prescribed before a new marriage can take place (*'idda*), it is considered acceptable for a *pengarep* to approach her to deliver a new marriage proposal.

A *pengarep* also plays a role in remarriage. Despite the fact her divorce had not been legally recognized by the state, the community regarded Kulsum as a divorcée. Hence, she was often requested to welcome male guests (*tamu*) in search of a prospective wife. A *pengarep* was the intermediary who introduced them to Kulsum. On some occasions, her own brother-in-law assumed this role. Kulsum had great difficulty in coming to terms with this reality, although she

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<sup>27</sup> Anke Niehof, *Women and fertility in Madura (Indonesia)* (Leiden: Instituut voor Culturele Antropologie en Sociologie der Niet-Westerse Volken, 1985), p. 109.

could understand why her close relatives were undisturbed by these proceedings. Her brother-in-law's principal motivation was to help Kulsum improve her situation in life. Although the situation caused her to feel uncomfortable, she did her best to negotiate her attitude to this long-standing local tradition. An agreed compromise between her and her brother-in-law was finally settled upon: *la kadung dennak jek dus nodusin, temmonen beih lah tak usa terrosagi* (when a guest already shows up, just greet him; there is no need to take it seriously).

#### **4. Seeking 'Middle Ground': The Role of *Kyai***

This section elucidates the roles of religious leaders (*kyai*) in managing the problems of marriage and sexuality. The case I analyse stems from the experiences of Kyai Karim, a prominent *kyai* in Summersari, when he was faced with the problem of having to deal with a polygynous marriage. This case throws interesting light on his socio-political position. He is not just an ordinary religious leader who runs a *pesantren*. He is much more than this as he is counted among the top leaders in both social and semi-governmental Islamic organizations. For instance, he is the head of the sub-district level of the Indonesian Council of Ulama and is one of the advisory chairmen of the regional chapter of the NU. In both these positions, he has demonstrated that his grasp of how different legal systems operate is undisputable. Importantly, the locals recognize him as a religious leader whose understanding of Islam is not influenced by old-fashioned ideas (*tidak kolot*) and is open (*terbuka*) to the modernizing world. The case recounted below shows beyond doubt that he was able to maintain his authority as an *ulama*, that is, as he claimed, he assumed responsibility for taking charge of morality and was able to challenge the state law. Fealy and Bush have remarked that *ulama* find themselves subject to competing pressures exerted by the society and the state.<sup>28</sup> My research has shown that *ulama* are constantly challenged when they are confronted with the real problems in society which in fact require

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<sup>28</sup> Greg Fealy and Robin Bush, 'The Political Decline of Traditional Ulama in Indonesia', *Asian Journal of Social Science*, vol. 42, no. 5 (2014), pp. 536–60.

a non-state settlement but none-the-less demand compliance with the state law. What follows is the narrative.

#### 4.1. A Case of Polygyny

A few years ago, a man, Rudi, and a woman, Nana, arrived at Kyai Karim's *pesantren*. Rudi confessed that he had having a love affair (*pacaran*) with Nana, whose age at the time was around twenty-five, for a few years. Rudi even claimed to have rented Nana a house so that he could indulge in intimate relations (*seperti layaknya*) with her all the more easily. Kyai Karim argued that the word "*seperti layaknya*" expressed by Rudi was a pseudo-term to refer to having extramarital sex, known locally colloquially as *kumpul kebo* (living together without being married). Kyai Karim showed no hesitation in urging them to undergo a marriage ceremony in order to legitimize (*menghalalkan*) their relationship. Then the cat was out of the bag. The problem was in fact not as straightforward as he had expected. Rudi was a civil servant and was already married to another wife. It is important to note that a male civil servant in Indonesia is prohibited to enter into a polygynous marriage without the permission of his superior (*pejabat*).<sup>29</sup> Kyai Karim was in a dilemma. As a religious leader, he was bound by the doctrine in classical Islamic law inspired by the fear that extramarital sex makes it obligatory for a man to marry. Meanwhile, under state law, the permission of the first wife is required.

To cut a long story short, he married them as he believed this was the only way to rescue the couple from living in sin (*kumpul kebo*) according to Islam. For Rudi, it was a polygynous marriage. After the conclusion of the marriage ceremony, Kyai Karim asked the couple to sign a letter declaring that they had been religiously married. This letter was in lieu of a marriage certificate. The letter mentions the names of the couples, the witness and the religious leader who solemnized the marriage. Kyai Karim urged Nana to tolerate her position as a second wife in an unofficially polygynous situation.

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<sup>29</sup>This prohibition is enshrined in Government Regulation no. 45/1990 jo. Government Regulation no. 10/1983 on the permission for marriage and divorce of civil servants. See O'Shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law*, p. 34.

However, Rudi found it hard to maintain good relations with Nana, especially when Nana demanded legal certainty over her status as a wife. When Rudi failed to comply with Nana's demands, she decided to report their informal marital union to the man's supervisor, taking the signed informal marriage letter with her as proof. Soon this polygynous marriage was the talk of the town.

A prominent official from Rudi's office met Kyai Karim to make sure that Nana's complaint was soundly based. Should this prove to be the case, her husband could be subject to legal sanctions for having entered into a marriage which counted as non-procedural polygyny. The official alleged that Kyai Karim had married them illegally, accusing him of "selling" the marriage ceremony. Kyai Karim was highly offended and, in return, blamed the official for being incapable of controlling his staff's morality. He then challenged the official with a set of questions set out in the following conversation. w

Kyai Karim : Would you mind telling what is your current rank?

Official : Echelon 3

Kyai Karim : When you go away on official business do you ever meet a woman whom you want to date. What do you do then?

Official : Yes, this is no more than typically male behaviour.

Kyai Karim : Well now, you have finally mentioned that phrase "typically male". Do you want to 'buy' or to marry?

I actually cannot accept polygyny because it is difficult to do justice to all the wives involved. But, if you do not marry, you are simply fornicating. Please do not complicate the problem, but find the best solution.

Official : Yes, *Kyai*, (this is tricky) so how should I go about it?

Kyai Karim : This situation obliges you to return to religious rules. You are supposed to respect not only state regulations but also religious teaching. The second should weigh more heavily.

This conversation shows that *Kyai Karim* resorted to Sharia in his search for as the solution to this problem of *kumpul kebo*, which he assumed to be a consequence of the obstruction generated by a state law. In this situation, he argued that Sharia had played an important role in safeguarding a person's religious life. However, he hastened to underline that religion should not be taken lightly as a broom to sweep up sins. In fact, when a couple has already sunk (*terperosok*) into moral turpitude and the state law can no longer provide a solution, the religious authorities cannot just abandon them to a moral limbo. He stated:

“Polygyny is very casuistic. From an ordinary point of view, no wife can accept her husband taking another wife. I have a daughter. I shall never agree that her husband enter into other marriages. But, in the case in which a man finds himself morally obliged (*terpaksa*) to indulge in polygyny, he has no escape although his decision will not be not readily accepted to society. God has indicated that polygyny is difficult. It can only be resorted to in exceptional circumstances like preventing illicit sex.”

#### **4.2. Legal Reasoning**

The expanding corpus of literature has been enhancing our insights into the complicated relationship between social norms and legal practice,<sup>30</sup> in which Sharia continues to act as an independent normative system. Cammack *et al.* have argued that control over marriage practice is played out in a contested arena in which different social actors seek to exercise their power.<sup>31</sup> Importantly, contemporary public debates about Islam and social change in Indonesia indicate that Sharia has been challenging the legal concept of marriage introduced by the state which has complicated or does not allow procedures permissible according to Sharia. Examining the law-making process, Cammack argues that, despite the failure to impose the compulsory enforcement of Sharia on the adherents of Islam,

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<sup>30</sup> Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 8; Sally Engle Merry, 'Law, Culture, and Cultural Appropriation', *Yale Journal of Law & the Humanities*, vol. 10, no. 2 (1998), pp. 575–603.

<sup>31</sup> Cammack, Young, and Heaton, 'Legislating Social Change in an Islamic Society: Indonesia's Marriage Law'.

Muslims have successfully defended traditional Islamic norms against ongoing legislative efforts to change the substance of Islamic marriage law.<sup>32</sup>

What has been happening in contemporary social practice? Based on his research on the social relations in a West Javanese regency, Stijn van Huis suggests that the modernization of the law on marriage-related matters has had a negative effect on the authority of *ulama*. In their efforts to safeguard their authority, they have been compelled to create a competing legal order and to challenge the authority of Islamic courts in respect of judicial divorce.<sup>33</sup> Also in the West Javanese context, Grijns and Horii have pinpointed the dilemmas and compromises which epitomize the contending norms on marriage and sexuality on the societal level. They emphasize that the influence of the conservative interpretation of Islam in controlling morality leads to the continuing practice of child marriage.<sup>34</sup> Platt, in the localized context of religious Lombok, puts forward a convincing case for arguing that the state law on marriage has been unsuccessful in superseding the so-called community-based law in the form of localized Islam and *adat*. In other words, social acceptance has prevailed over the state-based legitimacy. Legal processes in Islamic court do not always generate significant outcomes for defining the legal status of a wife.<sup>35</sup>

The case cited above reveals that Kyai Karim's reasoning about Islamic marriage crystallizes in the notion of "safeguarding Sharia". This entails at least two aspects: legalizing (sexual) relations and avoiding harm (sinful acts). However, the way Kyai Karim has been coping with this particular instance of polygyny deserves close attention, in particular making a detailed examination of the legal reasoning he used. In the interviews, Kyai Karim stated: "*Saya*

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<sup>32</sup> Cammack, 'Islamic Law in Indonesia's New Order'.

<sup>33</sup> van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 139.

<sup>34</sup> Grijns and Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns'.

<sup>35</sup> Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, p. 36.

*mengambil garis tengah pada kasus yang terjadi. Kalau mau disiplin ya pakai Syafi'i*" (I took a middle ground to resolve the case. If you are religiously disciplined, you are bound to follow the Shāfi'ī). Despite the supremacy of the Shāfi'ī *madhhab* in the area, he was clearly admitting that the Shāfi'ī way had not yet produced a suitable model for settling this sort of problem. Therefore, he underscored the notion of the 'middle ground'. In his choice, he was stressing that this was not a typical case and therefore demanded an alternative legal settlement.

What he meant by 'middle ground' was moving away from the Shāfi'ī School to another *madhhab* in his search for a solution. One problem which loomed large was that the woman came to him accompanied by no one but her man/husband. It was not clear whether she had already obtained the consent of her familial *walī* (Indonesian, *wali nasab*). In an ordinary situation, the *wali nasab* is allowed to delegate his role of marriage guardian to another person. This process is known as *tawkil wali*. Furthermore, in addition to a *walī* in the settlement of a marriage contract, three other aspects are required to be present: the bride and the groom, the proposal and acceptance (*ijāb* and *qabūl*) and the pronouncement of the marriage contract (*ṣīgha*). Besides these most dominant factors, Muslim jurists have been locked in dispute about other aspects, namely: the dowry (*mahr*), witnesses (*shuhadā'*) and the marriage guardian (*walī*). In the view of Shāfi'ī and Mālikī jurists, all these have to be present. Only the Ḥanafī jurists argue that a marriage without the consent of a *walī* can be valid.<sup>36</sup> Interestingly, behind his decision to take the 'middle ground' by *Kyai Karim* lies a particular stream of legal reasoning. His argument was constructed on the basis of a principle that, "if there is a danger that the woman might become mired in immorality (*fasād*), the judge has the right to marry her to a man of her own social status (*kufu'*)." This principle is founded on *Hadith* no. 1879, narrated by Aisha, from the collections of Ibn Mājah, which says, "Any woman whose marriage is not arranged by her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid. If (the man) has had intercourse with

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<sup>36</sup> Susan A. Spector, *Women in Classical Islamic Law: A Survey of the Sources* (Leiden/Boston: Brill, 2010).

her, then the *mahr* belongs to her in return for his intimacy with her. And if there is any dispute then the ruler is the guardian of the one who does not have a guardian.”<sup>37</sup>

This case of ‘illegal’ polygyny resonates with the notion of the internal plurality of a law. Salim quotes Menski’s concept of ‘a quadrangle of law’ which has been essential to the further development of the triangle of law introduced by earlier scholars.<sup>38</sup> An important factor in his model is not just that he reiterates the four elements of law (state, religion, society and international), but the factor which he terms ‘plurality of pluralities’. It means that each element of a law has internal plurality too. This concept is very relevant in an examination of Kyai Karim’s actions. By saying that he had “not only adhered to the state law, but also religious teaching”, he showed a tendency to position the state law and Sharia in juxtaposition to each other. In his solution, Kyai Karim settled the case by exploiting the internal plurality of legal opinions in Islamic jurisprudence. He produced a creative legal reasoning in his attempt to shape his decision in accordance with Islamic law. In his juggling of the different legal practices, he was aware that a strict reliance on a particular *madhhab* was out of the question. His dilemma is exemplified by Bowen’s remark that Islam needs to reshape its response in the variety of contexts is very apposite. In his opinion, a Muslim scholar has to engage in legal reasoning, thinking outside the *madhhab*, and consider the reinterpretation of Islamic norms, as well as the incorporation of *adat* into law.<sup>39</sup>

## 5. *Menghalalkan: Marriage to Legalize Relationship*

In this section, I present two case studies to demonstrate the fact that ideas about and practices in marriage are changing. An examination of the individual experiences of newly wed girls shows that Summersari

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<sup>37</sup> Muḥammad ibn Yazīd Ibn Mājāh, *English Translation of Sunan Ibn Majah with Commentary*, Vol. 3 edition (Riyadh: Darussalam, 2007), p. 78.

<sup>38</sup> Salim, *Contemporary Islamic Law in Indonesia: Shari’ah and Legal Pluralism*, pp. 25–6.

<sup>39</sup> Bowen, *Shari’ah, State, and Social Norms in France and Indonesia*.



society is witnessing a diversity of forms in the increase in women's individual autonomy. Thanks to the improved access to formal education and the greater job opportunities for high-school graduates, girls now have far more room to exercise their agency in choosing their partner. Social mobility is emerging as a driving factor in changing outlooks on marriage and sexuality. Nevertheless, as shown in the first case, the *fiqh*-based concept of the authority of a marriage guardian is still paramount in defining a girl's sexual morality.

### **5.1. Aini: The Girl Loves, the Guardian Decides**

In February 2017, my local collaborator took me to visit Aini's family. Aini, a twenty-one-year-old woman, was married in September 2011. After finishing Islamic primary school (*madrasah ibtidaiyah*), Aini studied in a prominent *pesantren* in a suburban area. Although the majority of *pesantren* have established *madrasah* with a graded-class system, not all of them have adopted a curriculum of general education. She preferred this *pesantren* because it runs a *madrasah* which combines both religious and secular subjects, adhering to the state curriculum. Unfortunately, she only managed to survive in this *pesantren* for a couple of months. She returned home and was sent to a local *pesantren* close to her village. This was also not a success. My collaborator said that Aini had actually wanted to study in an Islamic formal school, instead of in *pesantren*. Eventually she obtained the permission from her parents to continue at a *madrasah tsanawiyah* in the sub-district centre. Compared to her other classmates, she was older and looked more mature. Her parents were not really happy with this situation, not least because in that school Aini could interact not only with her fellow female students but also male ones.

In the meantime, a young man, Ulum, fell in love with Aini. Ulum is three years older. He had graduated the same school but by this time was in the second year of vocational high school (*sekolah menengah kejuruan*). Aini reciprocated his feelings. She said that they pursued a *pacaran* (courtship), but never met in private (*kencan*). It was not long before Ulum proposed that she marry him but said that he was prepared to wait until after she completed her schooling. Quite unexpectedly as far as Aini was concerned, Ulum's parents suddenly

came to see her parents, proposing that she be Ulum's wife. The proposal took her parents by surprise, even though a situation like this is not unique to their tradition. Aini's parents happened to be aware that their daughter already had a special relationship with a young man. The parents were in dilemma. The fact that the children were already emotionally attached loomed very large in their minds. Adding to the confusion was the custom that rejecting a marriage proposal is morally humiliating in the eyes of their society. There was a fear that their children would become too intimately involved and might possibly bring some form of social dishonour on the family. The father decided to accept the proposal and allow his young daughter to become engaged. A couple of months later she married and stopped school because the school refused to accept a married student.

A graduate of a *pesantren*, she now spends her days at home as a housewife, raising a three-year-old daughter. I talked to her, in Javanese with Madurese accent, about her experiences. In a subdued voice, Aini expressed her sadness about dropping out of secondary school. But this did not mean that she was not happy. When I asked if she was happy with the marriage, she smiled and acknowledged with pleasure she was married to a man of her own choice. She admitted that she was glad that the *pesantren* had taught her the values of *ikhlas* (sincerity) and *syukur* (gratitude). In this instance, Ulum and Aini were already acquainted with each other. Although the marriage ceremony was thrust upon them too fast, Aini was happy to be able to marry the man of her choice.

Koentjaraningrat remarks that the *santri* religious system provides the individual with a basic feeling of security through its concept of an intensive personal relationship with God.<sup>40</sup> This observation still seems pertinent to Aini's situation. I asked her opinion about her marriage being arranged by her parents and she responded as follows: "We had been developing feeling of closeness (*dekat*) for a couple of months. Perhaps you could call it *pacaran*, but

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<sup>40</sup> Koentjaraningrat, 'Family and Religion in Indonesia', *East Asian Cultural Studies*, vol. 13, no. 1/4 (1974), p. 67.

it was not the usual sort. The two of us never met together alone. *Pacaran* is really restrictive, but *kencan* (meeting in private) is considered out of the question and taboo.” Again, Islamic marriage is not perceived merely as a contractual tie. For Muslims in Summersari or elsewhere for that matter, marriage serves more as an act of worship (*ibadah*) which, according to the Prophetic tradition, completes one half of one’s religion. It unites the physical (*lahir*) and spiritual (*batin*) forces which lead to a husband and a wife committing themselves to each other body and soul for the sake of God.

In Aini’s case, it was unimportant to her that her parents should have sought her approval when the marriage proposal from Ulum’s family was accepted. Aini, therefore, never expressed her agreement or rejection of the parent’s decision. Even had she refused in view of the traditions of her society, as her guardian her father would have exercised his right to coerce her into marriage. Fathers, or other male guardians, play a decisive role in controlling their daughters’ behaviour<sup>41</sup> and in determining the validity of a marriage contract.<sup>42</sup> The 1974 Indonesian Marriage Law requires the consent of both spouses. Both the bride and the groom are required to sign a letter of consent (*surat persetujuan mempelai* or N3 form) to be submitted to the marriage registration office as one of the obligatory documents to be handed over before a marriage ceremony can be registered.

Despite the decision made by her father, Aini’s marriage reveals an ambivalence which necessarily suggests the evolution of sexual norms in a traditional community. Aini herself found her spouse, but her father decided the timing of the marriage. The younger generation in Summersari is showing a greater tendency to choose their own husbands and wives, but even so the timing of the ceremony is not always up to them. During the last decade, the result of increasing access to and the extended duration of formal education, schools have

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<sup>41</sup> Ann Black, Hossein Esmaeili, and Nadirsyah Hosen, *Modern Perspectives on Islamic Law* (Cheltenham: Edward Elgar Publishing, 2013), p. 129.

<sup>42</sup> Muhammad Khalid Masud, ‘Gender Equality and the Doctrine of *Wilāya*’, in *Gender and equality in Muslim family law: Justice and ethics in the Islamic legal tradition*, ed. by Ziba Mir-Hosseini et al. (London: I.B. Tauris, 2013), p. 12.

been increasingly providing a space in which the younger generation can meet prospective partners. Girls and boys are not separated in schools or classrooms, allowing them the freedom to interact with each other. As a consequence, young people, especially girls, are becoming more exposed to the notion of mutual love (*la padeh senneng*). This ideal of mutual love has recently become more instrumental in the shaping of local marriage behaviour; the sexuality of the young is no longer a familial affair.

Aini's mutual love demonstrates that a woman's increasing autonomy in the choice of marriage spouse does not necessarily result in a more egalitarian view of the gender relationship in a family. When I asked about her understanding of gender relations in Islam and how this affected her marital life, she was of the view that a devout Muslim wife ideally acknowledges her husband's leadership and accepts his sexual advances.<sup>43</sup> This outlook is still a strong reflection of the conservative understanding of gender relations in Islam and is the one disseminated in *pesantren*. Only a small number of *pesantren* have proposed a newer idea of gender equality.<sup>44</sup>

In their views of what makes a marital relationship, Aini and other students in *pesantren* are familiar with *'Uqūd al-lujayn fī bayān ḥuqūq al-zawjayn* by al-Nawawi (AD 1813-1898), a textbook which claims to uphold patriarchal ideas of gender relations.<sup>45</sup> The book is not part of regular curricula, but is usually read during the month of Ramadan when people come to listen to it voluntarily. There are four chapters in the book. The first two chapters address the rights and obligations of wife and husband in a family. The first chapter sets out a husband's obligations towards his wife, namely: treating her well, providing a

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<sup>43</sup> Nina Hoel and Sa'diyya Shaikh, 'Sex as Ibadah: Religion, Gender, and Subjectivity among South African Muslim Women', *Journal of Feminist Studies in Religion*, vol. 29, no. 1 (2013), pp. 69–91.

<sup>44</sup> Bianca J. Smith and Mark Woodward, 'Introduction, Decolonizing Islam and Muslim feminism', in *Gender and power in Indonesian Islam: leaders, feminists, Sufis and pesantren selves*, ed. by Bianca J. Smith and Mark Woodward (London and New York: Routledge, 2014), p. 10; Husein Muhammad, *Fiqh Perempuan: Refleksi Kiai atas Wacana Agama dan Gender* (Yogyakarta: LKiS, 2001).

<sup>45</sup> Srimulyani, *Women from Traditional Islamic Educational Institutions in Indonesia: Negotiating Public Spaces*, p. 125.

livelihood and dower, as well as guiding her through the maze of rituals and wifely obedience to the husband. The second chapter describes a wife's obligations to her husband which include taking good care of him, submitting her body to him, staying at home while the husband is away and keeping modestly covered at all times (*aurat*). Another book popular among the *pesantren* community is *Qurrat al-'uyūn bi-sharḥ naẓm ibn Yāmūn fī adāb al-nikāḥ* by Muḥammad al-Tihāmī which deals with sexual morality. This book encourages the importance of marriage as a means to preserve morality and establish a lineage. It also addresses a number of issues related to ethics related to sexual relations, such as reciting prayers, keeping the body clean and the proper times and places in which to have sexual intercourse.

Now, Aini stays at home, doing the housework and taking care of the children. Nevertheless, while her husband is working outside the home, she can use her free time in the morning to undertake some sort of economic activity which could generate a small amount of money. She, as do other neighbouring mothers, embroiders embellishments for Islamic dresses. The money she makes is enough to give small daughter some pocket money (*uang jajan*).

## **5. 2. Marry Me! Marriage and Religious Piety**

In the first months of 2007, I made the acquaintance of Iin's family. Socially, it can be considered middle-class. The father works in a private factory and the mother runs a small green grocery stall (*warung sayur*). Iin was twenty-one when I first met her. She had never boarded in a *pesantren*, but had attended state Islamic schools instead. As is a common practice in her circles, she had extended her studies of Islam at an informal *madrasah diniyah* just across the way from her house. After completing *madrasah aliyah* (Islamic senior high school) in 2014, she decided not to continue her studies but to join the work force. Her mother told me that Iin had been encouraged to continue her studies at university, but she had not been tempted by the prospect. Iin began by working in a restaurant in the town of Bangil where she met a young man, Alim, at the end of 2015. He is three years older than Iin and is originally from her neighbouring village. He has been working as a factory hand in the industrial centre known as PIER

(Pasuruan Industrial Estate Rembang), in which hundreds of major transnational companies operate.

As of September 2015, they have been in a serious relationship. In contrast to Aini, because Iin worked outside the home, she has had ample opportunities to meet Alim in private. In view of her situation, Iin acknowledged that she did not want to have a long period of courtship with Alim. Reasons derived from sexuality, public morality and certainty (*kepastian*) appear to have shaped her outlook. She believed that Alim was the man of her destiny (*juddhu*) but she feared that their relationship would not end in marriage. She therefore asked Alim to marry her as soon as possible. In April 2016, Alim's family came to Iin's parents to formalize the betrothal (*lamaran*) which would signify Iin's status as an engaged woman. After this Iin left her job saying that she needed to prepare for wedding in August, a few months after.

Iin articulated her ideas on marriage as follows:

"I thank God that my parents allowed me to marry a man of my own choice. I hope God blesses us in this marriage. This marriage will safeguard me from [the perils of] pre-marital sex. I just want to be a good wife to him and a good mother to my children. We don't have to worry about how we are going to feed our family. If our intentions are good, God will help us."

The brief sketch of Iin's marriage reflects the changing attitudes towards marriage among young local Muslim females in Summersari. It seems obvious that the dominant power of the older generation in the choice of marriage partners and the timing of the marriage which prevailed in the past is now gradually being offset by the girls' agency. A girl's consent to the marriage has been emerging as an important factor. The Indonesian Marriage Law, Article 7 (1), stipulates that girls can consent to marriage from the age of sixteen, while for boys the age of consent is from nineteen. However, the law does make an exception for Muslims by stating that the permission of an Islamic court can serve as a legal basis for marrying girls and boys under sixteen and nineteen respectively. Their consent to the marriage is dependent upon the

consent of their male guardians if they are under the age of twenty-one. This means that the individual autonomy of the girls is only really acknowledged if they are already older than twenty-one.

Furthermore, Iin's views on what marriage means to her have been formulated with Islamic doctrines on sexuality and morality in mind. She proposed an array of arguments related to sexuality, saying that, for instance, marriage would preclude damaging interaction (*pergaulan rusak*) and allay her concerns about premarital sex. Marriage was the only way open to her to make their sexual relationship lawful (*menghalalkan hubungan*). Of course, this was not the only reason. Playing a big part in her thoughts were the ideas of founding a lineage (*namba ketoronan*) and complying properly with worship (*nyampornaagi ibedeh*). Many *Hadiths* state this value: marriage completes one half of one's religion; it is part of a person's *Sunna*; one of the three persons entitled to the help of the Almighty is he or she who marries with a vision of preserving their chastity. These ideas have always featured prominently in the chapters on marriage in the classical *fiqh* treatises and have been a constitutive element of the worldview of Muslims who have been deeply influenced by the *pesantren* culture.

Muslim feminists have explicitly encouraged the interpretation of sexuality and sexual interaction enshrined in the Islamic texts, as an essential part of individual experience and as the cultivation of spiritual awareness.<sup>46</sup> In spite of framing marriage as a means to avoid sinful acts, it is also indisputably regarded as an expression of piety.<sup>47</sup> Over the past two decades, marriage as a step on the right road towards piety has been encouraged as a way to cultivate a pious self among Muslims who have not enjoyed an education in traditional Islamic institutions.<sup>48</sup> Scholars connect this phenomenon to the rise of

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<sup>46</sup> N. Hoel, 'Engaging Islamic Sexual Ethics: Intimacy, Pleasure and Sacrality', *Sexualities*, vol. 18, nos. 1–2 (2015), p. 84.

<sup>47</sup> Asma Barlas, 'Believing women' in Islam: *Unreading patriarchal interpretations of the Qur'an* (Austin, TX: University of Texas Press, 2002), p. 153.

<sup>48</sup> Rozario, 'Islamic Piety against the Family: From "Traditional" to "Pure" Islam'; Rachel Rinaldo, *Mobilizing Piety: Islam and Feminism in Indonesia* (New York: Oxford University Press, 2013).

religious piety in this secular world. Recent trends in the anthropological study of Islam have suggested that modernization does not necessarily result in secularization or religious desacralization,<sup>49</sup> but instead gives rise to the proliferation of multiple modernities.<sup>50</sup> This change has generated an increasing demand for the re-advancement of religious and traditional institutions in a whole gamut of temporal sectors.<sup>51</sup>

Religious piety is also closely related to individual agency. Smith-Hefner, for instance, has underscored the changes among the urban, educated Muslim Javanese young people who have been influenced by the rise in the awareness of individual autonomy and the expansion of their own increasing agency. Even the agency of women has been expanding and opened up a range of possibilities. This has allowed them to navigate their own actions in their quest to find different solutions as long as these sustain their ideals of a better life. In this respect, Schielke has underscored that, “Muslims’ engagement with their religion is neither the outcome of blind adherence, nor the result of coercion, but an active and dynamic process of engagement with ideals of good life and personhood.”<sup>52</sup>

## 6. Conclusion

In this chapter, I have discussed the ways people in religious Summersari mould the practices associated with marriage. Despite the homogenous tradition of Islam in the area, the narratives indicate the internal heterogeneity of the relationship between agency of the actors involved, cultural norms and prevailing social structure in their

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<sup>49</sup> Peter L. Berger, ‘The Desecularization of the World: A Global Overview’, in *The Desecularization of the World: Resurgent Religion and World Politics*, ed. by Peter L. Berger (Washington: Ethics and Public Policy Center, 1999), p. 11.

<sup>50</sup> Timothy P. Daniels, ‘Introduction: Sharia Dynamics and the Anthropology of Islam’, in *Sharia Dynamics: Islamic Law and Sociopolitical Processes*, ed. by Timothy P. Daniels (Cham: Springer International Publishing, 2017), p. 14.

<sup>51</sup> Kalanges, *Religious Liberty in Western and Islamic law: Toward a World Legal Tradition*, p. 4.

<sup>52</sup> Samuli Schielke, ‘Second Thoughts about the Anthropology of Islam, or How to Make Sense of Grand Schemes in Everyday Life’, *ZMO Working Papers*, no. 2 (2010), p. 5.



selection of whom to marry. I suggest that, in all social categories, the ideas of an ideal marital spouse are conceptualized within the set of localized ideals of chastity (*kesucian*), correct behaviour (*apik*) and good fortune (*mompong*). These notions culminate in the identity of what it is to be a *santri* (people of a *pesantran*). As we have seen, these values are certainly present in the case of Munir and Ulfa. In their pre-marriage process, we are given to understand that the *pesantran* was an important factor in the maintenance of the *fiqh*-based orientation towards marriage. In other words, being a *santri* signifies the purity of a girl and her high moral principles. In Summersari, the implementation of these ideas in marriage and remarriage are still dependent on the roles of the *pengarep* (traditional marriage-broker) and *kyai* (religious leaders), although the role of the latter might be superseded.

Assuming the leading role in facilitating the communication between the two families concerned, the *pengarep* are very important to families noted for the religiosity and those whose daughters have been educated in *pesantran*. *Pengarep* help to protect the reputation of the family and oversee the preservation of social honour. Nor is their role confined to first marriage, remarriage has become an arena in which *pengarep* exercise their influence too. As shown in the case of Kulsum, who is from a lower-class family, we see how cultural norms such as *mompong*, *juddhu* and *apik* are also intertwined with religious rationales. Kulsum's out-of-court divorce suggests the overriding importance of social acceptance compared to formal legal recognition. Likewise, practices among middle-class families also show the importance of this role. Fahim was married-off after her parents were visited by a *pengarep*. Her husband is a *santri* from a middle-class family and therefore a good catch. People were very much afraid that the man would be married to another woman (*mompong*) if the marriage proposal was not accepted. This same reasoning applied in the case of Fahim's sister.

Another key actor in any marriage is *kyai*. *Kyai* are important in resolving the legal issues which intersect with religion-related sexual morality. *Kyai* maintain their roles in the production of an Islam-based

legal norm which exercises control over sexual morality and this sometimes clashes with the state legal norm. In addition, divergent opinions in traditional *fiqh* doctrines have been essential to the construction of a legal reasoning which ties in with people's interests. The ability to exercise legal reasoning has become a fundamental instrument by which *kyai* can maintain his legitimate authority in the society. Because of the involvement of *kyai*, marriage has been, and is still, an effective tool by which to tackle the problems of religious morality and female sexuality.

Increasing participation in formal education and the rise in women's mobility have challenged these tried and tested practices.<sup>53</sup> Formal schools now provide a space in which young people can meet prospective partners. Mutual love is becoming more important. Because they now have more room to exercise agency in the selection of a possible spouse, the role played by *pengarep* is a diminishing one. Nevertheless, for girls the finding a beloved partner is still not the crucial factor in deciding when they marry. In many cases, the decision of the timing of a marriage is still firmly subject to the parents' authority because they are still the people supposed to exercise control over their daughter's sexual morality. Parents usually refer to this obligation in terms of preserving the social honour of a family. Even when women are in the position to articulate their consent to a marriage, they still need to depend on religiously inspired principles in order to make sense of their choices.

In Pasuruan a woman who divorces informally (out of court) and wants to remarry will experience no problem in finding a *kyai* willing to marry her to a new spouse, despite the absence of a marriage certificate, an attitude found in other parts of Indonesia too, like in Cianjur, West Java.<sup>54</sup> This suggests that religious norms still prevail over other legal norms, especially in remarriage. Furthermore, with the help of their traditional stalwarts, the *kyai* and *pengarep*, the villagers in Pasuruan are managing to continue to observe their

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<sup>53</sup> Gavin Jones, 'Which Indonesian Women Marry Youngest, and Why?', *Journal of Southeast Asian Studies*, vol. 32, no. 1 (2001), pp. 67–78.

<sup>54</sup> van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 271.

community-based legal system, thereby forestalling the heavy involvement of state institution.<sup>55</sup> Platt has underlined the dominant influence of community-based law which saps the efficacy of the Marriage Law.<sup>56</sup> The narratives in this chapter have revealed some of the dilemmas and compromises which must be made on different levels in society as the result of the diversity of values on marriage and family.

In the next chapter, I have analysed the relationship between the state official functionary in charge of marriage registration (*penghulu*) and their informal village counterparts (*modin*), so long embedded in villagers' marriage ceremonies. In its attempt to come to grips with the position of the *penghulu* and the KUA, this chapter adopts the concept of 'state-in-society' approach. It will also present an attempt to investigate the ways local people negotiate their own interests when dealing with a regulation of the marriage fee newly introduced by the government.

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<sup>55</sup> Grijns and Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns', p. 12.

<sup>56</sup> Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, p. 149.

