



Samarah: Jurnal Hukum Keluarga dan Hukum Islam
Volume 7 No. 3. November 2023
ISSN: 2549 – 3132; E-ISSN: 2549 – 3167
DOI: 10.22373/sjkh.v7i3.20048

Law Omission in Muslim Society: Inquiring Citizen Rights in the Administration of Islamic Family Law in Madura, Indonesia

Abdul Haq Syawqi

Sharia Faculty, Institut Agama Islam Negeri, Madura, Indonesia

Muhammad Khatibul Umam

Institut Agama Islam Negeri Madura, Indonesia

Achmad Ainur Ridho

Sekolah Tinggi Ilmu Al-Quran, Sumenep, Indonesia

Roziana Amalia Ilyas

Sekolah Tinggi Ilmu Al-Quran, Sumenep, Indonesia

Try Subakti

Institut Agama Islam Negeri Madura, Indonesia

Email: asyawqi@iainmadura.ac.id

Abstract: Understanding of the law omission seems controversial; some view it only as an interruption of normal life, and some discern it as an administrative violation. Differences in the understanding may produce difficulties in enforcing the administration of Islamic family law. In line with this context, while mapping forms of the law omission in various community groups, this study analyses reasons for differences in the understanding of it. This qualitative research used administration and Islamic Law theory. This study was based on data collected from interviews, FGDs, and Google Forms on three different community groups with religious structural characteristics in four regencies on Madura Island. This study revealed that social differences and social classes in a society have become a force that structures the society's views or understanding of the law omission. Differences of understanding have consequences for the levels of difficulties in enforcing the Islamic family law, especially in the administrative context, such as in cases of registration and dispensation of marriages. Structural differences that exist in a religious society become important to differentiate factors in an interpretation of a reality of life. This paper suggests expanding the observed cases and providing additional data sources to enable an in-depth and comprehensive understanding of the impact of the law omission in the field of administration of Islamic family law.

Keywords: Law omission, citizen rights, administration, Islamic family law

|| Submitted: September 18, 2023 || Accepted: October 21, 2023 || Published: October 21, 2023

<http://jurnal.ar-raniry.ac.id/index.php/samarah>

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

Abstrak: Pemaknaan terhadap pembiaran hukum memperlihatkan sesuatu yang kontroversial, sebagian melihat pembiaran hukum hanya sebagai interupsi atas kehidupan normal dan sebagian yang lain melihat pembiaran hukum sebagai pelanggaran hukum yang bersifat administratif. Perbedaan pemahaman telah menimbulkan kesulitan dalam menegakkan administrasi hukum keluarga Islam. Sejalan dengan itu, tulisan ini selain memetakan bentuk pembiaran dalam berbagai kelompok masyarakat juga menganalisis alasan-alasan terjadinya perbedaan pemahaman. Penelitian kualitatif ini menggunakan teori administrasi dan hukum Islam. Tulisan ini didasarkan pada data yang dikumpulkan dari hasil wawancara, FGD dan Google Form pada tiga kelompok masyarakat yang berbeda dengan memperhatikan karakteristik struktural kelompok agamis pada empat Kabupaten di Madura. Hasil penelitian memperlihatkan bahwa perbedaan kelompok dan kelas sosial dalam masyarakat telah menjadi kekuatan yang menstrukturkan pandangan dan pemaknaan masyarakat atas pembiaran hukum. Perbedaan pemaknaan memiliki konsekuensi bagi tingkat kesulitan dalam menegakkan hukum keluarga Islam khususnya dalam konteks administrasi seperti yang terjadi pada masalah pencatatan dan dispensasi perkawinan. Perbedaan struktural yang ada dalam masyarakat agamis telah menjadi faktor pembeda penting dalam interpretasi atas suatu realitas kehidupan. Tulisan ini menyarankan perlunya perluasan kasus yang diteliti dan penambahan sumber data untuk memungkinkan dipahaminya dampak pembiaran hukum di bidang administrasi hukum keluarga Islam secara mendalam dan komprehensif.

Keywords: *Pembiaran hukum, hak warga negara, administrasi, hukum keluarga Islam*

Introduction

There have been controversies in interpreting the omission of Islamic family law administration. Some consider the omission of the Islamic family law administration as a violation of law, while some others still consider it as a normal problem. A report noted that there is still a high number of unregistered marriages in 4 regencies on Madura Island. For example, in Pamekasan there were 558 applications for *itsbat nikah* (marriage certificates) in 2018, 129 applications for marriage certificates in 2019, 474 applications for marriage certificates in 2020, 421 applications for marriage certificates in 2021.¹ Meanwhile, there was a spectacular number of cases of marriage dispensation. For example, in Bangkalan there were 30 cases of marriage dispensation in 2019, 572 cases in 2020, and 118

¹ Religious Court of Pamekasan, "Annual Reports/Activity Implementation Reports for the Year 2018-2021 Pamekasan Religious Court Class I. B" (Pamekasan, n.d.).

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

cases in 2021.² Based on these data, these issues on the Islamic family law administration seem normal. However, administratively these are serious problems, namely the law omission. The law omission clearly has occurred as there are a lot of applications of marriage certificates and marriage dispensations that violate the legal age limit for marriage not recorded at an official government institution, Religious Affairs Offices (*Kantor Urusan Agama/KUA*).

As far as the author analyses, studies on omission of Islamic family law administration tend to look at two issues. Firstly, clearly it is omission of the law because people unconsciously violate The Law Number 16 of 2019 concerning amendments to The Law Number 1 of 1974 in which Article 7 states that marriage is only permitted if the male and female are 19 years old.³ In the context of administrative law, the first source of law is written legislation⁴, so it is clear that this is a fundamental⁵ law omission⁶. Secondly, this omission seems normal; for example, when marriage dispensation is legalized by a judge. The ratification of the judge in the marriage dispensation seems to be a solution, but at the same time this shows a normality which will make it difficult to enforce the Islamic family law. Moreover, if examined further, there are a lot of issues that the judge must consider before deciding on cases of marriage dispensation, either administrative or non-administrative issues⁷; in civil law this is then referred to as formal and material law.⁸ Therefore, this study aims to identify that problems of marriage certification and marriage dispensation are not only about normal or abnormal problems as some laws regulate these, but also law omission on their administration that becomes a fundamental problem.

² Religious Court of Bangkalan, "Report on the Implementation of Activities for the Year 2019-2021 The Bangkalan Religious Court" (Bangkalan, n.d.).

³ "Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (2019).

⁴ Ahmed M.A. Hamad, et.al., "The Judiciary in Islamic Law, Palestinian Legislation, and Guarantees of Its Independence," *Samarah: Jurnal Hukum Keluarga Islam dan Hukum Islam* 5, No. 1, (2021), p. 18.

⁵ Kerstin Steiner, "Branding Islam: Islam, Law, and Bureaucracies in Southeast Asia," *Journal of Current Southeast Asian Affairs*, (2018), p. 43.

⁶ Giacinto della Cananea and Mauro Bussani, "The 'Common Core' of Administrative Laws in Europe: A Framework for Analysis," *Maastricht Journal of European and Comparative Law*, (2019), p. 246,

⁷ Saulius Katuoka and Ieva Navickaitė-Sakalauskienė, "Misleading Actions vs. Misleading Omissions under Unfair Commercial Practices Directive. National Approach in Context," *International Comparative Jurisprudence*, 2016, p. 23.

⁸ Rio Satria, "Dispensasi Kawin Di Pengadilan Agama Pasca Revisi Undang-Undang Perkawinan," 2019, p. 17.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

This study is to complement some shortcomings of previous studies that has less focus on consequences of neglecting⁹ the Islamic family law administration. In particular, this paper points out that "controversy" in viewing the omission of this law is a central dimension shown by religious communities. Accordingly, this study has three main questions. First, what are forms of the omission of Islamic family law administration? Second, what are basic factors for the occurrence of the omission in a religious society? Third, how are implications of the omission for the life of the religious community? The answers to these three questions may allow understanding of the rationale that is used as basic factors for obedience and disregard for the Islamic family law administration.

This study on Islamic family law administration is based on an argument that each group has a different ideological¹⁰ and practical basis which has influenced several forms of problems in the field of Islamic family law. Laws that have been implemented in religious societies have not been responded uniformly by them. Some use religion as an ideological basis in reading and understanding what is happening. Some use science and social¹¹ conditions as a basis for problems they are facing, including this issue of Islamic family law. Different rationale of perspectives in the societies have become important factors that have led to the law omission.

Law omission in the Islamic family law administration was chosen as a subject of this paper for three reasons. First, the issue of this omission¹² is a central topic that has not received much attention in previous studies. Second, law omission may explain the existence of a causal relationship¹³ that requires a thorough understanding as it arises for reasons that need to be disclosed. Third, the existence of law omission becomes a basis for a series of consequences that occur. These consequences require mapping to formulate some actions. The three reasons are expected to provide a comprehensive understanding on the omission

⁹ Zoe Rathus, "The Research Says Perceptions on the Use of Social Science Research in the Family Law System," *Federal Law Review*, (2018), p. 13.

¹⁰ Belinda Fehlberg, Lisa Sarmas, and Jenny Morgan, "The Perils and Pitfalls of Formal Equality in Australian Family Law Reform," *Federal Law Review*, (2018), p. 368.

¹¹ Rizal Darwis Ahmad Faisal, et.al., "Sociological and Political Constraints of Islamic Sharia Enforcement in South Sulawesi Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (2023), p. 2.

¹² Michael Douglas, et. al., "The HCCH Judgments Convention in Australian Law," *Federal Law Review*, (2019), p. 428.

¹³ Diletta Mauri, "Becoming Parents as Mending the Past»: Care-Experienced Parents and the Relationship with Their Birth Family," *Children and Youth Services Review*, 2023, p. 6.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

and insights for problem solving, especially regarding the rights of citizens in the administration of Islamic family law.

This study was qualitative research that relied on primary and secondary data. The primary data were obtained from field studies and from mapping research aspects. The required data consisted of tangible data, factors, and implications. The forms of controversy involve patterns of differences in knowledge, values, and social practices. Various practices that demonstrate differences in interpretation¹⁴ were mapped in this study. Factors, such as religion, family interest, and social practices, that contribute to the occurrence of controversy, were mapped. Practical reasons could serve as the basis for the differences in interpretation. Data regarding the implications of the law omission were also mapped, especially concerning how law omission leads to administrative violations and rights within the family or rights as a citizen.

The data were collected from interviews, Focus Group Discussions (FGDs), and Google Forms obtained from three different community groups, while mapping the structural characteristics of the religious groups in four regencies on Madura Island. For interviews, the author conducted deep interviews with three community groups characterized structurally as follows. First were informants who had unregistered marriages and informants who obtained marriage dispensation living in villages. Second was informants who had unregistered marriages and informants who obtained marriage dispensation living in cities. Third is community leaders in several regencies on Madura Island where there were suspected cases of unregistered marriages and marriage dispensations. In data collection through FGDs, the author organized the FGDs with community figures, specifically *Kyai* (Islamic scholars) or academic figures, *modin/penghulu* (marriage officers) from local Religious Affairs Offices (KUA), as well as parents who had unregistered marriages and applied for marriage dispensation. On the other hand, in data collection through Google Forms, the informants were academics or students whose studies were focused on Islamic family law.

This study was conducted for two months, starting from a desk review, field observations, interviews, FGDs, and a Google Form survey. Prior to the field research, various secondary materials were collected, including online news, to map cases of law omission at textual levels. Observations were conducted in several meeting spaces where law omission by some involved

¹⁴ Roger Chafe, "Rejecting Choices: The Problematic Origins of Researcher-Defined Paradigms within Qualitative Research," *International Journal of Qualitative Methods*, (2023), p. 7.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjhc.v7i3.20048

parties could be directly observed. The interviews were conducted within three categories of social classes for comparative¹⁵ purposes, at each respective location of each informant after obtaining their consent. Five individuals were selected as informants for the FGD sessions, to confirm initial findings and collecting additional data obtained from the Google Form survey.

The analysis on the obtained data was conducted in two forms. Firstly, data processing followed the stages outlined by Huberman.¹⁶ These stages started from data reduction from the observations and interviews, followed by data display in the form of summaries and synopses based on the themes found in the field, and then followed by data verification for the conclusion. Secondly, the analysis employed interpretive techniques, starting from the "restatement" of the data found from both observations and interviews, followed by "description" to identify patterns or trends in the data, and then concluded by "interpretation" to reveal the meaning within the obtained data. Technically, the process involved interviews, FGDs, and Google Form survey were refined with the framework of state administrative law theory in the narrative of qualitative research. Segmenting informants within the Madura community groups and utilizing a valid research application along with an appropriate theory, the results of this study could be comprehensive and at least be able to depict the current situation regarding citizens' rights within a religious society, such as on Madura Island, particularly in relation to the administrative aspects of Islamic family law.

Forms of Law Omission on the Islamic Family Law Administration in Madura

The forms of law omission in this study were based on data obtained from Religious Courts (*Pengadilan Agama/PA*) and Religious Affairs Office (KUA) in 4 regencies on Madura Island. The author found a surprising fact; there were about two crucial issues referred to in this study as law omission. The first form is related to marriage registration. It is solely on marriages that are not registered at KUA. Such unregistered marriages are commonly known in Indonesia, and particularly in Madura Island called "*nikah sirri*" or informal marriages. The second form is marriage dispensation. Initial data for marriage dispensation can be traced and found in the PA of the 4 regencies on Madura Island. Commonly known, administrative data in the PA is usually referred to as "cases," and each registered case is assigned a case number. Based on these case

¹⁵ Roger Chafe, "Rejecting Choices, p. 7.

¹⁶ A. Michael. Miles, Matthew dan Huberman, *Analisis Data Kualitatif: Buku Sumber Tantang Metode-Metode Baru* (Jakarta: UI Press, 2000), 15.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

numbers, the author then delves into the field data and analyses them. In a detailed and clear manner, data are presented along with their analyses as in the following sections.

1. Marriage Registration

The term "marriage registration" used in this study refers to a specific condition or issue observed in the field. The issue at hand is based on data found in the PA, indicating that a lot of people in Madura Island do not register their marriages the KUA. This is evident from the numerous requests for "*istbat nikah*" (marriage certificate) in several areas on Madura Island. For instance, in PA Bangkalan, over the past 5 years, there have been a significant number of *istbat nikah* cases. In 2019 there were 606 cases, in 2020 there were 572, and in 2021 there were 339 cases. In Sampang, in 2018 there were 29 cases, in 2019 there were 12 cases, and in 2020 there were 8 cases. Similarly, in Sumenep, in 2016 there were 575 cases, in 2020 there were 270 cases, and in 2021 there were 265 cases. The detail of *istbat nikah* cases or unregistered marriage cases can be seen in the table below:

Table 1: Marriage Certificate Cases in the Last 5 Years

No	Religious Court (PA)	Case	Year	The Number of Registered Cases	The Number of Decided Cases*
1	PA Bangkalan	Isbat Nikah	2019	606	607
			2020	572	573
			2021	339	338
2	PA Sampang	Isbat Nikah	2018	28	29
			2019	9	10
			2020	7	8
3	PA Pamekasan	Isbat Nikah	2018	556	327
			2019	532	750
			2020	474	488
4	PA Sumenep	Isbat Nikah	2016	575	575
			2020	270	270
			2021	265	265

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjhc.v7i3.20048

Sources: Yearly Reports of PA Bangkalan, Sampang, Pamekasan, Sumenep**2. Marriage Dispensation**

In terms of marriage dispensation, it is often also called marriage discretion. This term appears as it has been regulated in Islamic Law Compilation (*Kompilasi Hukum Islam/KHI*) and is sure to find it in cases in PA. The PA always refers to it as marriage dispensation. In the last 5 years, there have been a lot of cases for marriage dispensation in several regencies in Madura. In PA Bangkalan, in 2019 there were 30 cases, in 2020 there were 118 cases, and in 2021 there were 118 cases. In Sampang, in 2018 there were 0 cases, in 2019 there were 8 cases, in 2020 there were 0 cases. In Sumenep, in 2016 there were 30 cases, in 2020 there were 292 cases, and in 2021 there were 335 cases. Then in Pamekasan, the author has described the cases in the introductory section. In detail, the marriage dispensation cases or the unregistered marriage can be seen in the table below:

Table 2: Marriage Dispensation Cases in the Last 5 Years

No	Religious Cort (PA)	Case	Year	The Number of Registered Cases	The Number of Decided Cases*
1	PA Kabupaten Bangkalan	Isbat Nikah	2019	30	28
			2020	118	119
			2021	118	117
2	PA Kabupaten Sampang	Isbat Nikah	2018	0	0
			2019	8	9
			2020	0	0
3	PA Kabupaten Pamekasan	Isbat Nikah	2018	35	33
			2019	43	42
			2020	267	266
4	PA Kabupaten Sumenep	Isbat Nikah	2016	30	30
			2020	292	292
			2021	335	335

Source: Yearly Reports of PA Bangkalan, Sampang, Pamekasan, Sumenep

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

The two data on the cases regarding marriage registration and marriage dispensation reveal a rather surprising fact that is intriguing to study. This is considered surprising for at least two reasons. The first reason is related to cultural factors—how can an area that appears to be religious still exhibit irreligious behavior. Based on the data above, there is still a significant number of people who have not properly registered their marriages under the law. The highest record, as indicated by the data, was found in PA Bangkalan in 2019, around 606 cases of *istbat nikah*.

The second reason is the impact of this cultural image: whether the act of not officially registering marriages, called "nikah sirri," is also a form of religious practice in a religious community. This aspect is worth exploring further because it's possible to argue that fulfilling the necessary requirements and pillars of Islam without officially registering with the government might not be seen as breaking the law. Thus, these theoretical-subjective reasons need to be verified to ensure knowledge about marriage registration and marriage dispensation; then the results of this study become comprehensive and objective. These reasons are discussed in more detail by the author in the subsection on factors of law omission.

Law Omission on Islamic Family Law Administration in a Religious Society

1. Marriage Registration

Various reasons and perspectives contribute to the factors of a community not engaging in marriage registration. For instance, according to an interview with a community leader in a village within a sub-district, Kota Pamekasan, it was stated that the issue of whether marriages are registered or not doesn't overly concern the Madurese society. This is because Madura has become modern today, unlike the Madura of the past.¹⁷ Pragmatic perspective¹⁸ like this demonstrates how a society's culture can change due to social conditions. In the sociology of law, this phenomenon is referred to as social change. Social change and legal change must develop in parallel ways; as this is a necessity or scientific consequence.¹⁹ In a technical framework, from an administrative perspective, this social change is a system in which the system itself can regulate and adjust

¹⁷ AFMS, "Direct Interview" (2022).

¹⁸ Adriaan Bedner & Stijn van Huis, "Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism," *Utrecht Law Review* 6, no. 2 (2010), p. 190.

¹⁹ Syaifullah, *Refleksi Sosiologi Hukum* (Bandung: PT. Refika Aditama, 2007), 31.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

according to its needs²⁰. It is also worth considering that institutions should consider bureaucratic reforms that start from within themselves. For example, KUA should adopt approaches that can convincingly persuade the community to voluntarily and consciously recognize the importance of marriage registration. This approach can be effective and successful if reforms are initiated from the bottom-up²¹, meaning initiating changes in grassroots level, not changing the laws (top-down).

In contrast to the view of the informant or the leader above, the community as active participants hold diverse opinions regarding the unregistered marriages. According to a parent, a farmer in a village in Sumenep, who do not register their child's marriage with the KUA, he argued that dealing with administrative matters is overly complicated. He chose not to register their child's marriage due to the belief that fulfilling the requirements and pillars of an Islamic marriage is sufficient, and they didn't see any issue if they didn't register the marriage according to government regulations.²² The response from the informant, who is a parent involved in an unregistered marriage, seems to reflect a pragmatic aspect of life where safety is prioritized. This is especially prominent on an island with religious characteristics like Madura. This observation aligns with rural sociology; in predominantly agricultural societies, such as those in rural areas, people tend to think more realistically and avoid unnecessary risks in their affairs.²³ Practically, Islamic teaching in Madura consists of three component: credo, community and code.²⁴ These three components are encompassed within the pillars of Islam (*rukun Islam*) and the pillars of faith (*rukun Iman*). Therefore, in terms of understanding the depth of Islamic belief, tranquility or safety is enough for the marriage, as mentioned by one of the informants from the village above. In the framework of state administration, this perspective falls within the realm of human behavior. According to this view, human beings invariably have goals that guide their behavior.²⁵ It is these goals that subsequently lead their behavior. As a result, it's quite common to find that

²⁰ Inhye Heo, "The Paradox of Administrative Decentralization Reform in Young Asian Democracies: South Korea and Indonesia," *World Affairs*, (2018), p. 377.

²¹ Ahmad Tholabi Kharlie; Fathudin; Windy Triana, "Reforming Islamic Marriage Bureaucracy In Indonesia Approaches and Impacts," *Al-Jāmi'ah: Journal of Islamic Studies* 59, no. 2 (2021), p. 255.

²² SYHR, "Direct Interview" (2022).

²³ Kurnadi Shahab, *Sosiologi Pedesaan* (Yogyakarta: Ar-Ruzz Media, 2017), 12.

²⁴ Dian Eka Indriani et al., "Traditions: Radical or Peace-Building," 2019.

²⁵ Heo, "The Paradox of Administrative Decentralization Reform in Young Asian Democracies: South Korea and Indonesia," 392.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

even in highly religious rural areas, people may adopt a pragmatic view, although violating some laws.

In contrast to the community leaders and rural community behavior discussed earlier, it appears that the urban population on the island holds different perception regarding unregistered marriages. For instance, a parent not registering their child's marriage, an informant working as an employee expressed that whether the marriage is registered or not is not a very serious issue. He believed that adhering to the true teachings of their religion is sufficient and more than enough.²⁶ Then interesting facts were derived from the Google Form data. When respondents were asked about the importance of registering marriages, their answers were quite similar to the interview data mentioned earlier. They have heard of rules or laws requiring marriage registration, but due to practical needs or pragmatic reasons, this requirement becomes more permissive.²⁷ During the FGDs, an intriguing set of data emerged. When community leaders, academics, and individuals who had not registered their marriages were gathered, they seemed to be fully aware that they were practicing law omission. This proved when they were asked if they were aware of the marriage registration. To this question, they answered that they were aware, but due to practical consideration, urgency, or a desire to avoid hassle; and then the final answer, religious factors which they believed did not mandate marriage registration as long as the requirements and pillars of Islam were fulfilled, everything will be fine.²⁸

The data obtained from the informant's interview above is intriguing when viewed within the context of urban society's culture. In the culture of urban society, there exists a process known as individualization²⁹. This process could be potentially transformative, implying that individuals become accustomed to accepting differences, making society more permissive towards deviations. From an administrative perspective, this aligns with an integrative paradigm³⁰, where social systems and human behavior are interlinked and can adapt to each other. As a result, the responses of urban and rural communities, as discussed earlier, are highly integrated, even though fundamentally they are all engaging in the law

²⁶ RSM, "Direct Interview", Madura, (2022).

²⁷ ABDZ, "Direct Interview", Madura, (2022).

²⁸ Based on the results of the Focus Group Discuccion (FGD), Madura, 2022.

²⁹ Arpad Szakolczai, Agnes Horvath, and Attila Z. Papp, "Individualization as Depersonalization: Minority Studies and Political Anthropology," *Nationalism and Ethnic Politics*, (2017), p. 4.

³⁰ Della Cananea and Bussani, "The 'Common Core' of Administrative Laws in Europe: A Framework for Analysis," 219.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

omission. The author summarizes several factors related to the unregistered marriages.

Table 3: Factors of Law Omission on Marriage Registration in Madura

No	Factor	Segmentation	Regency
1	Religion	Urban Society, Rural Society	Bangkalan, Sampang, Pamekasan, Sumenep
2	Pragmatism	Urban Society, Rural Society	Bangkalan, Sampang, Pamekasan, Sumenep
3	Culture	Urban Society, Rural Society	Bangkalan, Sampang, Pamekasan, Sumenep

Source: Data based on the interviews, FGD, dan Google Form, 2022

2. Marriage Dispensation

Based on the interview results conducted with a community leader in Pragaan, Sumenep, it was found that there is a misperception in the society, including in marriage dispensation. According to this community leader, there are essentially two types of people in Madura. The first type can be described as common individuals who consider government regulations to be unimportant. Hence, they simply rely on religious justifications. The second type consists of those who are starting to understand the existence of rules and regulations. Exploring those in the second type in greater depth is intriguing because, ultimately, it's a comprehensive religious understanding that serves as their rationale.³¹ On the marriage dispensation, it may easily lead our minds to think about rural communities that might not fully understand the rules or tend to disregard them. However, based on the interview results mentioned above, such a hypothesis is actually contradicted. In the context of Islamic legal reform, some contemporary and conservative scholars³² seem agreed on the necessity of marriage registration rules for the benefit, particularly of women, and to avoid the disorderliness in the administration of Islamic family law.³³ Therefore, based on the interview results and the theory of legal reform, it is ideal for regulations to change as societal perspectives and times evolve. These changes are a necessity as the perspectives of society shift and times change.

³¹ SHRR, "Direct Interview", Madura, (2022).

³² Hoko HORII Mies GRIJNS, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5, no. 1 (2018), p. 453.

³³ Khoiruddin Nasution, *Fazlurrahman Tentang Wanita* (Yogyakarta: Tazzafa dan Accademia, 2012), 178.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

The next informants, aside from the community leaders, are those involved in marriage dispensation, who could be parents or married couples. However, in this study, the most frequently factor for the marriage dispensation is the parents. In rural areas, it was found that when asked why they engage in an act prohibited by the law, such as marrying off their underage children through dispensation, their responses led to a common conclusion. They acknowledged being aware of the legal regulations, including the recent law No. 16 of 2019, which sets the minimum age for marriage at 19 years for both males and females. However, they proceeded with the dispensation anyway, as they felt they had no other choice to marry their children off as soon as possible. This phenomenon can be examined through the lens of legal theory. According to Roscoe Pound, the law has limitations due to several reasons, one of which is the multitude of demands placed upon it, but the law itself may not be able to fulfil and satisfy all of the demands.³⁴

In the urban segmentation of the Madura Island community, it seems that their perspectives are not significantly different from those living in rural areas. This is evident from the data obtained through FGDs and Google Forms. Based on the FGD results, it appears that the law serves as a double-edged sword as there are dual interpretations. The first interpretation is pragmatic, implying that individuals engage in marriage dispensation to ensure the legality of their marriages. The second interpretation is law omission, meaning that by pursuing dispensation, they might actually violate other rules, such as the minimum age requirement for the marriage. This then becomes difficult to solve in both theoretical and practical terms of the marriage dispensation; consequently, there are pros and cons on this issue. Therefore, clear and unambiguous regulations are necessary to prevent confusion among the public concerning the rules of the marriage dispensation in the KHI.³⁵

Based on the data from the Google Form, it was also found that most respondents answered that they engage in marriage dispensation to obey the marriage law.³⁶ This contributes to a negative precedent for law enforcement, especially in the administrative perspective. Because in the current context of our state administration, there has been a shift from the traditional public administration (TPA) paradigm towards the new public administration (NPA).

³⁴ Roscoe Pound, *An Introduction to the Philosophy of Law* (New York: Routledge, 2017), p. 31.

³⁵ Rosdalina Bukido and Fence M. Wantu, "Synchronize the Different Law Rules Study of Law Number 16 Year 2019 and Law Number 35 Year 2014," *Journal of Legal, Ethical and Regulatory Issues*, 2020.

³⁶ Based on Data from Google Form, 2022.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

Within the NPA, state administration is no longer a driving force, but a catalyst.³⁷ This implies that in our law enforcement, these rules are essentially treated as formalities. As a result, the enforcement of the law, while seemingly aligned with the prevailing laws, is actually a continuous act of law omission.

Table 4: Factors of Law Omission on Marriage Dispensation in Madura

No	Factors	Segmentation	Regency
1	Pragmatism	Urban Society, Rural Society	Bangkalan, Sampang, Pamekasan, Sumenep
2	Religion	Urban Society, Rural Society	Bangkalan, Sampang, Pamekasan, Sumenep
3	Administration	Urban Society, Rural Society	Bangkalan, Sampang, Pamekasan, Sumenep

Source: Data based on the interviews, FGD, dan Google Form, 2022.

Implications of Law Omission on Islamic Family Law Administration in Religious Society

1. Child Custody

The first implication of law omission is clearly evident in child custody rights. In the context of marriage registration, for example, informants are actually aware of this. This awareness was expressed during the interview conducted by using the Madurese language; it was said "*oning ben taoh atoran genikah* (they know and understand the rules)."³⁸ Some villagers of Sokobenah, Sampang, as previously mentioned by the community leaders in the previous section of this paper, acknowledged that Madurese society are different in between the past and today. Therefore, in this context, they are actually aware that unregistered marriages may have implications for child custody rights. In the framework of reforming family law regulations, it becomes crucial to implement approaches, socialization, and education among the Madurese. Neglecting this issue can significantly impact and have implications on other substantive matters, such as determining biological paternity, the child's status within marriage, and so forth.³⁹

³⁷ Della Cananea and Bussani, "The 'Common Core' of Administrative Laws in Europe: A Framework for Analysis," 246.

³⁸ BTMM, "Direct Interview", Madura, (2022).

³⁹ Stijn Cornelis van Huis Euis Nuraelawati, "The Status of Children Born Out of Wedlock and Adopted Children In Indonesia: Interactions Between Islamic, Adat, and Human Rights Norms," *Journal of Law and Religion* 34, No. 3 (2019), p. 352.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjhc.v7i3.20048

Based on the FGD data in Bangkalan, it was also found that both rural and urban communities focus on preventive measures. The wording they use in the Madurese language is "*kaangguy anyegghe oreng acerrai*" or "to prevent people from divorcing."⁴⁰ This implies that they actually understand that there is a factor that can prevent divorce, which is achieved through marriage registration. Therefore, this should be responded appropriately, as administrative rules made by the government should meet the need of the community⁴¹, either for preventive purposes⁴² or other purposes.

Meanwhile, based on the data obtained from the Google form, it was found interesting data that the respondents' answers were quite balanced when asked whether they would sue for child custody due to a divorce. There were two answers from the respondents, namely some who would sue and some who would not.⁴³ As a result, this data shows that the issue of marriage registration regarding child custody rights varies significantly. In the context of Madura, Islamic religiosity, either in rural or urban areas, isn't a determining factor in the Madurese understanding. This is because the understanding of Madurese on Islam isn't solely based on symbols but more on behavior.⁴⁴ Therefore, it's possible that someone from a rural area may exhibit behavior more akin to urban areas and vice versa. The point is, in the context of child custody rights among the Madurese, their understanding isn't solely based on symbols. For instance, although someone seems religious, it doesn't necessarily mean their behavior aligns with the law; their behavior must also be assessed to determine if it aligns with the symbols.

Child Support (*Nafkah*)

Another implication of law neglect is on child support. The variable of child support arises from the results of interviews conducted by the author. A community leader in Pamekasan stated that child support is a logical

⁴⁰ Subject of Research Head of Pesantren, Chief of KUA, "Focus Group Discussion" (2022).

⁴¹ Della Cananea and Bussani, "The 'Common Core' of Administrative Laws in Europe: A Framework for Analysis," 247.

⁴² Fatum Abubakar, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)," *Al Ahkam* 4, no. 2 (2019), p. 4. Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Jakarta: Kencana Prenada Media Group, 2006), p. 190.

⁴³ Based on Data from Google Form, 2022. Hazar Kusmayanti, et.al., The Settlement of Disputes Regarding Division Of Joint Property After a Divorce in The Central Aceh Regency," *Jurnal Ilmiah Islam Futura* 21, No. 2 (2021).

⁴⁴ Eka Indriani et al., "Traditions: Radical or Peace-Building," p. 10.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

consequence⁴⁵ from marriage problems such divorce. If deeply examined, this consequence is essential and must exist when a marriage ultimately cannot be salvaged. For marriages that are not officially recorded, this will become a very serious issue.

This implication is further reinforced by the results of the FGD conducted in Sampang. Even though this regency has relatively fewer cases of marriage registration and dispensation than the other three regencies in Madura, the findings are interesting to note. In the FGD, participants including community leaders, representatives from KUA, and parents of unregistered marriages, acknowledged that if parents would divorce, the right to child support would become crucial and should be prioritized.⁴⁶ From this FGD, it can be concluded that the society fundamentally understands that Islamic law is the correct and appropriate solution. This aligns with the majority of scholars' opinion, which states that the rights of children, including financial support, are a shared responsibility both when parents are together and when they are divorced.⁴⁷

Based on the data from the Google Form, the respondents actually tend to emphasize religious factor as a differentiating factor. This means that they believe if the conditions and requirements of marriage are fulfilled is sufficient for the marriage. However, everyone does not think this way as there are still those who argue for the sake of administrative order and the need to claim the rights of child support,⁴⁸ especially when the divorce occurs. This highlights the fact that the Madurese society actually understands various variations within Islamic law. In Islamic law itself, there are a number of provisions regarding child support (*hadhanah*). The differing opinions among scholars⁴⁹ regarding this matter reflect how comprehensive and complex Islamic family law is, requiring broad and diverse understanding and knowledge in order to truly comprehend it.

Inheritance

The last implication based on the data obtained from the interviews is inheritance. In matters of inheritance, informants hold somewhat similar opinions to the two implications above. However, the issue of inheritance tends to be more related to compliance with something agreed upon together. In Madurese language, informants refer to it as "*napah can rembheg genikah*," meaning that

⁴⁵ MHTQ, "Direct Interview" Madura, (2022).

⁴⁶ Focus Group Discussion, Madura 2022.

⁴⁷ Anja Steinbach, "Children's and Parents' Well-Being in Joint Physical Custody: A Literature Review," *Family Process*, 2019, p. 7.

⁴⁸ Based on Data from Google Form, 2022.

⁴⁹ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia*, 327–36.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

the inheritance issues depend on agreement.⁵⁰ In customary law⁵¹, the calculation of inheritance differs between customary law, Western law, and Islamic law. In customary law, there are almost no fixed rules for inheritance calculation, making it essential to have administrative marriage registration to ensure proper implementation.

Based on the data from the FGDs, the participants discussed that inheritance is considered unimportant, but it is actually an essential issue. It is deemed essential due to the cultural significance of male status in Madurese society. As a result, the Madurese saying "*pagghun lakek se nyak benny'an*" emerges, emphasizing that males receive the largest share in inheritance.⁵² In this context, an integral aspect in discussing the inheritance is the kinship or family system. In Madurese society, they strongly uphold the principles of kinship,⁵³ which are included in the patrilineal kinship system. However, their implementation can be highly conditional, depending on the social situation.

Conclusion

Based on the three research questions in this study, several conclusions can be drawn. First, there are two forms of law omission in Islamic family law administration, namely marriage registration and marriage dispensation. Second, the factors that contribute to the omission include factors such as religion, pragmatism, administration, and culture within the society. Third, the implications of the omission are evident in the realm of Islamic family law, particularly concerning the rights of child custody, child support, and inheritance. The analysis of the law omission in interpreting the Islamic family law administration has led to two significant findings. First, the interpretation of the administration is dynamic, revealing not only different levels of knowledge but also different interests. Second, this study offers another perspective on the Islamic family law in relation to administration and citizens' rights, which has traditionally been seen solely from a legal perspective. The dynamic interpretation of Islamic family law and a newer subjective perspective to understand the consequences of the law omission have contributed for new directions in the field of Islamic family law studies.

⁵⁰ APSP, "Direct Interview", Madura, 2022.

⁵¹ Katharina Holzinger et al., "The Constitutionalization of Indigenous Group Rights, Traditional Political Institutions, and Customary Law," *Comparative Political Studies*, (2019), p. 4.

⁵² WDH, "Direct Interview", Madura, (2022).

⁵³ Ahmad Tholabi Kharlie, *Hukum Keluarga Indonesia* (Jakarta: Sinar Grafika, 2013), 260.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

This current study is limited to analyzing some specific regions and perspectives of the informants. This analysis does not allow the research findings to be used as a reference to explain other variations in the law interpretation on a larger scale. Similarly, relying solely on the perspectives of the informants to draw conclusions about the interpretation of the omission does not provide a comprehensive view of the controversies surrounding this interpretation. Due to these limitations, further studies are suggested to consider comparative aspects across different regions and larger ranges of data; hence, more established rules can be formulated for the development and reform of the Islamic family law.

References

Journals and Books

- Abubakar, Fatum, “Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan).” *Al Ahkam* 4, no. 2 (2019).
- Bedner, Adriaan, & Stijn van Huis. “Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism.” *Utrecht Law Review* 6, no. 2 (2010).
- Bukido, Rosdalina, and Fence M. Wantu. “Synchronize the Different Law Rules Study of Law Number 16 Year 2019 and Law Number 35 Year 2014.” *Journal of Legal, Ethical and Regulatory Issues*, 2020.
- Cananea, Giacinto della, and Mauro Bussani. “The ‘Common Core’ of Administrative Laws in Europe: A Framework for Analysis.” *Maastricht Journal of European and Comparative Law*, 2019. <https://doi.org/10.1177/1023263X19827817>.
- Chafe, Roger. “Rejecting Choices: The Problematic Origins of Researcher-Defined Paradigms within Qualitative Research.” *International Journal of Qualitative Methods*, 2023. <https://doi.org/10.1177/16094069231165951>.
- Douglas, Michael, Mary Keyes, Sarah McKibbin, and Reid Mortensen. “The HCCH Judgments Convention in Australian Law.” *Federal Law Review*, 2019. <https://doi.org/10.1177/0067205X19856503>.
- Faisal, Ahmad, et.al., “Sociological and Political Constraints of Islamic Sharia Enforcement in South Sulawesi Indonesia.” *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (2023).
- Fehlberg, Belinda, et.al., “The Perils and Pitfalls of Formal Equality in Australian Family Law Reform.” *Federal Law Review*, 2018.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjhc.v7i3.20048

<https://doi.org/10.1177/0067205x1804600302>.

Hamad, Ahmed M.A., et.al., “The Judiciary in Islamic Law, Palestinian Legislation, and Guarantees of Its Independence.” *Samarah: Jurnal Hukum Keluarga Islam dan Hukum Islam* 5, No. 1 (2021).
<https://doi.org/10.22373/sjhc.v5i1.8927>.

Heo, Inhye. “The Paradox of Administrative Decentralization Reform in Young Asian Democracies: South Korea and Indonesia.” *World Affairs*, (2018).
<https://doi.org/10.1177/0043820018813474>.

Holzinger, Katharina, Roos Haer, Axel Bayer, Daniela M. Behr, and Clara Neupert-Wentz. “The Constitutionalization of Indigenous Group Rights, Traditional Political Institutions, and Customary Law.” *Comparative Political Studies*, (2019). <https://doi.org/10.1177/0010414018774347>.

Indriani, Eka Dian, et.al., “Traditions: Radical or Peace-Building,” 2019.
<https://doi.org/10.2991/icrhc-18.2019.3>.

Kharlie, Ahmad Tholabi, *Hukum Keluarga Indonesia*, Jakarta: Sinar Grafika, 2013.

Katuoka, Saulius, and Ieva Navickaitė-Sakalauskienė. “Misleading Actions vs. Misleading Omissions under Unfair Commercial Practices Directive. National Approach in Context.” *International Comparative Jurisprudence*, 2016. <https://doi.org/10.1016/j.icj.2016.07.002>.

Kusmayanti, Hazar, et.al., “The Settlement of Disputes Regarding Division of Joint Property After a Divorce in The Central Aceh Regency,” *Jurnal Ilmiah Islam Futura* 21, No. 2 (2021).
 DOI: <http://dx.doi.org/10.22373/jiif.v21i2.6599>.

Mauri, Diletta, “Becoming Parents as Mending the Past»: Care-Experienced Parents and the Relationship with Their Birth Family.” *Children and Youth Services Review*, 2023.
<https://doi.org/10.1016/j.childyouth.2023.106911>.

Mies GRIJNS, Hoko HORII. “Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns.” *Asian Journal of Law and Society* 5, no. 1 (2018).

Miles, Matthew dan Huberman, A. Michael. *Analisis Data Kualitatif: Buku Sumber Tantang Metode-Metode Baru*. Jakarta: UI Press, 2000.

Nasution, Khoiruddin, *Fazlurrahman Tentang Wanita*. Yogyakarta: Tazzafa dan Accademia, 2012.

Nurlaelawati, Euis, and Stijn Cornelis van Huis. “The Status of Children Born Out Wedlock and Adopted Children in Indonesia: Interaction Between Islamic, Adat, and Human Rights Norms.” *Journal of Law and Religion* 34, no. 3 (2019).

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

- Pound, Roscoe *An Introduction to the Philosophy of Law*. New York: Routledge, 2017.
- Rathus, Zoe. “The Research Says Perceptions on the Use of Social Science Research in the Family Law System.” *Federal Law Review*, 2018. <https://doi.org/10.22145/flr.46.1.4>.
- Rio Satria. “Dispensasi Kawin Di Pengadilan Agama Pasca Revisi Undang-Undang Perkawinan,” 2019.
- Syarifuddin, Amir, *Hukum Perkawinan Islam Di Indonesia*. Jakarta: Kencana Prenada Media Group, 2006.
- Shahab, Kurnadi. *Sosiologi Pedesaan*. Yogyakarta: Ar-Ruzz Media, 2017.
- Steinbach, Anja. “Children’s and Parents’ Well-Being in Joint Physical Custody: A Literature Review.” *Family Process*, 2019. <https://doi.org/10.1111/famp.12372>.
- Steiner, Kerstin. “Branding Islam: Islam, Law, and Bureaucracies in Southeast Asia.” *Journal of Current Southeast Asian Affairs*, 2018. <https://doi.org/10.1177/186810341803700102>.
- Syaifullah. “Refleksi Sosiologi Hukum.” Bandung: PT. Refika Aditama, 2007.
- Szokolczai, Arpad, Agnes Horvath, and Attila Z. Papp. “Individualization as Depersonalization: Minority Studies and Political Anthropology.” *Nationalism and Ethnic Politics*, 2017. <https://doi.org/10.1080/13537113.2017.1273653>.

The Rules of Law

- Religious Court of Pamekasan. “Annual Reports/ Activity Implementation Reports for the Year 2018-2021 Pamekasan Religious Court Class I. B.” Pamekasan, n.d.
- Religious Court of Bangkalan. “Report on the Implementation of Activities for the Year 2019-2021 The Bangkalan Religious Court.” Bangkalan, n.d.
- Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan atas Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan (2019).

Interviews and FGD

- ABDZ. “Direct Interview,” Madura, 2022.
- WDH. “Direct Interview,” Madura, 2022.
- SYHR. “Direct Interview.” Madura, 2022.
- RSM. “Direct Interview,” Madura, 2022.

Law Omission in Muslim Society

Abdul Haq Syawqi, et. al.

DOI: 10.22373/sjkh.v7i3.20048

SHRR. "Direct Interview," Madura, 2022.

MHTQ. "Direct Interview." Madura, 2022.

APSP. "Direct Interview," Madura, 2022.

BTMM. "Direct Interview." Madura, 2022.

AFMS. "Direct Interview," Madura, 2022.

Focus Group Discussion, at Madura 2022.