

The bureaucratization of Muslim marriage in Indonesia

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Abstract

The phenomenon of “secret” (*siri*) Muslim marriages—marriages that are conducted without state recognition—has become a hotly debated topic in Indonesia, particularly since the emergence of Muslim marriage agencies that organize unregistered online marriages. The issue is particularly contested between the state, women’s activists, legal activists, and religious leaders. This article analyses the current efforts of the Indonesian state to bureaucratize Muslim marriages by insisting that unregistered marriages need to be registered with the state, and the societal responses to such regulations. Those who believe in the importance of state registration of Muslim marriage emphasize that it is an integral part of social reform. However, it has also been seen as creating problems when it only serves the interests of the majority and stands in the way of minority religious understandings, particularly by some conservative Muslims who believe that marriages within the Muslim community should be regulated by Muslim leaders (*‘ulamā*) only, and not the state. This article argues that unregistered marriage has been the real test of the bureaucratization of religion in Indonesia. The government’s effort to demonstrate its Islamic credentials by accommodating the people’s majority religion has led it to assume an ambiguous position on the issue of unregistered marriages.

KEYWORDS: Muslim marriage, *siri* (secret), unregistered marriage, Islamic law, women, Islam, Indonesia

Introduction

The bureaucratization of Islam in Indonesia has its roots in the early years of the independent state (post-1945), in particular through the establishment of the Ministry of Religious Affairs in 1946. Kathryn Robinson argues that this moment “was the first in a series of strategies by the state to ‘capture’ Islam, rather than have Islam capture the state.”¹ Sezgin and Künkler argue that governments are often interested in managing religion for the sake of nation-building.²

- 1 Kathryn Robinson, “Muslim Women’s Political Struggle for Marriage Law Reform in Contemporary Indonesia,” in *Mixed Blessings: Laws, Religions, and Women’s Rights in the Asia Pacific Region*, eds. Amanda Whiting and Carolyn Evans (Leiden: Brill, 2006), 183–210, at 184.
- 2 Yüksel Sezgin and Mirjam Künkler, “Regulation of ‘Religion’ and the ‘Religious’: The Politics of Judicialization and Bureaucratization in India and Indonesia,” *Comparative Studies in Society and History* 56, no. 2 (2014): 448–78.

The bureaucratization of Muslim marriages through the process of marriage registration is a major component in the bureaucratization of Islam. The government uses well-known rhetoric to justify this bureaucratization project, namely to protect the rights of vulnerable citizens—especially women and children—and to ensure public order.³ The bureaucratization of Indonesian Muslim marriages was considered a significant move—particularly by women activists and women’s organizations—to emancipate family law⁴ from the “anti-egalitarian provisions of Islam.”⁵

Drawing on one year of fieldwork conducted in 2016 in Jakarta, Indonesia, this article concentrates on the most recent attempts of the government to bureaucratize Muslim marriages—in particular relating to the increasing presence of online *nikah siri* (secret marriage) agencies—and the responses towards these efforts. Scholars such as Eisenstadt, Gouldner, Janowitz, Wright, and Delany have emphasized the ambivalent societal responses towards state bureaucratization projects.⁶ In independent Indonesia’s history, too, a tension can be observed between those who support and those who oppose the process of bureaucratization of Muslim marriages at the level of state governance.

Following Eisenstadt’s suggested lens, this study focuses on the context that has given rise to the current process of the bureaucratization of Muslim marriage. Eisenstadt argues, “the conditions determining the effects of bureaucracy’s political neutrality vary in different countries, and one of the main problems facing the comparative study of bureaucratic organization is to elucidate these situations.”⁷ Those who believe in the importance of state registration of Muslim marriage emphasize that it is an integral part of social reform. However, it has also been seen as creating problems when it only serves the interests of the majority and stands in the way of minority religious understandings, particularly some conservative Muslims who believe that marriage within the Muslim community should be dealt with by Islamic scholars (*‘ulamā’*) and not the state. This article, therefore, argues that unregistered marriage has been the real test of the bureaucratization of religion in Indonesia. The government’s effort to demonstrate its Islamic credentials by accommodating the people’s religion has led it to assume an ambiguous position on the issue of unregistered marriages.

3 Scholars of bureaucratization have emphasized its integral function to state formation. See, for example, Max Weber, *The Theory of Social and Economic Organization*, trans. A. M. Henderson and Talcott Parsons, ed. Talcott Parsons (Glencoe: Free Press, 1947); see also S. N. Eisenstadt, “Bureaucracy and Bureaucratization,” *Current Sociology* 7, no. 2 (1958): 99–124.

4 See, for example, June S. Katz and Ronald S. Katz, “The New Indonesian Marriage Law: A Mirror of Indonesia’s Political, Cultural and Legal System,” *American Journal of Comparative Law* 23, no. 4 (1975): 653–81; Siti Musdah Mulia and Mark E. Cammack, “Toward a Just Marriage Law: Empowering Indonesian Women through a Counter Legal Draft to the Indonesian Compilation of Islamic Law,” in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, ed. R. Michael Feener and Mark E. Cammack (Cambridge, MA: Harvard University Press, 2007): 129–45; Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Court* (Amsterdam: Amsterdam University Press, 2010).

5 Robinson, “Muslim Women’s Political Struggle,” 187.

6 See Eisenstadt, “Bureaucracy and Bureaucratization”; S. N. Eisenstadt, “Bureaucracy, Bureaucratization and Debureaucratization,” *Administrative Science Quarterly* 4, no. 3 (1959): 302–20; Alvin W. Gouldner, “Metaphysical Pathos and the Theory of Bureaucracy,” *American Political Science Review* 49, no. 2 (1955): 496–507; Morris Janowitz, Deil Wright, and William Delany, *Public Administration and the Public: Perspectives toward Government in a Metropolitan Community* (Ann Arbor: University of Michigan, Bureau of Government, 1958; Westport: Greenwood Press, 1977). Citations refer to the Greenwood edition.

7 Eisenstadt, “Bureaucracy and Bureaucratization,” 102.

Types of unregistered marriages

Secret marriage has been practiced by Indonesian Muslims for decades. Secret marriages are a particular kind of unregistered marriages.⁸ Notably, the number of unregistered marriages in Indonesia remains high. According to the nongovernmental organization Empowerment for Female Headed Households,⁹ the number of Indonesians who conducted *nikah siri* in 2012 reached 25 percent of the total marriages.¹⁰

Secret marriages are understood by many Muslims in Indonesia as a form of marriage that is permitted in Islam but not officially recognized by the state. Unlike official marriages, secret marriages are not registered with the Office of Religious Affairs (in the case of Muslims) or the Office of Civil Registry (where Indonesia's recognized minorities—Christians, Hindus, Buddhists, and Confucianists—register their marriages).¹¹ Since March 2015, Indonesia has been stirred by news regarding the growing practice of online secret marriages. Observers and critics have blamed the weak enforcement of the Indonesian Marriage Law for enabling the flourishing of online secret marriage.

The existing presence of unregistered marriages has contributed to the infamous image of Indonesia's bureaucratic administration. Muslim marriage registration has been one of the targeted domains of bureaucratic reform within the Ministry of Religious Affairs. Through Presidential Regulation Number 81 of 2010, the Ministry of Empowerment of State Apparatus and Bureaucratic Reforms launched the Grand Design of Bureaucratic Reform 2010–2025, aimed at improving the Indonesian government to a world class standard of professionalism. Muslim marriage registration, however, is still considered a serious problem, especially due to the presence of Indonesian Muslims who still opt for unregistered marriage. Internal and external pressures have created ambivalent perceptions towards the bureaucratization of Muslim marriages in Indonesia. Eisenstadt mentions that to ensure a bureaucracy can perform efficiently, "Its members must have some professional orientations and standards and be immune to various inside and outside pressures."¹² The discussion of the bureaucratization of Muslim marriages in Indonesia reflects the presence of ambivalent attitudes within the government when dealing with internal and external pressures.

Unregistered marriages take place for several reasons, and not all unregistered marriages¹³ are secret. Examples include child and early marriages, which are often unregistered although not

8 For a solid discussion of different kinds of *siri* marriages, see Annelies Moors, "Unregistered Islamic Marriages: Anxieties about Sexuality and Islam in the Netherlands," in *Applying Sharia in the West: Facts, Fears and the Future of Islamic Rules on Family Relations in the West*, ed. Maurits Berger (Leiden: Leiden University Press, 2013): 141–64.

9 Founded in 2000, Empowerment for Female Headed Households (known by the acronym PEKKA) has been active in assisting women to uphold their rights, including helping women get access to legal support and in disseminating awareness of the existence of female household heads in Indonesia. See Jayne Curnow, "Legal Support Structures and the Realisation of Muslim Women's Rights in Indonesia," *Asian Studies Review* 39, no. 2 (2015): 213–28.

10 Henny Rachma Sari, "25 Persen Masyarakat Indonesia Melakukan Nikah Siri" [25 percent of Indonesian society has conducted *siri* marriage], *Merdeka.com*, December 26, 2012, <https://www.merdeka.com/peristiwa/25-persen-masyarakat-indonesia-melakukan-nikah-siri.html>.

11 In Indonesia, Muslims are subject to Islamic family law, whereas the recognized religious minority group are subject to civil family law.

12 Eisenstadt, "Bureaucracy and Bureaucratization," 102.

13 Unregistered marriage is known in other countries by different terms. In Egypt, for example, it is known as 'urū marriage. In Algeria and Morocco, it is known as *fatiha* or *bil-fatiha wa bil-jma'a* marriage. For a discussion of 'urū marriage, see Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law* (London: I. B. Tauris,

necessarily secret. These are often conducted as religious marriages, as opposed to registered marriages.¹⁴ If an underage couple has conducted religious marriages and wants to proceed with registration, they will have to receive permission from their parents, who must lodge a written application to the religious court to obtain dispensation. Parents' consent is mandatory for underage marriages in Indonesia's family law (both Islamic and civil family law).

Another example is temporary marriage (*nikah mut'ah* or *nikāhal-mut'a*) practiced only among Shi'ite Muslims, a creed that does not officially exist in the eyes of Indonesian law, which treats all Muslims de jure as Sunni. Therefore, temporary marriage cannot officially be registered because it also does not exist in the eyes of Indonesian law.¹⁵

Secret Marriage (Nikah Siri)

The level of secrecy among secret marriages can differ from one case to another, depending on to whom these marriages are secret.¹⁶ One common type is marriage without the bride's guardian (*pernikahan tanpa wali*). This is conducted when the bride's guardian does not agree with his daughter's choice or the couple do not want to involve their families, especially their parents, in their marriage. These marriages are usually conducted by special agencies, such as an illegal registrar, two witnesses, and a substitute guardian provided by the agencies or illegal registrars.

A second type of *nikah siri* is a secret usually maintained by immediate family, close friends, and the religious leader who is responsible for the ceremony of a marriage contract. This second type is usually conducted by young couples who want to go beyond conventional dating but are not ready to marry officially and make their union public. Therefore, this type of *nikah siri* is seen as a bridge before a couple officially registers their marriage. This decision is generally considered a solution to the parental dilemma of wanting to postpone the official marriage of their offspring while simultaneously wanting to prevent the offspring from engaging in immoral acts, such as premarital sex (*zina*). A couple who are still continuing their studies and are not ready to start a family, for example, often choose this option.

A third type of *nikah siri* is the loosest type, meaning that it is widely known in the local community and is considered to be *nikah siri* merely in the sense that it is not registered. This kind of *nikah siri* is usually undertaken by older people or those who are destitute and living in rural and poor urban areas. Mostly, it occurs to avoid the cost of marriage registration, or out of ignorance about the law, that is, the obligation to register the marriage with the state.

2000); Frances S. Hasso, *Family Crisis and the State in the Middle East* (Stanford: Stanford University Press, 2011); Moors, "Unregistered Islamic Marriages."

- 14 In Indonesia, early or child marriage refers to marriage conducted between couples whose ages are below the minimum age of marriage, as stipulated in the 1974 Marriage Law, art. 7, no. 1, namely nineteen for boys and sixteen for girls. Some might distinguish between early and child marriages. Blackburn and Bessell, for example, mentioned that child marriages refer to marriage conducted by girls under the age of fourteen and early marriages refer to those between fifteen and nineteen years old. Susan Blackburn and Sharon Bessell, "Marriageable Age: Political Debates on Early Marriage in Twentieth-Century Indonesia," *Indonesia*, no. 63 (1997): 107–41, at 135.
- 15 In Indonesia, Shi'ites are an Islamic minority group within the majority of Sunni Muslims. The presence of the Shi'a and its teachings is considered a threat to the majority of Sunnis in Indonesia. In 1984, for example, Majelis Ulama Indonesia (Indonesian Council of 'Ulamā) issued a fatwa to warn Indonesian Muslims against the danger of Shi'i doctrines. See Saskia Schäfer, "Renegotiating Indonesian Secularism through Debates on Ahmadiyya and Shia," *Philosophy and Social Criticism* 41, no. 4–5 (2015): 497–508.
- 16 For a comparative perspective of the aspect of secrecy in *siri* marriage, see also Bianca J. Smith, "Sexual Desire, Piety, and Law in a Javanese *Pesantren*: Interpreting Varieties of Secret Divorce and Polygamy," *Anthropological Forum: A Journal of Social Anthropology and Comparative Sociology* 24, no. 3 (2014): 227–44.

A fourth type of *nikah siri* has a higher level of secrecy and is used by some civil servants who want to practice polygyny even though polygyny has been forbidden for civil servants since 1983 (unless they can produce permission from superiors,¹⁷ as well as the first wife).¹⁸ So in order to circumvent the law, some civil servants engage in secret marriage with a second or third wife.¹⁹

Indeed, the most hotly debated issue regarding *siri* marriage in Indonesia relates to the secret marriages of government elites.²⁰ The most recent case of such marriage under public scrutiny occurred in 2012, when an active Garut Regent, Aceng Fikri, married a seventeen-year-old girl in an unregistered Islamic ceremony and divorced her four days later via text message. The case became a national issue and warranted the attention of Indonesia's president, who asked the home minister, Gamawan Fauzi, to investigate the case. Fikri was found guilty of breaching some laws, especially Marriage Law No. 1 of 1974, art. 2 (2), which states, "Every marriage is required to be registered according to the applicable regulations."²¹ As a public figure, Fikri was widely considered to have tainted his reputation in the eyes of his community, both by marrying a girl who had just turned seventeen years (one year above the minimum marriage age) as a second wife without registering the marriage, and by divorcing her disgracefully via text message.

Unregistered divorce

It is important to note that unregistered marriages are sometimes the result of unregistered divorces. A divorced person is required to provide a letter of divorce during the registration of his or her second marriage. Failure to acquire this letter has prompted many couples to pursue unregistered marriages. In addition, some couples believe that at some point in the future they can register their existing unregistered marriage through a court procedure, *itsbat nikah*, a request for confirmation of existing unregistered marriage. Ibu Hanisa, a fifty-year-old divorcée who recently remarried, for example, said,

We have not registered our second marriage, Mbak [sister]. I asked my [new] husband, but he said it is okay for the time being because both of us do not have divorce letters [from our previous marriages]. We believe that one day we can register our marriage, especially because we saw on TV currently there have been some nongovernmental organizations that can help people like us to get *itsbat nikah*.²²

17 This can be seen from Peraturan Pemerintah Republik Indonesia [Government Regulation of the Republic of Indonesia] No. 10/1983, as amended by Government Regulation of the Republic of Indonesia No. 45/1990. See a copy of the law, last accessed August 3, 2018, http://sdm.ugm.ac.id/web/sk/1990_PP-45-TH-1990_PERUBAHAN-PP-10-1983-IZIN-PERKAWINAN-DAN-PERCERAIAN-BAGI-PNS.pdf (in Indonesian).

18 This is mentioned in Marriage Law No. 1 of 1974, art. 5 (1. a).

19 It is important to note that polyandry is completely forbidden.

20 For a discussion of the longest public dispute regarding the *siri* marriage of Moerdiono, a Soeharto-era state secretary, in 1993, who secretly married a *dangdut* (a genre of Indonesian popular music) singer, Machiha Mochtar, see Simon Butt, "Polygamy and Mixed Marriage in Indonesia: Islam and Marriage Law in the Courts," in *Indonesia: Law and Society*, ed. Timothy Lindsey (Singapore: Institute of Southeast Asian Studies, 2008), 266–87; Amin Abdullah, "Religion, Science and Culture: An Integrated, Interconnected Paradigm of Science," *Al-Jami'ah: Journal of Islamic Studies* 52, no. 1 (2014): 175–203.

21 The president eventually dismissed Aceng Fikri from his position. See Abdullah, "Religion, Science and Culture," 178.

22 This confirmation, which is granted by religious courts, will automatically make their marriage registered and legal from the perspective of Indonesian Law. Ibu Hanisa, interview by the author, South Jakarta, January 7, 2016.

As indicated by Ibu Hanisa, couples who conduct *itsbat nikah*²³ (confirming an existing unregistered marriage) do so because they have not yet registered their marriage. *Itsbat nikah* is regulated by the Compilation of Islamic Law (Kompilasi Hukum Islam), art. 7, no. 2, which states that “in the case of marriage that cannot be formalized with a marriage certificate, the couple can propose *itsbat nikah* in a religious court.”²⁴ There are numerous causes behind the decision not to register marriage in the first place, although most are due to having secret marriage or child marriage. In addition, there have been a large number of cases in which couples conduct *itsbat nikah* to confirm their rights, especially before divorcing their *siri* marriage spouses.²⁵

The trend of *itsbat nikah* began flourishing in the year 2012, after the emergence of mass *itsbat nikah* organized by nongovernmental organizations. Widely known as *itsbat massal*, this is a free service, usually over one day, provided by the religious court to accommodate the confirmation of Muslim marriages for couples who meet the requirements to have *itsbat nikah*. As mentioned in the Compilation of Islamic Law, art. 7, no. 3, “The ‘Itsbat Nikah’ which can be claimed to the Islamic Court is restricted to the case of; a. a marital status for the purpose of divorce; b. loss of the Marriage Document; c. an ambiguity about the validation of one of the conditions in the marriage; d. a marriage [conducted] before the issuance of Law No. 1 of 1974 and; e. a marriage [conducted] by those who have no impediment to marriage according to Law No. 1 of [1974].”²⁶ The practice of *itsbat nikah* by public figures—especially actresses, actors, and singers²⁷—has also contributed to the popularity of *itsbat nikah*.

Bureaucratization: history of action and actors

Broadly speaking there are four groups with opposing or contradictory views involved in the process of establishing legal rights and obligations regarding Muslim marriages: the government or state, religious leaders, women’s rights activists, and legal activists.

Government: State Laws

The first of the Indonesian government laws relating to marriage were introduced during the time of state formation, in the 1940s. The debate regarding marriage registration resulted in the birth of Law No. 22 of 1946 requiring all Indonesians, regardless of faith, to register their marriages,

23 The *itsbat/itsbat* or *ithbat al-nikāh* in Indonesia is similar to the practice of *thubut al-zawjiyya* (proof of marriage) in Morocco, in which the couple of a *fatiha* marriage try to register their marriage. The reason that drives Moroccans to conduct this *ithbat* and *thubut* of marriage is also similar, namely when they need to legitimize the status of the child. See, for example, Mir-Hosseini, *Marriage on Trial*, 171.

24 See Euis Nurlaelawati, “Pernikahan tanpa Pencatatan: Isbat Nikah Sebuah Solusi?” [Marriage without registration: *Itsbat nikah* as a solution] *Musawa* 12, no. 2 (2013): 261–77, at 269.

25 Adriaan Bedner and 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): 175–91, at 188.

26 Arskal Salim and Azyumardi Azra, eds., *Shari’a and Politics in Modern Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003), Appendix III, 281 (corrections and clarifications to the translation by the author).

27 Some of the public figures who had *itsbat nikah* are actress Ayu Azhari, who married Danish singer Mike Tramp; singer Melinda, who married Dedi Supardi, a former regent of Cirebon; and actor Tommy Kurniawan, who married Fatimah Tania Nadia, stepdaughter of Fadel Muhammad Alhaddar, the former minister of maritime affairs and fisheries.

reconciliations, and divorces.²⁸ The plan of the early post-Independence governments was to develop one civil law applicable to all Indonesians, irrespective of religious identity.

In this section, I examine in some detail two major pieces of legislation: the 1974 Marriage Law and the 1991 Compilation of Islamic Law. I follow this with a brief outline of the most recent laws relating to Muslim marriages and the government's moves toward sanctions.

The 1974 Marriage Law

During the New Order regime (1966–1998), President Soeharto introduced a unified (civil) marriage law, Law No. 1 of 1974, known as the first Indonesian Marriage Law, consisting of 14 chapters and 67 articles. Based on art. 2, no. 2, Muslims have a legal obligation to conclude their marriage in the presence of a marriage registrar. The article states, “Every marriage is required to be registered according to the applicable regulations.”

The formation of the 1974 Marriage Law in Indonesia signaled an effort by the government to bureaucratize religious marriages. According to Cammack, Young, and Heaton, before the 1974 Marriage Law was promulgated, Muslim marriages were administered by “unamended rules of Islamic law. Prior to 1974 there had been no legislative interference with the substance of Islamic marriage rules.”²⁹ The 1974 Marriage Law, which can be regarded as part of the bureaucratization of religion, indeed serves the government's post-Independence project to unify diverse particularistic laws and customs followed by the population by introducing this legal centralism.³⁰

In view of Eisenstadt's³¹ insistence on the importance of examining the conditions that shape the development of bureaucratization, it needs to be emphasized that the conditions leading to the birth of the 1974 Marriage Law were rich in political nuance. The New Order, particularly from the 1970s onward, had been persistent in marginalizing diverse expressions of Muslim politics to strengthen its hegemony.³² Therefore, the draft law produced in 1973, a civil draft law that would have applied to all Indonesians equally irrespective of religious identity, was severely criticized by Muslims who believed that the bill was aimed at marginalizing Islam, Islamic law, religious courts, and Muslim interests, especially given that some contents violated aspects of Islamic law.³³ The divergence between this bureaucratization effort and the voices of its opponents demonstrates how state religion was not at that time in line with the people's religion, which also mirrors what Richard Antoun mentions as being the ambivalent relationship between state religion and people's

28 See Khoiruddin Nasution, *Status Wanita di Asia Tenggara: Studi terhadap Perundang-Undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia* [The status of women in Southeast Asia: A study of marriage laws of contemporary Muslims in Indonesia and Malaysia] (Jakarta: Indonesian-Netherlands Cooperation in Islamic Studies, 2002), 42. Initially this was valid only in Java and Madura, but it was extended to the entire Indonesian territory in 1954, based on Law No. 32, on marriage registration, divorce, and reconciliation, as the legal system was nationalized and standardized across the country.

29 Mark Cammack, Lawrence A. Young, and Tim Heaton, “Legislating Social Change in an Islamic Society: Indonesia's Marriage Law,” *American Journal of Comparative Law* 44, no. 1 (1996): 45–73, at 45.

30 Sezgin and Künkler, “Regulation of ‘Religion,’” 467. For a further discussion of legal centralism or legal monism and the nation state, see Sherman A. Jackson, “Islamic Reform between Islamic Law and the Nation-State,” in *The Oxford Handbook of Islam and Politics*, *Oxford Islamic Studies Online*, July 27, 2018, <http://www.oxfordislamicstudies.com/article/opr/t9001/e039>.

31 See Eisenstadt, “Bureaucracy and Bureaucratization.”

32 Nurlaelawati, *Modernization, Tradition and Identity*, 70.

33 See Mark Cammack, “Legal Aspects of Muslim-Non-Muslim Marriage in Indonesia,” in *Muslim-Non-Muslim Marriage: Political and Cultural Contestations in Southeast Asia*, ed. Gavin W. Jones, Chee Heng Leng, and Maznah Mohamad (Singapore: Institute of Southeast Asian Studies, 2009), 102–38, at 110.

religion.³⁴ Three examples in which this divergence can be seen from the draft law are the issues relating to intermarriage legislation, polygyny, and the position of the Islamic court.

In the case of intermarriage legislation, article 11 of the draft law relating to interreligious marriage, stated, "Differences of nationality, ethnic group, country of origin, place of origin, religion, belief, and descent are not an impediment to marriage."³⁵ Some Muslim communities suspected that this was part of a Christianization project.³⁶ Societal opposition resulted in a revision of the bill, including the annulment of the intermarriage legalization.³⁷ The second main area of divergence was the strict regulations surrounding polygyny, which was also criticized by the *'ulama'*, who argued that the regulations contradicted Islamic teachings because they believed that it is permissible in Islam.³⁸ The *'ulama'* were in favor of retaining polygyny. Finally, the bill was criticized due to the assumption that it was aimed at marginalizing the role of Islamic courts and institutions over civil administration and general courts, especially in relation to the civil registration of marriage.³⁹

The law that was finally passed in 1974 differentiated between civil marriage (for all the recognized religious minorities) on the one hand and Muslim marriage on the other. It stipulated the same criteria for Muslim marriage that applied to non-Muslim marriage but made a distinction between marriages that were valid and those that were legal.

The major issue that remains significant to this day is the issue of the validity and legality of marriage. This is a major tension that the government continues to face. For a marriage to be valid, it needs to be officiated by an *'alim* (Muslim authority). However, for a marriage to be legal, it must be registered with a marriage registrar or state-appointed *penghulu* (Pegawai Pencatat Nikah). *Siri* marriages are often valid if officiated by an *'alim*, but they are only legal once they are registered—at which point they cease to be *siri* (secret).

The Compilation of Islamic Law

On June 10, 1991, Indonesia witnessed a new phase of the bureaucratization of Islamic law through the birth of the Compilation of Islamic Law, regulating marriage, inheritance, and endowments, via Presidential Instruction No. 1 of 1991.⁴⁰ The Compilation of Islamic Law served as a guide for religious courts in Indonesia. However, the context behind the enactment of the law related to the political conditions at the time. Many Muslims believe that this was the winning point of their long struggle to enforce Islamic law in Indonesia. According to Bowen,⁴¹ the

34 Richard T. Antoun, "Fundamentalism, Bureaucratization, and the State's Co-optation of Religion: A Jordanian Case Study," *International Journal of Middle East Studies* 38, no. 3 (2006): 369–93, at 370.

35 Cammack, "Legal Aspects," 110.

36 Cammack, 110. See also John R. Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003), 180.

37 See also Jennifer Connolly, "Forbidden Intimacies: Christian-Muslim Intermarriage in East Kalimantan, Indonesia," *American Ethnologist* 36, no. 3 (2009): 492–506, at 495.

38 See Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Pacific Rim Law and Policy Journal* 19, no. 2 (2010): 279–301, at 287. It is noteworthy that polygyny has been a main concern of women's rights activists. Polygyny, together with child marriage, forced marriage, and arbitrary repudiation, were the central agenda of the first Women's Congress in 1928. See Robinson, "Muslim Women's Political Struggle," 190; Kathryn Robinson, *Gender, Islam and Democracy in Indonesia* (London: Routledge, 2009), 42–43.

39 Nurlaelawati, *Modernization, Tradition and Identity*, 68–69.

40 Siti Musdah Mulia, "Promoting Gender Equity through Interreligious Marriage: Empowering Indonesian Women," in Jones, Leng, and Mohamad, *Muslim-Non-Muslim Marriage*, 255–83, at 255.

41 Bowen, *Islam, Law and Equality*.

Compilation of Islamic Law is also part of the nationalization of Islamic law and the process of Islamization, along with the earlier presence of Islamic courts, and a sign of the increasing importance of Islam in Indonesia. The birth of the Compilation of Islamic Law can be regarded as the effort of the state, specifically the New Order government, to amend its relationship with Islam, as earlier the New Order had treated Islam with “hostility, manipulation, and marginalisation.”⁴² This demonstrates a change in the government’s attitude.

As a state-issued guideline on the interpretation and application of Islamic law in the country’s Islamic courts, the Compilation of Islamic Law signaled a strong effort of the authoritarian government to bureaucratize Muslim marriage. The very condition of the country at that time had made this growth and development of bureaucratization of Muslim marriages conducive. The political nuance behind the birth of the Compilation of Islamic Law is resonant with Eisenstadt’s view on the relationship between bureaucracy and power. Eisenstadt says, “Thus we find that in societies, or sectors thereof, where any given group establishes a power monopoly over parts of its environment, this group may use the bureaucracy as an instrument of pure power and manipulation, distort its autonomous roles and professional orientation.”⁴³

The discussion of marriage registration in the Compilation of Islamic Law, reaffirms earlier 1974 regulations: art. 5, no. 1, for example, states, “To guarantee the order of marriage for Muslims, every marriage must be registered”; and art. 5, no. 2, states, “The Registration of marriages as stated in point (1) conducted by the Marriage Registrar as stipulated in Law No. 22 of 1946 jo [*juncto* or in conjunction with] Law No. 32 of 1954.”

Recent Legislation

Most recently, the regulation has been reaffirmed in Undang-Undang Republik Indonesia [UU] [Law of the Republic of Indonesia] No. 23/2006, art. 3 *juncto* (in conjunction with) art. 1, no. 17, on population administration, which states that marriage is one of a number of important events that have to be reported.⁴⁴ Based on UU No. 23/2006, art. 90, no. 1(b), the administrative fine for those who do not report their marriages within a maximum of sixty days of the marriage date (or thirty days from their return to Indonesia if married outside of Indonesia) is maximum 1 million rupiah (USD 75). However, it should be noted failure to register a marriage is not considered a criminal offense.

Government: State Sanctions

Despite these laws, however, *siri* marriages are prevalent due to a number of “supportive conditions.” The government’s ambivalence towards imposing sanctions is illustrated by *siri* marriages conducted by two different types of marriage registrars.

First, there are cases in which licensed *penghulu* or marriage registrars (Pegawai Pencatat Nikah), who are civil servants of the Ministry of Religious Affairs—working at the Office of Religious Affairs (Kantor Urusan Agama, or KUA), the office that registers Muslim marriages—marry couples in *siri*

42 Nurlaelawati, *Modernization, Tradition and Identity*, 65.

43 Eisenstadt, “Bureaucracy and Bureaucratization,” 123.

44 See a copy of the law, last accessed August 3, 2018, http://www.dpr.go.id/dokjdi/dokument/uu/UU_2006_23.pdf (in Indonesian).

marriage.⁴⁵ In other words, the very officials—state-appointed *penghulu* whose function it is to officiate marriages—are not implementing the law, and worse, are violating it by marrying couples in *siri* marriage. The sanctions for such a practice are heavy. The Inspectorate General has implemented diverse sanctions ranging from reprimands and demotions, to termination of employment.

However, if those who marry a *siri* couple are *penghulu liar* (literally “wild registrar” or “unregistered registrar”—that is, they are not licensed *penghulu*), they cannot be sanctioned. Couples who have this kind of unregistered marriage are not prosecuted. The minister of religion, Lukman Hakim Saifuddin, admitted that the government cannot undertake prosecution or sanctions, except the administrative sanction mentioned above, against offenders because a marriage that is valid from a religious point of view cannot be considered a criminal offense.⁴⁶

The discussion of marriage registration in Indonesia often ends in deadlock because failing to register a marriage is not considered a criminal offense. However, there have been some recent efforts undertaken to prevent frequent occurrence of unregistered marriage, such as a proposed bill, Material Law of Religious Court in Marriage (Rancangan Undang-undang Hukum Materiil Peradilan Agama Bidang Perkawinan). Article 143 of the proposed bill states: “Anyone^[47] with the intention to conduct marriage not in front of the Marriage Registrar as mentioned in art. 5, no. (1) shall be subject to a fine of not more than 6,000,000 (six million rupiah [USD 455]) or sentenced to a maximum of 6 (six) months.”⁴⁸ The illegal marriage registrar that is involved in this practice will be sentenced to a maximum of three years of imprisonment.

Although this proposed bill can be regarded as progress in the eyes of progressive Muslims and women’s rights activists, to date the bill has not been passed as law. The status of the proposed bill has caused many to criticize the government for what they perceive as a slow movement in responding to rules relating to unregistered marriages.

Opponents and Proponents: Religious Leaders, Women’s Rights Activists, and Legal Activists

The plan to turn the proposed bill, mentioned above, into law has generated significant protests from the opponents of the bill, who are mostly conservative religious leaders. They argue that the bill is against the *shari‘a*. In other words, it forbids something that is permissible by God. They argue that a marriage is valid as long as the contract follows religious requirements. They

45 See Syalaby Ichsan, “Bisnis Nikah Siri Libatkan KUA?” [Nikah siri business also involves KUA] *Republika*, December 11, 2014, <http://www.republika.co.id/berita/koran/khazanah-koran/14/12/11/ngem0c26-bisnis-nikah-siri-libatkan-kua>. Some *nikah siri* online agencies that have successfully collaborated with Office of Religious Affairs employees are able to offer marriage registration. They set high fees for this kind of marriage registration. While the price of online *siri* is generally only between 2 million and 2.5 million rupiah (USD 151 to USD 189), marriage registration will cost between 6 million and 6.5 million rupiah (USD 455 to USD 493). The price includes the service of the marriage registrar.

46 “Menteri Agama Bicara Efek Nikah Siri Online” [The Minister of Religious affairs talks about the influence of online *siri* marriage] *Tempo*, March 13, 2015, <http://nasional.tempo.co/read/news/2015/03/13/173649734/menteri-agama-bicara-efek-nikah-siri-online>.

47 That is, the couple.

48 Besides *siri* marriage, the proposed bill also regulates *mut‘ah* (temporary) marriage. Article 144 of the proposed bill mentions that those who conduct *mut‘ah* marriage will be sentenced to a maximum of three years and that the marriage is void in the eyes of the law. See a copy of the proposed bill, last accessed August 3, 2018, <https://skydrive.live.com/embedicon.aspx/Public%20Share/Draft%20RUU%20HMPA%20Bid%20Perkawinan.pdf?cid=90d8572e18fea99c> (follow the prompts; PDF is in Indonesian).

also argue that it is not realistic to forbid *siri* marriage when free sex and adultery is often regarded as a human right and those who are involved are not sanctioned.

On the other hand, the proponents of this bill, mostly women's rights activists, argue that *nikah siri* will harm women and the children born from these unregistered marriages, because the government cannot guarantee their rights. The proponents also argue that this kind of marriage can create *tnah* (in this context it refers to negative assumptions) within communities.

Women's rights and legal activists have argued that unregistered marriage can result in placing women in vulnerable situations. Van Huis and Wirastri outline how Indonesian women's organizations, such as the National Commission on Violence against Women,⁴⁹ the Legal Aid Institute for Women,⁵⁰ Muslimat NU,⁵¹ and Rahima⁵² underscore the negative side of unregistered marriage for women as well as their children.⁵³ Unregistered marriage breaches the Act of the Protection of Women and Children.⁵⁴

Online nikah siri

Online *nikah siri* evolved from the development of sophisticated media technology and the fact that more Muslims are becoming tech-savvy. The business of online *nikah siri* has become increasingly popular, particularly given the rise in smartphone use, mobile data plans, and low internet costs, which have enabled more users to participate online. Although, there is no reliable evidence on the number of online *nikah siri* agencies, the increased presence of these agencies have been noted by media outlets in Indonesia,⁵⁵ becoming headlines in some Islamic magazines and Islamic based newspapers. The practice began generating media attention in March 2015, although a number of pioneers in the industry established their businesses in 2013.⁵⁶ In addition, those who started online *nikah siri* businesses are not new to the industry. Ustadz Rahmad (pseudonym), a fifty-seven-year-old man, for example, says,

My service is not new, Mbak Eva [sister Eva]. I have helped people since long ago. Initially, it was just a *nikah siri* service. I started this online *nikah siri* service because of the demand. Today's people are using the internet in their daily lives, including in arranging their *nikah siri*.⁵⁷

49 The National Commission on Violence against Women is an independent national institution founded in 1998 through Presidential Decree No. 181 of 1998, focusing on advocating for the human rights of women and abolishing violence against women. See http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=51515&p_count=96167.

50 Founded in 2005, the Legal Aid Institute for Women or Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan, known as LBH-APIK, is a civil-society organization that aims to produce gender-sensitive legal systems and provide legal aid to poor women in Indonesia.

51 Muslimat NU was formed in 1946 as the women's wing of Nahdlatul Ulama, the largest Muslim organization in Indonesia.

52 Rahima, a nongovernmental organization founded in 2000, focuses its agenda on advocating for Muslim women's rights and empowering Muslim women.

53 Stijn Cornelis Van Huis and Theresia Dyah Wirastri, "Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws," *Australian Journal of Asian Law* 13, no. 1 (2012): 1–17, at 1.

54 Van Huis and Wirastri, 2.

55 Abu Sahma Pane, "Bisnis Nikah Sirih On Line, Penghulu Jadi Jutaan" [Online *siri* marriage business, (unregistered) registrars become millionaires], *Okezone*, March 15, 2015, <http://news.okezone.com/read/2015/03/14/337/1118708/bisnis-nikah-sirih-on-line-penghulu-jadi-jutawan>.

56 Pane.

57 Interview with Ustadz Rahmad (pseudonym), July 5, 2016. The interview with the author was conducted in confidentiality and the name of the interviewee and location of the interview are withheld by mutual consent.

Others offering online *nikah siri* services express similar points of view. Owners of agencies relating to online *nikah siri* have taken advantage of the boom in the use of the internet, especially social media in Indonesia, and they have utilized this opportunity to develop and advertise their businesses.⁵⁸

When the issue of online *nikah siri* became prominent, the supporters of this *nikah* argued that the form of marriage does not violate religious teachings. Indeed, supporters express the belief that this form of marriage helps to discourage sex outside marriage (*zina*).

There are two types of online *nikah siri*. The first, *akad* or '*aqd* (marriage contract), is conducted face to face between the guardian of the bride, provided by the business operators, and the groom. However, business operators have actively promoted their businesses online. Although the advertisement that they have on their websites mainly focuses on the service of online *nikah siri*, outsiders often see it as a Muslim dating site. This kind of assumption is not totally misleading, given that some agencies also provide the service of finding Muslim partners.

The second practice of online *nikah siri* occurs when the marriage contract is conducted entirely online with the help of media, particularly Skype, video calls, and teleconferencing.⁵⁹ The prospective bride and groom do not have to meet the illegal marriage registrar of the online *nikah siri* business. Rather they merely contact the online *siri* marriage service after which everything is organized by the service.

Both of these practices present significant problems. In relation to the first kind of marriage, a problem lies in the issue of the guardian of the bride (*wali nikah*).⁶⁰ In the case of online *nikah siri* the guardian is most likely not to be the father of the bride (not *wali nasab*). Rather, the agencies or illegal registrars provide the guardian. Usually, the guardian is an employee of the agency who they claim to be a *wali hakim*. *Wali hakim* is appointed by the government and works in the name

58 Indonesia has among the highest densities of Facebook users in the world and is generally considered to be a nation that is highly networked online. In 2015, for example, the *Wall Street Journal* mentioned that Indonesia was the world leader of mobile Facebook access. See Newley Purnell, "The World Leader in Mobile Facebook Access?," *Wall Street Journal*, January 23, 2015, <http://blogs.wsj.com/digits/2015/01/23/the-world-leader-in-mobile-facebook-access-indonesia/>.

59 The use of long-distance media for the conducting of marriage has been approved by many Muslim scholars in Indonesia, as long as the \square ve religious requirements of marriage are fulfilled. The \square ve religious requirements \square re *ijab* and *kabul* (or *qabul*), the presence of both the bride and the groom, two witnesses of marriage, a guardian, and a *mahr* or *mahar* (the obligatory gift paid by the groom to the bride). Compilation of Islamic Law, art. 1(c), states, "Akad Nikah [marriage contract] is a series of *ijab* [words of delivery] pronounced by the *wali* and *kabul* [words of acceptance] pronounced by the groom or his representative on the presence of two witnesses." Salim and Azra, *Shari'a and Politics in Modern Indonesia*, 279.

60 According to all of the '*ulama'* from the schools of legal thought (*madhhab*), except Hana \square te *madhhab*, a guardian or *wali* is seen as a *syarat sah* (prerequisite for the validity of a marriage). The Hana \square te *madhhab* considers the position of the *wali* as merely *mustabah* (*sunnah* or fulfillment of which is rewarded). In the Indonesian context, there are three types of guardians: *wali nasab* (guardian from the bride's own kinship); *wali hakim* (judge or ruler guardian, especially for those who do not have a *wali nasab* or have a problem with them); and *wali muhakkam* (a guardian appointed by a couple in certain circumstances, particularly in the absence of *wali nasab* and *wali hakim*). The *wali muhakkam* is unrecognized by a number of Muslim countries, including Indonesia based on Compilation of Islamic Law, art. 20, no. 2. It should be noted that the authority of *wali* is both exclusive and subject to an order of priority, with *wali nasab* being prioritized. Thus, if a bride who has a *wali nasab* effectuates a marriage using a *wali hakim*, then the marriage will be considered unlawful, except under certain conditions when the *wali nasab* is absent, as specified in Compilation of Islamic Law, art. 23, nos. 1 and 2. Art. 23, nos. 1 and 2, states, "(1) The 'Wali hakim' can only takes over the position of the 'wali nikah' if the 'wali nasab' is not available or it is impossible to present him or whose address is unknown or disappeared or '*adlal*' or reluctant. (2) In the case of the '*wali adlal*' or reluctant the '*wali hakim*' can only perform his task as the '*wali-hakim*' upon the verdict of the Islamic Court concerning the matter." Salim and Azra, *Shari'a and Politics in Modern Indonesia*, 284.

of the government institution, not the individual. Therefore, the claim by the online *nikah siri* business operators that they use a *wali hakim* is misleading. At this point in time, this kind of practice is considered illegal in Indonesia, based on Compilation of Islamic Law, art. 20, no. 2, which states that *wali nikah* (a marriage guardian for the bride) consists only of *wali nasab* or *wali hakim*.

The second problem lies in the fact that the *penghulu*—the person in charge of the marriage ceremony—considered as a *penghulu liar*, might be an *ustadz gadungan* (illegal *ustadz*, someone who claims to be an Islamic authority, but is not).⁶¹ At this point, the motivation of these businesses becomes evident, especially given that the cost of this type of marriage is relatively high in comparison to conventional marriage, with the cost running at about 2.5 million rupiah (USD 189). In contrast, a marriage conducted in the Office of Religious Affairs is free of charge, and when conducted outside the office or on a weekend, the fee is 600,000 rupiah (USD 45).

The government, through the Directorate General of Guidance of the Muslim Community (Direktorat Jendral Bimbingan Masyarakat Islam), known as the Ditjen BIMAS Islam, has taken steps to fight against the practice of online *nikah siri*. The Directorate General has ordered the Ministry of Communication and Information Technology to block websites offering online *nikah siri* services. Nevertheless, to date a number of services are still accessible. The contact numbers for online *nikah siri* remain readily available on the internet and the phone numbers remain active.

Eisenstadt argues that “the establishment of new independent states with new power centers, as well as mounting governmental regulation in recent years, also draw attention to the problem of bureaucratization.”⁶² In Indonesia, the problem of bureaucratization of Muslim marriages is also encountered when the government strives to apply its regulation, as discussed above—the introduction of the 1974 Marriage Law and the 1991 Compilation of Islamic Law—to the most current governmental effort to counter the increasing number of online *nikah siri*. A significant problem concerning online *nikah siri* that the Directorate General faces is the presence of fake marriage books (*buku nikah palsu*). Pirated marriage books are usually produced because Indonesians may be reluctant to register their marriages on their own, leading married couples to utilize the services of brokers (*calo*) to register their marriages with ease. There have been a number of reasons why couples prefer to have fake marriage books. According to Lilih Rahmawati from the Directorate General, the main reason is to avoid the bureaucracy involved in registering marriage at the Office of Religious Affairs. Lilih says, “They want to have a shortcut, so they prefer to buy a fake marriage book.”⁶³ Buying a fake marriage book is particularly common for those who want to have an illegal polygynous marriage.⁶⁴ If the broker is reliable then an authentic marriage book will be provided, however if the broker is unreliable then a pirated marriage book will often be provided.

61 *Ustadz* (or *ustādh*) is an Arabic term that literally means a male religious teacher. In Indonesia, the term *ustadz* is usually used to identify diverse groups of religious authority ranging from someone who has in-depth knowledge on Islam, such as preachers or teachers at Islamic schools, to those who are employed to teach Muslims how to read the Qurʾān. In the above mentioned context, the term *ustadz* is combined with the term “illegal” because what has been performed by this *ustadz*—as seen by others, especially those who do not agree with online *nikah siri*—does not reflect a thorough understanding of Islam. Nurul Ilmi Idrus uses the term *imam liar* (literally “wild Muslim leader” or “illegal Muslim leader”). Nurul Ilmi Idrus, “It’s the Matter of a Piece of Paper: Between Legitimation and Legalisation of Marriage and Divorce in Bugis Society,” in “Gender and Culture in Contemporary Indonesia,” ed. Barbara Baird, special issue, *Intersection: Gender and Sexuality in Asia and the Pacific*, no. 19 (2009), <http://intersections.anu.edu.au/issue19/idrus.htm>; see also Idrus, *Gender Relations in an Indonesian Society: Bugis Practices of Sexuality and Marriage* (Leiden: Brill, 2016).

62 Eisenstadt, “Bureaucracy and Bureaucratization,” 108.

63 Lilih Rahmawati, interview by the author, Gedung Kementrian Agama Jakarta Pusat, January 9, 2016.

64 Some requirements that are considered too difficult to be fulfilled by those who want to have polygynous marriages are mentioned in the Compilation of Islamic Law, art. 56, no. 1 (“A man who wants to marry more

The Story of a Penghulu: "Saya Membantu Orang" (I Help People)

Ustadz Ali (pseudonym) started his *nikah siri* business⁶⁵ in Jakarta in 2000. With a strong religious background, Ustadz Ali graduated from the Department of Islamic Law, State Islamic University, Syarif Hidayatullah Jakarta. Besides Ustadz Ali, other owners of agencies or illegal registrars (*penghulu*) are also religiously educated, graduating from *madrasah* (Islamic schools) and *pesantren* (Islamic boarding schools). During the interview Ustadz Ali emphasized several times that he intends to help others through his business activities, "*Saya membantu orang, Mbak Eva*" (I only help people, Sister Eva).⁶⁶ He has had clients not only from Indonesia but also from Jordan, Malaysia, Singapore, and Brunei. According to Ustadz Ali, most of his clients are men who want to conduct polygynous marriage. In the majority of Muslim countries, the main motivation behind *siri* marriage is polygyny.⁶⁷ Annelies Moors, in her study of unregistered marriage in some Muslim majority countries in the Middle East, mentions that polygynous marriages may be unregistered in order to keep them a secret from the first wife.⁶⁸ In Indonesia, this fact has been mentioned frequently by government officials of the Directorate General of Guidance for the Muslim Community.

When questioned about his views on those who oppose him, Ustadz Ali pointed at the position of Indonesian feminists. He said,

You know Mbak Eva, those who oppose us, especially Ratna Sarumpaet (an Indonesian feminist), are working with non-Muslims, particularly Jews. They want to do harm to Islam. Therefore, these NGO activists, who often receive funds from Western countries, keep saying "pity those who have experienced unregistered marriages." For me, Mbak Eva, this kind of marriage is a private matter.⁶⁹

Ustadz Ali believes that his actions serve to positively benefit the couples, including women. He added,

Each time, I help them. I tell the women that they have to be prepared to be the second, third, or fourth wife. This means that they have to be prepared for the possibility that the husband will prioritize the first wife. I tell them that if they are not ready to be the second, third, or fourth wife then I will not help them.⁷⁰

Ustadz Ali's advice to prospective brides—which he often repeated during the interview—is that the second, third, or fourth wives should understand that the first wife may always be prioritized by the

than one woman must ask a permission to an Islamic Court"), and art. 58, no. 1(a) ("there is an approval of the wife"). Salim and Azra, *Shari'a and Politics in Modern Indonesia*, 290. As mentioned earlier, civil servants have an additional requirement, a permission letter from their superiors, which is deemed to be difficult to obtain.

65 Usually, those who operate this type of business have strong networks all over Indonesia. For example, Ustadz Amir Hamzah who runs an online *nikah siri* business in Surabaya, hires *petugas* (staff) in other parts of Indonesia. His *petugas* are the people in the field who organize each online *nikah siri*. The cities that have been served by Ustadz Amir Hamzah's network are Surabaya, Jakarta, Surakarta, Malang, and Gresik, including Nganjuk.

66 Interview with Ustadz Ali (pseudonym), July 9, 2016. The interview with the author was conducted in confidentiality and the name of the interviewee and location of the interview are withheld by mutual consent.

67 Under Islamic law, there is no stipulated minimum age. The consummation of marriage, however, should be conducted only when a girl has reached puberty. This limit is flexible, however, when the bride can provide the permission letter from her parents.

68 See Moors, "Unregistered Islamic Marriages," 147.

69 Ali, interview.

70 Ali, interview.

husband, does not sound Islamic. Polygyny in Islam emphasizes the equal treatment of all wives, regardless of their position as first, second, third, or fourth. This is, in particular, based on the main teachings of the Qur'ān 4:3, "but if you have reason to fear that you might not be able to treat them with equal fairness, then [only] one"⁷¹ A husband in a polygynous marriage should be able to uphold true justice for all of his wives, regardless of their positions.⁷² Ustadz Ali's statement also demonstrates that most women who utilize his services are positioned as the second, third, or fourth wife. He also admitted that most of the men who performed unregistered marriage either already have or want to have a polygynous marriage without telling their first wife. Ustadz Ali said that he also warns the male clients prior to conducting the marriage. He stated,

I also say to the men: you have to be ready materially and immaterially (*lahir dan bathin*). If you are not ready to please and take care of your wives, I will not help you.⁷³

The duration of this kind of marriage, according to Ustadz Ali, is not usually long; the main reason being that often the new wife is not ready to face the pressure of being a second, third, or fourth wife. The *ustadz* also argued that, prior to marriage, he warns women about the risk of having an unregistered marriage, which could leave women and possible offspring without legal rights in the case of divorce.

A leaflet distributed by the Legal Aid Institute for Women in Jakarta (Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan) also explains that in unregistered marriages, the wives

cannot enforce rights attributed to a legal marriage, such as *nafkah* (livelihood) during the marriage, marital property in case of divorce, or inheritance in case of death of the husband. Secondly, due to the unclear status of their marriage they often have to face the stigma of being a "dishonourable woman." Thirdly, children resulting from unregistered marriages will be considered the legal children of their mother only and as a result they only have a civil relationship with their mother and her family.⁷⁴

When Ustadz Ali was asked whether he is aware that his business might be seen as breaching family law in Indonesia, he responded,

I am marrying them religiously. What is important to note is I do not issue a statement letter,⁷⁵ because this kind of letter is dangerous. Religiously this kind of marriage is valid. In my opinion, what I have been doing is merely helping them. This is the way the government should fight against prostitution. I think it is also important to introduce this option to prostitutes and encourage Muslim men to marry them. This will be more useful for them, so they do not have to sell themselves.⁷⁶

Ustadz Ali's response and position demonstrates one voice among diverse voices of the people's religion. His explanation shows the expression of an individual who espouses a worldview different from that of the government and its bureaucracy.

71 My translation relies heavily on Muhammad Asad, trans., *The Message of the Qur'an* (Gibraltar: Dar al-Andalus, 1984).

72 Asghar Ali Engineer, *Rights of Women in Islam* (New Delhi: Sterling, 2008), 187.

73 Ali, interview.

74 Quoted in Van Huis and Wirastrri, "Muslim Marriage Registration in Indonesia," 1.

75 A "statement letter" is a letter explaining that the couple are husband and wife. He does not issue a marriage certificate or any written marriage contracts.

76 Ali, interview.

Ustadz Ali emphasized that he does not offer dating agency (*biro jodoh*) services and does not marry people of different religious traditions. He also highlighted that the technical procedure of this marriage is Islamic. He said that during the offline *akad*, he usually requests the bride to remain in another room or wear a *cadar* (face veil), so that the groom cannot see his bride prior to the marriage contract being finalized.

A seemingly non-Islamic aspect of Ustadz Ali's business can be seen from the way he appoints a *wali* (legal guardian) for the bride. Ustadz Ali provides a *wali* from his staff. As discussed above, this kind of practice is considered by many Islamic scholars as violating an Islamic teaching on requirements for choosing a *wali*. Most of Ustadz Ali's clients discover his services from the internet or are referred from within his clients' friendship networks. The witnesses of marriage and *wali* are generally friends of the couple. Despite media attention, Ustadz Ali's business is still operating successfully, and he believes this is because his intention is to help his fellow Muslims.

The Story of Nadya

Nadya, a thirty-three-year-old woman, was an online *siri* marriage client. Nadya, who works in a karaoke lounge in Jakarta, admitted that she was not the only person in her circle of friends who has practiced online *siri* marriage. Nadya married a man who was a long-standing customer of the lounge via online *siri* in order to prevent her from committing *zina*. Additionally her husband-to-be, Yanto, did not want to marry her legally through conventional marriage because he was already married and did not want to seek the consent of his first wife. Yanto said, "I could not marry her legally, Mbak Eva, because I am sure that my wife will not let me marry again and the court will not issue a permission for me." As a consequence, Nadya and Yanto chose to get married online. The fact that women who conduct online *siri* marriage often work in karaoke lounges and bars has given birth to strong prejudice toward this kind of marriage, with the prevailing opinion that online *nikah siri* is akin to "undercover" prostitution. Women's rights activist Dina, thirty-three years old, states,

It is very sad to face the fact that many people use religion for their own benefit. What is the difference between prostitution and this kind of marriage? Some couples even met because they were initially staff and customer. It is undercover prostitution!⁷⁷

The concept of *zina*, which has been used as the main motivation for those who want to conduct online *siri* marriage, has been questioned by those who oppose the practice. Many critics argue that this kind of motivation is merely used to camouflage the main motivation, namely sexual pleasure. It is noteworthy, however, that those in the business of online *nikah siri* practice openly in their surroundings. Muslim communities in Indonesia seem reluctant to control such a practice, given that the *penghulu* who is responsible for the marriage is usually called an *ustadz* (religious teacher), which signifies someone who is honored in his community. They are usually known in their local areas as having certain "religious capital," to borrow Pierre Bourdieu's concept, which implies that they are well-versed in Islamic knowledge, especially in Islamic law.

⁷⁷ Dina, interview by the author, Menteng, June 29, 2016.

Bureaucratization: a real test for the Indonesian government

Online *nikah siri* which has recently been covered by the media and has become a hotly debated topic, has caused tension for the Indonesian government, especially for the Directorate General of Guidance for the Muslim Community of the Ministry of Religion, whose responsibility encompasses Muslim marriages.

The current challenges cover two levels. First, following Eisenstadt's⁷⁸ view on bureaucracy and bureaucratization, the challenge relates to the context of the environment: the tension between people with businesses in the online *nikah siri* industry, conservative religious leaders, women's groups, legal activists, and the Indonesian government—who aim to bureaucratize in order to maintain social order.

Responding to the currently hotly debated issues relating to unregistered *nikah siri* and online *nikah siri*, the Directorate General has communicated its position, namely that marriage registration is a must. Therefore, online *nikah siri* has to be banned. During an interview on the phenomenon of *online nikah siri*, the director general of BIMAS, M. Machasin, emphasized,

Marriage is a religious matter. If it is carried out according to the terms and conditions, then the marriage is still valid. The main reason often mentioned [by those who conduct online *nikah siri*] is because the person involved does not want to complicate her/himself by having their marriage registered in the KUA. However, it must be noted that we live in a society. There are rights and obligations which must be protected. Marriage is not just about the relationship between two people, but also about social order that requires the presence of the state.⁷⁹

Machasin's emphasis on social order is a typical rhetoric used by bureaucrats to socialize their bureaucratic apparatus (see the introduction of this volume). However, this kind of government position, namely mentioning the validity of *nikah siri* from a religious perspective while at the same time trying to introduce a new bureaucracy is seen by many, especially women's rights activists, as ambiguous and weak. Echoing Machasin, Lilih Rahmawati says,

Marriage is the right of citizens, meaning that the government cannot be too regulatory and forceful in the following of certain rules, especially given that, in terms of *nikah siri*, there is no rule relating to its prohibition.⁸⁰

This dilemma can also be easily found among other government elites, particularly when a statement is launched that is opposed by conservative groups. There is often a tendency to play it safe; that is, there is caution to avoid antagonizing conservative Muslim groups.

This phenomenon relates to the second level that challenges bureaucratization, namely the development of an Islamic resurgence that has swept the country. Both parties, the government and conservative Muslims who support online *nikah siri* and *nikah siri*, in general, need to demonstrate that they have the proper religious understanding that unregistered online *nikah siri* is valid from a religious perspective. Here lies the ambiguity in the government's effort to bureaucratize Muslim

78 Eisenstadt, "Bureaucracy and Bureaucratization."

79 Thobib, "Machasin: Kemenag Jalin Sinergitas dengan Kepolisian dalam Tangani Maraknya Nikah Siri Online" [Machasin: The Ministry of Religious Affairs synergizes with police departments in handling the rise of online *siri* marriage], *Direktorat Jenderal Bimbingan Masyarakat Islam*, March 20, 2015, <http://bimasislam.kemenag.go.id/post/berita/machasin-kemenag-jalin-sinergitas-dengan-kepolisian-dalam-tangani-maraknya-nikah-siri-online>.

80 Rahmawati, interview.

marriages. The effort to develop modern Indonesia by introducing various bureaucracies has to face problems of accommodating diverse voices of Islam. The government need to demonstrate their legitimacy and credibility as the guardian of the proper understanding of Islam, which in this context means that they need to admit that marriage with or without registration is valid in the eyes of God. Therefore, what we can see here is the “Islamisation race,” to borrow Liow’s term.⁸¹ The government needs to demonstrate their credibility in front of an increasing number of Indonesian Muslims who are keen to accentuate their piety. The rise of piety that has swept the country, which is in line with the growing number of middle class Muslims, has led the government to be extra careful when facing Muslim groups using “religious language” or when attempting to show understanding of their struggles.

BIMAS has tried to make registering marriages easier through two new initiatives as part of the government effort to maintain legal-bureaucratic Islam. The first is the waiving of fees for marriage registration. Since the issuance of PP No. 48/2014,⁸² marriages performed at the Office of Religious Affairs are free of charge (unless conducted outside office hours, in which case the fee is 600,000 rupiah—about USD 45). This regulation was created in order to lower the number of unregistered marriages in Indonesia, by making it easier for low income couples to register. However, the cost of using an unofficial broker (*penghulu liar*) to arrange a marriage certificate ranges from 1.5 million to 10 million rupiah (USD 113 to USD 758) and remains an attractive option to many. The main reason for using a marriage broker is the same reason as those who prefer to buy a fake marriage book, namely to avoid the complicated bureaucratic processes in Indonesia. The complex bureaucracy is evident in the obligation to provide letters from the neighborhood head, the hamlet head, the urban village head, and the subdistrict head. In addition, the couple must prepare for an often slow response within the bureaucracy. This line of bureaucracy demonstrates the government’s excessive effort to control Muslim marriages.

The second initiative is the establishment of a website through which couples can register their marriage. Through its information management system known as SIMKAH, Indonesia has, for the first time, an online record of the history of its citizen’s marriages. Before SIMKAH, staff of the Office of Religious Affairs recorded the marriage of Indonesians by hand and the office had a disorganized roomful of papers regarding marital histories, which were almost always impossible to access efficiently. In addition to enabling a proper record of each citizen’s marital history, having SIMKAH also contributes to the prevention of data forgery. The government’s target is to have SIMKAH operators in all parts of Indonesia by 2016, but this has not been achieved to date.

As mentioned earlier, the government seems to proceed from the assumption that they cannot convince Muslims that unregistered marriage is unlawful in Islam. In addition, in terms of online *nikah siri*, many argues that the response from the government has been quite slow. These issues are challenging to overcome because those who conduct these kinds of marriage believe they are doing the right thing from an Islamic point of view and their communities are reluctant to interfere. For example, the Directorate General cannot act if there are no complaints from community members regarding such practices. This is an issue between the effort to bureaucratize Muslim marriages and the Directorate General’s eagerness to preserve its credibility as upholding the “proper”

81 Liow uses this expression of the “Islamisation race” to identify the efforts of two opposing parties in Malaysia to politicize Islam and demonstrate their Islamic credentials—United Malays National Organisation, known as UMNO, the leader of the ruling coalition, and its main Islamic opposition party, Parti Islam Se-Malaysia, known as PAS. Joseph Chinyong Liow, “Political Islam in Malaysia: Problematising Discourse and Practice in the UMNO- PAS ‘Islamisation Race’,” *Commonwealth and Comparative Politics* 42, no. 2 (2004): 184–205.

82 This government regulation is the amendment of PP No. 47/2004.

understanding of Islam by admitting that online *nikah siri* is valid. Additionally, at this point, the responsibility for ensuring marriages are registered falls not only into the hands of parents, couples, religious leaders, and society, but also the government. The government's willingness to commit this issue to their agenda and implement regulations will prove to be particularly important but so far has been lacking.

Conclusions

Discussion of online *siri* marriage is a continuation of the current trajectory of marriage registration in Indonesia. The bureaucratic apparatus which is being deployed by the government to counter the presence of unregistered marriage, particularly online marriage, can be regarded as another episode in the bureaucratization of religion in Indonesia, following the 1974 Marriage Law and the introduction of the 1991 Compilation of Islamic Law.

For the government, the issue of valid versus legal marriage has consistently presented a major problem relating to the bureaucratization of Muslim marriage. The challenges that have accompanied the process of the bureaucratization of Muslim marriage mainly cover two levels. Firstly is the environment, which embodies the tension between the government, diverse voices of Islam, and social groups. Secondly is the context of a rise of religiosity, which has had to be accommodated by the government. In Indonesia, there is currently an Islamization race occurring in society, which can be evidenced in the effort of the Indonesian government to demonstrate Islamic credentials amid an increasing number of Muslims who are eager to upgrade their religiosity and pursue the study of Islamic teachings.

The government is wary of the possibility that strict regulation of marriage could be counterproductive. Islam plays an important role in Indonesian life; it is also noteworthy, however, that Indonesia is not an Islamic state. Therefore, on certain issues, the government's position is ambiguous, as is evident in this article. On the one hand, the government considers *nikah siri* as illegal. However, it also admits that this marriage is valid in Islam. This ambiguous position reflects the long-term efforts of the government to use a religious approach in order to accommodate the rise of religiosity in the country. Additionally, the government's intention to win the "Islamisation race" is evident in the manner in which the government deals with the diverse demands of local governments to implement *shari'a*.

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