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*Islamic Courts and Women's Divorce Rights in Indonesia*



# Islamic Courts and Women's Divorce Rights in Indonesia

The Cases of Cianjur and Bulukumba

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*In memory of my father*



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## Glossary

Listed are only the important Indonesian and Dutch terms that recur in the text. Please note that I use the Indonesian spelling for Islamic legal terms originating from the Arabic language in accordance with the way those terms are most commonly written in Indonesian legislation. The meaning and use of those terms in Indonesia may differ from those in the Arabic countries in subtle ways.

*Adat*: social rules and practices of a community, custom, tradition.

*Adat law*: *adat* rules with legal value.

*Boedelscheidingen*: division of the estate after divorce or death.

*Bu*: Ms., Madam.

*Bupati*: district head.

*Cerai*: divorce.

*Cerai talak*: formal divorce request at the Islamic court by a husband.

*Darul Islam*: House of Islam. Islamic state proclaimed by Kartosoewirjo on August 7 1949 in West Java. In 1951 Abdul Kahar Muzakkar joined the *Darul Islam* rebellion in South Sulawesi and in 1953 Daud Beureu'eh in Aceh. In other provinces there were also pockets of *Darul Islam* fighters. Beureu'eh signed a peace agreement in 1959. In 1962 Kartosoewirjo was captured and executed. The capture and execution of Muzakkar in 1965 marked the end of the rebellion.

*Executoirverklaring*: statement of the general court which orders enforcement of a judgment of the Islamic court. Until the reforms of the 1989 Islamic Judiciary Law the subsequent priest councils, *penghulu* courts and Islamic courts had no independent capacity to enforce their judgments. Litigants who wanted to see these judgments enforced had to petition to the general courts (during the Netherlands Indies the *landraad*) in order to obtain an *executoirverklaring*.

*Fasakh*: annulment of marriage.

*Fatwa*: legal opinion of Islamic scholars.

*Fiqh*: Islamic doctrine.

*Gugat cerai*: divorce petition at the Islamic court by a wife.

*Haja*: woman who has completed the *hajj*.

*Hajj*: pilgrimage to Mecca. One of the five obligations for a Muslim.

*Haji*: man who has completed the *hajj*.

*Harta bersama*: marital property acquired by a couple during marriage.

*Hakam*: mediator.

*Hoge Raad, Hooge Raad*: Supreme Court of the Netherlands Indies.

*Ibu*: see *Bu*.

*Iddah*: waiting period of three menstruation cycles in which the wife is not allowed to remarry after a divorce.

*Ijma*: consensus among Islamic scholars over a legal issue; one of the five sources of Islamic law.

*Isbath nikah*: petition for a declaration of the legality of a marriage in which the court investigates whether the legal requirements for a marriage have been met.

*Jaksa*: prosecutor.

*Jaksa courts*: seventeenth and eighteenth century indigenous Javanese judicial courts headed by the sultans adjudicating civil and criminal matters. The term *jaksa courts* is a colonial collective noun for the indigenous judicial courts on Java. The name of the judicial courts actually varied and often were divided into several branches.

*Kadi*: Islamic judge.

*Kantor Urusan Agama (KUA)*: Office of Religious Affairs; sub-district level government institution under the Ministry of Religious Affairs which is responsible for the registration of Muslim marriages.

*Khul*: a traditional Islamic divorce procedure in which the wife offers her husband to return (part of) her dower (*mahr*) in exchange for his pronouncement of the *talak* and in which she will refrain from her maintenance rights during the *iddah*.

*KUA*: see *Kantor Urusan Agama*.

*Kyai*: head of an Islamic boarding school.

*Landraad*: court for the Indigenous population during the Netherlands Indies.

*Maddhab*: school of Islamic law. There are four Sunni schools of law: *the hanafi, syafi'i, maliki and hanbali maddhab*. In Indonesia the *syafi'i maddhab* is dominant.

*Mahar; Mahr*: dower; the bride-price given by a bridegroom to a bride. The *mahar* belongs to the bride and is hers to keep in the case of divorce. She is entitled to half if the marriage ends before consummation. The *mahar* is one of the requirements for a Muslim marriage.

*Majelis Ulama Indonesia*: the Indonesian *Ulama* Council. Founded in 1975 during the Indonesian New Order under the Suharto presidency as a body to produce *fatwas* and to advise the Indonesian Muslim community on contemporary issues.

*Masyumi, Majelis Syuro Muslimin Indonesia*: Council of Indonesian Muslim Associations. Political party established in 1943 as the result of a forced merger of the Indonesian Muslim organizations under Japanese occupation. After Indonesia's Independence in 1945 *Masyumi* turned into the main opposition to President Soekarno's rule. After 1953, when the *Nahdlatul Ulama* became a political party of its own, *Masyumi* mainly represented the modernist/reformist Muslim organizations. *Masyumi* was banned in 1960 because of its alleged support for the rebellions raging in Indonesia at that time.

*Muhammadiyah*: the largest modernist/reformist Muslim organization in Indonesia founded in 1912. Advocating individual interpretations of Qu'ran and sunnah.

*Mut'ah*: consolation gift. A man is required to give *mut'ah* to his former wife after his pronouncement of the *talak*, provided that it concerns a non-final divorce and she was not *nusyuz* at that time.

*Nafkah*: maintenance.

*Nafkah anak*: child support.

*Nafkah iddah*: maintenance of the husband to the wife during the waiting period after a divorce.

*Nahdlatul Ulama* (NU): the largest traditionalist Muslim organization in Indonesia. NU was founded in 1926 to defend the *syafi'ite fiqh* tradition against the influence of the modernist movements. Under Abdurrahman Wahid the organization became more reform-minded.

*New Order*: (Indonesian: *Orde Baru*) refers to the authoritarian regime of Indonesia's second president Suharto (1966-1998).

*NU*: see *Nahdlatul Ulama*.

*Nusyuz*: disobedient; not fulfilling the marital duties. Wives who are *nusyuz* lose their legal rights on maintenance from their husband. Traditionally *nusyuz* refers to the wife's

behaviour, but recently the Indonesian Islamic courts have applied the term to husbands as well.

*Pak*: mister.

*Pancasila*: the five pillars of the Indonesian state, included in the preamble of the Constitution. They are: belief in one God, nationalism, humanism, democracy, and social justice. The New Order regime (1966-1998) turned these five pillars into an elaborate single national ideology, which served as a means of promoting national unity.

*Penghulu*: traditionally the highest authority in the Islamic bureaucracy on the district level on Java, who in the Netherlands Indies also acted as judge in the Islamic courts and as advisor on Islamic matters in the general courts. In modern Indonesia, the district-level head of the Islamic bureaucracy.

*Penghulu courts*: the Islamic courts on Java and Madura, which were part of the colonial legal system of the Netherlands Indies; successors of the *priest* councils by the reforms of 1931 and 1937.

*Persatuan Islam* (Persis): reformist Muslim organization founded in 1923, promoting reinterpretations of Islamic law strictly based on the Qur'an and hadith. Persis strongly opposes 'un-Islamic' heresy, myth, superstition as well as the elevated status of people of Arabic ancestry in Indonesia.

*Priesterraad* (plural: *priesterraden*): priest council. The Dutch used the term to refer to the *penghulus'* judicial gatherings in the indigenous legal system. The 1882 Priest Councils Regulation formally made the *priesterraden* on Java and Madura part of the colonial legal system.

*Qadi*: see *Kadi*.

*Raad van justitie* (plural: *raden van justitie*): first instance court for Europeans and appellate court of the *landraad* in the Netherlands Indies.

*Reformasi*: the period of political, legal, economic and social reforms which followed president Suharto's resignation in 1998. There is no consensus among academics about what year the *Reformasi* period ended; the start of Megawati's presidency in 2001 or Yudhoyono's presidency in 2004.

*Rujuk*: reconciliation of divorced spouses. *Rujuk* is only allowed during the waiting period after a non-final divorce (*talak raj'i*).

*Sarekat Islam*: Islamic Union, founded in 1911. A pre-independence Muslim organization in the Netherlands Indies and the colony's first mass nationalist movement. In 1921 *Sarekat Islam* became a political party.

*Surambi courts*: the seventeenth century judicial gatherings on matters which were ruled by Islamic law at the veranda (*surambi*) of the grand mosque as part of traditional

Javanese justice under the sultans. Whether a strict division between the *jaksa* courts and *surambi* courts existed is unclear but these separate judicial gatherings of *penghulus* at the grand mosques are well-documented. See *Jaksa* courts.

*Syafi'ite fiqh*: the Islamic doctrines of the *syafi'i maddhab*, which traditionally is the dominant school of law in Indonesia.

*Syiqaaq*: a procedure in which the *penghulu* appoints one family member of each spouse as mediators (*hakam*) in an attempt to reconcile a couple. When reconciliation fails, the *hakams* have the possibility to advise the couple to divorce. In Indonesia their advice traditionally was not only directed at the husband in order to persuade him to pronounce the *talak*, but also to the Islamic judge who could divorce the couple.

*Talak*: divorce through the pronouncement of the *talak* by the husband.

*Talak ba'in*: a final divorce. The couple cannot reconcile and only remarry after the wife has been remarried with another man and subsequently divorced him.

*Talak raj'i*: a divorce which is not final until the wife's waiting period (*iddah*) has ended. The marriage can be reconciled (*rujuk*) during the *iddah*.

*Taklik al-talak*: conditional divorce. A contract pronounced by the bride-groom immediately after the conclusion of the marriage in which he states the conditions under which he will divorce his wife if she wants him to do so. A wife who wants to divorce on the base of the *taklik al-talak* must bring her case to a judge who will verify whether one of the conditions has been met. If so, she has to pay her husband the amount of compensation as established in the *taklik al-talak* and will be officially divorced. A *taklik al-talak* contract cannot be revoked during the marriage.

*Ulama*: religious scholar. In Indonesia the term *ulama* is used for both the singular as the plural form.

*Wali*: guardian. According to *syafi'ite* doctrine one of the requirements for a Muslim marriage is that a bride must be married of by a male guardian; her father, or if this is not possible by a replacement from her father's line.

*Waqf*: religious endowment.

*Zakat*: alms. Paying *zakat* is one of the obligations placed on Muslims. The alms are to be used for the welfare of the needy.

*Zina*: fornication, adultery, sin.

