



Universiteit
Leiden
The Netherlands

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

Fauzi, M.L.

Citation

Fauzi, M. L. (2021, May 18). *Aligning religious law and state law: street-level bureaucrats and Muslim marriage practices in Pasuruan, Indonesia*. Retrieved from <https://hdl.handle.net/1887/3176604>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/3176604>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <https://hdl.handle.net/1887/3176604> holds various files of this Leiden University dissertation.

Author: Fauzi, M.L.

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

Issue Date: 2021-05-18

Aligning Religious Law and State Law

Street-Level Bureaucrats and Muslim Marriage Practices
in Pasuruan, Indonesia

Muhammad Latif Fauzi

Lay out and cover design: Reza

Cover photo: Courtesy of the author

@2020 Muhammad Latif Fauzi. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronics, mechanical, photocopying, recording, or otherwise, without the permission in writing from the proprietor.

Aligning Religious Law and State Law

Street-Level Bureaucrats and Muslim Marriage Practices
in Pasuruan, Indonesia

Proefschrift

ter verkrijging van

de graad van doctor aan de Universiteit Leiden,
op gezag van rector magnificus prof. prof.dr.ir. H. Bijl,
volgens besluit van het college voor promoties
te verdedigen op 18 mei 2021
klokke 10.00 uur

door

Muhammad Latif Fauzi
geboren te Sidoarjo, Indonesië
in 1982

Promotores:

Prof. dr. L.P.H.M. Buskens

Prof. dr. A.W. Bedner

Promotiecommissie:

Prof. dr. N.J.G. Kaptein

Dr. Nadia Sonneveld

Prof. Dr. Euis Nurlaelawati (UIN Sunan Kalijaga, Yogyakarta, Indonesia)

Dr. Stijn van Huis (Universitas Bina Nusantara, Jakarta, Indonesia)

*To my parents, my wife Latifah and my daughters Neva and Queena
for their endless love, support and encouragement*

*This thesis was researched and written with financial support from the
5000 Doktor Scholarship of the Ministry of Religious Affairs
of the Republic of Indonesia*

Contents

Contents	vii
A Note on the Transliteration System	ix
List of Tables and Figures	xi
Acknowledgements	xv
Maps	xix
Introduction	1
1. Background	1
2. Marriage, Religion, and the State.....	10
2.1. Sharia in the Nation-State	12
2.2. State Law	16
2.3. The Bureaucratization of Muslim Marriage.....	22
3. Research Focus	25
4. Research Site.....	28
5. Research Method	29
6. Structure of the Thesis	32
Part One. LAW AND INSTITUTION	37
CHAPTER 1	
Regulating Muslim Marriage in Indonesia	39
1. Introduction	39
2. A Legally-Valid Marriage: Dilemmas and Compromises	41
3. Sharia-based Regulations and the Steep Stairways to Legislation	53
4. Contesting <i>Maşlaḥa</i>	57
4.1. The MUI <i>Fatwa</i>	58
4.2. The <i>Majelis Tarjih Fatwa</i>	60
4.3. The <i>Bahtsul Masail Fatwa</i>	60
5. A New Trend: Citizens' Rights Approach	62
6. Conclusion	68

CHAPTER 2

Reforming the Bureaucracy of Muslim Marriage	73
1. Introduction	73
2. <i>Penghulu</i> in the Formative Period	76
3. Institutional Transformation and the Re-centralisation of <i>Penghulu</i>	84
4. Dilemmas Arising from the Administration and the Discontinued P3N	89
5. Official Fees and NIK	100
6. Conclusion	105
Part Two. PRACTICE	109

CHAPTER 3

Pasuruan: Islam and Other Contexts	111
1. Introduction	111
2. Historical Context	111
2.1. Madurese Out-Migration to Pasuruan	113
2.2. Colonial Occupation	116
2.3. Pre-Independence	118
2.4. Post-Independence and the New Order Era	120
3. Cultural, Religious and Political Life	125
3.1. Cultural Life	126
3.2. Religious Groups	128
3.3. Patron-Client Relations	132
3.4. Political Sphere	137
4. Social Life in Summersari	138
4.1. Economy and Education	140
4.2. <i>Pesantren</i> Atmosphere	141
5. Conclusion	145

CHAPTER 4

Everyday Practice: Roles of <i>Kyai</i> and <i>Pengarep</i>	149
1. Introduction	149
2. Presenting Munir-Ulfa	150
3. <i>Pengarep</i> and Cultural Norms	155
3.1. Case 1: Kulsum's Marriage	155
3.2. Case 2: The Marriages of Fahim and Her Sister	157
3.3. The Important Role of <i>Pengarep</i>	158
4. Seeking 'Middle Ground': The Role of <i>Kyai</i>	164
4.1. A Case of Polygyny	165
4.2. Legal Reasoning	167

5.	<i>Menghalalkan: Marrying to Legalise Relationship</i>	170
5.1.	Aini: The Girl Loves, the Guardian Decides	171
5.2.	Marry Me! Marriage and Religious Piety	175
6.	Conclusion	178

CHAPTER 5

Registering a Marriage: *Penghulu, Modin*

	and the Struggle for Influence	183
1.	Introduction	183
2.	Marriage Registration and the State-in-society Approach ...	188
3.	Building an Internal Synergy	190
4.	Registering Marriages and Remarriages	196
5.	<i>Akad Dua Kali</i> (twofold marriage ceremonies) and <i>Ta'kid al-Nikāh</i>	201
6.	Conclusion	212

CHAPTER 6

Unregistered Marriage and the Search of State

	Recognition	215
1.	Introduction	215
2.	Why Legalising an Unregistered Marriage?	218
3.	Legal Identity and Citizens' Rights	222
4.	Administrative Transgression in Marriage Registration	224
5.	<i>Isbat nikah</i> by Islamic Courts	231
5.2.	Polygynous Marriage	233
5.3.	Underage Marriage	238
6.	Child Legitimation	241
7.	Conclusion	244

Conclusion

	247	
1.	Regulating Muslim Marriage and Public Debates	251
2.	The Uneasy Reform on the Bureaucracy of Marriage	255
3.	Present Day Cultural Life in Pasuruan	257
4.	Everyday Practice of Marriage and the Functioning of the Bureaucracy of Marriage.....	258
5.	Unregistered Marriages and Seeking State Recognition	263

References

	267
Glossary and Abbreviations	289
Summary	295
Samenvatting	305

Curriculum vitae	317
------------------------	-----

A Note On The Transliteration System

This thesis uses the system of Arabic transliteration adopted by many institutions and journals in the Anglo-Saxon world, such as the Library of Congress in Washington, D.C., USA, and the *International Journal of Middle Eastern Studies*. This system has been departed from in cases where specific transcriptions have come into general use. The words such as Islam and Qur'an, for instance, are written as they are, instead of *Islām* and *Qur'ān*. Names of personalities, organisations and foundations, as well as titles of books, journals and articles are rendered according to locally applied spellings and transliterations. For Arabic terms and names which are not part of the Indonesian language, I use the international standard of Arabic transliteration. With the exception of the term '*ulamā*' (singular '*ālim*'), the plural forms of Arabic-influenced terms are indicated by adding an s to the word in the singular, as in *kitābs* or *ḥadīths* rather than *kutub* or *aḥādith*.

List of Tables and Figures

Figure 0.1. The relationship between legal systems and agencies in Muslim marriage practices

Table 1.1. Categories of violation and crimes in the RUU HMPA

Figure 1.1. SPTJM Suami Isteri (SPTJM of husbands and wives)

Figure 2.1. The structure of the bureaucracy of the KUA at the Ministry level according to the PMA No. 42/2016

Figure 2.2. The structure of the regional and sub-district offices of religious affairs according to the PMA No. 42/2016

Figure 2.3: *Penghulu's* strike to voice the release of Romli

Figure 2.4. Letter from the local bureau of civil administration, substituting identity cards

Figure 3.1. Map of Pasuruan

Figure 3.2. Traditional way of celebrating birthday that is calculated on the basis of Islamic lunar calendar. Ceremony involves recitation of Quranic chapters, led by a religious leader.

Figure 3.3. Each family assumes its own respected *kyais* whose photos are commonly hung on the wall in the front room.

Table 3.1. Figures of formal and informal (Islamic) schools in Pasuruan, 2014, collected on the basis of the District Statistic of 2015 and <http://pasuruankab.siap-online.com/>

Figure 5.1. The structure of the KUA Summersari

Figure 5.2. The *kepala* of KUA talks to a villager

Figure 5.3. Registered marriage in the Summersari sub-district

Figure 5.4. *Janda's* registered remarriage

Figure 5.5. *Duda's* registered remarriage

Figure 5.6. *Akad nikah* in the office, led by a *modin*

Figure 6.1. The letter of village head declaring that a citizen is not legally married

Acknowledgments

Writing a PhD thesis is indeed an individual work but it is almost never possible to be accomplished in solitude. Behind me lies different layers of people who have helped me in numerous ways. The rules of Leiden University do not allow me to thank my supervisors. However, let me outmanoeuvre this rule by simply describing what both have done for me. Prof. Dr. Adriaan Bedner has given me intensive and passionate supervision. Prof. Bedner has contributed significantly to the finalisation of this thesis. Prof. Dr. Léon Buskens has guided me during my early months as a PhD student. From Prof. Buskens I learned much about theoretical framework, doing fieldwork and received insightful comments.

This thesis is made possible through the support from the 5000 Doktor Scholarship of the Ministry of Religious Affairs of the Republic of Indonesia. I would like to convey my sincere thanks to the 5000 Doktor that had provided me not only with the generous funds, but also with the kind assistance and relevant support for this academic journey. My thanks go to Prof. Dr. Kamaruddin Amin, the Director General of Islamic education, Prof. Dr. Amsal Bakhtiar, the ex-Director of Islamic Higher Education, and Yeni Ratna Yuningsih, Ph.D., the managing director of the scholarship programme.

I would like to express my gratitude to the family law group discussion at Van Vollenhoven Institute. The discussions we had has enriched me with insightful ideas on questions, issues and framework of doing family law. The members of this group, Mies Grijns, Hoko Hori, Arfiansyah, Al Farabi, Judith van Uden, Nada Heddane, Annelien

Bouland, Dr. Nadia Sonneveld, have carefully read and given important remarks on my chapters.

I am indebted to Dr. Margreet van Till, the coordinator of exchange programmes in the faculty of Humanities, Leiden University, for her assistance. I am grateful to my colleagues at LIAS and KITLV, Syahril Sidik, Aminudin Siregar, Nor Ismah, Ade Jaya Suryani, Adrian Perkasa, Taufiq Hanafi, Grace Leksana, Dr. Yanwar Pribadi, and Xu Guanmian for the friendship and mutual supports. I would also like to thank colleagues in Berlin: Dr. Syaifuddin Zuhri, Zacky Khairul Umam, Dr. Dyah Wirastri, Dr. Stijn van Huis and Dr. Dominik Müller for their invaluable inputs. I wish to thank scholars, namely Prof. Dr. Nico Kaptein, Dr. David Kloos, Dr. Ward Berenschot, Dr. Upik Djalins, and Prof. Dr. Henk Schulte Nordholt for their inputs during my presentation in KITLV. A number of colleagues in PCINU Belanda deserve my sincere gratitude for having provided emotional and communal support, mainly KH. Nur Hasyim Subadi, KH. Hambali Ma'sum, KH. Ahmad Naf'an Sulhan, KH. Ade Sihabuddin, KH. Ishaq, KH. Budi Santoso, Fachrizal Afandi, Fahrizal Yusuf Affandi, Muhammad As'ad, Yus Boersma, Ibnu Fikri, M. Shohibuddin, Yance Arizona and Ahmad Afnan Anshori. I also wish to thank my friends in Al Hikmah mosque in The Hague, namely H. Bahrul Munif and Nana Supriatna for their valuable support.

I would like to express my gratitude to professors and colleagues in the State Institute of Islamic Studies (IAIN) of Surakarta from whom I have obtained moral support. My apologies if I may not be able to name all of you, but let me try to thank a few people personally. The rector, Prof. Dr. Mudofir, the ex-dean of Sharia faculty, Dr. M. Usman, the current dean, Dr. Ismail Yahya, Dr. Lukman Fauroni, Dr. Zainul Abas, Dr. Fauzi Muharram, Sulhani Hermawan, Sidik, Helmi Haris, and some others are influential in my intellectual development. In addition, I would like to thank Rosemary Robson for proofreading my manuscript and Kora Bentvelsen for translating my summary into Dutch.

In the field, I would like to convey my greatest gratitude to my acquaintances and friends in Pasuruan. Pak Rudy, Mas Subadar, and Mas Hamzah who always welcomed me when I did fieldwork in the

office of KUA. I wish to particularly thank Dewi and Khoirul for their help to interview people on their marriage experiences. I wish to acknowledge the help provided by people in Summersari, among others Nisa, Ahmad, Iin, Alfi, Saiful and Gus Ja'far who provided me a nice place to stay at his Pesantren Miftahul Falah. My key informants, namely Umi Hanik, Haji Misbahul, Haji Hamim, Gus Rokib, Kyai Ghofur, and Ustadz Syukron have been very important to support me with the wealth of information for my study. I am also grateful to a number of NGO activists and organisations in Bangil, namely Mas Faizin, Cak Lutfi, Mbak Arofah and Mas Sihab in STAPA Centre and Cak Ali Sadikin in OBH YRPP, who have made my fieldwork more lively.

Finally, my profound gratitude goes to my spouse, Latifah Nasiruddin, our two children – Neva and Queena –, my brother and sister, and my parents, H. M. Hasibun and Hj. Maisaroh, who have always been the sources of patience, joy and encouragement. The idea of coming home has always provided me with great strength to finish my dissertation. This is our unforgettable journey. Thank you.

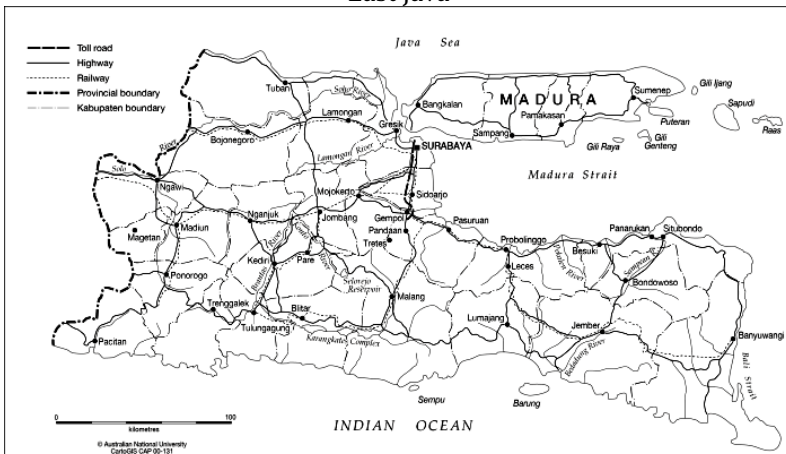


Maps*

Indonesia



East Java



* All maps are from CartoGIS ANU
