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

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## CHAPTER 2

# Reforming the Bureaucracy of Muslim Marriage

*Pemerintah berharap calon pengantin mendaftar sendiri, mengurus persyaratan dari desa langsung dibawa ke KUA. Tapi masyarakat belum siap. Secara tradisi mereka datang ke modin.*

*Di sisi lain, petugas KUA juga minim turun ke desa untuk pemeriksaan status calon pengantin dan wali nikah. Situasi di masyarakat sangat rumit.”*

Haji Mustofa, a village religious official (*modin*, was P3N) in Sumbersari

The government expects the couples to prepare the documents for marriage registration themselves and bring them from the village office to the KUA. However, people are not ready to do this yet. They go to *modin*, which is the tradition. Moreover, officials on sub-district level seldom come into villages to examine the legal status of the couples and the marriage guardian. The social situation on the ground is extremely complicated.”

### 1. Introduction

In the previous chapter, I have indicated that post-New Order Indonesia has been experiencing a rise in religious identity which continues to contest the state's attempt to reform Muslim marriage through legislation. Nevertheless, at the same time there is a tendency among *ulama* to speak of the concept of *maslaha* (common good)

which is increasingly beginning to resemble the state's idea of public order. On the secular side of the coin, the non-religious state bureaucracy has been emerging as an alternative force introducing reformatory ideas into strategic regulations. This bureaucratic reform has stimulated the government's public service institutions to strengthen the protection of citizens' rights.<sup>1</sup> Despite the conflicts arising from the state's insistence on legal norms for marriage registration and other problems such as the underperformance of bureaucrats,<sup>2</sup> this reform is an important step in the way the state is endeavouring to cope simultaneously with Islamic affairs and citizens' rights.

In this chapter, I try to get a grip on the practice of the state. I look at the bureaucratic and legal reforms in the administration of Muslim marriage which fall under the aegis of the Ministry of Religious Affairs (MoRA) and how these affect the administration of marriage registration in society. To this end, the main question of this chapter is: In what ways does the reform shape the bureaucracy of Muslim marriage which, in practice, is implemented by the Kantor Urusan Agama? The KUA is a state religious agency which deals exclusively with the Muslim marriage ceremony (*akad nikah*) including its registration. Within the KUA, the *penghulu* is the key actor as the state-supported religious official who is responsible for validating a marriage ceremony.

It is often said that the MoRA is responsible for dealing with more practical questions of religious identity or theological disputes about what 'proper' religion should be.<sup>3</sup> However, when it comes to Islamic marriage, religion has not been the overriding issue. Instead, the MoRA has been confronted with the problem of corruption. The MoRA has

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<sup>1</sup> In 2010, the Indonesian government issued a main guideline for bureaucratic reform covering a period of 5 years. *Peraturan Presiden* (Presidential Regulation) No. 81/2010 tentang Grand Design Reformasi Birokrasi 2010-2025 (On the Grand Design of Bureaucratic Reform of 2010-2015).

<sup>2</sup> Nurdiana Gaus, Sultan Sultan, and Muhammad Basri, 'State Bureaucracy in Indonesia and its Reforms: An Overview', *International Journal of Public Administration*, vol. 40, no. 8 (Routledge, 2017), pp. 658–69.

<sup>3</sup> Sezgin and Künkler, 'Regulation of Religion and the Religious: The Politics of Judicialization and Bureaucratization in India and Indonesia', p. 450.

attempted to address this problem by instigating a series of reform in order to reinforce its rational legal authority<sup>4</sup> and legitimacy.<sup>5</sup> Although it seems that attempts at reform have so far been half-hearted, the state is under growing pressure to address the issue of citizens' rights. Political actors have agreed that Muslim marriage registration is an integral part of the civil registration system. Here we encounter the problem of falling between two stools. They formulate citizenship by expressing preferences in a way which has been strongly influenced by modern, state-centric conceptions.<sup>6</sup> According to the Law on Civil Administration, marriage is a crucial life moment to which the legal obligation of registration is applied. A marriage certificate (*akta nikah* or *buku nikah*) issued by the KUA is accordingly deemed equivalent to a *dokumen kependudukan* (civil document). I am embracing this modern approach, they have somewhat lost sight of the more traditional views on marriage which are still very much embedded in village life.

In this chapter, my purpose is to argue that the KUA has endeavoured to introduce an array of reforms to redefine its position, interpreting its institution not just in its narrow sense as a religious bureaucracy which deals with Islamic marriage but taking a wider perspective on it as the administration of public service. In this light, the KUA plays a role as a prominent government frontline public service agency helping the government protect the rights of citizens

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<sup>4</sup> Weber introduced this concept in response to the transition from medieval to modern societies and states in Europe. It refers to authority which is legitimized by a rational-legal and interdependent division of labour, characterized by economic and occupational specialization and complex rational-legal systems, in which highly specialized bureaucracies are the norm. Weber called this rational justification of obedience to authority "domination by virtue of legality, by virtue of the belief in the validity of legal statute and functional competence, based on rationally created rules." Max Weber, 'Politics as a Vocation', in *From Max Weber: essays in sociology*, ed. by Hans H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946), p. 79.

<sup>5</sup> Legitimacy is a central concept which defines how individuals accept a power and conceive their obedience as a commitment. It is critical because it constitutes any normative claims made by a government. R. Stryber, 'Legitimacy', *International Encyclopedia of the Social & Behavioral Sciences* (2001), pp. 8700–4.

<sup>6</sup> Pamela J. Stumpo, 'Challenging the Practice of the State, but Beholden to Its Image: Women's Activists, Academics, and the Public Take on Egypt's Citizenship Laws', in *The Everyday Life of the State: A State-in-Society Approach*, ed. by Adam White (Seattle: University of Washington Press, 2013), p. 189.

more effectively. However, in the eyes of its superior, the MoRA, religious issues to do with the marriage ceremony still take pride of place. At the core of the problem lies the position of the *penghulu*. Time was when the head of the KUA did not necessarily have to be a *penghulu*, but now the MoRA has returned *penghulu* to the core of the KUA bureaucracy, ensuring the head of the KUA must always be the older of this office in an effort to secure its religious credibility. This was the first reform but more were to follow. Other changes have seen the elimination of informality and the concomitant charging of official fees for marriage registration. The state requires the KUA to be a centralized, powerful agency, firmly in charge of marriage registration and it has attained its goal by diminishing the intermediary roles played by informal village religious leaders. However, in doing so it has failed to appreciate the social importance of the latter. Lastly, the MORA has struggled with the integration of civil administrative data into marriage registration system. To sum it up in one sentence, the implementation of this series of reform was more easily said than done.

This chapter begins with a historical sketch of the formation of the roles of the *penghulu* and the KUA in the years immediately after Indonesian Independence. Section 2 focuses on the re-organization of the KUA bureaucracy and the re-promotion of *penghulu* as key actors in it. Section 3 examines the core problem in the administration of Muslim marriage, that is, the administration fee, which put the *penghulu* in a real predicament, and its upshot, the elimination of assistant marriage registrars from the bureaucracy. Section 4 deals with the reform of the administration fee and other bureaucratic matters and how they relate to the discourses about Muslim marriage registration and the protection of citizens' rights. This section ends with a conclusion.

## **2. *Penghulu* in the Formative Period**

Scholars have argued that the emergence of a modern nation-state has made religious affairs an integral part state control. Deliar Noer's 1978

work emphasized that the position of Islam in Indonesia was not at all easy as it was subject to debate not only between secular and Islamic groups but also to competition in Muslim circles.<sup>7</sup> Gradually, the political process of administering Islam has proceeded to what is called “state Islam”,<sup>8</sup> a form of Islam endorsed by the state. Consequently, as they are embedded in religious affairs, marriage norms have been unavoidably reshaped by the state actors to tackle matters in the national interest such as population control.<sup>9</sup> This has been done, as Muller has remarked, by empowering “state-funded administrative bodies to guide and influence Islamic discourses in diverse ways.”<sup>10</sup>

This section specifically explores how the state deals with the administration of Muslim marriage. It examines the historical trajectory of the bureaucracy of Muslim marriage under the aegis of the MoRA. This bureaucracy is understudied, particularly when compared to topics related to marital dispute settlement by Islamic courts.<sup>11</sup> After the Indonesian state began to reform the Muslim husband’s unilateral rights to divorce by the introduction of judicial divorce in 1974, the legal practices in Islamic courts have grown enormously in importance as a topic of debate. Matters have reached such a pitch that not just their practices but the very existence of Islamic courts has become the subject of political debate. In fact, political pressure demanding the abolition of Islamic courts was very nearly successful after the UU (Law) No. 19/1948 on the Judicial Power was passed. Chapter 35 (2) of this Law decreed that disputes between Muslims should be resolved under the jurisdiction of a

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<sup>7</sup> Deliar Noer, *The Administration of Islam in Indonesia* (Ithaca, NY: Cornell Modern Indonesia Project, 1978).

<sup>8</sup> Moch Nur Ichwan, ‘Official Reform of Islam: State Islam and the Ministry of Religious Affairs in Contemporary Indonesia, 1966-2004’ (Tilburg University, 2006).

<sup>9</sup> Maznah Mohamad, ‘Malaysian Sharia Reforms in Dlx: The Changeable National Character of Islamic Marriage’, *International Journal of Law, Policy and the Family*, vol. 25, no. 1 (2011), pp. 46–70; Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2002).

<sup>10</sup> Müller, *The Bureaucratization of Islam and its Socio-Legal Dimensions in Southeast Asia: conceptual contours of a research project*, p. 2.

<sup>11</sup> See, for instance, Nur Ahmad Fadhil Lubis, *Islamic Justice in Transition: A Socio-Legal Study of the Agama Court Judges in Indonesia* (Los Angeles: University of California, 1994).

general court.<sup>12</sup> The imputation of this chapter was that Islamic courts had been integrated into the general courts. However, this law never came into force.<sup>13</sup> It was superseded by UU Darurat (The Emergency Law) No. 1/1951 on the Jurisdiction and Procedures of the Civil Courts which stipulated the continued existence of Islamic courts and the abolition of all indigenous *adat* courts.<sup>14</sup> Under these circumstances, the administration of Muslim marriage remained relatively free of political intervention.

The modern bureaucratic administration of Muslim marriage was set up simultaneously with the foundation of the MoRA by the Indonesian government on 3 January 1946, founded on *Penetapan Pemerintah* (the Government Declaration) No. 1/S.D. 1946. The MoRA itself was in fact an extension of what had existed since the closing years of the nineteenth-century in the Dutch East Indies, initially as the *Kantoor voor Inlandsche Zaken* (Office for Indigenous Affairs). This became the Bureau of Religious Affairs (*Kantoor voor Inlandsche en Arabische Zaken*) in early 1899.<sup>15</sup> In this period of administrative changes, the colonial administration reorganized the hierarchy of the *penghulu*. These were government-sponsored officials charged with handling matters pertaining to Islamic affairs, including marriage and divorce on district and sub-district levels.<sup>16</sup> *Penghulu* were answerable to the *Bupati* (Regent). Under the Japanese occupation from 1942 to 1945, this Office of Religious Affairs was renamed the *Shumubu* or *Kantor Oeroesan Agama*.<sup>17</sup> Prominent staff members of the former

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<sup>12</sup> Jaenel Aripin, *Jejak Langkah Peradilan Agama di Indonesia* (Jakarta: Kharisma Putra Utama, 2013), p. 70.

<sup>13</sup> According to Lev, Law 19/1948 Chapter 7 made no mention at all of a distinct jurisdiction for Islamic courts implying their demise. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, p. 65.

<sup>14</sup> Emergency Law 1/1951 on the Jurisdiction and Procedures of the Civil Courts. See also van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 46.

<sup>15</sup> Rini Rusyeni, 'Fragmented Voices: The Personal Archives of the Advisors of Inlandsche Zaken, 1899-194' (Leiden University, 2017), p. 13.

<sup>16</sup> Karel A. Steenbrink, *Beberapa Aspek tentang Islam di Indonesia Abad ke-19* (Jakarta: Bulan Bintang, 1984). Further details about the *Kantoor voor Inlandsche Zaken*, read Husnul Aqib Suminto, *Politik Islam Pemerintah Hindia Belanda: Het Kantoor voor Inlandsche zaken* (Jakarta: LP3ES, 1985), pp. 99–107.

<sup>17</sup> Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, p. 44.

Dutch-established office continued to run its successor. Worried about the strength, or lack of it, of its control over religious leaders (*ulama*), the Japanese military administration decided to establish the *Shumuka* to expand the powers of the *Shumuba* in various *karesidenan* (regencies) in 1944.<sup>18</sup> The *Shumuka* was supposed to act as the co-ordinator of local *ulama* but with the obvious aim of exerting more control over them.<sup>19</sup> The *Shumuba* served as the foundation of the establishment of the MoRA in 1946.

Since 1946, the mission of the MoRA has been to be the most prominent agency responsible for the supervision of all matters related to marriage and reconciliation between Muslims.<sup>20</sup> The most obvious change which has taken place since the formation of the MoRA was the reorganization of the existing judicial and executive institutions on both national and regional levels. On the basis of *Penetapan Pemerintah* (Government Decree) No. 5/SD 25 March, 1946, the MoRA took over control of both lower Islamic courts and the Supreme Islamic Court (*Mahkamah Tinggi Islam*) from the Ministry of Justice. The upshot was that, on the regional level of religious office, the name of the *Shumuka*, was changed to *Djawatan Agama Daerah* (Regional Religious Bureau).<sup>21</sup> Ever since, *penghulu*, who had previously been subordinate to a *Bupati*, have fallen directly under the supervision of the MoRA.

The rules and regulations governing Muslim marriage were legally defined more clearly when the central government issued UU (Law) No. 22/1946 *tentang Pencatatan Nikah, Talak dan Rujuk* (on the Registration of Marriage, Divorce and Reconciliation). The Law placed the practical implementation of Muslim marriage administration in the hands of the *Pegawai Pentatah Nikah* (the Marriage Registrar). Article 1 (1) of the law states: "A marriage which is concluded in

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<sup>18</sup> Ahmad Syafii Maarif, *Islam dan Politik: Teori Belah Bambu, Masa Demokrasi Terpimpin, 1959-1965* (Jakarta: Gema Insani Press, 1996), p. 20.

<sup>19</sup> Aiko Kurasawa, 'Mobilization and Control: A Study of Social Change in Rural Java, 1942-1945' (Cornell University, 1988), pp. 400-4.

<sup>20</sup> Noer, *The Administration of Islam in Indonesia*, p. 18.

<sup>21</sup> Mujiburrahman, *Feeling Threatened: Muslim-Christian Relations in Indonesia's New Order* (Amsterdam: Amsterdam University Press, 2006), p. 126.

accordance with the precepts of Islam, henceforth referred to as a marriage, is to be supervised by a marriage registrar who is appointed by the Minister of Religion or other designated officials.”<sup>22</sup> On the practical level, this law indirectly enjoined a division between *penghulu kabupaten* (regency *penghulu*) and *penghulu hakim* (judge or *qadi penghulu*). The role of the former was to act as the marriage registrar, while the latter adjudicated on Muslim marital affairs in an Islamic court. A year or so later, this division was formally confirmed in *Keputusan Menteri Agama* (KMA, the Decree of the Minister of Religious Affairs) No. 6/1947 on 8 December 1947 pertaining to the division of tasks between the two institutions.<sup>23</sup>

In the late 1940s, the central government issued *Peraturan Pemerintah* (Government Regulation) No. 33/1949 on the *susunan dan lapang pekerjaan* (the structure and the tasks) of the MoRA. One of these was “to regulate, undertake and observe all aspects related to registration of marriage, reconciliation and repudiation among Muslims.” Practically, this function was overseen by the *jawatan nikah, talak, rujuk* (Section on Marriage, Repudiation and Reconciliation).<sup>24</sup> Interestingly one important aspect of this regulation was the use of the designations of *Kantor Kenaiban Kecamatan* (Office of the Sub-district Religious Representatives) and *Kantor Kenaiban Distrik* (Office of the District Religious Representatives), both supervised by the *Kantor Kepenghuluan Kabupaten* (Office of the Regency *Penghulu*). By its construction of this hierarchy, the government officially restored the term *naib*,<sup>25</sup> as it had been applied in the colonial times,<sup>26</sup> as the designation of the representative of the Regency *Penghulu* on a sub-district level.<sup>27</sup> In my view, this reorganization can be seen as a

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<sup>22</sup> The Law 22/1946 on the Registration of Marriage, Divorce and Reconciliation.

<sup>23</sup> Abdul Manan, *Pembaruan Hukum Islam di Indonesia* (Depok: Kencana, 2017), pp. 2–3.

<sup>24</sup> This division was regulated by *Keputusan Menteri Agama* (Decree of the Minister of Religions) No. 2 1185/KJ November 1946 and was then reaffirmed by *Peraturan Pemerintah* (Government Regulation) No. 33/1949 tentang Susunan dan Lapang Pekerjaan Kementerian Agama (on the structure and the task of the Ministry of Religious Affairs).

<sup>25</sup> In the Sunni tradition of Islamic law, *naib* refers to the authorized representative of a *qadi* (judge) or local magistrate.

<sup>26</sup> Lubis, *Islamic Justice in Transition: A Socio-Legal Study of the Agama Court Judges in Indonesia*, p. 85.

<sup>27</sup> Clifford Geertz, *The Religion of Java* (Illinois: The Free Press, 1960), p. 202.

government strategy to maintain its control over Muslim marriage without putting itself to too much trouble since people were already familiar with such institutions.

In 1947, the bureaucracy administering Muslim marriage also underwent a phase during which informal religious officials on village level were incorporated as official marriage functionaries. The government promoted the village-level religious officials, namely *kaum* (*modin*, *amil*, or *lebei*), to be P3NTR (*Pembantu Pegawai Pencatat Nikah, Talak dan Rujuk* or Assistant Marriage, Divorce and Reconciliation Registrars), to assist the marriage registrars on higher levels.<sup>28</sup> This process signified the bureaucratization of traditional authorities. It transformed them into a modern organizational team whose main role was to bridge the relationship between the state and society.<sup>29</sup>

However, the office of *modin* was not solely a matter for the MoRA, it also fell under the aegis of the Ministry of Home Affairs. The reason was a *modin* dealt with the religious matters of village residents and this was assumed to make them part of the village administration. This village administration was, and is, under the control of the Ministry of Home Affairs. Therefore, according to *Maklumat Bersama* (the Shared Declaration) No. 3/1947 of the two Ministries, the *modin* should be treated the same as a *pamong desa* (a village official). In the 1980s, especially following the issuance of the UU No. 5/1975 on *pemerintahan desa* (village administration), the Soeharto regime incorporated the *modin* into the village administration under the title *Kepala Urusan Kesejahteraan Rakyat* (*Kaur Kesra*, head of People's Welfare).<sup>30</sup> However, this did not apply to all of them. In some villages like in Pasuruan, there has been a division between *modin kawin*

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<sup>28</sup> More details about their tasks and technicalities are regulated in the Instruction of the Minister of Religion No. 4/1947 re the obligations of a marriage registrar.

<sup>29</sup> There is a variety of names given to this informal authority, such as *modin*, *kaum* (community leader) and *rois* (religious leader). Achmad Zainal Arifin, 'Defending Traditions, Countering Intolerant Ideologies: Re-energizing the Role of Modin in Modern Java', *Al-Jami'ah: Journal of Islamic Studies*, vol. 55, no. 2 (2017), pp. 265–92; Pradjarta Dirdjosanjoto, *Memelihara Umat: Kiai Pesantren-Kiai Langgar di Jawa* (Yogyakarta: LKIS, 1999), p. 195.

<sup>30</sup> The Law 5/1975 on *Pemerintahan Desa* (village administration).

(marriage *modin*) and *modin kematian* (funeral *modin*). The village administration only incorporated *modin kematian* into its body, not *modin kawin* because they were already organized by the district office of religious affairs. The upshot was that the *modin* was put in a problematic position with a foot in the camp of each of two Ministries. Although they were entitled to identify themselves as P3NTR, with the exception of those officially recognized as *pamong desa*, their legal status was never set out in black and white. Until recently (see Section 4 of this chapter), this ambivalent status was a cause of confusion.

The MoRA has passed down the official reform of Islam to lower-level agencies by exercising a strict mechanism of control to bring them into line with the policy of the central administration.<sup>31</sup> In the early 1950s, the designation *Kantor Urusan Agama Kecamatan* (KUA, Sub-District Office of Religious Affairs), hereinafter referred to as KUA, was the public designation of the MoRA branch-office on sub-district level whose primary task was to deal with the administration of Muslim marriage. In the course of the subsequent transformation this entailed, the *naib* who was responsible for *kantor kewajiban kecamatan*, given equivalent status to the head of the KUA. The equivalence of a *naib* with the head of the KUA can be seen in the elucidation to *Peraturan Menteri Agama* (PMA, the Regulation of the Minister of Religion) No. 1/1952 on *wali hakim* (magistrate-guardians). This regulation asserted that, because of his equivalent status to the head of the KUA, the *naib* had the authority to act as magistrate-guardian if a biological guardian of a bride could not be present (*mafqud*). Although the term *naib* is no longer currently in use, I have personally seen that local Muslims are still comfortable addressing the head of the KUA as *naib*.

The year 1955 signified a major change in the bureaucracy of Muslim marriage administration. PMA No. 1/1955 on *kewajiban-kewajiban pegawai pencatat nikah* (the obligations of marriage registrars) restructured the organization of the KUA. It declared that

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<sup>31</sup> Sezgin and Künkler, 'Regulation of Religion and the Religious: The Politics of Judicialization and Bureaucratization in India and Indonesia', p. 469.

marriage registration could only be done by *naib kepala* (head of *naib*), *naib* or *naib pengganti* (a substitute). In the same year, the MoRA also standardized the documents required for the registration of a marriage, repudiation and reconciliation of marriage, which included the marriage examination form (*daftar pemeriksaan nikah*), books for marriage registration, repudiation or reconciliation (*buku pendaftaran nikah, talak, dan rujuk*) and a certificate of marriage, repudiation or reconciliation (*surat nikah, talak dan rujuk*).<sup>32</sup>

Under its former jurisdiction, the KUA was vested with the authority to register divorce initiated by men (*talak*). This was at the time a Muslim husband could divorce his wife simply by declaring a repudiation, which he was then required to register with the KUA.<sup>33</sup> Meanwhile, when a wife demanded a divorce but the husband could not or did not want to proclaim it, she had to petition for divorce, called *rapak*, in an Islamic court. In this regard, Hildred Geertz stated:<sup>34</sup>

“It is easy to get divorce in Java. Husband and wife usually notify the village religious official (the *modin*), who helps with weddings and divorces and conducts funerals. He then accompanies them to the sub-district religious official (the *naib* [the head of KUA]), who actually performs the marriages and divorces and keeps the records.”

Nakamura has questioned the meaning of the phrase “performs the marriages and divorces and keeps the records”. In her opinion, describing the role of the *naib* in officiating at marriages, divorces and keeping records is too narrow. As a religious official, the *naib* had a broader responsibility, guiding people to behave in accordance with Islamic law. When faced with instances of divorce, his first step was to give advice to the parties concerned and encourage them to reconsider the intention to dissolve their marriage. If the husband believed that divorce was the only way to improve the situation, he examined them

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<sup>32</sup> PMA No. 15/1955 *tentang Contoh-contoh Buku Pendaftaran Nikah, Talak dan Rujuk* (On Examples of Registration Forms for Marriage, Repudiation and Reconciliation of a Marriage).

<sup>33</sup> Mark Cammack and R. Michael Feener, ‘The Islamic Legal System in Indonesia’, *Pacific Rim Law & Policy Journal*, vol. 21, no. 1 (2012), p. 17.

<sup>34</sup> Hildred Geertz, *The Javanese Family: A Study of Kinship and Socialization* (New York: The Free Press of Glencoe, 1961), p. 71.

both to see if the marriage dissolution could be legally approved according to Islamic law. After completing this examination, he recorded the divorce and issued a divorce decree.<sup>35</sup> Nakamura also noted that the KUA, the Islamic court and BP4 were integral parts of the system of the administration of Islamic law, even though, on the face of it, they appeared to be mutually unrelated.<sup>36</sup>

UU No. 1/1974 on marriage ushered in a significant change in the jurisdiction of the KUA. Since it has been in force, the KUA has no longer had to deal with a unilateral divorce pronounced by the husband. All divorces must be declared before an Islamic court. Despite this fundamental change, the jurisdictions of the KUA and the Islamic court remain interrelated. The Islamic court delivers a report of the divorce to the KUA with which the parties' marriage was registered. It is then the duty of the KUA to execute the court's decision of *isbat nikah* (retrospective marriage confirmation). Furthermore, the KUA also facilitates marital reconciliation (*rujuk*) between the husband and the wife during the prescribed waiting-period (*iddah*) subsequent to pronouncement of the divorce. The document of reconciliation is then presented to the Islamic court as a legal proof of the annulment of their divorce.

### **3. Institutional Transformation and the Re-centralization of Penghulu**

A series of organizational reforms in marriage administration has taken place on the central/national level since Indonesia declared its Independence. Since 1963, all matters related to Muslim marriage have been handled by the Directorate of *Urusan Agama Islam* (Islamic Affairs). As of 1967, this directorate came under the aegis of the Directorate General for Guidance of Islamic Community (*Bimbingan Masyarakat Islam*, henceforth referred to as Bimas Islam). Other Muslim affairs such as Islamic education, Islamic courts and Islamic

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<sup>35</sup> Hisako Nakamura, *Divorce in Java: A Study of the Dissolution of Marriage among Javanese Muslims* (Yogyakarta: Gadjah Mada University Press, 1983), pp. 107–8.

<sup>36</sup> *Ibid.*, p. 106.

higher education were also run by the Directorate General.<sup>37</sup> This structure was reorganized again at the end of the 1970s. This reorganization was deemed necessary because of the wide range of matters with which the MoRA had to cope. To lighten the workload, the Directorate-General of Islam was split into two bodies. The first, the Directorate-General for the Guidance of the Islamic Community and Pilgrimage (*Bimbingan Masyarakat Islam dan Urusan Haji*) deals with matters pertaining directly to religion, including marriage and pilgrimage. Meanwhile, Islamic education and Islamic courts were henceforth to be administered by the second body, called the Directorate-General for the Social Development/Advancement of Islamic Institutions (*Bimbingan Masyarakat Pembinaan Kelembagaan Agama Islam*).

For some decades, the Directorate *Urusan Agama Islam* had the task of managing more than 5,600 KUA offices and more or less 8,000 *penghulu* throughout the nation. In 2010, the nomenclature of the body was changed to *Direktorat Urusan Agama Islam dan Pembinaan Syariah* (Directorate of Islamic affairs and the Advancement of *Shari'a*).<sup>38</sup> This change meant the scope of the control of the directorate was broadened from focusing solely on marital affairs (*penghulu* and the KUA) to covering mosque and *halal* matters. A decade later, another fundamental change occurred. The government decreed that the organization of marriage administration and familial affairs should be undertaken by a specialized body. The MoRA issued Regulation No. 42/2016 on *Organisasi dan Tata Kerja Kementerian Agama* (Organization and Operating Procedures of the MoRA), Article 387, which affirmed the setting-up of a new directorate, namely *Bina Kantor Urusan Agama dan Keluarga Sakinah* (Office for the Organization of Religious Affairs and Harmonious Families/Family

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<sup>37</sup> Regulated by *Keputusan Menteri Agama* (Decree of the Minister of Religion) No. 56/1967 *tentang Struktur Organisasi, Tugas, dan Wewenang Departemen Agama* (On the Structure, Tasks and Competences of the Department of Religion), dated 30 May 1967.

<sup>38</sup> Kementerian Agama, *Profil Direktorat Urusan Agama Islam dan Pembinaan Syariah* (Jakarta: Kementerian Agama RI, 2013).

Cohesion).<sup>39</sup> With the passing of this regulation, the KUA was assured of its own specialized home on the national level.

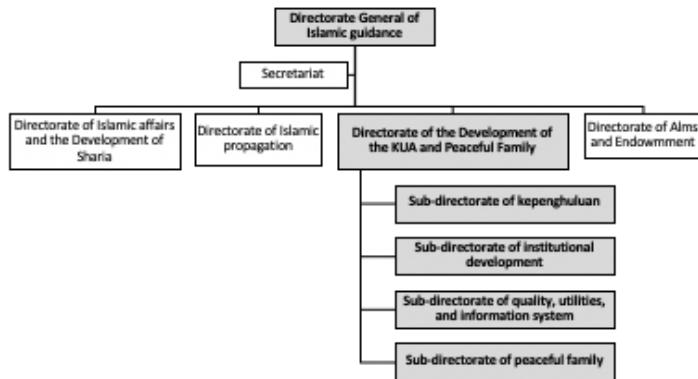
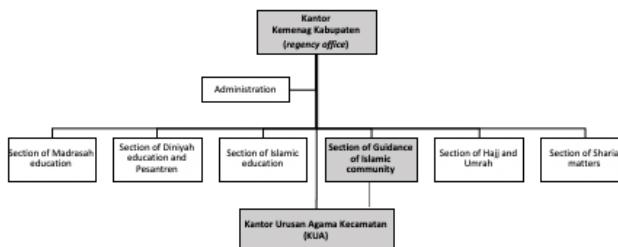


Figure 2.1. The structure of the bureaucracy of the KUA on the Ministry level according to the PMA No. 42/2016

In this structure, the KUA is under the control of the regency/town office of the MoRA (*Kantor Kementerian Agama Kabupaten*). The relationship is hierachal. Therefore the work of the head (*kepala*) is carried out under the direction of Provincial Office of Religious Affairs (*Kantor Wilayah Kementerian Agama Provinsi*, henceforth referred to as *Kanwil*). In the everyday running of the department, it is *kepala seksi* (the section head) of the *Bimbingan Masyarakat Islam* (Guidance of the Islamic Community), abbreviated to *Kasi Bimas Islam*, in the district office of religious affairs who is responsible for overseeing the performance of the KUA offices.



<sup>39</sup> PMA No. 42/2016 on *Organisasi dan Tata Kerja Kementerian Agama* (Organization and Operating Procedures of the MoRA).

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

Generally speaking, the KUA is responsible for handling Islam-related affairs in one sub-district. The registration and reconciliation of Muslim marriages lie at the very heart of its activities, but it also has other matters to deal with such as the running of mosques, alms, property endowment and family harmony (*keluarga sakinah*). In its handling of marital affairs, the head of the KUA acts as a marriage registrar (*Pegawai Pencatat Nikah*, abbreviated as PPN). Article 2 of the PMA No. 11/2007 on marriage registration states that “the PPN is an official who verifies documents, supervises and registers marriage/reconciliation, administers husband-initiated divorce (*cerai talak*), wife-petitioned divorce (*cerai gugat*) and marriage counselling.”

This Article makes it quite clear that the KUA also undertakes marriage counselling and runs courses on preparation for marriage for brides and grooms (*kursus calon pengantin*). In the past, the counselling was the task of a body called *Badan Penasehat Perkawinan dan Penyelesaian Perceraian* (BP4, Board of Marriage Counselling and Divorce Settlement). The establishment of this advisory board was initiated locally in the course of the 1950s.<sup>40</sup> In 1962 it was unified nationally. In 1977, its name was changed to *Badan Penasihat Perkawinan, Perselisihan dan Perceraian* (Board of Marriage Counselling, Dispute Settlement and Divorce) based on Decree of the Minister of Religious Affairs (*Keputusan Menteri Agama*, KMA) No. 30/1977 on *Penegasan Pengakuan Badan Penasihat Perkawinan, Perselisihan dan Perceraian* (Affirmation of the Acknowledgement of the Marriage Counselling, Dispute Settlement and Divorce). Since then, the board has been a semi-official body within the MoRA. Its principal mission is to lend assistance and to solve marital disputes. Couples who wish to get a divorce are expected to attend the BP4 for counselling. Upon receiving confirmation of a break-down in marriage from the members of the board, declared in the form of *Naskah*

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<sup>40</sup> Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, p. 151.

*Penasihat* (Advisor's Note), the couples then go to the KUA to formalize their divorces.<sup>41</sup>

Since 1998, the MoRA was financially prevented from funding this board because of the shortfall in its budget. As a consequence, in 2009, following the 14<sup>th</sup> BP4 National Conference, BP4 was transformed into an independent organization, some of whose staff members are high officials in the MoRA. Nevertheless, this board is in fact still involved in Ministry programmes such as *kursus pra nikah* (pre-marital course).<sup>42</sup> In the wake of this change, the BP4 now focuses only on marriage counselling and is no longer involved in divorce. Therefore, the abbreviation BP4 now stands for *Badan Penasihat, Pembinaan dan Pelestarian Perkawinan* (Board for the Counselling, Fostering and Perpetuation of Marriage).<sup>43</sup>

Functions in the KUA are classified into three categories. They consist of the head (*kepala*), functional officers (*pejabat fungsional*) who include marriage functionaries (*penghulu*) and the administrative staff. In the past, the KUA functionaries were simply categorized into two groups: the *kepala* and the *pelaksana* (officials). Under the 2001 MoRA Regulation, the *kepala* KUA is a structural position (*jabatan struktural*) who also serves as the PPN. In the past, any officials could be promoted to this position and they did not have to be *penghulu*.<sup>44</sup> *Penghulu* are trained, specialized marriage functionaries whose sole responsibility is to conduct a marriage ceremony. They do not have the authority to sign marriage certificates, although there has been a debate about it. The authority to sign marriage certificates is vested in the PPN. However, some argued that *penghulu* were allowed to authorize marriage certificates if the PPN delegated his mandate.

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<sup>41</sup> Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 185.

<sup>42</sup> In 2013, the Directorate-General on Islamic Guidance issued Regulation No. DJ. II/542 concerning the organization of pre-marital courses which declares that BP4 is one of the organizers.

<sup>43</sup> See the KMA No. 114/2009 tentang Penetapan Pengurus BP4 Pusat (on the Officials of the Central BP4).

<sup>44</sup> KMA No. 517/2001 tentang Penataan Organisasi Kantor Urusan Agama Kecamatan (on the organization reorganization of the Sub-district KUA)

This dispute has now been resolved since the MoRA issued a new regulation on the reorganization of the KUA in 2016.<sup>45</sup> The regulation stipulates that the *kepala* KUA is no longer a structural position (*jabatan struktural*) but is considered an additional task (*tugas tambahan*) which can be exercised exclusively by a *penghulu*. In other words, it is now only *penghulu* who are eligible to act as head of the KUA (the PPN). As a consequence, the *kepala* KUA who are not *penghulu* have to meet certain standards attained by passing a set of competency trainings and tests to be *penghulu*.<sup>46</sup> When they have passed the exams, they are awarded a certificate which declares their fitness to assume a functional position (*jabatan fungsional*) as *penghulu*.

This regulation has wrought some significant changes. Firstly, the regulation pragmatically endorses the uniformization of who should serve as the PPN. Secondly, even more importantly, it seems that the MoRA has demanded the reshaping of the position of *penghulu* placing him at the centre of the KUA so as to reclaim the KUA's specialization in religious affairs. This development brings us back to the concept of *naib*. In the past, a *naib*, who was a religious person and acted as the representative of the regency *penghulu*, headed the *kantor kenaiban kecamatan*. Now it is the *penghulu* who are qualified in religious matters and are fully responsible for the KUA. Those heads of the KUA who are not *penghulu* are encouraged to take the certification examination which can qualify them as *penghulu*.

#### **4. Dilemmas Arising from the Administration and the Discontinued P3N**

Over the last few years, the phrase *Paradigma Baru* (a new paradigm) has increasingly become the buzz word circulating among the

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<sup>45</sup> PMA No. 34/2016 tentang Organisasi dan Tata Kerja Kantor Urusan Agama Kecamatan (on the Organization and the Working Procedures of the Sub-district KUA).

<sup>46</sup> See Peraturan Menteri Pendayagunaan Aparatur Negara (The Decree of the Minister for the Efficient Running of the Civil Service) No. PER/62 /M.PAN/6/2005 tentang Jabatan Fungsional Penghulu dan Angka Kreditnya (on the Functional Position of *Penghulu* and Their Credit Points).

functionaries of the KUA. This jargon appeared as a headline in the magazine published by the Directorate-General for Islamic Guidance (*Direktorat Jenderal Bimbingan Masyarakat Islam, Dirjen Bimas Islam*), the centralized mother organization of the KUA, in 2014. An article in the magazine emphasizes that the bureaucracy running the KUA needed to reform its way of thinking and its attitudes if it were to provide excellent public service.<sup>47</sup> This nub of this problem had to do with the complexities surrounding the informal administration fee traditionally received by KUA marriage registrars which was later defined as an illegal charge (*pungutan liar*) or gratification. This illegal charge was the reason that the KUA found itself stereotyped as a corrupt institution.

The upshot has been that a row has broken out about one of the fundamental issues to do with marriage registration, the administrative fee. In the colonial period, we have seen that *penghulu* were also confronted with financial predicaments. The 1882 Regulation concerning the Priest Councils in Java and Madura was issued for the very purpose of controlling the informal fees received by *penghulu* by stipulating that they be paid a salary. The fly in the ointment in the Regulation stipulated that only the chief *penghulu* would be salaried, while other *penghulu* were not. Unsurprisingly, the absence of a provision pertaining to *penghulu* salaries meant that the regulation was ineffectual<sup>48</sup> and the *penghulu* remained dependent on legal fees (*ongkos perkara*). This income was administered as a mosque fund (*kas masjid*).<sup>49</sup> In practice the chief *penghulu* circulated a certain portion of *zakat* (alms fund) not only to religious officials and the people legally eligible to receive *zakat* (*mustahiq*), but also as a present to the *Bupati*. Sometimes this generosity was even extended the distribution to European officials.<sup>50</sup> The 1929 Marriage Ordinance,

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<sup>47</sup> Thobib Al-Asyhar, 'Wajah Baru KUA: Profesional, Berintegritas, dan Akuntabel', *Bimas Islam* (Jakarta, 2014).

<sup>48</sup> van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 36; Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, p. 14.

<sup>49</sup> Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration, 1882-1942*, p. 62.

<sup>50</sup> *Ibid.*, p. 116.

Article 1 (5) laid down that *penghulu* could set discretionary fees of varying amounts on the basis of the degree of solvency of the families concerned. Later, at the time of the introduction the *penghulu-gerecht* (*penghulu* courts) replaced the *raad agama* (religious court) in 1931, the colonial government tried ensure that court officials were salaried. However, this intention was never implemented as the government budget was in a lamentable state as the consequence of the severe economic crisis in the 1930s.<sup>51</sup> Only from 1934, did *penghulu* begin to be paid allowances, but not salaries.

Among its other objectives the 1946 Muslim Marriage Law was intended to restructure the organization of *penghulu*. The general elucidation on the law clearly states that preceding Dutch regulations did not guarantee marriage registrars (*penghulu*) a salary since their income was dependent on the fees they received from the marital couples' families. This gave rise to the concern that they were not executing their task in a proper manner, not to mention to the possibility that they might be lining their own pockets on the side. The whole matter was complicated even further because this fee (*ipekah*) was also considered to be religiously unlawful (*haram*) by certain Muslim groups. In its efforts to resolve the impasse, the government tried to tighten its grip on the marriage registrars by paying them a salary. However, this did not eradicate the problem because, despite their official position as P3NTR, the *modin* remained unsalaried.

In the mid-1950s, the problem had shifted from the provision of a salary for *penghulu* to the difference in the fee charged for a marriage ceremony in the office and a marriage conducted outside the office (*bedolan*). To officiate at the latter, the *penghulu* had to attend a marriage ceremony held, for instance, at the bride's house. They charged extra for this, but there was no specific regulation which could ensure a degree of uniformity in this matter. In Circular (*surat edaran*) No. 2/B/1954 issued by the Jakarta Office of Religious Affairs in 1954,<sup>52</sup> *bedolan* featured as an important issue with regard to the legal

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<sup>51</sup> *Ibid.*, p. 163.

<sup>52</sup> *Surat Edaran Jawaban Urusan Agama Jakarta* No. 21/B/1954 soal *Bedolan* (Circular from the Jakarta Office of Religious Affairs no. 21/B/1954 re *bedolan*)

status of the sum they received from the bride's families. Rather puzzlingly, the Circular seems to justify this extra charge. It emphasizes that *penghulu* in big cities were likely to receive a significant amount of money, whereas their counterparts in small towns and rural areas would enjoy smaller amounts of money.

Ever since, the *bedolan* fee has been subject to debate and conflicting legal norms. Each region has its own approach to dealing with this matter. Numerous regencies use local regulations issued by the Regent to legalize the practice of charging an additional fee in calculations of the *bedolan*. The MoRA turned a blind eye to this variation in the fee. The government regulation only mentions that an administration fee of Rp. 30,000 is charged, irrespective of where a marriage ceremony was conducted.<sup>53</sup> For some decades, the additional fee has been the norm in society. Many people believe that the *penghulu* deserve the fees because of their important role in a marriage ceremony.

For example, in Sidoarjo, East Java, in 2003 the *Bupati* issued a decree concerning the adjustment (*penyesuaian*) of the *bedolan* fee and the honorarium for the P3N (*Pembantu Pegawai Pencatat Nikah* or Assistant to the Marriage Registrar).<sup>54</sup> The letter referred to a higher regulation, namely: the decision made by the Governor of East Java province which approved the *bedolan* fee and the honorarium for the P3N.<sup>55</sup> The Regent of Sidoarjo's decree stipulated that the administration fee for marriage outside the office in working hours was Rp. 180,000, differing considerably from that in the government regulation. This Regent's regulation demonstrates that the

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<sup>53</sup> Peraturan Pemerintah (the Government Regulation) No. 51/2000 tentang Tarif atas Jenis Penerimaan Negara Bukan Pajak yang berlaku pada Departemen Agama (on the Non-tax Revenue of the MoRA).

<sup>54</sup> Keputusan Bupati Sidoarjo (Decree of the Regent of Sidoarjo) No. 29/2003 tentang Penyesuaian Biaya Nikah Bedolan dan Honorarium Pembantu Pegawai Pencatat Nikah (P3N) Kabupaten Sidoarjo (on the Synchronization of the *Bedolan* Fee and the Honorarium of P3N in Sidoarjo).

<sup>55</sup> Surat Gubemur Jawa Timur (Letter of the Governor of East Java) No. 45113267/02112002 tentang Permohonan Persetujuan Penyesuaian Besarnya Biaya Nikah Bedolan dan Honorarium Pembantu Pegawai Pencatat Nikah (P3N) (In Response to the Request for an Adjustment to the *Bedolan* Fee and the Honorarium of P3N).

administration fee for an Islamic marriage has become a matter of concern not only to the MoRA District Office (*Kantor Kementerian Agama Kabupaten*) but also the local government. Moreover, the regulation orders the head of the MoRA district office to supervise the implementation of this regulation, even though he and his office fall under the aegis of MoRA and not under that of the Regent.

In response to the confusion caused by these different local regulations, the Minister of Religious Affairs issued Letter of Instruction No. 2/2004 on the improvements to the marriage service. The instruction emphasizes the fixed charge for a *bedolan* fee of Rp. 30,000 and strongly prohibited *penghulu* to charge an administrative cost exceeding this; in a nutshell advising them not to apply the local regulations.<sup>56</sup> Moreover, the central government also issued Regulation No. 47/2004. Although this replaced the previous Regulation No. 51/2000, it brought no changes in its wake. The Regulation still stipulated one tariff, Rp. 30,000, as the administration fee, irrespective of the variety of places in which a marriage ceremony (*akad nikah*) might be held. Heeding these regulations, the Regent of Sidoarjo's finally amended the 2003 local regulation in 2008.

Another variation on the *bedolan* fee was applied in the West Javanese regency of Subang. The Regent issued Regional Regulation No. 22/2006<sup>57</sup> whose purpose was to facilitate the carrying out of a marriage ceremony in society. It not only set the amount of *bedolan*, but specified the detailed allocation of the fee. It states that the *bedolan* fee, Rp. 250,000, already included the official fee, Rp. 30,000. Nearly half of the fee was given to the KUA to cover its various requirements (*penghulu*, *modin*, marriage preparation course and other things), while around 34 percent of the fee was distributed to the Regency Office of Religious Affairs. Interestingly, the local administration also enjoyed 10 percent of the fee. These regulations show that the *bedolan*

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<sup>56</sup> Instruksi Menteri Agama (Instruction of the Minister of Religious Affairs) No. 2/2004 tentang eningkatan Pelayanan Pernikahan Pada Kantor Urusan Agama Kecamatan (on the Improvement of Service in Sub-district KUA).

<sup>57</sup> Peraturan Daerah Kabupaten Subang (Local Regulation Subang) No. 22/2006 tentang Biaya Pencatatan Nikah Bedolan (on the *Bedolan* Fee)

has become a serious issue among *penghulu* but, so far, there has been no specific regulation to amend the issue. Therefore, several regional governments have taken steps to deal with the matter in response to the conditions in their local areas.

Despite its awareness of the difficulties arising from the *bedolan* fee, the MoRA still acknowledges its existence, as shown by PMA no. 11/2007 which serves as the present most fundamental basis for the setting in train the procedures for marriage registration. Article 21 Point (1) in this PMA asserts that a marriage ceremony should be held in the KUA office. Interestingly, Point (2) stipulates that, considering a request from the bride and with the PPN's consent, a marriage can be held outside the KUA office. By this point, despite the absence of the national regulation and the abolition of local regulations pertaining to the *bedolan* fee, *penghulu* cannot reject any proposal for paying *bedolan* as it is allowed by the regulation. Accordingly, the statistics from the Directorate of Islamic Affairs indicate that the comparison between *nikah bedolan* and *nikah kantor* in the course of the first half of 2007 was 981,536 (82%) for *nikah bedolan* and 221,367 (18%) for *nikah kantor*.<sup>58</sup> The unresolved problem of the *bedolan* fee has left the *penghulu* on the horns of a dilemma.

This issue came to a head when the police arrested a *penghulu*, Romli, in Kediri, East Java. He was prosecuted by the attorney of Kediri municipality for receiving money as *bedolan* and sentenced to one year's imprisonment and a fine of Rp. 50,000,000. It appeared that Romli had asked his financial administrator to record every single informal fee from the brides' families and this document was deemed to be admissible evidence which the attorney could submit to the court when bringing a charge of extortion against him. He was found guilty of charging a fee which differentiated between *nikah bedolan* and *nikah kantor*. The cost of the former was 225,000 and that of the latter 175,000. Romli received Rp. 50,000, regarded as the transfer cost, of each *bedolan* fee and Rp. 10,000 from every single marriage ceremony.

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<sup>58</sup> Departemen Agama RI, *Bimas Islam dalam Angka 2007* (Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam, 2007), p. 24.

Some portion of the fee was used to pay the salary of non-tenured administrators in the KUA and was also deposited with the marriage section at the District Office of Religious Affairs. I was informed that this regular deposit enabled the district office to pay allowances to P3N. Romli was prosecuted under Article 11 of the Law on Bribery and Corruption of 2001. The informal fee was officially defined as an unlawful gratification.<sup>59</sup> The Article states that a state official is subject to 5-year term of imprisonment or a fine ranging from 50 to 250 million rupiahs, if he/she receives a gratification as a consequence of his/her position.<sup>60</sup> The judges decided that Romli was had been proved guilty. The decision found in favour of the attorney's prosecution, sentencing Romli to one year's imprisonment and a fine of Rp. 50,000,000.

In mid-December 2017, I talked to Samsu Thohari, the head of a KUA in Surabaya who was the co-ordinator of the Forum of Kepala KUA of East Java. The forum was established after the Romli case had been filed with the court of Surabaya. Samsu Thohari argued that Romli had been acting carefully and in good faith and should never have been prosecuted. Thohari and his colleagues perceived Romli's case as a kind of criminalization of *penghulu* and condemned the central Ministry for ignoring the situations on the ground with which *penghulu* were confronted.<sup>61</sup> They protested against the legal process by a mass strike rejecting the conclusion of a *bedolan* marriage involving *penghulu* throughout the province. In a pointed protest, they only solemnized marriages held in the office during the working hours.

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<sup>59</sup> <https://news.okezone.com/read/2013/12/18/337/914034/kpk-amplop-penghulu-masuk-kategori-gratifikasi>

<sup>60</sup> The decision of Surabaya General Court No. 104/Pid.Sus/2013/PN.Sby.

<sup>61</sup> Interview with Samsu Thohari, 10 December, 2017.



Figure 2.3: *Penghulu* strike demanding the release of Romli<sup>62</sup>

Thohari argued that Romli's gratification case should be understood in the framework of the central government's attempts to achieve good governance in the MoRA. In mid-2012, the MoRA was shaken by a corruption case arising from a project to print the Qur'an (*pengadaan Al-Qur'an*). In the same year, M. Yasin, the ex-deputy-head of the Commission for the Eradication of Corruption (*Komisi Pemberantasan Korupsi*, KPK) was appointed Inspector-General of the MoRA. He later became an icon of the corruption eradication movement in all the working units under the MoRA. The KUA, as the MoRA frontline public service institution, emerged as a major concern in the hoary practice of charging informal fees. In 2014, the KPK designated the MoRA one of the 'red-report' (*rapor merah*) Ministries on account of the lack of integrity of its functionaries.<sup>63</sup>

A few years prior to the allegations against Romli, the MoRA attempted to reduce the practice of informal fees, whose roots the MoRA assumed had to do with the intermediary roles played by P3N.<sup>64</sup>

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<sup>62</sup> This picture was taken from <https://m.kbr.id/media/?size=810x450&filename=/archive/2013/12/16/pengulubesar.jpg>

<sup>63</sup> <https://tirto.id/biaya-nikah-dan-rapor-merah-kua-bGz3>

<sup>64</sup> As the effort, the Director General of Bimas Islam issued the Circular letter No DJ.II.I/3/HK.007/2757/2013 on the prohibition of collecting informal fees in marriage registration.

As I explained earlier, a P3N is a *modin* who has been authorized by the state to assist *penghulu* in marriage affairs. The fly in the ointment is that, despite the official position of P3N, they are not officially salaried. Although it was said that they receive allowances once every three months, when push came to shove, the local government allocated their allowances from the informal fees collected by the KUA. In its attempt to get on top of the problem, the MoRA reformed the position of P3N. This reform was initiated in 2009, on the basis of Instruction of the Director General of Bimas Islam DJ.II/113/2009.<sup>65</sup> The Instruction orders the District Office of Religion not to extend the contract of P3N or to make any new appointments unless they are really needed. Rather than use an intermediary, the MoRA suggested people come directly to the KUA, with the marriage documents they have prepared themselves, without involving a *modin*. The subsequent policy statement issued in 2015<sup>66</sup> defined the boundaries of ‘needed’. It only applies to remote areas. This policy was met with a wave of rejections in numerous areas. In Palembang, South Sumatra, for instance, P3N requested a hearing in the local Parliament to secure their position.

Returning to the Romli case, the heart of the problem is that the role of a *penghulu* is critical in the administration of a marriage. A *penghulu* is, referring to Lipsky, a frontline worker who interacts directly with citizens, a street-level bureaucrat.<sup>67</sup> Hence a *penghulu* is an essential link between the government and the people. In coping with everyday marriage administration, *penghulu* is challenged by the many and various traditions which are part and parcel of any society. Quite often a *penghulu* receives a fee to which he is not entitled but which seem perfectly legitimate given the extra work he has been required to do. We learn from Lipsky that as, a civil servant, a *penghulu* might have to work in situations which often require responses to the human dimensions of a situation.<sup>68</sup> If dedicated to his job, he might

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<sup>65</sup> Instruction of the Director General of Bimas Islam DJ.II/113/2009 (10 February 2009) on the use of non-tax revenue funds and the reorganization of P3N.

<sup>66</sup> Instruction of the Director General of Bimas Islam DJ. II/1/2015 on the promotion of P3N.

<sup>67</sup> Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*, p. 3.

<sup>68</sup> *Ibid.*, p. 15.

give his clients his individualized and thorough attention. As the man-on-the-spot, he feels that he is best equipped to deal with local situations and, when the central government attempts to change the *status quo*, he often tries to resist this intervention.

Likewise, in Sumbersari society in which I was doing my fieldwork, it seems that the abolition of the position of P3N had no effect whatsoever on the practices of *modin*. Fighting to uphold their position, the *modin* have set up an association (*paguyuban*) called Samawa. Every month they meet in each other's houses. Sometime in January 2017, I attended one of their meetings. Although it was an informal gathering, it was spilling over with religious agenda. A recitation of *tahlil* (prayers to remember the dead) opened the meeting. A number of issues came up in a discussion session afterwards. One was *wali* (guardianship). Haji Hamim, co-ordinator of this *paguyuban*, argued that guardianship continued to cause problems in society because, in fact, official documents cannot always be guaranteed to contain valid data about a citizen, especially in the matter of the biological relationship between a father and his daughter.

Moreover, Haji Mustofa's opening statement implied that people actually involve them on the basis of their position as *modin* rather than as P3N. He also emphasized that it would be almost impossible for the government to monopolize the administration of marriage as long as the civil administration on the level of local society is not properly organized. Besides performing his religious duties, at the very least a *modin* plays an important role in verifying the biological relationship between the bride and the marriage guardian. In particular cases, as I discovered in my fieldwork, neither a birth certificate nor a family card can be taken as a proper guarantee of the actual the relationship between biological parents and the child. In a nutshell, having to depend solely on a document which might happen to contain incorrect data opens plenty of room for conflict and requires extensive local knowledge.

For example, on one occasion a bride registered a man, Pak Ahmad, as her marriage guardian. A neighbouring villager dropped a

hint that the *modin* should double check who could serve as the guardian in her marriage because Pak Ahmad was, in fact, not the biological father of the bride, even though on the family card Pak Ahmad is listed as her father. This raised the problem that, according to Islamic law, a foster father is not entitled to act as a marriage guardian. The *modin* told Pak Ahmad that he could not take the role of guardian for his adopted child. Upset Pak Ahmad rejected the *modin's* assertion as had always treated the bride as his own daughter. The *modin* tried to convince Pak Ahmad of the conditions required for a marriage according to Islamic law, but the latter refused to budge. The *modin* understood that he had to manage this matter carefully with a good deal of discretion, assuming that, if the biological father knew about the situation, he would confront Pak Ahmad.

In Sumbersari, rarely does a father give the bride in marriage himself. Most of the time, the father delegates his authority to a respected religious leader (*kyai*). The *modin* did not force Pak Ahmad to relinquish his wish but tactfully took Pak Ahmad to visit the *kyai* whom he personally preferred so that the former could delegate his rights (*tawkil wali*). Hence the matter seemed to have been resolved satisfactorily and a couple of days later, when the *modin* met the bride's biological father, again exercising his discretion, he invited him to visit the same *kyai* to do the same thing. The result was that, on the day of *akad nikah*, the *kyai* assumed the role of guardian and neither Pak Ahmad nor the father played any formal part.

This experience goes a long way to underline that Muslim marriage registration is much more than simply an administrative affair. It has wider dimensions, both religious and social. Because of these ramifications, a *modin*, the man-on-the-spot, remains a vital actor. The story I have just told shows very clearly that, in contrast to the limited capacity of the state, the *modin* played an important role in mediating the different interests in society. Firstly, he certainly assisted the *penghulu* in the latter's main task, that is to ensure that a marriage ceremony was conducted in accordance with Islamic rules. Secondly, he was successful in preventing potential tension between Pak Ahmad and the father.

## 5. Official Fees and NIK

Back to Romli, his imprisonment and the strike of his fellow *penghulu*, have become an important step on the road to further reform. An important figure in the section of the MoRA dealing with *penghulu*, Anwar Saadi, told me that, through its failure to live up to its responsibility, the government was ignoring the interests of *penghulu* and neglecting Muslim affairs in general.<sup>69</sup> Adding his weight to the discussion, Suryadharma Ali, the incumbent Minister, argued that people perceive the marriage ceremony to be a sacred event. They prefer to conduct it at home and it is common for people to give voluntary gifts to their *kyai* or *penghulu* for performing their religious roles in a marriage ceremony.

The first proposal the MoRA made was an additional budget to replace the informal fee received by *penghulu*. This proposal was not approved by the government. Instead, the government encouraged the MoRA to keep the people involved in the financial costs of marriage registration. From the outset, the government had been adamant that marriage registration can never be free of charge.<sup>70</sup> Under the supervision of the Co-ordinating Ministry for Human Development and Cultural Affairs, the government prepared a new regulation to accommodate its preference. According to Anwar Saadi, the MoRA actually proposed a number of categories of administration fees. Firstly, those who want a marriage ceremony performed at the KUA office would have to pay Rp. 50,000. Secondly, those who wished to have an-outside-office marriage ceremony have to pay Rp. 400,000. Thirdly, if the marriage ceremony was held on hired premises (*gedung*), the couple's family would have to pay even more. This initial proposal was rejected as too complicated and the proposal was simplified into two categories of fees. The first category remained the

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<sup>69</sup> Interview with Anwar Saadi, 13 December 2017.

<sup>70</sup> <http://www.tribunnews.com/nasional/2014/02/07/menkokesra-biaya-nikah-harus-tetap-ada>

same, while the second and the third were fused into one with one charge, Rp. 600,000.

The KPK, the Parliament and the Ministry of Home Affairs then exerted pressure on the MoRA to change the first category by eliminating the fee altogether. Their argument was premised on UU No. 23/2006 on Civil Administration (*administrasi kependudukan*). The law merely stipulates that all Muslim citizens who conclude a marriage ceremony must report it to the sub-district KUA within 60 days. According to the law, a marriage ceremony is considered to constitute one of the 'crucial life moments' (*peristiwa penting*) to which the legal obligation of registration is applied.<sup>71</sup> Furthermore, Article 79A of the UU No. 24/2013, a revision of the previous UU No. 23/2006 on Civil Administration, states that "all matters as the consequence of the publication of civil documents (*dokumen kependudukan*) are free of charge". With regard to these provisions, marriage certificate issued by the KUA is taken to be one of these civil documents (*dokumen kependudukan*) to which a citizen has an inalienable right. Muslim marriage registration is treated the same as common civil registration which applies no charge.

This has stirred up a considerable debate among KUA officials.<sup>72</sup> Most of them tend to argue that a Muslim marriage certificate (*akte nikah*) is not the equivalent of a *dokumen kependudukan*. The reason is twofold. Firstly, the official definition of *dokumen kependudukan* in UU No. 23/2006 refers specifically to documents of civil registration (*pencatatan sipil*), which does not necessarily include marriage registration. Secondly, there is still a dichotomy between registration of Muslim and non-Muslim marriages which has led to different procedures being applied. In contrast to the civil administration office, the KUA has the jurisdiction not solely to register a marriage ceremony but, more fundamentally, to ensure that it has complied with Islamic

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<sup>71</sup> The Law 23/2006 on Civil Administration (*administrasi kependudukan*).

<sup>72</sup> This idea was, for instance, expressed by a *penghulu* in West Java, arguing that the management of administration fee should be decentralized because of the variety of conditions in each region. See <http://kuagunungjati.blogspot.com/2015/06/analisa-biaya-nikah-berdimensi-ruang.html>

rules. Anwar Saadi confessed that the MoRA failed to negotiate the KUA officials' interests effectively in the meeting with different elements in the government.

To ensure the proper administer of the civil administration and public service, the central government issued Governmental Regulation No. 48/ 2014 which accommodates the last option. Article 6 states that every citizen who performs a marriage or brings about a reconciliation inside or outside the KUA office should not charge a registration fee. If a marriage ceremony is held outside the KUA office, the bride's family is obliged to pay an amount of Rp 600,000 as an honorarium and transport costs as part of the revenue of the KUA.<sup>73</sup> The implementation of two types of fees is not without complexities. People pragmatically strategize these fees in order to suit their own interests. I shall try to delve more deeply into this issue in Chapter 5.

Besides introducing this administration fee reform, the MoRA has also urged the KUA to improve its administrative system. In 2013, the MoRA introduced a computer-based system of marriage registration (*Sistem Informasi Manajemen Pernikahan*, SIMKAH). This programme was launched in tandem with the application of the single identification number (*Nomor Induk Kependudukan*, NIK), introduced by the government in 2009.<sup>74</sup> This is also known as the electronic identity card (e-KTP). The SIMKAH uses the NIK as the main parameter by which to examine the validity of a person's private details. During the first years of its operation, however, the SIMKAH did not link up with the NIK database stored by the MoHA. Nevertheless, it was already able to prevent any inaccurate scrutiny of the age of the bride. It was only at the end of 2015 that numerous regencies initiated integration of the local civil administration database with the SIMKAH database managed by the KUA. This was an outcome of the regulation issued by the Minister of MoHA which

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<sup>73</sup> See Article 6 PP No. 48/2014 on the non-tax income of the MoRA.

<sup>74</sup> Peraturan Presiden (the Presidential Regulation) 26/2009 Tentang Penerapan Kartu Tanda Penduduk Berbasis Nomor Induk Kependudukan Secara Nasional (on the implementation of the identity card on the basis of a national identity number).

allows its civil registration bureaus to give the civil administration data access to relevant government institutions, including the KUA.

This co-operative model was later expanded on an even greater scale. At the end of 2017, the MoRA and the MoHA officially signed a co-operation accord which ushered in the use of e-KTP in marriage registration nationwide. E-KTP has now become a compulsory document in marriage registration. The MoHA now authorizes the KUA of the MoRA throughout Indonesia to access civil documents and to validate NIK stored in the administrative system run by the Bureau of Civil Administration. Conversely, the MoHA is also entitled to access data on marriage registration managed by the MoRA. Of course, according to Anwar Saadi, the implementation of the use of e-KTP is subject to the readiness of each KUA to undertake this task.<sup>75</sup>

That said, the integration of marriage registration into the civil administration has had important consequences. Firstly, because nowadays the KUA obliges them to submit an electronic identity card (e-KTP), it is no longer possible for both the brides and grooms to fiddle their ages using the legal proof issued by the village head. A bride who is legally eligible to register a marriage (16 years and older) but does not yet possess an identity card can no longer get away with just handing in a declaration from the village office. Rather, she has to submit a letter from the local civil administration bureau declaring that the NIK has been verified and the identity card is being processed. This procedure means there is no longer any room for backdating birthdates (*menuakan usia*) when applying to register a marriage.

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<sup>75</sup> Pencatatan Nikah Hanya Menggunakan KTP Elektronik, <https://bimasislam.kemenag.go.id/post/berita/pencatatan-nikah-hanya-menggunakan-ktp-elektronik>, accessed 15 Mar 2019.

## Chapter 2



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

Secondly, when the bride is not legally allowed to register her marriage, primarily because her age is under 16 on the day of the marriage ceremony, the *modin* usually marry a couple informally for social reasons and postpones the registration. This means that one consequence of the modernization of the marriage registration system

is an increasing number of unregistered marriages and this problem still exists. My observations in a village in Sumbersari sub-district show that in six out of forty-five marriages during the year 2017, the registration was delayed because of the bride's age. On a more positive note, this delay in registration also suggests that people are actually tending to register their marriage despite their limited legal literacy.

Villagers are less daunted and it seems that marriage registration is easier and more negotiable. The great advantage is that the *modin* always find pragmatic solutions to different problems even though it seems that the implementation of the NIK has obviously failed in its goal of reducing births out of wedlock and eliminating underage marriage. Putting something on the statute books is not always cut and dried. The implementation is not as simple as it sounds. In a follow-up to the integration of the civil administration and marriage registration through the SIMKAH, the MoRA introduced a marriage card (*kartu nikah*) in November 2018 and stipulated in the newest regulation on marriage registration, PMA No. 20/2019. The Minister of Religions argued that the card is the yet another offshoot of the SIMKAH. The card works like an identity card. The MoRA is keen to stress that the card is handy and can be used in multiple instances as a substitute for a marriage certificate. As it is equipped with a barcode, it is believed that the card will be able to eliminate the forgery of a marriage certificate.

## 6. Conclusion

In Indonesia, the administration of Muslim marriages in the KUA can be considered to be a real step in the direction of the bureaucratization of Islam. The bureaucratization of Islam refers to the process by which the state co-opts religion and centralizes Islamic religious authority within its own institutions.<sup>76</sup> We see how state actors are empowering state-funded administrative bodies to shape Islamic discourses and

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<sup>76</sup> Ann Marie Wainscott, *Bureaucratizing Islam: Morocco and the War on Terror* (Cambridge: Cambridge University Press, 2017), p. 14; Müller, *The Bureaucratization of Islam and its Socio-Legal Dimensions in Southeast Asia: conceptual contours of a research project*, p. 2.

regulate religious matters in the public sphere. The KUA is the MoRA's frontline agency to deal with these matters. However, for a number of years, as long as the KUA has existed, problems related to the position and the rights of formal and informal marriage functionaries as well as the administrative system have required considerable adjustment if they are to function adequately.

Although the MoRA has been committed to performing a series of bureaucratic reforms of the KUA, it has not yet freed the latter from its invidious position. In its dealings with marriage, it has to manage both the religious and the administrative aspects of Muslim marriages and herein lies its dilemma. To perform the former duty, it is supposed to exercise traditional religious authority, while for the latter it has to function as a modern administrative bureau. In other words, the KUA is a religious bureaucracy, yet must perform as a public service office on the other. The tension between the religious and the administrative aspects has generated significant complexities which have dogged it right up to the present.

In order to sift out some of these complexities, the MoRA has attempted a series of reforms of the KUA over the last few years. These reforms have been introduced into numerous fields and include administrative fees, the positions of *penghulu* and *modin* and their competences and the administrative system itself. Despite the solutions the reforms have offered, they have brought a number of problems in their wake. It seems as one problem is solved, another one arises.

The first problem is related to the administrative fees and the position of the *penghulu*. The position of *penghulu* has always been a thorn in the side of the Ministry ever since early years after Indonesian Independence. One of the most persistent problems with which *penghulu* have been confronted is the issue of the administrative fee for the marriage ceremony which has led to the problem of alleged unlawful gratification. The lack of a specific legal procedure to regulate the payment of the administrative fee for a marriage ceremony outside the office (*bedolan*) even led to the prosecution of a *penghulu* in Kediri, East Java, in 2013. Therefore, the MoRA has introduced various

bureaucratic reforms to cope with this crisis. Among the decisions it has taken, the MoRA has made marriage registration free of charge. This policy was influenced by the law of civil administration which positioned marriage registration as a civil registration. The law stipulates that each citizen has the right to obtain a *dokumen kependudukan* (civil document) free of charge. Because marriage certificates are deemed to be the equivalent to other civil documents, Muslim marriage registration accordingly should cost nothing. Only people who wish to conclude *bedolan* are expected to pay extra to cover the costs incurred by the *penghulu*. This reform has meant that the KUA officials apparently tended to identify themselves as civil registration rather than religious officials. In fact, the KUA has a religion-based jurisdiction, namely: to supervise whether a marriage ceremony complies with Islamic doctrines and it seems that the MoRA is still exigent about securing the religious nature of the KUA. It achieved this by restoring the position of *penghulu* at the epicentre of the KUA. Now turns out that only a *penghulu* can serve as the head of the KUA (the PPN).

The second reform has occurred in two interconnected areas: the affirmation of the PPN as the only agency for marriage registration and the termination of the function of village religious officials (*modin*) as the P3N. The government argues that the practice of *modin* sails close to the wind of corruption. However, I argue that the issue has to do with the uncertain legal status of the P3N which means the government is disengaged to pay them a salary. In practice, it is hard to implement this reform in society. In certain rural Muslim communities, Islamic marriage is a religious ceremony which necessitates the authority of informal religious leaders such as *kyai* or *modin* far more than the formal authorities such as *penghulu* or the PPN. In their everyday practice, the *modin* do not concern themselves solely with the administrative matters, but are more involved in the religious sides of marriage. As has been the tradition, people tend to delegate any marriage administration to a *modin* and, by so doing, villagers manage to achieve two goals simultaneously: the sidestepping the administrative rigmarole and satisfying the requirements of religion. From a social point of view, the loss of their

legal status as P3N does not affect their roles as *modin*. As a result, these informal leaders cannot be replaced just like that.

The third kind of reform, integrating marriage registration into the civil administration, seems to have run into the same sorts of problems. The use of the NIK is unquestionably to avoid fraudulent changes in the ages of the couples, yet there is no guarantee that this will stop people's willingness to marry their children under the statutory marriageable age. In cases like this, the intervention of the *modin* remains important. Neither the modern system nor the government officials are likely to be able to handle this situation adroitly. Confronted with a problem like this, a *modin* will come up with a solution. Their most common solution is to perform a religious marriage with a delayed/retroactive registration. Although the religious marriage literally does breach the law, the delay in registration does guarantee the legal status of the couples.

In the next chapters, I leave the discussion on the legal and bureaucratic reform of marriage administration in the KUA and turn my focus instead to look at law in action. I try to build up an understanding of how people deal with the state law and negotiate their interest to comply with it. However, before plunging into this discussion, the following chapter presents the social context of the society in which I have done my research. This is to give a preliminary basis to help understand how Islamic marriage is practised and in what ways traditional social actors play roles.