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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 5

## **Registering Muslim Marriages: *Penghulu, Modin* and the Struggle for Influence**

*“Ancaman saya begini: Saya turun jabatan atau buku nikahnya saya coret. Saya tidak mau instansi pemerintah dilecehkan.”*

(This is my warning: I resign or I cross out the marriage certificate. I do not want a government institution humiliated.)

Pak Yusuf, the head of a KUA office in Pasuruan

### **1. Introduction**

It was at the end of January 2017. I stopped my motorcycle as I passed the Summersari grand mosque in Pasuruan. I cast my eye over a green building next to the mosque. The building looked dirty, the front garden was untidy, but the entrance gates stood open. A small signboard reading ‘Kantor Urusan Agama’ still hung on the fence. The leaves of a mango tree in the corner of the garden drooped down over some parts of the signboard. I was hesitant but finally decided to approach a young man sitting at a *warung* (food stall) directly opposite the mosque. I asked him if that building was the Office of Religious

Affairs (Kantor Urusan Agama, henceforth referred to as the KUA)<sup>57</sup> for which I was searching. The young man told me that the building had been unoccupied for months. The office had in fact been moved a couple of hundred metres to the south, taking over a building belonging to the sub-district branch of the NU.

The following day, I visited the ‘new’ office and met its highest official, Pak Yusuf,<sup>58</sup> the *kepala* (head) of the KUA, who simultaneously serves as the Pegawai Pencatat Nikah (PPN, the official marriage registrar). His position is socially acknowledged as the equivalent of *penghulu* or *naib*. Pak Yusuf briefly explained that they had had to move because major parts of the old building were in need of renovation. He said that the Provincial Office of Religious Affairs has approved a proposal for reconstruction. However, he did not know much about the cadastral history of the land as he had only been head of this KUA since October 2014. He resides in an area close to Surabaya, the capital city of the province of East Java, which involves a journey of one hour by motorcycle to reach the office. On those days on which the number of marriage ceremony<sup>59</sup> rises, he has to spend the night in the office to be able to attend the ceremonies held early in the morning next day. During my fieldwork, he often invited me to be his guest at the office too. I was very happy to accept his offer as it also enabled me to have extensive chats with Pak Rohmat, one of the local officials whose house is just a few dozen metres from the office. Pak Rohmat is a non-tenured employee (*pegawai honorer*) who has been affiliated with the KUA for more than twenty years.

Pak Rohmat explained that, ever since the KUA was inaugurated in 1961, it had rented the house next to the mosque. In the early 1990s, the government had allocated land near the sub-district health centre

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\* An earlier version of this chapter has been published in *Al-Jami'ah: Journal of Islamic studies* vol. 57 no. 2 (2019): pp. 397-424.

<sup>57</sup> The KUA is a state body at the sub-district (*kecamatan*) level which is responsible for the administration of Muslim marriages.

<sup>58</sup> All names are pseudonyms.

<sup>59</sup> To avoid misunderstanding, herein marriage ceremony refers to *akad nikah* or *ijab kabul*, the stage at which the woman's guardian in marriage offers the bride to the groom who then declares his acceptance.

for the construction of a new KUA office. Some local religious elites who knew about it fiercely opposed to the plan. They argued that the KUA, whose task is to deal with Islamic affairs, was ideally situated alongside a mosque. In the end, the government cancelled the construction project. Later, after the intervention of religious leaders, the owner of the (rented) house was prepared to exchange his property for the allocated land. Since then, the house has been government property, even though the exchange was carried out unofficially. As a local villager, Pak Rohmat has been assigned the job of co-operating with village authorities to finalize its legal status. He is happy to take on this assignment, arguing “it’s the source of my income”.

This narrative gives a very good impression of how informal religious leaders exercise their power in the (re)making of a state institution.<sup>60</sup> The resistance to the construction of a new building makes it quite clear that a state institution cannot really be isolated from its social context. Referring to similar situations, Davis argues that, “informality is both a mirror and a determinant of the state’s formal reach”.<sup>61</sup> Moreover, it is also obvious that, in the perception of the religious leaders, the KUA is more than a formal institution involved in the administration of marriage. Rather, the KUA officials, not least the *penghulu*, the KUA functionaries who deal specifically with marriage, are also assumed to possess religious authority. This perception is based on the reasoning that the task of the *penghulu* is to conduct a marriage ceremony according to Islamic norms or, at least, to validate that a marriage ceremony has been performed in accordance with Islamic rules and can therefore be legally registered.

This chapter examines the fact that a state agency like the KUA is unlikely to be detached from the social forces with which it engages.<sup>62</sup>

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<sup>60</sup> Adam White, ‘Introduction. A State-in-Society Agenda’, in *The Everyday Life of the State: A State-In-Society Approach*, ed. by Adam White (Seattle: University of Washington Press, 2013), pp. 1–12.

<sup>61</sup> D.E. Davis, ‘Informality and State Theory: Some Concluding Remarks’, *Current Sociology*, vol. 65, no. 2 (2017), p. 317.

<sup>62</sup> Christian Lund, ‘Rule and Rupture: State Formation through the Production of Property and Citizenship’, *Development and Change*, vol. 47, no. 6 (2016), pp. 1199–228.

Klinken and Barker have emphasized the importance of “the study of the state in relation to the broader social context in which it is embedded”.<sup>63</sup> Bearing this in mind, I would like to draw attention to a wider debate about the state in society. Hence the emphasis in this chapter lies on the ways *penghulu* negotiate their authority in a society in which the influence of informal religious authorities is dominant. It elucidates how the KUA and its officials on the subdistrict level shape and implement the rules on marriage registration and analyses how they interact with the different actors in the local society.

On the basis of my observations of the everyday practice of the KUA in my research field, I want to suggest that, given their situation, the KUA officials have to negotiate their authority in a variety of contexts. They personally considered that, for the sake of stability, it was important to enhance their good relationship with religious leaders and local elites. It seems that officials like Pak Rohmat, who is a local villager, play an important role in bridging relations between the KUA and the local elites, including *modin* (informal religious officials in charge of marriage on the village level). Moreover, considering the principle of the ‘dual validity’ of Muslim marriages, that is, the legal obligation of marriage registration and the religious nature of the marriage ceremony, the flexibility of KUA officers in interpreting and implementing the rules is the key to the success of state-imposed marriage registration.

Unquestionably, the uneasy relationship between the religious and administrative aspects of marriage places *penghulu* on the horns of a dilemma. This quandary is actually not a new phenomenon. When we trace the history of *penghulu* beginning in the colonial era, we find this problem crops up time and again. Researchers have argued that, long before Independence, state-promoted *penghulu* found themselves poised at a crossroads between the interests of Muslim leaders and

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<sup>63</sup> Gerry van Klinken and Joshua Barker, ‘Introduction: State in society in Indonesia’, in *State of authority: the state in society in Indonesia*, ed. by Gerry van Klinken and Joshua Barker (Ithaca, NY: Cornell University, 2009), p. 5.

those of the colonial government.<sup>64</sup> It has been the fate of *penghulu* to be stereotyped by religious leaders as people whose Islamic education left much to be desired.<sup>65</sup> Discussing their contemporary delicate balancing act, Nurlaelawati has remarked that the KUA officials, including *penghulu*, show an inclination to co-operate with *ulama*, tending to position themselves as *ulama* rather than as state officials. Examining their role in divorce, she found that *penghulu* have assumed a role as an intermediary between the *ulama* and the religious courts. Even more interesting is that, as she suggests, the KUA officials in particular areas adopt an ambivalent position towards judicial divorce when they go ahead with the marriage registration of married couples who claim to have been divorced but fail to present a divorce certificate.<sup>66</sup>

This chapter asks a fundamental question: In what ways do *penghulu* maintain their authority? This resonates with other questions, such as: What language do they use in their struggle for power in society? What is people's attitude towards them? What roles do *modin* play? How can we explain from observing the everyday interaction between people, *modin* and *penghulu*, theoretically? By posing these questions, this chapter aims to scrutinize the (political) position of *penghulu* and the KUA officials in society at large. It then addresses the matter of how *penghulu* seek influence in navigating the recent introduction of marriage in accordance with the state laws.

This chapter is composed of six sections. Following this introduction, I briefly elaborate the foundational framework on which this chapter stands. The next section seeks to elucidate the social context in which the state is supposed to exercise its legal authority. From here I go on to address the presence of state institutions in order to introduce them into the core discussion. This involves examining the different attitudes of KUA officials. Later, I expand my discussion

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<sup>64</sup> Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration, 1882-1942*.

<sup>65</sup> *Ibid.*

<sup>66</sup> Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 189.

of the image with an analysis of the recent trend in marriage registrations. The sixth section examines the interaction between the *penghulu* and entrenched social forces in the making of marriage practice.

## **2. Marriage Registration and the State-in-society Approach**

Pak Yusuf's words which begin this chapter indicate that the state's legal authority over marriage is never free of challenges. Marriage has been, and still is, subject to competing authorities.<sup>67</sup> To extrapolate the complicated position of state officials like Pak Yusuf in society and its relationship with informal authorities,<sup>68</sup> this chapter has borrowed the conceptual framework of the 'state-in-society'.<sup>69</sup> By and large, this approach has been developed in response to the fact that the modern world is principally shaped by the authority of the state through the implementation of the force of its formal rules. However, in practice how these rules are determined by "those who are supposed to enforce them" and by "those who are supposed to obey them" is not cut-and-dried.<sup>70</sup> This situation inescapably gives rise to a wide range of competing authorities and discourses. Given the circumstances, it seems impossible to be able to avoid the necessity of examining the compound relationship between the authority of the state and everyday social actors in order to comprehend their multiple narratives and political activities as reciprocal processes which constitute one another. The relationship between them is seen as a dialectical process.

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<sup>67</sup> Scott, 'Social Norms and the Legal Regulation of Marriage', p. 1903.

<sup>68</sup> Recent studies of the state and society have considered informality an analytical point of departure for theorizing governance, citizenship and social order. Davis, 'Informality and State Theory: Some Concluding Remarks'.

<sup>69</sup> Among others, Joel Migdal is one of the leading scholars on the subject. His book "State in Society" published in 2001 has been fundamental in providing insightful viewpoints to deal with the enquiry into the making and the remaking of the state in the face of social realities. See Joel S. Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another* (Cambridge: Cambridge University Press, 2001).

<sup>70</sup> White, 'Introduction. A State-in-Society Agenda', p. 3.

This 'state-in-society' approach leads to a new, distinctive definition of the state. It revisits that proposed by earlier scholars like Max Weber who conceptualized the state on the basis of its institutional nature as a powerful organization which allows it to resort to coercion.<sup>71</sup> This longstanding understanding of the state is encapsulated in Weber's commonly cited definition "a state is a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory".<sup>72</sup> At the core of this definition clearly lies the notion of domination by the means of physical force within the borders of the state's territory. Migdal has tried to see this domination as neither centred nor single, exclusively occupied by a formal organization. Instead, he has come up with the idea of "society's multiple arenas of domination and opposition".<sup>73</sup> He also suggests that the state is a power which "embodies an ongoing dynamic, a changing set of aims" as the consequence of the engagement of social forces.<sup>74</sup>

In the study of Islamic law and society, this 'state-in-society' approach necessarily brings me back to a number of works which have suggested the so-called cultural shape of state activity. One is the seminal work by Rosen on the practices of the *qadi* in the context of Islamic law and Moroccan social and cultural life.<sup>75</sup> After his examination of the local *sharia* court records (*sijill*) in the town of Sefrou, Morocco, he found that the oaths sworn and the use of professional witnesses are not based on the exact reality; they are the outcome of the *qadi's* personal construction which is constructed through a process of negotiation. This effort is made to establish the judicial facts which will make it possible for the *qadi* to make decisions.

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<sup>71</sup> Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another*, p. 111.

<sup>72</sup> Weber, 'Politics as a Vocation', p. 78.

<sup>73</sup> Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another*, p. 99.

<sup>74</sup> *Ibid.*, p. 112.

<sup>75</sup> Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society* (Cambridge: Cambridge University Press, 1989).

Migdal offers a dual-aspect definition of the state. He states: "The state is a field of power marked by the use and threat of violence and shaped by (1) *the image of a coherent, controlling organization in a territory, which is a representation of the people bounded by that territory*, and (2) *the actual practices of its multiple parts*."<sup>76</sup> The first aspect, the state's image, assumes the state as a dominant and autonomous entity which controls the direction taken by the given society. This is also bound up with how the state has become an integral part of everyday social relations; the explanation of why it continues to exercise a certain form of authority.<sup>77</sup> The second aspect, the practice, connects with the ways the state's image is either reinforced or weakened by its own officials and societal agencies. In short, it focuses on the variety of practices which influence the sharp demarcation between the state and the society.<sup>78</sup> It allows us to see how state authority is negotiated by different actors.

Using this framework, I have come to perceive Muslim marriage registration as a political activity which inevitably involves interaction between the state agent and everyday societal agencies. My starting-point is an examination of the development of registered marriage from which I move on to analysing the practices of *penghulu* and of the KUA, paying particular attention to the image portrayed. In my construction of this the image, I analyse the internal dynamics within the KUA to understand how *penghulu* maintain the position of the KUA. I focus on the recent trends in the performance of the marriage ceremony and marriage registration which provide the arena in which different authorities continue to contest.

### **3. Building an Internal Synergy**

This section analyses the behaviour of KUA officials and their interaction in the everyday running of the KUA. However, before going

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<sup>76</sup> Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another*, pp. 15–6.

<sup>77</sup> White, 'Introduction. A State-in-Society Agenda', p. 13.

<sup>78</sup> Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another*, p. 20.

further, it is important to explain who are employed in the KUA. The positions in the KUA can be divided into three categories, namely: the head (*kepala*), officials specifically working on marriage (*penghulu*) and the administrative staff. In the KUA Sumbersari, these positions are occupied by four persons: two are civil servants, while the other two are non-tenured local positions. The office itself occupies a two-storey building. The ground floor consists of one big hall and four small rooms. The hall houses two desks, one in the front and one at the back, separated by an old suite of sofa and armchairs in the middle.

The principal civil servant is Pak Zaki. He occupies the front desk, the registration counter. Previously Pak Zaki was as a teacher in a state Islamic school in the town Bangil. In 2014, he decided to leave the school to become a KUA official. "I wanted to feel more relaxed in my new position", Pak Zaki said. He is responsible for keeping the *buku register* (registration book). This book contains the personal details of the brides and the grooms, date of registration, the proposed date of the marriage ceremony, the bride's guardian and where the marriage ceremony will take place. Perhaps he is right when he says that his new occupation is less hectic than his previous job but, in the process of marriage administration, Pak Zaki's desk lies at the heart of all the procedures. On a practical level, he is the one who verifies the accuracy of the data (name, age and the guardian of the bride).

Pak Yusuf occupies the back desk. He began his career as a civil servant in the Office of Religious Affairs in Pasuruan in 1985. Since then he has been continuously employed as a KUA official, moving from one office to another across the region. He is neither the product of an Islamic university nor did he graduate from a *pesantren*. Instead, he attended a vocational high school (*sekolah menengah kejuruan*) in the 1970s and later studied economics obtaining the degree of Sarjana Ekonomi (SE, BA in Economics). In the past, it was possible for an administrative official in possession of this degree qualified to be promoted to the rank of a structural official (*pejabat struktural*), that is, the *kepala* of a KUA. Pak Yusuf achieved this at the end of 2004. In this position, Pak Yusuf fulfils the duties of a marriage registrar (PPN, Pegawai Pencatat Nikah).

In the past, the *kepala* of a KUA was not always *penghulu*, although *penghulu* could hold a structural position (*jabatan struktural*) as a *kepala* KUA. In Pak Yusuf's case, he is the *kepala* but he is not a *penghulu*. Nevertheless, because the office does not have its own *penghulu*, he automatically assumes the function of *penghulu*. This kind of situation can sometimes lead to problems if the *kepala* of a KUA are not well versed in the religious competencies expected of him by the society. This is the reason the government has changed the regulation governing position of a *kepala* of KUA. Currently, the *kepala* of a KUA must be a *penghulu*.

The fact that Pak Yusuf has to act as *penghulu* has emerged as a crucial issue in Summersari. Local people have problematized his educational background because he had never attended an Islamic school. Pak Yusuf has also not been adequately educated in Arabic. Importantly, particular societies, as in Summersari, demand the use of Arabic as well as that of the local language in the performance of a marriage ceremony, including the marriage sermon (*khutbah nikah*), the offer (*ijab*) and its acceptance (*kabul*). The people believe that the use of Arabic imbues the marriage ceremony with additional blessing. This demand definitely requires that a *penghulu* possess well-honed skills in reciting Quranic texts or proficiency (*fasih*) in reciting prayers in Arabic. Therefore, it is quite common for local people to ask a *modin* or another religious leader, rather than the *penghulu*, to conduct the ceremony.

Some wooden-framed posters hang on the wall near Pak Zaki. At the top, a big poster announces the regulations determining the mechanism of the marriage registration fee which stresses the difference between *nikah di KUA* (marriage in the KUA) and *nikah di luar KUA* (marriage outside the KUA). Beneath it, a poster reproduces a *hadith* on the roles of the marriage guardian and witnesses in marriage contract. This *hadith* says *lā nikāḥa illā biwaliyyin wa shāhiday 'adlin* (no marriage except with a guardian and two non-discredited witnesses). It also contains a description of the list of who can be a guardian and that they can come only from paternal side. If the bride's father is absent, there are still twenty guardians who are

eligible to replace him, ranging from grandfather to the oldest son of a paternal great-uncle.

A couple of metres from Pak Zaki's desk is the room in which the two non-tenured officials do their work. Their position is commonly called *sukwan*, derived from the word *sukarelawan* (voluntary). They are local natives, Pak Rohmat and Pak Hamid. Pak Rohmat's principal task is organizing the marriage documents. As his house is close to the office, he has also been assigned the duty of handling the day-to-day running of the KUA. Every morning, before office hours, he opens the door and cleans the floor. In the evening, he comes back to the office to make sure that everything is secure. Pak Rohmat is also responsible for recording the personal details of couples wishing to marry in the *buku bantu register* (back-up registration book). The difference between this book and the *buku register* is that that kept by Pak Zaki contains the column which mentions the number of marriage book (*buku nikah*) or the copy of marriage certificate (*kutipan akta nikah*) to given to the married couples. Pak Rohmat also takes charge of writing their details down in the *buku nikah*, which each couple receives. The one with a green-cover is for the wife (*buku nikah istri*), while the red-brick cover is for the husband (*buku nikah suami*). Pak Hamid's work is to manage the electronic data. Since 2013, the data of the married couples have been managed electronically. The system is called SIMKAH (Sistem Informasi Manajemen Nikah). Below is a diagram of the structure of KUA Summersari.

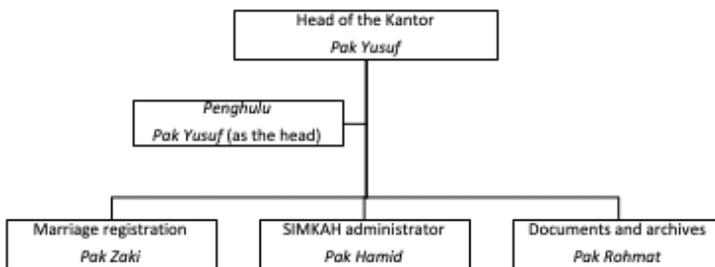


Figure 5.1. Structure of the KUA Summersari

Both Pak Rohmat and Pak Hamid are from families widely respected in religious circles who have played a considerable role in the development of the institution. In 1992, after finishing senior high school, Pak Rohmat took the position of his older brother who had just been promoted in the civil service rankings. Currently, his brother is serving as *penghulu* in another sub-district. When he took over his brother's position, Pak Rohmat shared the same ambition, to be a civil servant too. Therefore, some years ago he took a bachelor's degree in Islamic education which he hoped would accelerate his promotion. However, so far this promotion has eluded him. Pak Hamid is a local villager who is a graduate of a prominent *pesantren* in the town which has not adopted secular education. Local people regard him more as an Islamic teacher (*ustadz*) than as an official in a state institution. He heads an informal Islamic school (*madrasah diniyah*) in a *pesantren* which belongs to his uncle, one of the top leaders of the local branch of the NU. As his hands are full with these activities, he does not work at the KUA full time. Pertinently, it is his uncle who has the authority to permit the use of the building as a temporary headquarters of the KUA. Moreover, his father is reported to have been the person who made the land barter transaction feasible in the past.

We can easily identify the difference between the civil servants and the non-tenured officials in their everyday performance, which essentially underlines their formal and the semi-formal positions. Pak Zaki and Pak Yusuf dress more formally, white long-sleeved shirt on certain days, with an official badge pinned on their left breast. In addition, Pak Yusuf always wears a typically Islamic cap (*kopyah*). It seems that the *kopyah* says something about his state-sanctioned authority on Islamic matters. Pak Rohmat and Pak Hamid tend to dress more informally.



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

Although Pak Rohmat and Pak Hamid do not have permanent appointments, their position is important. Firstly, as said, their families are genealogically linked with religious elites in the area. Secondly, as locals, they share close emotional ties with the *modin*, the village religious leaders who act as informal marriage functionaries. The majority of them are graduates of *pesantren*. In the area there is an overwhelming tradition that a marriage ceremony, particularly the couple's first marriage, should always be performed by a *modin*. In this position, the *modin* does not just organize the administrative documents required for the registration, he is in charge of the whole process. Thirdly, if he is unable to attend, Pak Yusuf tends to assign one of the two local officials to represent him in the informal monthly meetings between the *modin* and village officials.

Meanwhile, as a civil servant whose job is to run the registration desk Pak Zaki feels bound to observe state regulations. He argues that he just implements the procedure as these have been committed to paper. Quite often *modin* lodge complaints about him, alleging that he has been *terlalu ketat* (too rigorous) and *mempersulit* (makes matters more complicated than they are). This is a very common reaction when

Pak Zaki insists that the couples turn up for the *rafak* (document verification). The *modin* are chary about *rafak* for several reasons. One objection is that either the bride or groom is still a boarder in a *pesantren* or works out of town. Another reason is that the couple has not yet signed the marriage consent form. When this happens, the *modin* usually approach Pak Rohmat to discuss the situation in the expectation that he will help to convince Pak Zaki that everything will turn out alright. Pak Zaki's principal concern is that: "*If an official from the District Office of Religious Affairs should conduct an audit and finds an irregularity; it is not their (modin's) responsibility. We get the blame instead.*" Therefore, on certain occasions the PPN, Pak Yusuf, has to resolve the impasse stating: "*Up to you, modin. If you do not want to follow our rules, please don't bother to work with us!*"

This explanation reveals a variety of issues, ranging from social forces in operation behind the local officials to the manoeuvres of *modin*, which inhibit the everyday practice of the KUA. Pak Yusuf is aware of this situation and that he needs to exercise his authority, albeit playing his power trump card very carefully. As the PPN, he is unquestionably a representative of the state, but as a *penghulu*, he tends to present himself in his guise as a religious authority. Pak Yusuf gives the local officials leeway to play a role in bridging the communications gap between the KUA and the local people. Meanwhile, Pak Zaki tends to position himself as the guardian of the state rules. Together these attitudes have been important an important factor in co-shaping the everyday image of the KUA as an institution dealing with Islamic affairs and a state body in charge of marriage administration.

#### **4. Registering Marriages and Remarriages**

As far as marriage practices in East Javanese villages are concerned, when the date of the marriage ceremony has been agreed on by the two families, the girl's father approaches a *modin* to ask for the latter's help in arranging the marriage ceremony. At this point, I should explain that people usually go to *modin* for the first marriage, that is,

when neither the bride or the groom, or both of them, has never been married before. If it is not a first marriage for one of the couples, there is no guarantee that *modin* will feel obliged to participate in the process. The father-*modin* interaction represents the initial process in the implementation of the state law on marriage. In the Summersari setting, I observed a conversation between a father and *modin* which ran as follows:

Father : *Pak Haji, kauleh amantuah. Senapah melleh buku nikah?*

(Pak Haji, I am going to marry my daughter. How much is it to buy (obtain) a marriage certificate?)

*Modin* : *Alhamdulillah Pak, anak sampean olle juddhu mogeh-mogeh deddih juduwen dunyah sampek akhirat.*

(Praise be to Allah! Your daughter has found her future husband. Wish her a blessed relationship in this world and in the Hereafter.)

*Buku nikah benne juwel bellih tapeh istilanah ngurusin, bedeh persyaratana. Sittung, koduh cokop omor, mon binek nembeles taon, mon lakek sangabelles taon. Duek, koduh anddik Kartu Keluarga, KTP, ben ijasah.*

(The marriage certificate is not something to be bought but has to do with marriage registration which requires some conditions to be met. Firstly, the age of marriage: for women this is sixteen and for men nineteen. Secondly, you have to hand in a family card, an identity card and a school diploma.)

Father : *Enggi lengkap sedejeh.*

(Yes, they all are all present and correct.)

*Modin* : *Sampean napah ngurusneh dibik napah pasra dek kauleh?*

(Are you going to handle the registration yourself or asking me to do it?)

Father : *Pasra dek sampean Pak Modin sampek akad nikanah.*

(I want you handle it, Pak *Modin*, including the marriage ceremony.)

*Modin* : *Mon pasra dek kauleh biaya penguruseneh senekah, molain derih pengetikan, perjelenen sampek mareh.*

(If this is what you want it will cost (a certain amount), covering the preparation of all the documents, transport costs and the marriage ceremony.)

This conversation clearly shows that the villagers generally perceive marriage registration in terms of “buying a marriage certificate”. They argue this is because they have to spend a certain amount of money to obtain it. The *modin* usually tells them that it is not a matter of buying a letter, but of registering a marriage. This misperception is not only prevalent in the matter of marriage registration, it also crops up in judicial divorce. The locals use the phrase of *melleh talak ka hakim* (buying a divorce from the religious judges). Some people refer to it as *melleh kartu kuning* (buying a yellow card) because the divorce certificate for a wife has yellow decorations on it.

Despite the local perception of marriage registration as buying a marriage certificate, when we look at the figures for marriages registered, it appears that this step has become an increasingly important part of local marriage practice. I talked to various *modin* and they generally confirmed that marriage registration is already being perceived as a requirement by the local people. One of them said: “*It has changed now. Nearly all marriages are registered at the KUA.*” With a Muslim population of 61,650, the Summersari sub-district has around 500-550 registered marriages a year. In the Pasuruan regency with Muslim population of 1,604,325 in 2015, the number of marriages was around 14,150 a year. The highest number of marriages in the most densely populated sub-district, Gempol, with a Muslim population of 199,272 it was 1,308 per year. The lowest number, amounting to

ninety-nine marriages a year, was found in the Tosari sub-district, in which Muslim population is 5,625.<sup>79</sup>

My materials from the records of the KUA Summersari show that there was an increase in marriage in 2010 compared to previous years. In 2008, the number of registered marriages was around 485 and it escalated to 642 in 2010. Unfortunately, I have not been able to collect have enough data to explain this escalation. However, if I might speculate on the basis of the information which I collected from *modin*, a number of factors were involved. Firstly, more ever-married couples are tending to register their remarriages. Secondly, people are more aware that many incentives, such as government subsidies or access to bank loans, are easier to obtain if they can produce a marriage certificate. Thirdly, both parents find it important to list their names on their child’s birth certificate. What follows is the figure of registered marriage since the 1960s up to the present.

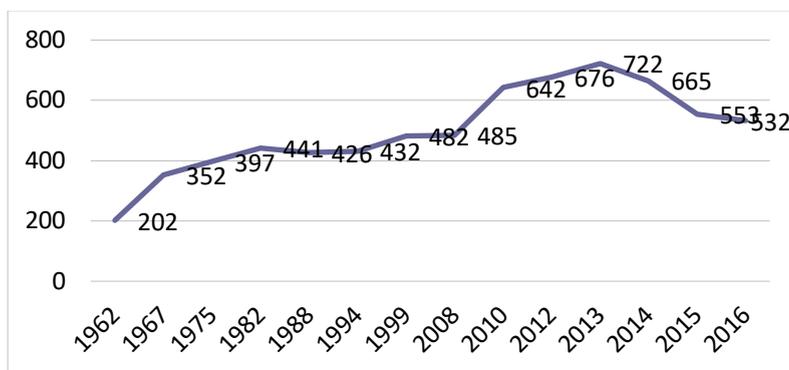


Figure 5.3. Registered marriage in the Summersari sub-district

This chart shows that, since 2015 there has been a tendency towards a decline in marriage registration. When I consulted the officials of the KUA about this matter, they argued that the decline was caused by neither a decrease in marriages nor a rise in unregistered marriage. Social mobility seems to have been the major factor

<sup>79</sup> BPS Kab. Pasuruan, *Kabupaten Pasuruan dalam Angka 2016*, p. 232.

instigating to this change. In distinction to the past when marriages generally involved only local people, the younger generation now have ample opportunities to establish cross-cultural families. This assertion is endorsed by the introductory letter (*surat pengantar*) now issued by the local KUA so that a groom can register his marriage at the KUA with which the bride is affiliated.

People's attitudes towards the importance of marriage registration no longer apply just to first marriages, they now extend to remarriages. The number of remarriages, in which one or both of the couple is a *janda* (ever-married women) or *duda* (ever-married men), constitutes nearly one-quarter of the total number of marriages.<sup>80</sup> In the year 2015, there were 124 remarriages out of 553 marriages or 22.42 percent. Meanwhile, in the year 2016, there were 122 remarriages out of 532 marriages or 22.93 percent. This figure also suggests that there has been an increase in people's awareness about seeking a judicial divorce from a religious court. Based on the records from Islamic courts in 2015, the number of divorces registered at the KUA Summersari was 104. Twenty-three were divorces initiated by husbands (*cerai talak*), while the remaining eighty-one were requested by wives (*cerai gugat*). Here, the ratio of divorce was 18.9 percent compared to the number of marriages in the same year. From Figure, I assume that both the KUA and the religious courts have increasingly been shaping people's attitudes about how to deal with marital matters. This finding corroborates earlier studies which have shed light on the growth of divorce cases in Indonesian religious courts over the last decade.<sup>81</sup>

The following charts are more detailed information of remarriages of *janda* and *duda* in 2015 and 2016 which I collected from the SIMKAH records.

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<sup>80</sup> The KUA administration and the civil registration in Indonesia differentiate between *janda mati* (widow) and *janda cerai* (divorced woman) and between a *duda mati* (widower) and *duda cerai* (divorced man).

<sup>81</sup> Nurlaelawati, 'Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce'; Mohamad Abdun Nasir, 'Islamic Law and Paradox of Domination and Resistance', *Asian Journal of Social Science*, vol. 44, nos. 1–2 (2016), pp. 78–103.

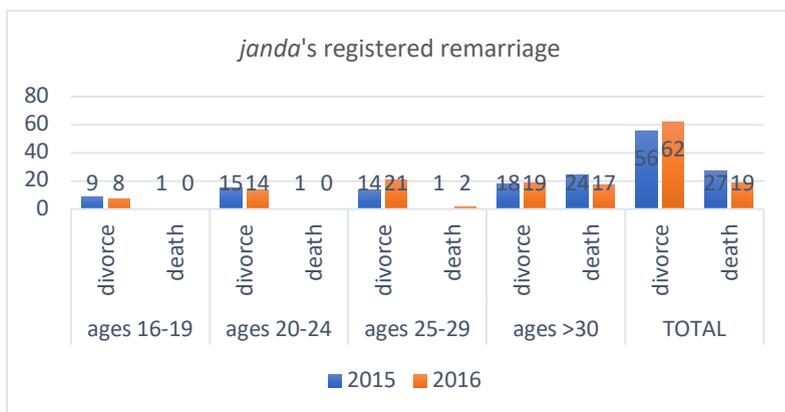


Figure 5.4. Registered *janda* remarriages

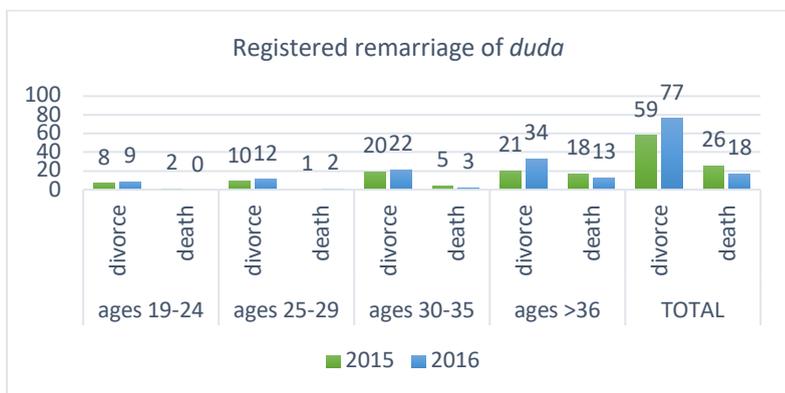


Figure 5.5. Registered remarriages of *duda*

\*Ages are calculated based on the date of marriage registration.

### 5. *Akad Dua Kali* (twofold marriage ceremonies) and *Ta'kīd al-Nikāḥ*

People's changing attitudes towards marriage registration, discussed in the previous section, underscore the optimism felt about the effective functioning of the state as a body which wields legal authority. Does this mean that people are now more inclined to surrender their religious affairs to a state agent? If so, to what extent

does it affect the roles of traditional leaders? With reference to Law no. 22/1946 on the Registration of Muslim Marriage, Divorce and Reconciliation, Article 6 of the Compilation of Islamic Law states that a marriage ceremony must be held in front of and under the supervision of a marriage registrar (PPN). However, going back to the statement at the beginning of this article, it is obvious that Pak Yusuf was proclaiming the state-bestowed power to legalize Muslim marriage. He even uttered some threats to stress this authority. This situation leads me to an enquiry about what has actually happened to the state-society relationship lurking behind marriage registration.

Sometime in May 2017, a family in a Pasuruan village whose daughter was about to wed held a *walimah*. A *walimah* is a festive meal organized at the bridegroom's house for the purpose of making a public announcement of the forthcoming marriage ceremony (*akad nikah*). It is usually held in the morning and relatives, neighbours and respected figures in the village are invited. The groom and a few of his family members also attend. The programme commences with the recitation of *mawlid* (prayers for the Prophet) and prayers and usually concludes with an *akad nikah* ceremony. Two weeks earlier, when the bride's father had visited Haji Misbah, a *modin* in the village, to arrange the marriage ceremony, he decided to register it as a *nikah kantor*, marriage at the KUA office. Haji Misbah asked the father about who would serve as the *munakkih*,<sup>82</sup> stating the following:

"I told the father that the obligation to marry a woman is the responsibility of the *wali*. It is much better if the *wali* undertakes this duty personally. However, he can delegate it to another suitable person if he prefers. However, it is thought vulgar for the *wali* to delegate it to the *modin* and, moreover, the *wali* is still obliged to be present at the marriage ceremony."

In a nutshell, the *walimah* was held on the same day as the *akad nikah* scheduled by the KUA. In the meantime, the father had been persuaded by his family to include the *akad nikah* during the *walimah*,

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<sup>82</sup> *Munakkih* is the person to whom the marriage guardian delegates his authority to marry off his daughter.

following the usual pattern. It was said: “*Mumpung Gus Akib rawuh, dinikahno sekalian ae*” (Better to marry them now while Gus Akib is present). Gus Akib is a prominent religious leader whom the bride’s family consult about Islam and other matters. Living as they do in the *pesantren* tradition, the locals still believe in the concept of *barakah* (blessing), a quality which revealed in the performance of good religious acts by people.<sup>83</sup> Their ideal is a marriage ceremony blessed by intermediation of Gus Akib. Hence the father raised the situation with Haji Misbah, the *modin*, who was among the guests at the *walimah*. Haji Misbah had no objection and permitted the *akad nikah* to take place. Nevertheless, he still insisted that a *akad nikah* would also take place at the KUA a few hours afterwards. This solution has led to a circumstance called *akad dua kali* (twofold marriage ceremonies).

A religious leader like Gus Akib, who was willing to conduct a religious marriage ceremony, is probably the exception rather than the rule. Gus Akib is a village-level religious leader. Some religious leaders who enjoy a high reputation usually refuse to marry couples.<sup>84</sup> They usually suggest the family hold the ceremony at the KUA. These religious leaders are well aware of the consequences of a marriage which has not been properly registered. They tend to support the authority of the *penghulu* and the KUA and perceive both the marriage ceremony and the registration as an inseparable process.

The practice of *akad dua kali* was the reason Pak Yusuf spoke so harshly. This practice is growing in the wake of the new policy drawn up by the central government in 2014 delineating a stricter boundary between marriage in the office (*nikah kantor*) and marriage outside the office (publicly known as *nikah bedolan*).<sup>85</sup> The basic principle at

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<sup>83</sup> In Sufism, one can receive God’s blessing through the intermediary of a holy man such as a saint or a *murshid*. Within the *pesantren* tradition, students are supposed to respect their teachers not only in the classroom but also in all aspects of life. Failure to pay respect can cause the loss of the *barakah* of the teacher. See Martin van Bruinessen, *Tarekat Naqsyabandiyah di Indonesia* (Bandung: Mizan, 1992), p. 215; Dhofier, *The Pesantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java*, pp. 61–2.

<sup>84</sup> This is according to Pak Syukron, a *modin* in Summersari.

<sup>85</sup> Peraturan Pemerintah (Government Regulation) No. 48 Tahun 2014 tentang Perubahan atas Peraturan Pemerintah Nomor 47 Tahun 2004 tentang Tarif atas Jenis Penerimaan Negara

stake here is that the marriage ceremony is held at the KUA office. This complies with Article 21 Point (1) of the Regulation on the Registration of Muslim Marriages.<sup>86</sup> Interestingly, Point (2) covers the rules to be applied when, with the PPN's agreement, a bride proposes her marriage be solemnized outside the KUA office. Now, the differentiation between *nikah* at the KUA and outside the KUA has been clarified by the introduction of a scale of multiple tariffs. Those who perform *nikah kantor* are charged Rp. 0. Meanwhile, the couples' family have to pay more, Rp. 600,000 (approximately 40 US dollars), if they want to conclude a marriage ceremony outside the office or out of working hours. Before 2014, there was no difference between the two.

It was originally proposed that the marriage be conducted as a *nikah kantor*, but in practice involves both *nikah bedolan* and *nikah kantor*. The *nikah bedolan* is carried out without the attendance of a *penghulu*, while a *nikah kantor* is carried out at the KUA purely and simply to acquire state recognition. Both ceremonies are sometimes performed on the same day. The issue seems to revolve around money. However, judging by aforementioned story, it also has to do with more essential issues such as the marriage ceremony itself and the meaning people attach to it. Importantly, in *nikah kantor*, local people tend to delegate the role of marriage guardianship to a *modin*, not a *penghulu*. This situation also explains why *modin* still survive. Obviously the role they play meets religious-cum-administrative interests.

This section has demonstrated how *penghulu* negotiate their authority as they navigate the pressures exerted by various forces: the state, local tradition and their own interests. By drafting the new regulation, it seems that the state is seeking to increase its power of intervention in marriage. The campaign for *nikah kantor* actually began some years ago. In its implementation, the central government has made significant efforts to enhance the status of KUA offices, transforming them into 'ideal houses' in which to hold a marriage

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Bukan Pajak yang Berlaku pada Departemen Agama (on the Revision of the Government Regulation No. 47/2004 on the non-tax revenue of the Department of Religious Affairs).

<sup>86</sup> Peraturan Menteri Agama (Regulation of the Minister of Religious Affairs) No. 11/2007 on Pencatatan Nikah (MarriageRegistration).

ceremony, actually renaming it *balai nikah* (marriage house). In the Summersari setting, the first floor of the office consists of an open hall which functions as the *balai nikah* in which marriage ceremonies are concluded. The existence of a *balai nikah* is becoming increasingly important, irrespective of the fact that the majority of them still provide less than adequate facilities. Therefore, the central government has spent a considerable amount of its budget for the Ministry of Religious Affairs to renovate hundreds of KUA buildings throughout Indonesia.<sup>87</sup>

Certainly, the differentiation between *nikah kantor* and *nikah bedolan* was not an issue in the past because there was no differentiation in the tariff. My observations in Summersari show that about 95 percent of marriage ceremonies prior to 2014 were conducted outside the office. By 2017, this situation had changed dramatically and the rate of *nikah bedolan* was now 24 percent of 531 marriages. This pattern is not typical only of Pasuruan villages, it is also emerging in other areas, although the decline is not as significant as in Pasuruan. Let us look at the detailed figures of a KUA in an urban community in the town of Jember, East Java.<sup>88</sup> In 2013, the ratio of *nikah bedolan* was 92 percent of the all marriages (730 of 799), and it declined in the two years after. In 2014, *nikah bedolan* represented 598 of 792 (76%), while in 2015 they were 439 of 746 (59%). It climbed a little bit in 2016 (64%) and in 2017 (76%), although the rise is still far below that of 2013.

In a situation similar to that in Jember, in Yogyakarta the difference in the tariff has not exerted a significant influence. The rate of *nikah bedolan* remains high, approximately 85 percent. A number of factors underlie this situation. Firstly, in the general perception of the people in Yogyakarta the state *penghulu* is a religious official with an adequate knowledge of Islam. Therefore, they have no qualms about

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<sup>87</sup> Kemenag, "Tiga Tahun Jokowi-JK: Kemenag Pemrakarsa Dan Investor Terbesar SBSN," accessed May 7, 2018, <https://kemenag.go.id/berita/read/505984/tiga-tahun-jokowi-jk--kemenag-pemrakarsa-dan-investor-terbesar-sbsn>.

<sup>88</sup> This data are calculated from the SIMKAH record which I obtained from a colleague of mine who is a *penghulu* at that KUA.

submitting all marriage matters to him. In many cases, it is the *penghulu* who conducts the marriage ceremony and assumes the responsibility of *munakkiḥ*. Secondly, the tariff for *nikah bedolan* is not really important to them. Thirdly, they tend to hold *nikah bedolan* because they want to invite their relatives, neighbours and colleagues to witness the ceremony. Fourthly, in their quest for greater social recognition, some families hold the marriage ceremony in a prestigious location, hotels or halls. When catering to these interests, there is no reason not to invite a *penghulu*. Nevertheless, a small number of them do choose to have *nikah kantor*. Their reason is usually because they do not want to have to deal with the complexities in the official documents.<sup>89</sup>

The implementation of the new tariff has certainly elicited different reactions from members of the society. Haji Misbah argued: “*The problem is that the difference is very big; Rp. 600,000 is a significant amount for villagers.*” Throughout the years 2004-2013, marriage administration costed Rp. 30,000 for either *nikah kantor* or *nikah bedolan*. If they opted for the assistance of a *modin*, people spent around Rp. 350,000. As shown by the above story, the brides’ families generally preferred an *akad nikah* to be part of a *walimah* as this arrangement offered at least two benefits: the participation of other villagers and the involvement of an honoured religious leader. It also backs up the assertion that a marriage ceremony has emerged as a fundamental arena in which religious leaders can exercise their authority.

As is commonly found in Muslim communities across the nation, a marriage ceremony is a merging of both religious and social activities.<sup>90</sup> This echoes the general opinion of Muslim scholars who state that Islamic marriage is an embodiment of the elements of civil contract, spiritual practice and worship of the divine.<sup>91</sup> This strongly suggest that an Islamic marriage is not merely a matter which falls into

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<sup>89</sup> This is summarized from my interview with Pak Nasrudin, a *penghulu* in Yogyakarta, August 2019.

<sup>90</sup> Mir-Hosseini, *Marriage on Trial: Islamic Family Law in Iran and Morocco*.

<sup>91</sup> Nichols, ‘Religion, Family Law, and Competing Norms’, p. 197.

the category of *mu'amalah* (civil contract), that is, pronouncing a contract of *ijab* (offer) made by the woman's guardian (*wali*), *qabul* (acceptance) by the man and the payment of dower (*mahr*). It is undeniably a contract but one which has expanded its dimension to that of an *'ibadah* (ritual act) in which normative and traditional elements of religion are engaged.<sup>92</sup> Therefore, in social practice, we see the a marriage ceremony interwoven with religious rituals,<sup>93</sup> including the recitation of verses from the Quran, *sholawat* (prayers for blessings on the Prophet) and *tahlil* (prayers for the ancestors). I have witnessed many similar rituals in Pasuruan villages. In certain communities there, particular days, like Friday *Pon*,<sup>94</sup> are believed to be especially auspicious for a marriage ceremony.

I discussed this issue with a local religious leader, Kyai Karim. He argued that it is understandable that people tend to conclude a marriage ceremony at home. His major concern revolved around the religious capacity of a *penghulu*. Religious leaders generally perceive *penghulu* to be *ulama*, whereas, in fact, Pak Yusuf has never been trained in an Islamic institution. Kyai Karim was critical of the government for making it too easy to promote its functionaries to the position of *penghulu*. Another point which he disparaged was that the facilities in the KUA are not yet up to standard (*pantas*) for conducting a marriage ceremony. He stressed both the bride and the groom must be "treated with respect" (*dimulyakan*) but, on certain busy days, they have to queue like people lining up for a dole of *raskin* (*beras miskin*, rice for the poor). Kyai Karim also made the point:

"I have heard public rumours that the *penghulu* is less than competent. His lack of skill in reciting *ayat* (Quranic verses) and *doa* (prayers) tends to get on people's nerves. People certainly think twice about involving him in a marriage ceremony. Marriage is a sacred ceremony. It is an *'ibadah*. Like *sholat*, if you do not recite Surah Al-Fatihah, the principal element in *sholat*, properly, your *sholat* is unacceptable."

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<sup>92</sup> Ziba Mir-Hosseini, 'Marriage', *Encyclopedia of Islam and the Muslim World* (New York: Macmillan, 2004).

<sup>93</sup> Black, Esmaili, and Hosen, *Modern Perspectives on Islamic Law*, p. 114.

<sup>94</sup> *Pon* is one of the five-day *pasar* (marketplace) cycle in the Javanese calendar.

This criticism seems to represent a view commonly held among the villagers. They see *akad nikah* as a crucial stage conducted under the guidance of a prominent religious leader, quite close to the issue of obtaining *barokah* (blessing). Hence, when organizing a *nikah bedolan*, people usually ask a *kyai* they respect to lead the marriage ceremony. When they do choose to have a *nikah kantor*, parents occasionally do bring their chosen *munakkiḥ* to the office. In some peculiar circumstances, it is said that there have been families who had felt they had to perform a second *akad nikah* at home because they were dubious about the validity of the earlier *akad nikah* at the office. Consequently, *akad dua kali* can be held both at home then the office or vice-versa.



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

The existence of *akad dua kali* quite irrefutably demonstrates the state's attempt to control marriage has not been an overwhelming success. For Pak Yusuf who is on the frontline of the Muslim marriage registration, this development has indeed been an affront. One of my informants, Pak Usman, a high-ranking official in the District Office of Religious Affairs, acknowledged that people in Pasuruan villages still place great reliance (*ketergantungan*) on *kyai*, and this dependence lies at the heart of the skewed relationship between state *penghulu* and

religious leaders.<sup>95</sup> Pak Yusuf is well aware that he is being challenged by the forces of informal religious authority. His discomfort prompts him to speak more on behalf of the state, rather than to think about perceiving himself as a religious authority. He uses his statements to underline his authority to bestow state recognition on religious marriage as the means to negotiate. Here is an example:

“I do not like them holding a traditional marriage ceremony at home and later having another marriage ceremony at the KUA. I usually ask the witnesses whether or not they are already married. If the answer is in the affirmative, I say: If it’s a marriage certificate you’re after, just ask your *kyai!*”

The *penghulu* Haji Misbah, who serves as the intermediary between the state and people, also finds himself in a quandary. He has suggested using the concept he calls *ta’kīd al-nikāh* for the second marriage at the KUA. I have failed to discover the origin of this concept. Literally, the first word *ta’kīd* is associated with the Arabic word *tawkid*, meaning endorsement or ratification.<sup>96</sup> *Ta’kīd al-nikāh* could be interpreted as authenticating a marriage (*pengukuhan pernikahan*). It seems that Haji Misbah’s idea in coming up with this concept is that an *akad nikah* at the KUA will provide state authentication of a foregoing religious marriage. Interestingly, he has also applied this concept in another context, underage marriage. If the bride has not yet reached the legal age of marriage, the couples are first married religiously. Later, when the woman’s age qualifies her for legal marriage registration, their marriage is registered at the KUA.

Unsurprisingly, the issue of *akad dua kali* has been raised in a series of meetings between the KUA and *modin*. Pak Yusuf has sternly cautioned the *modin* to discourage this sort of this marriage, saying “Don’t ever marry them at home!” Nor do his troubles end there. Besides the thorny issue of competing authorities, another aspect has

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<sup>95</sup> Interview with Pak Usman, the head of the Section on Islamic guidance of the Pasuruan Office of Religious Affairs, February 2017.

<sup>96</sup> Elsaid M. Badawi and Muhammad Abdel Haleem, ‘*توكيد* w-k-d’, *Arabic-English Dictionary of Qur’anic Usage*, Leiden edition (Brill, 2008), p. 1044.

been causing him and the other *modin* growing concern. Note the following statement by Pak Yusuf:

“What they are really after is a marriage free of charge. Whether they arrive here by motorcycle or by car, I run my eye over them. Sometimes this makes me hesitate to marry them at the office. Just think about it, they have arrived here in a Livina (a minibus) and the dowry paid was one million. This is nonsensical if they want a *nikah kantor*. I have had to refuse them. Why do you not invite us to come to your home! Have a *nikah bedolan* and, by paying just 600,000, ensure your religious, worldly and Afterlife interests!”

In his remark, Pak Yusuf is making a veiled reference to the relationship between *nikah kantor* and the financial capacity of the families concerned. He was questioning why, when people find it hard to find that bit of extra money to hold a *nikah bedolan*, do they not opt to get a marriage certificate which, in his opinion, covers the worldly and religious aspects in marriage for so much less. He said, “*Buku nikah sekali untuk seumur hidup*” (a marriage certificate is for life). Meanwhile, *penghulu* in the KUA in the town of Jember said to me, “This year (2018), we are targeting 85 percent *nikah bedolan*.” Both statements carry a strong undercurrent which hints that the issue of *nikah bedolan* is somehow bound up with economics. There is a logic behind this. However, before I setting out my explication, I should like to say that the existing table of multiple tariffs was the outcome of the absence of any regulation which would cover an incentive for *penghulu* to perform *nikah bedolan*. When it realized, the central government decided to set tariffs for *nikah bedolan*, legally entitling *penghulu* to supplement their income. This regulation means that, for each *nikah bedolan*, *penghulu* receive approximately Rp. 100,000 for their transportation and Rp. 150,000, or another amount depending on the KUA category, as an honorarium (*jasa profesi*).<sup>97</sup> Consequently, the

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<sup>97</sup> Keputusan Direktur Jenderal Bimbingan Masyarakat Islam (the Decree of the Directorate General of Islamic guidance) No. DJ.II/748 Tahun 2014 tentang Petunjuk Teknis Pengelolaan Penerimaan Negara Bukan Pajak atas Biaya Nikah atau Rujuk di luar Kantor Urusan Agama Kecamatan (on the technical procedure of the organisation of non-tax revenue from the fees of marriage or reconciliation outside the sub-district KUA).

fluctuating number of *nikah bedolan* has become a major issue among *penghulu* as they feel it in their pockets.

Pak Syamsu, the *kepala* of the KUA in the city of Surabaya, acknowledged that this bureaucratic reform is a confirmation of the legal certainty of the rights of *penghulu* in the case of a *nikah bedolan*,<sup>98</sup> but it has not overcome the problem of the organization of marriage registration in general. He referred to the lack of competence shown by KUA in the management of their everyday activities as they are forced to fight an uphill battle, frustrated in their efforts by the limited budget allocated them by the government. He argued: "The new regulation has undermined our capacity to act. Under the old regulation, we could still donate to social or mosque activities around us. Now, the budget for the KUA is so straightened, we cannot do anything for our non-tenured staff or for society in general because we just do not have the money to do this." In the past, the KUA had the autonomy to manage the money it received from people via *modin* and strengthen their institutional power. With Rp. 0 coming in for *nikah kantor* and the incentive for *penghulu* to perform *nikah bedolan* severely curtailed, *kepala* KUA are currently besieged by problems arising from the organization of the office. In their attempts to deal with this, I witnessed that some KUA offices in other areas have been encouraging their *penghulu* not to grab all the incentive, but to distribute some of it in the wider interest of the KUA.

Apart from these financial considerations, on the basis of Migdal's state-in-society, the practice of *akad dua kali* has been a place in which the state has been unable to impose its single-authoritative authority in marriage practice and, consequently, everyday agency has been able to intervene in the making of the state practice. The practice now provides what Peletz has called "the co-imbrication of law, politics, and religion".<sup>99</sup> *Akad dua kali* encompasses a multiplicity of issues, ranging from state authority, religious authority, the local sense of religious validity and the *penghulu*'s economic interests. However, this has been

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<sup>98</sup> Interview with him, October 2017.

<sup>99</sup> Michael G. Peletz, 'A Tale of Two Courts: Judicial Transformation and the Rise of a Corporate Islamic Governmentality in Malaysia', *American Ethnologist*, vol. 42, no. 1 (2015), pp. 144–60.

offset by a local development in which people are strategizing the multiple tariffs for marriage by concluding *akad dua kali*. This tactic allows them to maintain the ideal of marriage ceremony which incorporates the religious and social activities so important to them. This is their response to their perception of the lack of a religious competency displayed by *penghulu*. The intervention of traditional authority is embedded in this realm. In its turn, this 'deviation' has become a critical stepping-stone for *penghulu* to implement state laws on marriage on a grassroots level. Subtly, the tactics adopted by *penghulu* never mount a direct challenge to the traditional authority. Instead, they tend to present themselves as state agents, exercising their authority by the means of the threat that state recognition of marriage will never be possible without the possession of a marriage certificate which they have signed.

## 6. Conclusion

Examining the developments in a KUA office in a Pasuruan society, it seems obvious that the day-to-day running of this state body is not a compartmentalized, isolated aspect of society. In this chapter, Migdal's state-in-society approach has been helpful in revealing the complexities faced by *penghulu* and the KUA in the implementation of legal rules on marriage registration, as they struggle in a web of pressures exerted by societal agencies.

I found that the internal synergy between the KUA officials has been the key to securing the KUA's legitimacy. My principal reasons for this assertion are threefold. Firstly if they are to fulfil their tasks satisfactorily, the *kepala* of the KUA and the *penghulu* need to understand the workings of local social life, including how the local people perceive a marriage ceremony and transfer this knowledge into the grounds for making balanced decisions. Secondly, it should not be overlooked that the non-tenured local officials at the KUA also play a considerable role in communicating the state's ideas on marriage to social agencies, including *modin*. Thirdly, the KUA civil servants tend to implement the state rules strictly. Other factors also play a role. In

Pasuruan villages, local people regard marriage registration as a transactional relationship between state-citizen. *Modin* are the key agents in this brokerage. This KUA-*modin*-society relationship has produced the remarkable development of registered marriages and remarriages. In a nutshell, this triangular relationship demonstrates the effective functioning of the state.

In spite of these changes, the Indonesian central government has not given up its own ideas about how to manage marriage registration. Consequently, the central government has drafted a regulation which draws a stricter boundary to be drawn between *nikah kantor* and *nikah bedolan* in the expectation that this would be effective in eradicating the custom of earning a gratification among *penghulu*. This has not been plain sailing. In fact, this regulation has intensified the tension between religious authority and the state agency and led to the practice of *akad dua kali*. It seems fair to argue that *akad dua kali* is an outgrowth of the multiple tariff system for marriage ceremonies. Be that as it may, it also has to do with the local conceptualization of the function of a marriage. In everyday Muslim life, a marriage ceremony entails not only religious but importantly also social activities, both of which require the intervention of religious leaders. At the same time, we have also been witnessing situations in which *penghulu* are still challenged by accusations of their lack of competency in Islam. Given their blurred situation, *penghulu* have needed to redefine their position if they were to be accepted as legitimate agents competent to deal with Muslim marriages. Heeding the warning, *penghulu* have transformed their authority to provide state recognition of marriage into their source of power.

To conclude, in Pasuruan, *penghulu* tend not to identify themselves as *ulama*, even though their identity as a religious authority remains important. This differs from Nurlaelawati's finding in West Java. *Penghulu* in East Java identify themselves as state agents, wielding their authority to provide state recognition of a marriage as a resource to reinforce their influence. This suggests two interrelated aspects: Firstly, they invariably speak on behalf of the state. Secondly, a marriage certificate has become an important instrument in bolstering

their authority. Finally, *modin* are apparently playing a greater role in bridging the relationship between the state and society. *Modin* are finding themselves the subject of a compromise between competing legal orders; a situation which has given rise to the production of new legal norms, such as *ta'kīd al-nikāḥ*, to make their intermediary role possible. However, turning to the nub of the problem, the fact that *penghulu* have not been successful in persuading society to marry according to the State law suggests that, in the first place, that they do not enjoy a solidly entrenched position in society. This is in contrast to the *modin* who, with the rise of in interest in *ta'kīd al-nikāḥ*, have been able to create a semi-autonomous social field, which sustains customs and rules symbols internally but is nevertheless vulnerable to rules and decisions from outside the field.<sup>100</sup> In other words, the idea of *ta'kīd al-nikāḥ* has been effective in touching the meaning of marriage as the local people perceive it on the one hand and in ensuring the implementation of the state legal norms on marriage on the other hand.

The following chapter will problematize the social and legal meaning of marriage legalization for villagers who have made unregistered marriages. It seeks to understand people's motives as well as the ways people try to obtain state recognition of unregistered marriages.

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<sup>100</sup> Sally Falk Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study', *Law and Society Review*, vol. 7, no. 4 (1973), p. 720.