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

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Conclusion

This study has approached Muslim marriage from an array of different perspectives. It has examined how the Indonesian state has endeavoured to regulate Muslim marriage and how a local society in East Java has gone about dealing with the subsequent changes. I have looked not only at the law as interpreted by the central state, but also at the law as perceived and implemented by different actors on the lower strata of society, namely: ordinary people, judges, marriage registrars and religious leaders. Following Sally Moore, I have simultaneously looked at the rules, the occasions on which they are communicated and invoked what actual behaviour they have had to address, the contexts in which this takes place and the ideas and assumptions which have accompanied their introduction.[1] This has yielded a number of insights which I have discussed in the chapters of this thesis and which I shall now re-address in this conclusion. However, I would like to begin by setting out the key findings of my study.

The enactment of the Marriage Law, particularly the obligation of marriage registration, has still left some leeway in which informality can function. Berenschot and Van Klinken have remarked that, in post-colonial states like Indonesia, the experience of state-citizen interaction depends not just on the content of the law but also on the

[1] Sally Falk Moore, *Law as Process: An Anthropological Approach* (London: Routledge & Kegan Paul, 1983), p. 3.

strength of personal connections.[2] This informality has certainly shaped the practice of marriage registration, which initially presented a major problem as it has inexorably led to the bureaucratization of Muslim marriage.[3] The idea of marriage registration as an element of social reform militates against the convictions of conservative Muslims who believe that Muslim marriage should be regulated by *ulama* (religious leaders) only, not by the state. In this study, I have discovered that this informality has produced a mediating sphere which contains the potential to align state law and religious law, allowing people to adjust their religiously oriented attitudes to the state law. Informal religious leaders, represented by *modin* (informal religious leaders on the village level who are in charge of marriage) are the main actors in this sphere. Their role is key to helping citizens negotiate their interest in obtaining state recognition and to facilitate their ability to realize their rights. On the central government level, this informality is mistakenly viewed as corruption and therefore rejected. It provided an excuse for the government to remove the *modin* from the governmental apparatus. However, the local levels of government (district and sub-district), as in East Java, prefer to keep these informal actors in place in order as it is realized that they assist in aligning people's behaviour with the state legal framework.

Put in more general terms, the legal reform introduced in the marriage law was intended to facilitate state control of marriage practice and reinforce state authority, one part of which was eradicating informality. The central government assumes that the lower levels of government are capable of building a direct relationship with ordinary people without necessarily involving intermediaries. However, in practice, it does not work that way. Effective marriage registration needs these intermediaries, particularly in communities in which religious leaders command great respect. Nevertheless, the Marriage Law still defines marriage as a religious ceremony. In these communities, marriage registration includes two inseparable dimensions. Firstly, it is just an

[2] Berenschot and van Klinken, 'Informality and Citizenship: The Everyday State in Indonesia'.
[3] Nisa, 'The Bureaucratization of Muslim Marriage in Indonesia', p. 309.

administrative matter. The second dimension has to do with aspects related to the religious validity of a marriage and the proper conclusion of a marriage ceremony. Some state *penghulu* are considered to lack the religious legitimacy to be able to perform the second dimension. Traditionally *modin* do have such legitimacy. This is why informality has survived.

While these findings might seem to indicate a competition between state and local religious leaders, I want to underline that the relationship between the state and religion in Muslim marriage – at least in the cases I examined - is actually a matter of mutual adjustment. Religious authorities do indeed accept the state's intervention in marriage law, if this is limited to marriage registration. Simultaneously, local people are increasingly eager to register marriages as this makes them eligible to have access to the state services. Of course, there is a small segment of religious leaders who oppose the state law, especially those who do not accept the democratic foundation of the nation-state and propagate the idea of a so-called Islamic state'. However, the large majority can accept some level of intervention of the nation-state in Muslim marriage if two conditions are met. Firstly, the state law cannot challenge the fundamental principles of Sharia law or introduce something impermissible according to classical understanding of Sharia law, such as allowing same-sex marriage or totally prohibiting polygyny. However, this is hardly ever the case in Indonesia as to a large extent the legal reforms have taken into account what is permissible and impermissible according to the common understanding of Sharia law. Secondly, when the state law is too rigid to deal with some particular practices which are socially and religiously acceptable, when religious law is applied. To local people, religious law is a more responsive instrument for handling problems of sexual morality such as *zina* (extra-marital sexual relations) and teenage pregnancy. They prioritize the religious validity of marriage rather than its legal validity.

In response to the continuing informality and the uneasy relationship between the state law and religious law, the state officials in charge of marriage registration on the frontier levels, namely: the

sub-district office of Muslim marriage registration and the Islamic courts, are amenable to adopting a lenient approach towards regulations on marriage.[4] They do not interpret and implement the rules strictly. This attitude is of great assistance to those people who want to seek state recognition of their marriages so that they can have access to their citizens' rights. The lenient approach applies in particular in two conditions. Firstly, as a street-level bureaucrat of marriage registration, *penghulu* at the KUA (Kantor Urusan Agama, the Office of Religious Affairs) are willing to register an unregistered marriage. Their acquiescence means that people do not have to file a formal request for the legalization of their unregistered marriage with Islamic courts as decreed by the law. Here, *penghulu* transgress the rules on marriage registration in the name of humanity. Secondly, judicial practice also shows that judges resort to judicial discretion in the case of *isbat nikah* (retrospective marriage legalization) to prioritize the interest of the weaker party. [5] These differences in interpretation between the central government and the lower levels of government lead to legal plurality within the state. However, the existence of these legal mechanisms is the key to secure the functioning of the state law. In practice, if lower levels of government and judges of Islamic courts did not do this, people would turn away from the state.

The willingness of the state officials to give a less than strict interpretation of legal rules on personal status has become a major trend in other Muslim countries as well. In the case of Tunisia, Voorhoeve remarks that, despite the 'progressive' direction of the legal reform of its family law, the state-promoted family law is relative because there is much diversity in its application. Judicial discretion exists on different levels.[6] Vincent-Grosso has also indicated the same. In the Tunisian divorce court, because of the complexity of documents

[4] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 263.
[5] It is worth noting that the procedure for *isbat nikah* as set out in the KHI was initially meant to be a transitional article for those who had not yet registered their marriage prior to the ratification of the Marriage Law. Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', p. 187.
[6] Voorhoeve, 'Judicial Discretion in Tunisian Personal Status Law'.

brought to the court, the judges find it difficult to make a decision within the law. Consequently, the judges use the personal narratives of the litigants in making their judgement.[7] In addition, in the Egyptian context, Lindbekk suggests that the judicial practice has developed its own order of discourse. She argues that the judicial practice in divorce shows a move towards increased standardization in the implementation of family law. This standardization has come about through a closer union between law and religious morality.[8]

The abovementioned findings are the most fundamental issues of the four points which constitute my study. They are the legal reform on rules on marriage, the reform on the bureaucracy of marriage registration, changing social practices in marriage, the position of *penghulu* and the legalization of unregistered marriage. What follows are more detailed conclusions of each of them.

1. Regulating Muslim Marriage and Public Debates

The first point involves the political, religious and legal debates about how Muslim marriage in Indonesia should be regulated. The legal reform of the marriage law has become an arena of contesting ideas between Muslim groups.[9] Within the framework of a nation-state, legal reforms of marriage in post-independence Indonesia concentrate on the debate about how the religious norms governing marriage can be transformed into state law (*hukum negara*), or what positive law should look like. The debate one of the linchpins of the debate is the question of what constitutes a valid (*sah*) marriage It centres on the demand common among Muslims in Indonesia that the codification of Islamic marriage law by the state should not reduce the religious character of marriage.

Historically speaking, family law reform in Indonesia has addressed sensitive issues such as polygyny, the minimum age of marriage and the legal obligation of marriage registration. Under the

[7] Sarah Vincent-Grosso, 'Maktub: An Ethnography of Evidence in a Tunisian Divorce Court', in *Family Law in Islam: Divorce, Marriage and Women in the Muslim World*, ed. by Maaike Voorhoeve (London: I.B. Tauris, 2012), pp. 171–98.

[8] Monika Lindbekk, 'Inscribing Islamic Shari'a in Egyptian Divorce', *Oslo Law Review*, vol. 3, no. 2 (2016), pp. 103–35.

[9] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 10.

terms of the 1974 Marriage Law, the Indonesian state embraces the principle of monogamy but still provides room for those who wish to have more than one wife. Regarding minimum age, the Law has introduced the prescription that the bride must not be younger than sixteen years and the groom must be at least nineteen (now both changed to nineteen years). Before this law came into force, these two issues blew up into a heated debate between female activists and religious leaders in the early years of the twentieth century.[10] Up to now, the norms concerning polygyny and minimum age remain a subject of deliberation and negotiation involving state officials, religious leaders, feminist activists and other interested parties. Turning to the question of registration, the Marriage Law stipulates that marriage must first be solemnized in accordance with the religious teachings of the parties, after which the legal obligation of registration can be taken care of.

After the 1998 *reformasi*, the marriage law has increasingly been an arena of contestation between different groups in Islam.[11] On the sub-national level, we come across the politicization of Islamic issues. Several Islam-based regional regulations covering ruling on public morality have been enacted and these have complicated the procedure of Muslim marriage as stipulated by the national law. For instance, a local regulation obliges both the bride and the groom to be able to read the Quran. on the national level, the legal reform of Muslim marriage has been continued through the drafting of the bill on the substantive law of Islamic courts. The purpose of this legal reform aimed has been to introduce legal sanctions on those who do not register their marriage. This reform led to a public debate and certain Islamic groups urged people to resist it. The upshot is that the reform ended in a deadlock.

Earlier, the Civil Administration Law has introduced legal sanctions in the form of fines for those who fail to register their

[10] Susan Blackburn, *Women and the State in Modern Indonesia* (Cambridge: Cambridge University Press, 2004); Susan Blackburn and Sharon Bessell, 'Marriageable Age: Political Debates on Early Marriage in Twentieth-Century Indonesia', *Indonesia*, vol. 63 (1997), pp. 107–41.

[11] See Fauzi, 'Islamic Law in Indonesia: Recent Debates on Islamic Family Law in the Reformasi Era (1998-2007)'.

marriage, but these scarcely raised an eyebrow. Moreover, as Van Huis and Wirastri have argued, legal sanctions are never a sufficient deterrent to stop people opting for unregistered marriages.[12] Ironically, at the same time, the Ministry of Home Affairs drafted a regulation which assists people in unregistered marriages to obtain birth certificates for their children mentioning the names of both parents. Once again, this shows the ambiguity of the state when it comes to dealing with informality.

The debate on legal reform also involved *ulama*. They use their organizations and *fatwas* to claim and reinforce their religious authority. Their *fatwas* demonstrate how the concept of *maṣlaḥa* (public good) in Islamic law has become increasingly important in supporting the state to establish its control of marital relations. Despite its success, this *maṣlaḥa* orientation has been challenged by those Islamic groups which take a literal approach to classical Islamic texts. In the case of the registration of polygyny, such texts suggest that neither judges nor the state should exert exaggerated (*ishrāf*) control over personal relations.

In spite of these religious debates, the state is still determined to extend its power to control Muslim marriage in order to protect the rights of women and children. Therefore, legal reform is still work in progress. Recent legal reforms reveal that the judiciary and the civil bureaucracy have been busy securing this goal. At this point, the discourse on Muslim marriage no longer hinges on the religious and legal validity of marriage but is about the consequences of marriage registration for citizens' rights. I classify this new direction as a citizens' rights approach. In this approach, both members of the judiciary and the civil service are key actors. One important feature has concerned the judiciary's examination of the legal status under the Constitution of children born out of legal wedlock. Court decisions grant children born out of wedlock paternal recognition as long as there is sufficient proof that they have a blood relationship with the father, a decision which directly contravenes classical Islamic law. The

[12] van Huis and Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws', p. 14.

civil bureaucracy has also been seriously addressing the consequences of unregistered marriage for the registration of the birth of a child. Its efforts have led to the mapping out of a new policy, namely: letters of absolute responsibility (*surat pernyataan tanggungjawab mutlak*) which declare the religious validity of the marital relationship of the parents and hence the legitimacy of the child. Armed with these letters, the parents are able to claim the birth certificate of a child born out of legal wedlock. The letters can be used as a substitute for a marriage certificate, but they do not legalize the marital relationship of the parents. This policy would seem to have reduced the significance of marriage registration. In other words, this policy explicitly challenges the reason for the regulation of marriage registration. Nevertheless, by implementing this policy, the state is able to control marriage practice in society and bestow individual rights and obligations concomitant with national identity. Such a process is categorized by Peletz as an inseparable part of state formation.[13]

To sum up, a new trend in family law reform is currently underway in Indonesia. Instead of reforming the content of the Marriage Law, which inevitably ignites heated debates, the government has adopted a citizens' rights approach to deal with the problems arising from unregistered marriage. Far-reaching reforms of the rules on marriage have been achieved without secularizing the main elements of Muslim family law. These reforms are indirectly improving the position of women in the matrimonial sphere and protecting the rights of children. However, the issue of parents whose marriage is not legal under state law still face limitations in claiming certain citizens' rights is still the elephant in the room. The legal status of a marriage can only be proven by producing a marriage certificate. However, new obstacles have arisen as the citizen's approach, as I explained earlier, is undermining the importance of the marriage certificate. Nevertheless, despite this new development, the recompenses accruing from the possession of a marriage certificate still pressures people to comply with the state's regulation of marriage. On these grounds, it is safe to suggest that the legal debate about Muslim marriage in Indonesia has

[13] Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia*.

shifted from the issue of the validity of Muslim marriage to the problems for citizens' rights caused by the consequences of marriage registration. Since its implementation of the citizens' rights approach, the government has become much more effective in managing marriage and controlling people's marital practices.

2. The Uneasy Reform on the Bureaucracy of Marriage

The second important set of findings of this study is related to the bureaucratization of marriage in the wake of the government insistence on marriage registration and the subsequent issuing of a marriage certifcate, considered to be the instrument which determines the legal validity of marriage. Failure to register a marriage makes a union legally invalid in the eyes of the state. The KUA, which is headed by a PPN (*Petugas Pencatat Nikah*, marriage registrar), is in charge of the registration of Muslim marriage. In the past, no special qualifications were needed to be appointed a PPN. Now, only a *penghulu* (a state religious authority who is responsible for concluding a marriage) can act as a PPN, a move which is part of the state's strategy to boost the legitimacy of the KUA.

Over the past few years, in efforts to improve its performance, the government has attempted to introduce bureaucratic reform in the KUA. This bureaucratic reform has been devised for the simultaneous attainment of two objectives: the government wants all its citizens to register their marriages and that this registration should not be dependent on religious actors operating outside the state framework. This reform was introduced after an incident in East Java in which a *penghulu* was sued for corruption just because he recorded the customary extra-legal payment he collected for conducting a marriage ceremony outside the office. Determined to eradicate this extra-legal payment, the government (the MoRA) issued a new regulation in 2014 which clearly differentiates between *nikah kantor* (marriage in the office) and *nikah bedolan* (marriage out of the office). *Nikah kantor* is free of charge because a marriage certificate is treated in the same way as other civil documents. For *nikah bedolan*, people have to pay Rp. 600,000-, replacing the contested informal payment, to cover the *penghulu*'s expenses.

However, the matter of extra-legal payment has not yet been properly solved. It is particularly complicated because it also linked to the position of the *modin* who, in the past, acted as the PPPN or P3N (*Pembantu Petugas Pencatat Nikah*, assistant of marriage registrar). *Modin* are usually persons with a high reputation for religious scholarship.[14] The MoRA decided to eliminate the institution of P3N in 2010. As a consequence, the P3N was no longer an official marriage registration functionary. The dismissal of P3N caused no problems in an urban community like in Yogyakarta in which dependence on *modin* was not particularly strong. However, it was less effective in rural contexts. Sumbersari in East Java provides a good example. Although the institution of P3N has officially disappeared, *modin* still survive. By involving *modin* in the process of marriage, people manage to combine the religious aspect of the marriage ceremony and the administrative aspect of the marriage registration. This kind of situation arises in most areas in East Java. Grijns and Horii have demonstrated that *amil* play a similar role in West Java.[15]

A similar reform has been the integration of the marriage registration into the civil administration. The thinking behind this reform was to prevent any modification of the ages of couples, usually of the brides, to make these comply with the Marriage Law. This reform has caused new problems. Although a bride might be legally underage, she, or her family, still seek state recognition of her marriage. Currently the government officials are unlikely to be prepared to negotiate in this situation because the system uses the data filed under a single identification number (NIK, *Nomor Induk Kependudukan*) to calculate her age. If her age does not comply with the legal requirement, the system will automatically reject the registration. Once again, *modin* are able to alleviate this situation by performing a religious marriage with a delayed registration, meaning that the marriage will be registered as soon as the spouses have reached the required minimum age.

[14] To become P3N, *modin* were appointed by the village head and then confirmed by the head of the KUA to assist the PPN in his work.

[15] Grijns and Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns'.

This series of reform lead us to the conclusion that the central government is heavily influenced by the idea of rationalization as defined by Weber.[16] In the eyes of the government, modern bureaucratic reform simply means eliminating values embedded in a religious/ethical context. Efficiency and effectiveness have been the keywords from the government's point of view. However, as I explained in Chapter 5, Muslim marriage can never be completely rational in Max Weber's sense, since it must invariably be based on core Islamic norms and values if it is to retain its Islamic character. Indeed, the success of the reform is indeed dependent on the situation prevailing in each society. For Pasuruan people in general, the involvement of a *modin* is fundamental because people consider the religious elements of a marriage more important than any requirements which might be imposed by the state administration. Unlike the *modin*, the state does not have the leeway to make suitable adjustments.

3. Present-Day Cultural Life in Pasuruan

The centrality of *modin* and religious leaders in general is reasonable if we look at how Islam extends its influence in the Pasuruan social life. Pasuruan is a regency in the province of East Java which is inhabited by a majority of Muslim communities which generally show a tendency towards practising the traditional Islam encouraged by the NU. This religious orientation draws strength from the fact that many Pasuruan residents have historical roots in the island of Madura. The migrants have acculturated with the Javanese, a mingling which led to a distinct sub-culture called *pedalungan* or *pendhalungan*. This community has been established on the basis of patron-client relationships in which *kyai* or the leaders of *pesantren* act as the patron. The commitment to practising Islamic traditions and the strongly inculcated obedience to religious leaders (*kyai*) have led to a complicated relationship between

[16] Tony Waters and Dagmar Waters, 'Max Weber's Sociology in the Twenty-first Century', in *Weber's rationalism and modern society new translations on politics, bureaucracy, and social stratification*, ed. by Tony Waters and Dagmar Waters (New York: Palgrave Macmillan, 2015), p. 4; Max Weber, *Economy and society: An outline of Interpretive Sociology*, ed. by Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978), p. 889.

religion and the state. This social configuration appears to have infiltrated and influenced political life too.

Furthermore, Sumbersari, the area in Pasuruan in which I have been conducting my fieldwork, as is common in Maduro-Javanese areas, has to contend with an array of social problems, chief among them poverty and a tendency not to participate in formal education. This avoidance of the established formal educational system has made *pesantren* a central institution. *Pesantren* offer an alternative educational institution which is perceived to be adequate to fulfil their needs as it inculcates in students not only the knowledge they require to function in society but also instils religion and character-building in them. However, the winds of change are coming and in the last decade. *Pesantren* have been expanding their curricula to respond to a new aspiration, i.e. providing general knowledge and practical skills. This is coincident with the development on the national level which has shown a growing tendency for Islamic schools to be more open to change.

4. Everyday Practice of Marriage and the Functioning of the Bureaucracy of Marriage

The fourth set of findings in this study is centred on two issues: the everyday practice of marriage in a rural society and the functioning of the marriage registration bureaucracy - which is not the same as its bureaucratization, which I discussed in the previous section. I have put these aspects into the same category because both relate to how marriage is practised by local people. It encompasses how people perceive a marriage and determine whom and when to marry as well as how they perceive marriage registration.

In the eyes of the people of Sumbersari, and many others in Indonesia, marriage is a purely religious affair. It is a sacred ceremony people set tremendous store by the involvement of religious authorities, far more than they are bothered about state involvement. Nevertheless, despite the homogenous tradition of Islam in the area, I encountered internal heterogeneity of the relationship between agency of the actors involved, cultural norms and the social structure in the selection of whom to marry. It is important to note that, in all

social classes, the ideas about an ideal spouse have been shaped by the discourses circulating within traditional Islam. These ideas include preserving chastity (*kesucian*) and playing according to the rules (*apik*). *Pesantren* play an important role in maintaining this *fiqh*-based understanding of marriage. Being a *santri* (student of *pesantren*) is taken as a guarantee of the purity and good morals of a girl.

Marriage practice in Sumbersari shows that the negotiations in which these ideas are dominant are dependent on the role of the *pengarep* (traditional marriage broker). Entrusted with the principal role of mediating the communication of the two families concerned, the work of *pengarep* is mainly important to those families whose daughters have been educated in *pesantren*. In these families, girls have limited agency and restricted room when it comes to finding a suitable future husband. It is the parents, not always the father, who determine to whom and when they will be married to. The upshot is that arranged marriage is quite common. In this situation, marriage has become a marketplace in which a *pengarep* is essential to achieving the expectations of the parents.

Another key actor in marriage is the *kyai*. Marriage practice in Sumbersari shows the on-going centrality of the role of *kyai* in the production of an Islam-based legal norm to safeguard sexual morality. This is a tricky point as a decision based on these norms sometimes conflicts with the state legal norms. "Preventing harm (extramarital sex and unwanted pregnancy) should be the priority" is always the overriding argument presented. Differences of opinions between traditional *fiqh* doctrines are essential to the construction of the *kyai*'s legal reasoning, which should comply with the interests of the people concerned. From a social perspective, religious marriage has been an effective way to tackle the problems caused by religious morality and female sexuality when the state law is difficult to comply with.

In Sumbersari, modernity manifests itself in the form of increasing participation in formal education and the rise in female mobility. As the younger generations acquire more room to exercise agency in the selection of a possible spouse, the role of the *pengarep* will decrease. Nevertheless, even if girls do have the agency to find a suitable partner this does not mean that they can also determine the timing of the

marriage. In certain cases, the decision about the timing of a marriage is subject to the parents' authority. This is grounded on the idea of preserving the social honour of a family. Indeed, even if women are able to articulate consent to a marriage, they will still need to resort to religion-inspired reasons in order to justify their choices.

In Sumbersari a woman who has divorced informally (out of court) and wants to remarry will have no problem in finding an Islamic leader willing to marry her traditionally. This is in line with Van Huis' finding in Cianjur, West Java.[17] Furthermore, the centrality of religion and cultural norms corroborates earlier research findings. These issues are becoming more prominent as Sumbersari is being confronted with 'modern' development. As argued by Nancy Smith-Hefner, modernity has become a space of moral and political contestation when the ideals of a family come up for discussion.[18] Reassured by the presence of *kyai* and *pengarep*, to solve their problems, villagers almost always resort to the community-based legal system, eschewing any involvement of the state apparatus. In West Java, Grijns and Hori suggest the same development.[19] Platt has also underlined that the dominant influence of community-based law undermines the efficacy of the Marriage Law.[20]

Examining the history of the KUA in Sumbersari, I found evidence of the continuing intervention of religious leaders in the (re)making of the KUA. Their undiminished authority means that the KUA cannot ignore them but has to reach a compromise with these leaders. *Penghulu* discover it is important to maintain a good relationship with religious leaders and local elites if they want to maintain their power. In addition, non-tenured workers at the KUA, who are local villagers, play a significant role in bridging the distance between *penghulu* and the local population.

[17] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 271.
[18] Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth', p. 458.
[19] Grijns and Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns', p. 12.
[20] Maria Platt, *Marriage, gender and Islam in Indonesia: women negotiating informal marriage, divorce and desire* (Oxon. and New York: Routledge, 2017), p. 149.

In Sumbersari, marriage registration is regarded by the common people as a commercial relationship between the state and society. Their argument is simple: the state provides recognition by the means of a marriage certificate and people have to spend a sum of money to acquire this document. Given this perception, *penghulu* consistently find they run into complications when they try to implement the central government regulation which differentiates between *nikah kantor* and *nikah bedolan*. Before this policy came into force, nearly all marriage ceremonies were concluded at home (*nikah bedolan*). By making *nikah bedolan* much more expensive, the state pressures its citizens have their marriage ceremony performed in the office. The thinking behind the state's insistence was to make people fully dependent on its services. However, undaunted people challenge this policy and negotiate it to fit their interest.

In most cases, people differentiate between a marriage ceremony as a religious and social process in which a *kyai* or a *modin* is involved and a marriage ceremony as an administrative process in which a *penghulu* plays a role. People do not want to spend much money on conducting a *nikah bedolan*, which is why there has been a tendency to arrange *akad dua kali* (twofold marriage ceremonies). The first marriage ceremony, held at home, is the one in which they can satisfy their religious obligations, while the second is carried out at the KUA solely for the sake of registration. Of course, as the mediator between the state and society, *modin* play an important role in this and they have constructed a religious argumentation to justify this people's choice. Their solution is the idea of a *ta'kīd al-nikāḥ* (authenticating a marriage, *pengukuhan pernikahan*) to refer to the second marriage ceremony in the KUA. They have needed to invent such a new legal norm to sustain their intermediating role. The idea of *ta'kīd al-nikāḥ* is apparently an undisputed outcome of the negotiations between religious law and state law. It has been effectively used to achieve the religious significance of a marriage as the local people perceive it and to ensure the implementation of the state legal norms on marriage.

As street-level bureaucrats,[21] *penghulu* have to struggle to expand their influence and naturally they are opposed to the idea of *ta'kīd al-nikāḥ*. Nevertheless, they are also aware that *ta'kīd al-nikāḥ* has been the only way to make people conform to the legal obligation of marriage registration. Therefore, *ta'kīd al-nikāḥ* can be identified as a product of a semi-autonomous social field, in which the customs and symbols based on religious law are maintained on the one hand but which also harbours the potential to bring them into line with rules and decisions from outside the field, the state law.[22]

Furthermore, this research has discovered that *penghulu* do not work the same way as *ulama*. This differs from Nurlaelawati's study which suggests that *penghulu* pretend to act as religious authorities.[23] In my study, by contrast, *penghulu* are increasingly identifying themselves as a representative of the state. My study corroborates Van Huis' finding about the competing authorities in West Java. Religious leaders there perceived the state as a threat to their authority which led to a situation in which religious leaders in West Java denied the state authority in Islamic matters.[24] This outcome suggests two interrelated aspects: firstly, *penghulu* always speak on behalf of the state and treat the state law as the source of their authority; secondly, they use a marriage certificate as an important instrument to support their authority. In other words, in order to maintain their legitimacy, *penghulu* consistently advocate state recognition of a marriage, arguing it contributes to the protection of citizens' rights. The fact that *penghulu* are not always successful in persuading society to marry according to the state law in the first place suggests that they do not yet enjoy a solid position in society. When it is all said and done, the legitimacy of a *penghulu's* authority to control people's behaviour is dependent upon the extent to which *modin* play their roles. *Modin* are

[21] Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*.
[22] Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study', p. 720.
[23] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 189.
[24] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', pp. 139–40.

the key to bridging the relationship between the state and society, thereby securing the *penghulu*'s position.

5. Unregistered Marriages and Seeking State Recognition

The last set of findings in this study is connected with the process of legalizing unregistered marriage. It probes into the problem of how people deal with unregistered marriage, that is, a marriage which has been concluded in accordance with the religious requirements but has not been registered at the KUA. The reason they want to legalize an unregistered marriage usually revolves around an emic account of the necessity (*kebutuhan*) of obtaining requisite legal documents, such as marriage or birth certificates mentioning the names of both the parents. The KHI decrees that unregistered marriage can be legalized retrospectively by following the process of *isbat nikah* in Islamic courts. Consequently, *isbat nikah* is the only judicial procedure available to people to legalize unregistered marriages retrospectively and is the only possible legal way to cope with unregistered marriages.

However, in practice, people have yet another way to have their unregistered marriages legalized. Instead of going to the Islamic court, they approach a *penghulu* to register it at the KUA office. In other words, the choice between *isbat nikah* in Islamic courts or registering unregistered marriage in the KUA is dependent on the needs of particular people. *Isbat nikah* is meaningful only to people who seek the legalization of unregistered marriages to obtain a birth certificate for children born out of legal wedlock. If their interest is obtaining a marriage certificate only, they do not go to Islamic courts but solicit the help of *penghulu*. The *penghulu* at the KUA acquiesce in the legalization although they know it is a violation of the law. Their justification is that they are simply helping the people to procure a required document. *Penghulu* usually demand the couples present a letter from the village administration declaring that their marriage has never been registered. Of course, this marriage registration will not change the legal status of children born before the marriage was registered.

Another relevant finding is that, in practice, the judicial procedure of *isbat nikah* can be used to legalize marriages which are not actually

permissible under the terms of the Marriage Law, that is, illegal polygyny and underage marriage. In cases of polygyny, judges do not put much effort into uncovering how the marriage ceremony concerned was performed. They just consider that according legalization is more important for the sake of children's legal status. In other words, *isbat nikah* is accepted on humane grounds. The judges make use of Article 7 (2) e "marriage which is concluded between those who do not have any impediment according to the Marriage Law", but they interpret it more widely. In addition to these two mechanisms, the Indonesian law now provides another legal opportunity for people, who do not request *isbat nikah* from Islamic courts or register unregistered marriage in the KUA, to validate the legal status of children. This is done by submitting a proposal for the children's legalization (*asal usul anak*) to an Islamic court.

This sort of *isbat nikah* supports Nurlaelawati's finding that, in many cases, judges find it hard to apply the rules which they are formally expected to observe. Because the judges cannot force society to adhere to the state law, they have the tendency to go along with the temporal interests of those seeking justice in the courts, although what they do is contradictory to the rules expounded by the state.[25] Here we see that the judges prioritize the common good (*maṣlaḥa*) of the people rather than enforcing the letter of the law as intended by the legislator.

The frontier agencies of marriage, the judges of the Islamic courts and the *penghulu* at the KUA, seem aware that the judicial norm requiring the legal obligation of marriage registration has not been entirely successful. Many Indonesian still prioritize religious validity and are not particularly bothered about the legal validity of marriage. They are willing to comply with the state law only when they are in need of state services. The state has devised the *isbat nikah* procedure to cope with this situation. Judges of the Islamic courts have to exercise their judicial discretion and the *penghulu* at the KUA deliberately transgress the law in order to help citizens comply with the requirements of the state legal framework. The implementation of

[25] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 224.

these procedures is an important leverage in edging people towards the state.

To sum up, with regard to my findings, taken as a whole what we have witnessed is a continuing process of the penetration of state law into Indonesian society. Instead of reforming the substance of the marriage law, which would only stir up controversy and debates, the government has used a citizens' rights approach to control marriage practice. This citizens' rights approach is helpful in guiding people towards compliance with the state legal framework. In order to obtain requisite legal documents, people have no option but to legalize their marriages. However, as long as the dualism of religious validity and legal validity remains an issue, many marriages will remain unregistered. Furthermore, the central state is also endeavouring to remove all forms of informality from the procedures involved. Nevertheless, although the central government has officially removed the informal authority to act from marriage functionaries, in practice it seems it is an uphill battle to reduce the latter's intervention.

Moreover, in terms of legalization of unregistered marriages, we have also witnessed the decision by judges of Islamic courts and *penghulu* at the KUA to adopt a lenient approach towards the rules governing marriage. In certain cases, *penghulu* are willing to turn a blind eye to the rules, while the judges are ready to exercise judicial discretion to enable them to grant state recognition to a marriage. This situation has led to continuing legal plurality within the state. The willingness of the state officials to give a less than strict interpretation of legal rules is key to guaranteeing the functioning of the state law and will be good for the legal development of Indonesia in the future.