

INTERRELIGIOUS MARRIAGES BETWEEN MUSLIMS AND CHRISTIANS IN INDONESIA

Interreligious Marriages between Muslims and Christians in Indonesia

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Abstrak

Dalam masyarakat Indonesia yang multikultural, perkawinan lintas agama bukanlah hal yang asing dan tidak jarang terjadi. Tulisan ini menyoroti isu-isu historis, legal dan politis sehubungan dengan perkawinan lintas agama di Indonesia. Secara khusus fokus penelitian diarahkan pada perkawinan lintas agama di masa pra kolonial dan masa kolonial, perdebatan panas seputar Undang-undang Perkawinan 1974, dan fatwa Majelis Ulama tahun 1980 dan 2005 dan respon gereja serta perdebatan di dalam komunitas Muslim Indonesia tentangnya. Pandangan teolog-teolog Muslim progresif seperti Zainul Zanal dan Siti Musdah Mulia juga diperhitungkan dalam artikel ini. Perbincangan terkini mengenai perkawinan lintas agama menandakan rumitnya permasalahan yang dihadapi oleh masyarakat Indonesia dalam upaya-upaya mengelola kepelbagaian dan kemajemukan religius, menanggapi aspirasi-aspirasi kaum Muslim serta menjunjung tinggi kebebasan beragama.

Kata-kata kunci: perkawinan lintas agama, undang-undang perkawinan, pluralisme, fatwa, kebijakan gereja.

1. MARRIAGE IN THE PRE-COLONIAL PERIOD

In different parts of the archipelago,² people organised their cultural, political and economic life guided by customary law or *adat* which encompassed all aspects of life.

³ As the influence of Islam began to penetrate more deeply aspects of Islamic law began to be incorporated into local cultures. This occurred particularly in the area of Islamic family law.⁴ As Muslim communities developed the mosque occupied a central place not only for prayer but also for deliberating on matters relating to the

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² The term *Nusantara* is sometimes used to refer to the Indonesian islands of the archipelago. *Nusantara* originates from the Javanese words, *nuso* (nation) and *antero* (the whole/ combined).

³ *Adat* refers to cultural practices, institutions, and inherited wisdom and traditions including pre-existing spiritual traditions.

⁴ M.H. Hooker, *Islamic Law in Southeast Asia* (Singapore: Oxford University Press, 1984), 32.

life of the community.⁵ Arbitration systems or *tahkīm* were established and these traditional justice courts or *adat* tribunals were a precursor to early Islamic courts.⁶

Over time Islam challenged aspects of local cultures, such as the strongly stratified nature of Javanese society, but Islam in Indonesia was also shaped by local religious traditions and understandings.⁷ Daniel Lev's study of Islamic Courts makes the observation that the influence of Muslim law in Indonesia was primarily related to the area of marriage and family law.⁸ Hooker's study of the Malacca law of the 15th century revealed that certain elements were adapted from both Islam and *adat*.⁹ The use of Islamic *fiqh*¹⁰ was drawn primarily from the *Shafi'i* school, and was particularly noticeable in the laws relating to marriage.¹¹ From the 16th century onwards there was a significant degree of exchange between the Malay–Indonesian archipelago and the Middle East. Some went on the *hajj* and stayed for further studies before returning home with knowledge to translate religious texts and contribute to the development of a Malay-speaking Muslim identity.¹²

The preponderance of Arabic legal terms in the Indonesian language could be viewed as a sign of the innovating influence of Islamic doctrine in cultural life.¹³

⁵ Daniel S. Lev, *Islamic Courts in Indonesia: A Study of the Political Bases of Legal Institutions* (Berkeley: University of California, 1972), 25. Islamic family law and pre-existing principles and traditions were compatible in a number of areas.

⁶ In some areas two courts of justice operated side by side the *Jaksa* (or *adat*) courts based on local customs and those based on Islamic law conducted by a Muslim religious leader or *penghulu*.

⁷ See M. B Hooker, *Adat Law in Modern Indonesia* (Kuala Lumpur: Oxford University Press, 1978). Hooker contrasts Islamic law with Javanese practices in such areas as women's inheritance and child adoption. In Java men and women divided the property evenly, in contrast to Islamic law. Adopted children according to *adat* had rights of inheritance.

⁸ Lev, *Islamic Courts in Indonesia*, 5.

⁹ Hooker, *Islamic Law in Southeast Asia*, 33. The Sultanate of Palembang and Banten for example made the work of Muslim scholars available for use in deliberating on family law and local Muslim religious leaders or *penghulu* were given a place of respect.

¹⁰ *Fiqh* literally means understanding and acquisition knowledge. It is the rulings of Islamic scholars and jurists on jurisprudence and the interpretation of the *syariah*.

¹¹ A Muslim marriage required: two partners both of whom were Muslims /or the man to be a Muslim and the woman a *kitabiyah*; the *akad nikah* or marriage contract consisting of the *ijāb* (offer) and *qabūl* (acceptance); two witnesses; a *wali* or guardian; and a dower or *mahar* to be given to the wife. See Siti Musdah Mulia, *Muslimah Reformis* [Muslim Women Reformers] (Bandung: Mizan, 2004), 363. See also K.H. Hasbullah Bakry, *Pendekatan Dunia Islam dan Kristen* [Bringing Together the Muslim and Christian Worlds] (Jakarta: Grafindo Utama, 1985), 37. Bakry notes that in the *Shafi'i* school a Muslim man may marry a Christian woman.

¹² Azyumardi Azra, *Islam in Southeast Asia: Tolerance and Radicalism* (Melbourne: CSCI, 2005), 6. Texts from the *Sunni Syāfi'i* school (*maddhab* or *mazhab*) were translated. Nuruddin ar-Raniri was one important scholar in Aceh who from 1637-1643 wrote voluminous works.

¹³ See Lev, *Islamic Courts in Indonesia*, 6. Lev refers to the 'hybridisation' of Islamic Law and local custom in which religious influences blended with one another in a more or less harmonious way. Interaction was in the main peaceful but in some places tensions arose when for example pre-existing cultural practices encountered Islam's different inheritance system.

Considerable regional variety nevertheless existed in terms of how Islamic law and *adat* interacted.¹⁴ In different parts of the archipelago the two systems, Islamic and traditional religious beliefs, interacted with one another creating a social and cultural synthesis.

2. DUTCH–MUSLIM RELATIONS: MARRIAGE AND INTERMARRIAGE IN THE COLONIAL PERIOD

The coming of European powers, first the Portuguese and then the Dutch, was to herald major changes in the region. In his analysis of interreligious relations during the period of Dutch colonialism, Steenbrink refers to four main patterns of Dutch response to their encounter with Muslims. Dutch traders first showed caution, curiosity and selective admiration. They disapproved of Muslim doctrines but were respectful of Muslim behaviour. In the 17th century this view was replaced by a more negative view of Islam. Muslims were ‘detestable heretics’.¹⁵ The next pattern was one in which the relationship between the Dutch and indigenous Indonesians could be characterised as ‘natural hostility’.¹⁶ This was reflected in the high walls surrounding the Dutch East India Company’s trading stations.¹⁷ Once colonial rule was firmly established fear towards Muslims gave way to paternalism. The Dutch saw themselves as teachers or guardians of a still uneducated people whose religion was backward and superstitious.

Under Dutch colonial rule Muslim political aspirations were strongly discouraged and political forms of Islam that challenged colonial rule were dealt with harshly. The Dutch soon realised that ruling a majority Muslim population required consideration of Muslim sentiments. To avoid upsetting the local population the work of Christian

¹⁴ See also Ratno Lukito, *Islamic Law and Adat Encounter: The experience of Indonesia* (Jakarta: Logos, 2000). Lukito uses the term ‘symbiotic legal encounter’ to describe the encounter and exchange that took place. Aspects of *syariah* were more pronounced in some areas such as Aceh, Demak (in Java), Cirebon, Benten, Goa (South Sulawesi), Ternate, Jambi, and South Kalimantan.

¹⁵ See Steenbrink, *Dutch Colonialism and Indonesian Islam: Contacts and Conflicts 1596-1950*, esp. chap. 3. Steenbrink refers to the legacy of the Middle Ages and the Crusades as well as Luther’s politically biased rejection of Islam in connection with the expansion of the Ottoman empire which, along with other events, combined to create a negative impression of Islam in Europe.

¹⁶ Steenbrink, *Dutch Colonialism and Indonesian Islam: Contacts and Conflicts*, 21. See esp. chap. 4.

¹⁷ Dutch East India Company was known as the VOC (*Verenigde Oost-Indische Compagnie*).

missionaries in Muslim areas was strictly controlled.¹⁸ The Dutch developed a policy of giving recognition to Islamic family law whilst extending the power of authorities and the civil courts.

Efforts to codify law in areas under VOC control saw a number of statutes and codes passed. Dutch recognition of Islamic marriage, divorce and inheritance laws suggests that these elements of *syari'ah* were well-established in many communities.¹⁹ The role of local Muslim religious advisers or *penghulu* in the administration of marriage affairs was recognised in 1820.²⁰ A royal decree formally established Islamic courts in a number of districts in 1882 for the purpose of addressing marriage, divorce and inheritance.²¹

Giving recognition to Islamic family law was symbolic of Islam's authority and significance. There were voices of concern in the Dutch government about the wisdom of setting up Islamic courts (the *Raad Agama* or *Pengadilan Agama*). Some thought that the setting up of Islamic courts with native judges might fuel Islamic aspirations for a wider application of Islamic law.²²

¹⁸ Steenbrink, *Dutch Colonialism and Indonesian Islam*, esp. chap. 6. In the Philippines the arrival of the Portuguese halted the expansion of Islam whereas in Indonesia some scholars argue that Dutch policy aided its spread particularly with the introduction by the Dutch of Article 177 which placed tight control on missionary work. A flourishing of missionary activity did however later take place coinciding with the extension of the colonial system of education leading to perceptions that education and Christian mission went hand in hand. See also See McAmis, *Malay Muslims*, 25.

¹⁹ See Muhammad Atho Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia: Sebuah Studi tentang Pemikiran Hukum di Indonesia 1975-1988* [Fatwas of the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975-1988] (Jakarta: INIS, 1993), 228. For example: *Statuta Batavia* (1642); the *Kitab Moharder* or *Kitāb Muharrar* for the area around Semarang (1750); the *Kitab von Bone and Goa* (1759) in South Sulawesi; the *Compendium Freijer* (1760) and the *Pepakem Cirebon* (1768). The colonial government continued this trend of allowing Muslim organisations and councils to be established as long as Muslim scholars and lawyers met for the purpose of discussing religious rather than political concerns.

²⁰ See K. K. Hasbullah Bakry ed., *Kumpulan Lengkap Undang-Undang Dan Peraturan Perkawinan Di Indonesia* [Collection of Regulations and Laws relating to Marriage in Indonesia] (Jakarta: Djambatan, 1978), 247-268. In 1820 in the *Staatblad* (state gazette no. 20) Regents or *Bupati* were instructed to recognise the role of *penghulu* in matters of family and inheritance (Pasal 13 *Regenten Instructie*).

²¹ Lev, *Islamic Courts in Indonesia*, 28. 1820 signifies the formal beginning of religious courts in Indonesia though the existence of Islamic courts clearly predated the colonial period. Religious courts were set up in Java and Madura (Stbl. 1882/no. 152; Stbl. 1940/no. 3); South and East Kalimantan (Stbl. 1937/no. 638, 639) and for other parts of Indonesia. A three member Supreme Islamic court (*Mahkamah Islam Tinggi*) was based in Solo. The appointment and dismissal of Islamic religious experts was in the hands of Government officials. The chief *penghulu* reported to the Resident every 3 months. The Civil or District court known as *Pengadilan Negeri* (Stbl. no 58 of 1835) considered cases of litigation over marriage and inheritance which had financial implications.

²² Cornelis Snouck Hurgronje, advisor on Muslim affairs in the East Indies advocated for a division between political and religious aspects of Islam. In the 1930s he and some other Dutch scholars suggested that *adat* rather than Islamic law should be given greater recognition.

A Marriage Ordinance introduced in 1895 required the presence of a designated official at marriage ceremonies but government moves to make marriages monogamous and to formalise divorce in the secular courts were put on hold following strong resistance from Muslim communities.²³ Attempts to transfer jurisdiction over property affairs and inheritance from the Islamic courts to the civil courts in 1931 also met with formidable opposition. Not surprisingly there was reluctance on the part of Muslims to allow the few vestiges of Islamic institutions to be eroded. Some of the issues in these debates would later be echoed in the 1973 debate on the draft marriage bill which was widely interpreted as an attempt to extend secularising influences.

The legal system practised under Dutch colonialism differentiated between three different racial groupings: Europeans (including the Japanese), 'Foreign Orientals' (Chinese, Indians and Arabs), and Inlanders (natives). Whilst Dutch Criminal law and State Security law applied to all, different marriage laws applied to the different groupings. Europeans came under the marriage law of the Netherlands and other groups had their own customary law.²⁴ G.H.R. (*Regeling op de Gemengde Huwelijken S. 1898 No 158*) regulated the different marriage codes for each of the three racial groupings.²⁵

Confirmation and blessing of Christian marriages during the VOC period were a church responsibility. Later, with the impact of Enlightenment ideas in Holland, marriages came under the jurisprudence of the government and this led to a number of changes in marriage procedures in the Netherlands Indies. Christian couples were required to notify a government official who issued a notice of intent on the condition that the prospective marriage was announced three times in church services. Local churches kept records of the marriages that were conducted and passed this information to government officials each month. The Government registered marriages and provided a certificate. In line with Dutch Reformed Christian

²³ See Fealy and Hooker eds., *Voices of Islam in Southeast Asia: A Contemporary Sourcebook*, 43. Fines were later incurred if marriages took place without the presence of an official.

²⁴ See Bakry, *Kumpulan Lengkap Undang-Undang Dan Peraturan Perkawinan Di Indonesia*, 247.

²⁵ Ibid. The *Indische Staatsregeling* (1925) Article 131 and 163 categorised people into three different racial groups each with their own marriage laws. *Burgerlijk Wetboek* (BW): *Burgelijken Strand voor Europeanen* applied to Europeans and marriage registration fell under ordinance was Stbl. 1849/25. Muslim marriages were regulated under Stbl. 1882/152. For Christian Indonesians the *Huwelijks Ordonnantie Christen Indonesiers* (HOCl) or Stbl. 1933/74 applied and for registration Stbl. 1933/75. Chinese marriages were regulated under Stbl. 1919/81 and Hindus and Buddhist marriages were conducted according to their *adat*.

understanding, under Dutch colonial rule the church blessed marriages which had been ratified by the State.²⁶ A marriage law and ordinance for Christians were first established in Maluku in 1861 where Christian marriages were registered in the Civil Registry Office or *Kantor Catatan Sipil*. In 1933 a new law replaced the 1861 law regulating marriages of Javanese, Minahasa and Ambonese Christians.²⁷

Dutch regulation also legislated for “Mixed Marriage” which was defined as a marriage between two people in Indonesia who came under different laws.²⁸ A key phrase in the GHR Stbl.1898/158 was Article 7 (2): “Difference of religion, race or place of origin is no hindrance to marriage.”²⁹ Reflecting the patriarchalism of the times, a woman for legal purposes came under the law of her husband as did her children. Conversion to the husband’s faith was not required.

During the long period of Dutch rule different marriage laws applied to Muslims and Christians. Muslims had their own religious courts whilst Christian marriages were registered in the civil courts. This factor would later be of relevance in the conflict which emerged over Indonesia’s draft marriage bill. Originating in Dutch policy Muslims and Christians in Indonesia brought different experiences and assumptions concerning how marriage should be regulated. They had also inherited different understandings of the relationship between religion and state. Reconciling these different perspectives and expectations when attempting to formulate an Indonesian marriage law to be applied universally would prove challenging.

3. THE INDONESIAN MARRIAGE LAW (UUP No. 1 1974)

²⁶ J.L Ch Abineno, “Peneguhan dan Pemberkatan Nikah [Recognition and Blessing of Marriage]”, in *Pelaksanaan Undang-Undang Perkawinan Dalam Perspektif Kristen* [The Practice of the Marriage Law: a Protestant Perspective], eds., Weinata Sairin and J.M. Pattiasina (Jakarta: PT BPK Gunung Mulia, 1996), 20-32.

²⁷ See Bakry, *Kumpulan Lengkap Undang-Undang*, 67-88, 91-115. The new law was known as *Undang-Undang Perkawinan Kristen Jawa, Minahasa dan Ambon* or *Huweljkordonantie Christen Indonesia*.

²⁸ *Ibid*, 61-64. The relevant law relating to mixed marriages was GHR Stbl.1898/158 *Peraturan Tentang Perkawinan Campuran* and for the registration of mixed marriages Stbl. 1904/279. Indonesian original: Article 1 “Yang dinamakan Perkawinan Campuran, ialah perkawinan antara orang-orang yang di Indonesia tunduk kepada hukum-hukum yang berlainan.”

²⁹ The wording of Article 7 (2) was reproduced in the draft marriage bill of 1973 but after much debate was later withdrawn. The spirit of Article 10 of the GHR which stated that the marriage could be ratified as long as it did not contravene the laws that applied to either partner was retained in the 1974 marriage law.

In 1946 with nationalistic revolutionary fervour still strong, the Indonesian government expressed the intention of unifying administration of marriage and divorce and of developing marriage laws that would apply throughout Indonesia promoting the unity of Indonesia.³⁰ In 1950 a Committee (*Panitia Penyelidik Peraturan Hukum Perkawinan, Talak dan Rujuk*) was given the task of examining existing laws and proposing new laws in the area of marriage, divorce and inheritance. Initial work was done in recommending the registration of Muslim marriages.³¹ In 1963 a National Seminar was held to assist in the process of developing a national marriage law. The Minister for Justice gave the task of drafting new legislation to the law body, LPHN (*Lembaga Pembinaan Hukum Nasional*), in 1966 giving instructions that legislation must reflect the five pillars or *Pancasila* on which the State was built.

Achieving a unified marriage law proved more complicated than was originally envisaged. The pluralism of the colonial legacy presented a major challenge. There were doubts about the wisdom of trying to develop a unified national marriage law in a country of such diversity of peoples, cultures and religions.³² Women's groups were lobbying hard for a national marriage law that would strengthen women's rights and status and a number of submissions were made to the government by these groups.³³ Women wanted to see restrictions on arbitrary divorce and polygamy and a minimum age limit set for marriage. They also wanted it to be clearly stated that consent by both parties was required.

Seven years after LPHN had been given the task and the recall of two earlier drafts, the President announced the marriage bill (RUUP) on 31 July 1973. Even before it was released there were concerns being expressed. Kasman Singodimedjo, Chair of the large Muslim organisation, *Muhammadiyah*, and its Secretary, Ir. H.M. Sanusi, wrote to the Government on 30 July stating that, "most of what is in the RUUP ... is

³⁰ Hooker, *Islamic Law in Southeast Asia*, 257. See also Lev, *Islamic Courts in Indonesia*, 55.

³¹ A statute was passed in 1946 (No. 22) concerning registration of Muslim marriages, reconciliation and divorce. Registration was recommended but not made a requirement for a Muslim marriage to be valid. In 1954 the issue of registration of Muslim marriages was further defined in Law No 32/1954 (*Registration of Marriage, Talak dan Rujuk*; 1952). See Bakry, *Kumpulan Lengkap Undang-Undang*, 117-130.

³² See Direktorat Jenderal Hukum dan Perundang-Undangan Departemen Kehakiman [Department of Justice], *Sekitar Pembentukan Undang-Undang Perkawinan* [The Formation of the Marriage Laws], (Jakarta: Departemen Kehakiman, 1974), 78. Ischak Moro's speech in the House of Representatives (DPR), for example, highlighted the difficulties involved in developing a unified law.

³³ See June S. Katz and Ronald S. Katz, "The New Indonesian Marriage Law", *American Journal of Comparative Law* 24 (1975), 656-658.

diametrically opposed to the teachings of Islam” and outlined areas where the bill departed from Islamic Law.³⁴ Materials and submissions prepared by Muslim groups expressed similar concerns.³⁵

Discussion of the marriage bill took place in a context where a segment of the Muslim population was experiencing considerable disappointment. Islam had been at the forefront of the struggle for independence but since then the hopes that Indonesia would give greater recognition to Islam and *syari'ah* had not been realised. There were some gains for Muslims but overall aspirations had been frustrated.³⁶ The 1971 election results had not delivered strong support for Muslim parties and restrictions on the use of Islamic symbols created the feeling that Islam was being sidelined, first under the political system of Sukarno and then under Suharto.³⁷ This set up a contest between state power and religious authority in the minds of many Muslims.

Relationship between Muslims and Christians post-independence had been reasonably peaceful but there was considerable concern being expressed in Muslim circles about the missionary efforts of Christians following reports of large numbers of conversions to Christianity in Java following the 1965 communist coup. This created a fear of Christianisation which was discussed in Chapter Two. The early 1970s was a setting in which there was an undercurrent of intense religious rivalry between the two faiths.³⁸ When the marriage bill was being debated these factors came into play particularly because the draft bill made provisions for mixed marriages between adherents of different religions.³⁹ Some thought the bill provided an example of the majority faith perspective being ignored in favour of minority faith

³⁴ The letter and additional documents sent by Muhammadiyah are included in Direktorat Jenderal Hukum dan Perundang-Undangan Departemen Kehakiman, *Sekitar Pembentukan Undang-Undang Perkawinan*, 138-146.

³⁵ See Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia*, 52. Mudzhar outlined a number of Articles of the draft bill considered contradictory to Islamic doctrines such as: requiring divorce and permission for a second marriage to be granted by the courts (with secular civil courts intended); adopted children being given the same status as natural ones; legitimisation of children conceived during betrothal; requiring a divorcee to wait 306 days before being permitted to marry (contradicting the *'idda* waiting period of three cycles of the monthly period in Islam for a divorcee and 4 months and 10 days for a widow). The proposed marriage bill placed religious law in a position second to the civil law.

³⁶ See Bakry, *Kumpulan Lengkap Undang-Undang*, 276-280. Some gains included the setting up of the Ministry for Religious Affairs (to pay particular attention to the needs of the Muslim community) and government regulations to extend the authority and Jurisdiction of the Religious Courts so that their mandate included matters of inheritance.

³⁷ *Ibid*, 158-160.

³⁸ See Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia*, 67, 88.

³⁹ Article 11 (2) of the July 1973 draft bill stated that “Differences based on nationality, ethnicity, country of origin, place of birth, religion/beliefs and background is not an impediment to marriage.” This was identical wording to the GHR Dutch law relating to Mixed Marriage (Stbl. 1898/158).

perspectives. Others went further and claimed the bill aimed at undermining Islamic doctrines and could be used by those whose intents were to Christianise Indonesia.⁴⁰ There were calls to have the Article relating to mixed interreligious marriages removed. Muslim groups were also infuriated that the draft bill stated that a marriage was only legally valid if it was registered by the appropriate government agencies with no mention of the Islamic courts. Many saw this as evidence that the government wanted to adopt a secularised approach to marriage law and attack their institutions. Sessions of Parliament became heated with strong reservations being expressed particularly by the Muslim faction (PPP) and outside Parliament Muslim opposition to the draft bill was growing.⁴¹

Newspaper articles critical of the bill were influencing public opinion, fiery sermons were being preached, and popular support was becoming mobilised.⁴² On 27 September 1973 the Government prepared a response to the concerns raised which was presented by the Minister for Justice, Oemar Seno Adji and the Minister for Religious Affairs, H.A. Mukti Ali. As Mukti Ali spoke in Parliament the session had to be adjourned when around 500 student protestors caused a disturbance. Under pressure the government realised that it needed to negotiate with Muslim groups. *Nahdlatul Ulama* (NU) and *Muhammadiyah* leaders offered to assist the government to rework the bill and a small committee of seven, including members from the different factions and the armed forces tried to arrive at consensus.⁴³

The government gave assurances that aspects of the draft legislation that went against Islamic doctrine would be adapted or omitted and affirmed that the status of the Religious Courts would be unchanged. Women's groups were also lobbying to retain Articles that supported their concerns. The Indonesian Council of Churches (DGI)

⁴⁰ This was the view of H.M Rasjidi, "Kristenisasi dalam Selubung [Hidden Christianisation]", in an article published in *Nusantara* on the 18 August, 1973. Rasjidi described the marriage bill as promoting 'Kristenisasi' and reference was made to the tragic recent marriage of a princess of the Palace of the Pakubuwono XII (Sri Sunan B.R.A. Kus Supiah) to a Christian. The article along with other press clippings which reveal the heated public debates that were occurring are cited in Direktorat Jenderal Hukum dan Perundang-Undangan Departemen Kehakiman *Sekitar Pembentukan Undang-Undang Perkawinan*, 154-157.

⁴¹ See Direktorat Jenderal Hukum dan Perundang-Undangan Departemen Kehakiman, *Sekitar Pembentukan Undang-Undang Perkawinan*, 53-153. On 30 August 1973, after an explanation of the draft bill was provided by Oemar Seno Adji, the Minister of Justice, speeches from members of *Partai Persatuan Pembangunan* (PPP) expressed strong opposition to the bill.

⁴² See M. Cammack, L. Young and T. Heaton, "Legislating Social Change in Indonesian Society", *American Journal of Comparative Law* 44 (1996), 54.

⁴³ See Weinata Sairin and J.M Pattiasina, *Pelaksanaan Undang-Undang Perkawinan Dalam Perspektif Kristen* [The Practice of the Marriage Law: a Protestant Perspective] (Jakarta: PT BPK Gunung Mulia, 1996), 248-254. The document was entitled "*Pokok-pokok Pemikiran Badan Pekerja Harian DGI/MAWI.*"

and the Council of Catholic Bishops (*Majelis Agung Waligereja Indonesia*) wrote to the government outlining a number of matters of concern.⁴⁴ The memorandum asked for assurance that freedom to worship according to each person's beliefs would be guaranteed. It requested clarification on the legal status of civil marriages and explained that if it were decided that marriages must be conducted according to religious laws, the churches faced the predicament of not having their own developed marriage laws. On humanitarian grounds and for good order, it requested the State ensure all people be able to marry legally according to the law of the land. On the issue of mixed marriages the question was asked, "For prospective couples who have different religions, something that often occurs, under which religious law do they marry?"⁴⁵

A revised bill which accommodated Muslim concerns came before Parliament on 22 December 1973 symbolically coinciding with Women's Day and was passed, formally becoming law on 2 January 1974. The head of the Ministry of Justice, Soegondo Soemodiredjo, described the new law as a significant achievement for those who had been seeking greater recognition of women's rights. The new legislation made clear the purpose of marriage (to form happy and lasting families); set a minimum age for marriage (nineteen for men and sixteen for women); stated that wife and husband have equal rights on matters relating to the family; normalised monogamy; and made it a requirement that a legal marriage be registered by recognised marriage registry officers.⁴⁶

The 1974 Marriage Act differed significantly from what had been proposed in the draft bill particularly in relation to how it defined the requirements for a valid marriage. The statute stated that the purpose of marriage was the formation of families founded on God (Article 1) and a valid marriage was dependent on compliance with religious requirements. It must be performed according to the law and beliefs of each religion and registered according to existing laws (Article 2).⁴⁷

⁴⁴ Ibid.

⁴⁵ Ibid, 248. Indonesian original: "Kalau calon-calon suami-isteri manganut agama-agama yang berlainan suatu hal yang sering terjadi- menurut agama manakah mereka kawin?"

⁴⁶ See Direktorat Jenderal Hukum dan Perundang-Undangan Departemen Kehakiman, *Sekitar Pembentukan Undang-Undang Perkawinan*, 8.

⁴⁷ UUP Article 2 (i) in Indonesian: "Perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya itu. ii). Tiap-tiap perkawinan dicatat menurut peraturan perundang-undangan yang berlaku."

Christians responded to the passing of the Marriage Law with some reservation. The concerns raised by the churches in their letter to the Government had not been adequately addressed and they had felt marginalised in the debate. Most Indonesian churches did not support mixed marriage but they believed that aspects of the law appeared antithetical to religious freedom. The law promoted the place of religion in Indonesian society but there was now no clear way that couples could choose to have a civil marriage. They predicted that mixed faith couples would encounter significant difficulties as a result of the passing of the law. Christians were also left wondering if Islam would now play a more influential role in law-making and public policy debates in Indonesia with fears about whether non-Muslims would continue to be treated as equal citizens.⁴⁸

Considering the colonial legacy, arriving at a national marriage law was an enormous task. The goal of promoting gender justice, whilst in a more diluted form than the original draft bill, was given significant impetus with the passing of the law and represented a major achievement. Writing thirty years after the passing of the 1974 Marriage Law respected Muslim intellectual Azyumardi Azra judged that the law had successfully accomplished a number of goals.⁴⁹ He also thought that the law represented a trend towards the institutionalisation of *syari'ah*.⁵⁰

4. EFFECTS OF THE NEW LAW ON INTERRELIGIOUS MARRIAGE

In the 1974 Marriage Law Article 57 refers to 'Mixed Marriage' as a marriage between an Indonesian citizen and someone of another nationality. Interreligious marriage between two Indonesians is not explicitly mentioned. The Marriage Law's silence on the matter led to conflicting interpretations about whether such marriages were prohibited. Article 2 stated that no valid marriage may occur outside the laws of the respective religions and beliefs. Although Article 8 did not name interreligious

⁴⁸ See Katz and Katz, "The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural and Legal Systems", 665.

⁴⁹ See Azyumardi Azra, "The Indonesian Marriage Law of 1974: An Institutionalization of the *Shari'a* for Social Change", in *Shari'a and Politics in Modern Indonesia*, eds., Arskal Salim and Azyumardi Azra (Singapore: Institute of Southeast Asian Studies, 2003), 88. Azra contends that the marriage law contributed to creating stable families, reducing divorce and polygamy, helping bring population growth under greater control, promoting the rights and equal status of women, and helping to unify the nation.

⁵⁰ *Ibid*, 94.

marriages in its list of prohibited marriages, clause 8(f) stated that a marriage was prohibited between two people if they have a relationship that “according to their religion is not permitted”.⁵¹ It was argued that implicitly this meant Indonesians could no longer lawfully become married to someone of another faith unless one of them converted. During the 1980s, Article 2 and 8(f) provided the rationale for District Religious Affairs Offices (KUA) and Civil Registry Offices (KCS) to refuse requests of interfaith couples to have their interfaith marriage registered.

This confusion was compounded by the existence of different views amongst Muslims as to whether Islamic Law permits interreligious marriage for Muslims. In March 1976 a letter originating in the Department of Religious Affairs was sent to the mayor of Malang with copies sent to the Department of Justice and Home Affairs. In the letter Wasit Aulawi, who had responsibility over Islamic Courts, expressed the view that Islamic law allowed Muslim men to marry *Ahl al-Kitab* women but the reverse was not permissible.⁵² The letter which intended to offer clarity to the Muslim community revealed the extent of confusion surrounding the issue.

Protestant leaders and Roman Catholic bishops were of the view that the State had a responsibility to assist its citizens who chose to enter into interreligious marriages and argued that the KCS should continue to assist such couples.⁵³ Legal experts took a similar position. Ali Said of the Supreme Court drew attention to a ‘legal vacuum’ that existed in relation to interreligious marriage. Invoking the repeal provision in the Marriage Law, Article 66, it was argued that the relevant Dutch law relating to mixed marriages could be regarded as continuing to be applicable.⁵⁴ The Department of Justice communicated this view on 6 July 1976 writing to the Department of

⁵¹ UUP Article 8 in Indonesian: “Perkawinan dilarang antara dua orang yang: (f) mempunyai hubungan yang oleh agamanya atau peraturan lain yang berlaku, dilarang kawin.”

⁵² See Departemen Agama R.I, *Himpunan Peraturan Perundang-Undangan Perkawinan* [Collection of Laws relating to Marriage] (Jakarta: Departemen Agama R.I., 2001), 539.

⁵³ From the 12-14 March 1987 representatives of the Indonesian Fellowship of Churches (Protestant churches) and KAWI (Catholic Bishops) discussed interfaith marriage and agreed that couples be encouraged to marry in the Civil Registry Office with both continuing to maintain their own faith. The meeting also recommended that churches provide couples with special pastoral care noting that not all churches have felt able to bless inter-religious marriages. See Sairin and Pattiasina, *Pelaksanaan Undang-Undang Perkawinan Dalam Perspektif Kristen* [The Practice of the Marriage Law: A Protestant Perspective], 53.

⁵⁴ The new Marriage Law (article 66) revoked the old *Burgerlijk Wetboek* laws (*Ordonansi Perkawinan Indonesia Kristen* (Huwelijks Ordonantie Christen Indonesiers S.1933 No. 74), *Peraturan Perkawinan Campuran* (Regeling op de gemengde Huwelijken S. 1898 No. 158) and any other laws relating to marriage) *only insofar as they were in covered by the new law* (emphasis of the researcher).

Religious Affairs and copying the letter to governors and regional courts.⁵⁵ In April 1981 the Attorney General of the Supreme Court, Mudjono, wrote to the Minister for the Department of Religious Affairs and the Minister for Internal Affairs and again offered this legal opinion. The letter pointed to the importance of providing legal security for couples so as to avoid negative and undesirable effects that could flow from unregistered marriages.⁵⁶ The Attorney General called on the Minister of Religion to assist in the smooth administration of mixed marriages and requested that the Minister for Internal Affairs write to all Governors and officials working in Registry Offices to inform them that interreligious marriages could be legally performed.

Efforts to uphold the right of interfaith couples to have their marriages legalised lacked political support. In December 1983 a Presidential letter of Instruction (12/1983) stated that the role and responsibility of Civil Registry Offices (KCS) in the registration of births, marriages, divorces and deaths applied only to those who were not Muslims.⁵⁷ Advice from the Ministry of Religion to marriage registry officials in 1984 further curtailed KCS from registering marriages of Muslims.

Indonesian researchers, Rusli and Tama, writing in 1984 noted that “from all appearances, many interfaith marriages are still being conducted in local offices of the KCS”.⁵⁸ Statistics from the Civil Registry office in Jakarta (April 1985-1986) showed that interreligious marriages continued to be registered but from this time interfaith couples began encountering significant difficulties.⁵⁹ Previously the Civil Registry Office (KCS) had been willing to perform civil marriages but there were

⁵⁵ A copy of the advice written by Hadipoernomo is included in Departemen Agama R.I, *Himpunan Peraturan Perundang-Undangan Perkawinan* [Collection of Laws relating to Marriage], 537.

⁵⁶ See Sairin and Pattiasina, *Pelaksanaan Undang-Undang Perkawinan Dalam Perspektif Kristen* [The Practice of the Marriage Law: a Protestant Perspective], 339-340. Sairin and Pattiasina include a copy of the letter concerning “Jurisprudence from the Head of the Supreme Court No. KMA/72/IV/1981 20 April 1981.” Local and regional courts had been requesting advice and clarification on this matter and there were urgent calls for the problem to be resolved.

⁵⁷ Ibid. The relevant document included in Sairin and Pattiasina is entitled “Penetapan dan Peningkatan Pembinaan Penyelenggaraan Catatan Sipil Presiden Republik Indonesia.”

⁵⁸ S.H. Rusli and R. Tama, *Perkawinan Antar Agama dan Masalahnya* [Interreligious Marriage and its Problems] (Bandung: Shantika Dhama, 1984), 37. Rusli and Tama expressed concern that if mixed couples were not able to marry they may be forced to live together without having their union formally recognised denying them rights under the law.

⁵⁹ See Tutik Hamidah, “*Peraturan Perkawinan Antaragama di Indonesia: Perspektif Muslim* [The Regulation of Interfaith marriages in Indonesia: A Muslim Perspective]”, (Masters thesis, Yogyakarta: IAIN Sunan Kalijaga, 2000). Hamidah accesses statistics from the Civil Registry office in Jakarta (1985-1986) showing that 112 Muslim men and 127 Muslim women registered inter-religious marriages.

now moves to discontinue this practice. Some couples received rejection notices (*surat tolakan*) and those who pursued their case through the courts encountered a lengthy and costly process.⁶⁰ A complicating factor was that in the Indonesian courts past decisions were not necessarily binding and there is no clear system of precedent.⁶¹ Where couples were able to obtain a civil marriage, some encountered problems when their marriage was considered invalid by their religious community.⁶² Those who planned to have two marriage ceremonies faced additional difficulties.⁶³

The legal vacuum in the new law was clearly creating considerable confusion. There were voices calling for a solution so that interreligious marriages could be recognised by the State and by the religious law of each faith. Other voices declared that interfaith marriages were now prohibited.

5. THE ONGOING DEBATE: *FATWA* AGAINST INTER-RELIGIOUS MARRIAGE

There had always been a diversity views in Indonesia on the subject of interreligious marriage. Islamic marriage law in Indonesia up until 1991 had taken the form of normative law rather than formal law so it had been largely uncodified and therefore was implemented according to different cultural norms and traditions. It appears that in the past the view that an interreligious marriage of a Muslim man and *kitabiyya* woman was valid had wide acceptance. When K. H. Hasbullah Bakry was writing in 1969 for example he assumed that this was the case. He suggested that a Muslim marriage might be one between a Muslim man and a Christian woman and referred to the fact that one of Prophet's wives was a Christian and another was Jewish, to show

⁶⁰ See Simon Butt, "Polygamy and Mixed Marriage in Indonesia: The Application of the Marriage Law in the Courts", in *Indonesia: Law and Society* ed., Timothy Lindsey (Leichhardt: The Federation Press, 1997), 122-140. Butt examines the case of Andi Vonny Gani (Muslim) and Adrianus Petrus Hendrik Nelwan (Protestant) which went to the Supreme Court after the KUA and Civil Registry Office in Jakarta refused to recognise their interreligious marriage. Their marriage was ultimately legalised but aspects of the Supreme Court's 1989 decision added to confusion. The Supreme Court noted the legal vacuum in the Marriage Law and restated that every citizen has the right to marry another citizen according to Article 27 of the Indonesian Constitution. At the same time, the Court interpreted the couple's decision to marry according to the Christian faith as a choice by the Muslim partner to depart from the teachings of their faith.

⁶¹ *Ibid*, 136-140. Judges and lawyers use prior decisions of the highest court in the land (*Mahkamah Agung*) as a guide but past decisions are not binding in Indonesia's legal system.

⁶² Rusli and Tama, *Perkawinan Antar Agama dan Masalahnya*, 39.

⁶³ *Ibid*. As an example, Rusli and Tama note that Catholicism and Islam both expect their marriage ceremony to be the final one and there is a tendency to suggest their ceremony supersedes what goes before.

that there was no prohibition to this form of intermarriage.⁶⁴ It is therefore of interest why the view represented by Bakry subsequently failed to have the support of Indonesia's *ulama*. In 1980 the *Council of Indonesian Ulama* or MUI issued a *fatwa* (religious decree) against intermarriage for all Muslims.⁶⁵ *Fatwa* issued by the MUI are not legally binding but carry considerable authority and provide moral principals which guide the Indonesian Muslim community.

In July 2005 MUI reissued its opposition to interfaith marriages. In the preamble to *Fatwa* No 4/2005 MUI stated that it had decided to reissue its 1980 *Fatwa* because mixed marriages "were occurring frequently" and public debate surrounding mixed marriages (including the views of Muslims who supported interfaith marriages) had contributed to unease within the Muslim community.⁶⁶ An overview of seven Qur'anic texts on marriage and intermarriage is provided and reference is made to a *hadith* text from Abi Hurairah.⁶⁷ *Fatwa* No 4/2005 consists of two sentences:

- 1) Interfaith marriages are *haram*⁶⁸ and illegal.
- 2) The marriage of a Muslim man and a *Woman of the Book* (*Ahlu Kitab*), according to *qaul mu'tamad*⁶⁹ is *haram* and prohibited.

Fatwa No 4/2005 is as unequivocal in its opposition to interreligious marriage as the 1980 edict, if not stronger. Both state that it is *haram* for any Muslim to marry a non-Muslim. The 1980 *Fatwa* notes that there are differences of opinion on the subject of whether a Muslim man may marry an *Ahlu Kitab* woman but stated that because the ill-effects (*mafsadah*) are greater than the benefits (*maslahat*). This reference to the

⁶⁴ See Bakry, *Pendekatan Dunia Islam dan Kristen* [Bringing together the Muslim and Christian Worlds], 21.

⁶⁵ MUI was formed in May 1975 along with regional *ulama* councils in 26 provinces at the initiative of President Suharto and represents the highest Islamic authority in Indonesia. MUI enables the views of *ulama* to be heard on public policy but was not set up as a government body (though it has received government funding). On some matters the government appears to give consideration to the position adopted by MUI when drafting legislation. See Nicholaas Jan Gerrit Kaptein, *The Voice of the 'Ulama: Fatwas and Religious Authority in Indonesia* (Singapore: ISEAS, 2004).

⁶⁶ See Majelis Ulama Indonesia, *Fatwa Perkawinan Beda Agama* [Fatwa Concerning Interreligious Marriage] No 4/2005. <http://www.mui.or.id/files/04-Fat-Munas-Kawin%20beda%20Agama.pdf> (accessed March 3, 2006).

⁶⁷ Seven Qur'anic texts referred to include: QS. an-Nisa 4:3, al-Rum 3:21, al-Tahrim 66:6, al-Maidah 5:5, al-Baqarah 2:221, al-Mumtahanah 60:10 and al-Nisa 4: 25. Three are injunctions to marry and to protect one's family and three specifically relate to interfaith marriage (5:5, 2:221 and 60:10). Different interpretations of these texts were discussed in Chapter Three and will be discussed further in a later section in this chapter.

⁶⁸ *Haram* refers to anything that is prohibited and the opposite is *halal*.

⁶⁹ *Qaul mu'tamad* refers to the most approved juristic view.

‘*Qa’idah Fiqh*’ principle calls Muslims to choose the path that is less likely to threaten faith or lead to ill-effects.⁷⁰

Some scholars have expressed the view that the 1980 *Fatwa* reflected political concerns rather than classical Islamic *fiqh*. Although Muslims constitute an overwhelming majority of the population Mudzhar points to the ongoing struggle of the Muslim community for political recognition since independence and Muslim concerns about Christianisation.⁷¹

Suhadi is also of the opinion that the formulation of the 1980 *Fatwa* opposing interreligious marriage was influenced by the relationship between Islam and Christianity and Muslim concerns about Christianisation and overseas funding for Christian missionary work.⁷² Some Muslim scholars have suggested that making interfaith marriage illegal in Indonesia was an attempt to protect the Muslim community from further Christian penetration and this led Indonesia’s *ulama* to take a harsher line on the matter than is generally the case in Muslim *fiqh*.⁷³

The 1980 *Fatwa* on intermarriage was made against a backdrop of concern about Christianisation. The 2005 *Fatwa* appears to have been motivated by concern at liberal trends within the Muslim community and the internal debates and competing visions within the Muslim community concerning the role of Islam and the process of Islamisation.⁷⁴ The fact that MUI felt the need to reissue their *fatwa* against

⁷⁰ In this principal, also known as *Mafsadah*, the terms *kemadsadatan* and *kemaslahatan* are used. *Mafsadah* refers to ill-effects that might flow from an action which may threaten one’s faith, one’s life, one’s thinking, one’s future generations or one’s possessions. The term *masalahah* refers to securing these things. It is not uncommon for Indonesian *ulama* to use this method of interpretation also known as *al-dzari’ah* whereby for any particular action, if the negative implications outweigh the positive, the particular course of action may be pronounced *haram*. This may occur even if originally such actions were *mubah* (neither forbidden nor recommended).

⁷¹ See Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia*, 88-89. Mudzhar thinks that despite the Qur’anic injunctions that a Muslim man may marry a ‘Woman of the Book’, MUI wished to close off this option.

⁷² See Suhadi, “Inter-religious marriage in Indonesia: legal and religious political perspective”, (a paper presented at a Workshop on Muslim–non-Muslim Marriages, Rights and the State in Southeast Asia organised by the Asia Research Institute, Singapore, Sept.23, 2006). Suhadi notes that Muhammadiyah, the second largest Muslim organisation issued a *fatwa* prohibiting interreligious marriage in 1989.

⁷³ See Mujiburrahman, *Feeling Threatened: Muslim-Christian Relations in Indonesia's New Order* (Amsterdam: ISIM Publications, 2006). Also Ismatu Ropi, *Fragile Relations - Muslims and Christians in Modern Indonesia* (Jakarta: Jakarta, 2000). This also appears to be the case in MUI’s 1981 *fatwa* which stated that it was *haram* for Muslims to join in Christmas celebrations. See MUI, *Fatwa Tentang Perayaan Natal Bersama* [Fatwa Concerning Celebration of Christmas]. Jakarta: MUI, 1981.

⁷⁴ See Suhadi, *Kawin Lintas Agama: Perspektif Kritik Nalar Islam* [Interfaith Marriage: A Critical Muslim Voice] (Yogyakarta: LKiS, 2006). The author also interviewed Suhadi on 10 January, 2007.

interreligious marriage suggests that their original 1980 *fatwa* was either not widely known or not being followed.

Fatwa No 4/2005 coincided with the issuing of a number of *fatwas* directed at Muslims who held liberal and progressive views. *Fatwa* No 3/2005 placed limitations on the way Muslims might join in prayer with people of other faiths.⁷⁵ *Fatwa* No 5/2005 stated that according to Muslim law it was not acceptable for a Muslim to leave their inheritance to someone who is a non-Muslim (though it was permitted for Muslims to give non-Muslims presents or gifts in their will). *Fatwa* No 7/2005 saw MUI speaking against three trends in Indonesian society: pluralism, liberalism and secularism.⁷⁶ The plurality of Indonesian society is acknowledged and accepted but ‘religious pluralism’, defined as “an understanding that all religions are the same”, was rejected. The *fatwa* opposed pluralist and liberal theological trends and rationalistic ways of interpreting the *Qur’an* and *Sunnah*. MUI pronounced it *haram* for members of the Indonesian *umma* to follow these trends.

A range of Muslim voices were strongly critical of the 2005 MUI decrees.⁷⁷ They considered the edicts to be reactionary with a likely outcome that religious intolerance would increase. The 2005 MUI *Fatwa* on interfaith marriage and responses to it highlight deep divisions within the Indonesian Muslim community. Progressive

⁷⁵ Majelis Ulama Indonesia, *Fatwa Do’a Bersama* [Fatwa Concerning Joint Prayer] 3/2005 (Jakarta: MUI, 2005). This *fatwa* stated that whilst prayer between Muslims and non-Muslims in principle is something that is known and accepted (*bid’ah*) within Islam, certain kinds of joint prayer were deemed *haram* such as a Muslim saying ‘Amen’ to the prayer of a non-Muslim. The *fatwa* stated that it was not forbidden but also not recommended for a Muslim to participate in joint prayer when the prayer leader is a non-Muslim. A form of prayer which invites people to ‘each pray in their own way’ was acceptable but not prayer which required Muslims and non-Muslims to read a prayer text together.

⁷⁶ The *fatwa* expressed concern that Muslims tended to be of the view that followers of all religions would “live alongside one another in heaven”. MUI considered that this undermined the distinctiveness of Islam and relativises the truth. Muslims were urged to adopt an inclusive attitude in social interactions with non-Muslims, but an exclusivist approach in matters of faith. Muslims were also advised not to mix their religious beliefs with the beliefs and worship life of other faiths. MUI wanted to promote tolerance of religious diversity whilst affirming the unique revelation that Islam represents.

⁷⁷ See for example: “The Impact of MUI *fatwas* on freedom of religion in Indonesia”, *The Jakarta Post*, August 8, 2005. Also K.H. Mustofa Bisri, “*Fatwa* MUI, Refleksi Ketidakpercayaan Diri”, 15 August 2005. Also Gary LaMoshi, “Indonesia’s Islamists flex their muscles”, *Asia Times Online*, Oct 27, 2005. See also Ahmad Suaedy, Abd Moqsih Ghazali, Rumadi, and Muhammad Subhi Azhari, *Kala Fatwa Jadi Penjara* [Fatwas Fail to Imprison]. (Jakarta: The Wahid Institute, 2006). *Jaringan Islam Liberal* website included a number of articles. <http://islamlib.com/id/artikel/fatwa-mui-refleksi-ketidakpercayaan-diri/> (accessed August 20, 2005).

Muslims subsequently have continued to offer an alternative voice on issues such as interfaith marriage and interreligious relations.⁷⁸

6. THE 1991 COMPILATION OF ISLAMIC LAW (KHI)

The Compilation of Islamic Law (*Kompilasi Hukum Islam*) or *KHI* was established by the President's Instruction following approval given by a conference of influential *ulama*. The 229 Articles would become the authoritative guide for Islamic religious courts and Muslim judges. An aim of the KHI was to overcome the problem of inconsistency in the judgements of religious courts and enable greater legal certainty.⁷⁹

The Compilation of Islamic Law has become the accepted code used in religious courts throughout the country. The development of the KHI was considered a milestone for those wanting to see greater recognition of *syari'ah* in Indonesia. Government sponsorship of KHI established the State as the ultimate authority and arbitrator of law, and gave the government a larger role in interpreting Islamic tradition. KHI promotes an interpretation of *syari'ah* that limits polygamy and encourages the registering of Muslim marriages. Siti Musdah Mulia notes that some have labelled KHI as “the State's own ‘School’ of Islamic teaching’ (*fikih madzhab Negara*)”.⁸⁰ Through the KHI the government was able to cast itself as the promulgator of Islamic legal doctrine.⁸¹

⁷⁸ Progressive Muslim voices include Muslims who are human rights activists, law academics, women activists, and organisations such as the *Indonesian Conference on Religion and Peace* (ICRP), *The Society for Inter-religious Dialogue* or MADIA, *the Wahid Institute*, *the Islamic Liberal Network* (JIL), *Paramadina Foundation*, *NU youth corp* (*Angkatan Muda Nahdlatul Ulama*), *The International Centre for Islam and Pluralism* (ICIP), graduates from Islamic State Universities, and Muslims involved in interreligious dialogue such as the *Indonesian Conference of Religious and Peace* (ICIP) and *Institut DIAN/Interfedei*.

⁷⁹ See “Sejarah Penyusunan Kompilasi Hukum Islam di Indonesia [History of the Formulation of KHI]”, in *Intruksi Presiden R.I No. 1/1991 Kompilasi Hukum Indonesia* [President's Instruction No.1/1991] (2001), 135-152. The Government initiated the project in 1985 to compile and codify *Syari'ah* Islamic family law covering marriage, inheritance and *wakaf* or charitable foundations which fell under the jurisprudence of Islamic religious courts. Muslim academics from Islamic universities (IAIN) studied the classical texts and questionnaires and interviews were conducted with more than 187 *ulama* in ten locations where religious courts were operating. The marriage law reforms of Morocco, Turkey and Egypt were also studied.

⁸⁰ See Departemen Agama RI, Tim Pengarusutamaan Gender. *Counter Legal Draft Kompilasi Hukum Islam* [Counter Legal Draft to the Compilation of Islamic Law]. Discussion Document released for public discussion on October 4, 2004, Introduction by Siti Musdah Mulia.

⁸¹ See Cammack, Young and Heaton, “Legislating Social Change in Indonesian Society”, 66-67. See also Butt, “Polygamy and Mixed Marriage in Indonesia”, 125,129. Butt argues that Islamic law

The *Compilation of Islamic Law* or KHI makes it clear that for interreligious marriages for Muslims are prohibited under the Muslim law that now operates in Indonesia's religious courts. KHI does not have the status of law but it represents the majority Muslim position in Indonesia. Article 40(c) and 44 state that neither a Muslim woman nor a Muslim man are permitted to marry a non-Muslim.⁸² This view supported the position adopted by MUI in its 1980 *Fatwa* rather than the classical Islamic position which had allowed Muslim men to marry 'Women of the Book'.⁸³

7. EFFORTS TO REVISE THE UUP (1/1974) AND KHI (1991)

7.1. Efforts to revise the Indonesian Marriage Law

In 1992 it was reported that Munawir Syadzali, then Minister of Religion, thought clarification was needed on the matter of interfaith marriage. In a speech he gave in the Supreme Court building he suggested an additional Article needed to be included in the Indonesian Marriage Law to clear up confusion relating to interreligious marriage. *Ulama* and key Muslim organisations opposed this view and argued that formulating a law that specifically applied to mixed faith couples was not necessary.⁸⁴

A range of different groups over the years have campaigned for revisions to Indonesia's Marriage Law in order to address the legal vacuum relating to interreligious marriage.⁸⁵ In 1995 a draft 'Civil Registration Bill' based on Supreme

suffered at the hands of the State. Muslim interests were recognised in the 1974 Marriage law but subsequently the State has sought to monopolise Islamic law. He points to the way religious courts have been brought under stringent state control with requirements that judges hold academic degrees, be appointed after an examination, and pledge allegiance to *Pancasila* and the 1945 Constitution.

⁸² See Departemen Agama RI., *Kompilasi Hukum Islam Di Indonesia* [The Compilation of Islamic Law in Indonesia]. (Jakarta: Departemen Agama R.I., 2001). Article 40 (Indonesian original): "Dilarang melangsungkan perkawinan antara seorang pria dengan seorang wanita karena keadaan tertentu; (c) seorang wanita yang tidak beragama Islam. Article 44 states: Seorang wanita dilarang melangsungkan perkawinan dengan seorang pria yang tidak beragama Islam."

⁸³ The KHI, with the 1974 Marriage Law, has provided the grounds for Indonesia's Islamic courts and KUA officers to reject requests made by Muslims wishing to marry a non-Muslim.

⁸⁴ See Sairin and Pattiasina, eds., *Pelaksanaan Undang-Undang Perkawinan Dalam Perspektif Kristen*, 90. The Head of MUI at the time, K.H. Hasan Basri thought Article 1/1974 made the situation regarding mixed marriages clear, and there was no need for further amendments. NU also expressed the view that interfaith marriages were now prohibited under Indonesian law.

⁸⁵ For example the thesis of Tutik Hamidah, *Peraturan Perkawinan Antaragama di Indonesia: Perspektif Muslim* [The Regulation of Interfaith marriages in Indonesia: A Muslim Perspective] (Yogyakarta: IAIN Sunana Kalijaga, 2000). Hamidah recommends that an additional clause be added

Court Jurisprudence relating to intermarriage and a consortium for the formation of the Civil Registration Bill called for the Civil Registry Office to be given the power to register interreligious marriages as a basic human right. During 2003 and 2004 there were further efforts to revise the 1974 marriage law and consideration was given to accommodating a number of proposed amendments.⁸⁶ These also proved unsuccessful.⁸⁷ Initial work to draft a proposed law on Religious Harmony which would address the issue of mixed marriages was also sidelined.⁸⁸ Of interest is the fact that the ‘Population Administration Law’ passed in December 2006 specifically makes mention of those whose interfaith marriages have been upheld through the Civil Courts (*Pengadilan Negeri*).⁸⁹ Whilst this avenue has always been available to couples, the fact that the presence of interreligious couples is explicitly acknowledged within the make-up of Indonesia’s population means that it cannot be categorically stated that interreligious marriages are prohibited in Indonesia.⁹⁰

7.2. Efforts to revise the Compilation of Islamic Law: The Counter Legal Draft (CLD) 2004

The Ministry of Religious Affairs established a team led by Siti Musdah Mulia, a Muslim gender expert, to examine the *Compilation of Islamic Law* from the point of view of Indonesia’s commitment to gender equality, democracy and religious diversity.⁹¹ The result was the ‘*Counter Legal Draft to the KHI*’ launched on 10

to Article 2 of the 1974 Law: “...that a valid marriage be performed according to the law and beliefs of each religion *or according to the religious preference of the two people wishing to get married*” (emphasis added by the researcher).

⁸⁶ See Dewi Santoso, “Inter-Religious Marriage Defended”, *The Jakarta Post*, November 29, 2003. Santoso reports on efforts by Professor Dr Harkristuti Harkrisnowo, Director General of Human Rights Protection in the Ministry of Law and Human Rights defended interreligious marriage.

⁸⁷ A background document of draft amendments to the UUP (*Rancangan Perubahan Undang-undang No 1/1974*) was cited by the researcher. A group of people were invited by the Sekretariat Jenderal DPR (Bidang Perundang-undangan) to discuss the draft amendments on 9 June 2003 at the House of Representatives office but nothing came from this initiative.

⁸⁸ The Draft Law on Religious Harmony (*Rancangan Undang-Undang Kerukunan Agama*) proposed Article 15 (2): “If a marriage takes place between two people of a different religion, the marriage is registered according to the religious law as agreed to by the couple. (Indonesian original): “Jika terjadi perkawinan antar pemeluk beda agama, maka dicatatkan sesuai dengan hukum agama yang disepakati kedua belah pihak.”

⁸⁹ See Article 34 of the Population Administration (*Administrasi Penduduk*) Law No.23/2006.

⁹⁰ This point is made in a recently published booklet produced by PERCIK, an interreligious dialogue organisation based in Salatiga. See PERCIK, *Pergumulan Persiapan Perkawinan Beda Agama: Perbincangan Seputar Persiapan Perkawinan Beda Agama di Lingkungan Gereja* [Struggles in Interreligious Marriage Preparation: Discussion concerning Interreligious Marriage Preparation in the Church Context] (Salatiga: Pustaka Percik, 2008), 4.

⁹¹ Other members of the team were Marzuki Wahid, Abdul Moqsih, K.H. Achmad Mubarak, Abdurrahman Abdullah, Anik Farida, Marzani Anwar, Achmad Suaedy, Saleh Partaonan and Amirsyah.

September 2004 by the Ministry of Religious Affairs. The CLD noted the important place the *Compilation of Islamic Law* occupies in Indonesia, particularly in the current political environment characterised by frequent debates concerning the need to implement *syari'ah* and discussion concerning what contextual forms *syari'ah* might take in the contemporary context.⁹²

On the subject of intermarriage the CLD offers a very different perspective from that contained in the *Compilation of Islamic Law*. The Counter Legal Draft's proposed Article 50 stated:

- 1) A marriage of a Muslim to a non-Muslim is permitted.
- 2) The marriage of a Muslim with a non-Muslim is based on the principle of respect, valuing the right to freedom for each to follow the teachings of their religion and their own beliefs.
- 3) Before the marriage proceeds, the government is responsible to provide couples with an explanation concerning marriages between a non-Muslim and a Muslim so that both are aware of issues that may arise in such marriages.⁹³

Proposed Article 51 stated:

- 1) In a marriage between a Muslim and a non-Muslim, children have the right to freely choose a religion.
- 2) Until such time as the child is able to make that decision, the child's religion will be decided by agreement between the parents.⁹⁴

The Counter Legal Draft was released to a storm of controversy.⁹⁵ Following its release Siti Musdah Mulia, one of the team who had produced it, expressed

⁹² See Departemen Agama RI, Tim Pengarusutamaan Gender, *Counter Legal Draft Kompilasi Hukum Islam* [Counter Legal Draft to the Compilation of Islamic Law] (unpublished) (Jakarta: 2004), 2. The relevant section in Indonesian: "Program ini bercita-cita menawarkan rumusan (baru) Syari'at Islam yang sesuai dengan kehidupan demokrasi dan mencerminkan karakter genuine kebudayaan Indonesia..."

⁹³ The researcher's translation is of CLD Article 50: "(1) Perkawinan orang Islam dengan bukan Islam dibolehkan. (2) Perkawinan orang Islam dengan bukan Islam dilakukan berdasarkan prinsip saling menghargai dan menjunjung tinggi hak kebebasan menjalankan ajaran agama dan keyakinan masing-masing." (3) Sebelum perkawinan dilangsungkan, pemerintah berkewajiban memberi penjelasan kepada kedua calon suami atau istri mengenai perkawinan orang Islam dengan bukan Islam sehingga masing-masing menyadari segala kemungkinan yang akan terjadi akibat perkawinan tersebut."

⁹⁴ Article 51 CLD: 1) "Dalam perkawinan orang Islam dan bukan Islam, anak berhak untuk memilih dan memeluk suatu agama secara bebas." 2) "Dalam hal anak belum bisa menentukan pilihan agamanya, maka agama anak untuk sementara ditentukan oleh kesepakatan kedua orang tuanya."

disappointment that the government despite its stated commitment to gender justice, showed little political will to adopt their recommendations. If adopted the *Counter Legal Draft* would have led to a major shift in Indonesia's marriage policy but clearly the strength of opposition was formidable.⁹⁶

The *Counter Legal Draft* has succeeded in making available for public consideration and debate an alternative Muslim perspective. Of particular interest in terms of this study is the contextual methodology of *fiqh* that is utilised, which scrutinises the classical legal texts rather than adopting a literalistic or prescriptive approach. Whilst the prospects for revision to the Marriage Law and the *Compilation of Islamic Law* (KHI) appear remote, those who helped frame and support the sentiments expressed in the CLD remain hopeful that Islam in Indonesian will further develop along inclusive lines.⁹⁷

7.3.Lack of consensus on the subject of intermarriage

The Council of Indonesian *Ulama* (MUI) received support for its 2005 *fatwa* from some quarters including those who wanted to see a bill drafted to further enhance the ban of interreligious marriage.⁹⁸ Other critical voices highlighted the nature of *fatwas* as being products of *ijtihad*.⁹⁹ From this perspective *fatwa* and *fiqh* are relative rather than absolute and undergo change over time.¹⁰⁰ Nashruddin Baidan, Professor of Tafsir at STAIN in Surakarta reflects this view when he says that different interpretations (*fiqh*) are valid within Islam on many subjects. On the question of intermarriage he notes that the Muslim community does not have consensus on this subject.¹⁰¹

⁹⁵ There were numerous newspaper articles on the issue. See Muninggar Sri Saraswati, "Revolution in Islamic law?" *The Jakarta Post*, October 5, 2004. The article quoted the spokesperson for the CLD team, Abdul Moqsith Ghazali who stated that there was no verse which banned Muslim women from marrying non-Muslims and citing Ghazali who referred to the Prophet Muhammad's son-in-law who was not a Muslim at the time of his marriage (although he embraced Islam eight years later).

⁹⁶ A change of leadership in the Ministry of Religious Affairs meant that the nineteen CLD suggested revisions were effectively put on hold.

⁹⁷ See *Counter Legal Draft* unpublished (Jakarta: Department of Religion, 1991), 15.

⁹⁸ The *Indonesian Mujahidin Council* (MMI), the *Indonesian Islamic Dakwah Council* (DDII), and the Institute for Islamic Research and Study (LPPi) have sought this

⁹⁹ *Ijtihad* is interpretation of Islamic Law as a product of independent reasoning.

¹⁰⁰ *Fiqh* refers to Islamic law and jurisprudence. Some view these classical formulations as requiring imitation rather than interpretation. Others argue that *fiqh* is the duty of each generation of Muslims and *ijtihad* is the task of rightly guided Muslims in each context.

¹⁰¹ Baidan, Nashruddin, "Tinjauan Kritis Terhadap Fatwa Majelis Ulama Indonesia [A Critical Approach to MUI *Fatwa*]", (a paper given to a group of Christian Ministers, Yogyakarta, August 2003).

In different parts of the world progressive Muslim scholars have been developing contextual forms of *ijtihad*, reinterpreting Qur'anic texts in ways which can offer new perspectives on contemporary problems. Kamal and Mulia are two Indonesian Muslim academics and activists who, amongst others, reflect this trend. They have developed the view that there are no Qur'anic texts that clearly and universally make the question of interfaith marriage above debate.¹⁰²

Zainul Kamal and other colleagues associated with the organisation Paramadina, such as Kausar Azhari Nur, had been conducting Muslim marriages for interfaith couples (without the obligation that the non-Muslim convert to Islam). Kamal developed the rationale for his approach from a number of writings.¹⁰³ In particular Kamal examined the Qur'anic texts that had traditionally been used to oppose Muslim interreligious marriage such as Al-Baqarah 2:221 and Al-Mumtahanah 60:10. The contextual approach offered by Kamal argued that the instruction not to marry *musyrik* in QS 2:221 was a reference to the Arab *musyrik* who had no holy book and Quraisy *musyrik* who opposed the Prophet, rather than to *Ahl al-Kitab*.¹⁰⁴

Although the Qur'an has critical comments concerning 'People of the Book' Kamal notes that they are not referred to as *musyrik*. Moreover there are verses that explicitly mention the faithfulness of certain Jews, Christians and Sabaeans.¹⁰⁵ On this basis Kamal argues that the two key texts used to oppose Muslim intermarriage do not pronounce it *haram* for Muslims to marry *Ahl al-Kitab*. The example of the Prophet and some of his Companions who married Jewish or Christian women can be cited to support the case of interfaith marriages.¹⁰⁶ The foundation for this view was texts

¹⁰² Mulia, *Muslimah Reformis*, 358-378.

¹⁰³ Zainul Kamal, "Kawin Beda Agama" in *Fiqih Lintas Agama: Membangun Masyarakat Inklusif-Pluralis* [Islamic Jurisprudence relating to Interfaith Relations: Developing an Inclusive and Plural Society], edited by Mun'im A. Sirry (Jakarta: Paramadina & Asia Foundation, 2004), 153-164. Also See Zainul Kamal and Siti Musdah Mulia, *Penafsiran Baru Islam atas Pernikahan antar Agama* [New Islamic Interpretation of Interfaith Marriage] (Jakarta: Paramadina 2003).

¹⁰⁴ Kamal uses a similar method of exegesis described in Chapter 3 that distinguishes *musyrik* (idolaters) from *Ahl al-Kitab*.

¹⁰⁵ See for example QS Al-Baqarah 2:62. "Surely they that believe, and those of Jewry, and the Christians, and those Sabaeans, whoso believes in God and the Last Day, and works of righteousness their wage awaits them with the Lord, and no fear shall be on them, neither shall they sorrow."

¹⁰⁶ Kamal mentions Rasyid Ridha (who drew on the thinking of Imam Abu Hanifah) and others who did not limit *Ahl al-Kitab* to Jews and Christians but included *Majusi* and *Sabaeans* and women who were not idolatrous. He argues that *Ahl al-Kitab* may be interpreted more broadly today to include Buddhist women, Hindus, followers of Confucianism, Shintoism and those belonging to other religions not included in the Qur'an. He notes that the Prophet's friends such as Huzaifah, Usman bin Affan and Thalhah bin Ubaidillah also married Christian or Jewish woman.

such as QS An-Nahl 16:36. “Indeed we sent forth among every nation a Messenger, saying: ‘Serve you God, and eschew idols’.”¹⁰⁷

Kamal agrees with Muslim scholars who have permitted intermarriage and argued that the category *Ahl al-Kitab* could be broadened beyond Jewish and Christian women. More controversially Kamal questions the view that the Qur’an explicitly forbids Muslim women from marrying a non-Muslim. For Kamal this issue falls into the category of *ijtihad*, meaning that it is valid to reinterpret the tradition and its application in a different time, setting and context of *da’wah*. Kamal draws attention to the Qur’anic teaching that everything in creation comes from God, and plurality is part of the intended created order. This is illustrated in the following text: “O mankind, We have created you male and female, and appointed you races and tribes, that you may know one another (Al-Hujurāt 49:13).”

If marriage is a primary way to deeply know another, interreligious marriage is a valid way by which the meaning of the text is fulfilled. Kamal also believes that if the mission of Islam is spreading peace, love and kindness amongst people then allowing interreligious marriages is compatible with this mission.

Prominent Indonesian Muslim scholar Siti Musdah Mulia,¹⁰⁸ suggests that central to the problem of interfaith marriage is the difficulty many Muslims have in distinguishing between *syari’ah*, God’s eternal, timeless, universal and unchanging law, and *fiqh* which is influenced by social and cultural factors. *Fiqh* is a product of human ingenuity and intellect and is open to revision.¹⁰⁹ The existence of different interpretations on sacred texts within the *umma* is not a problem but can be viewed as a blessing she argues. Mulia thinks that Muslims have a God-given freedom to reinterpret texts, change laws and make adjustments to suit the situation in which they live and it is only in this way that efforts can be made towards consensus.

Mulia’s interpretation of the Qu’ran and Sunnah is guided by what she says is the universal mission of Islam, *rahmatan lil alamin*. Islam’s mission is to promote

¹⁰⁷ See also QS 10:47 “Every nation has its messenger.”

¹⁰⁸ Mulia is the Executive Secretary of the Indonesian Conference on Religion and Peace (ICRP), an interfaith organisation based in Jakarta. She is active on gender issues and law reform and led the team that produced the *Counter Legal Draft (CLD) of the Kompilasi Hukum Islam* for the Department of Religion in 2004.

¹⁰⁹ Siti Musdah Mulia, *Muslimah Reformis*, 379-400, chapt.18.

justice, peace, respect for others, love, integrity and freedom. Judged in this light Mulia believes that an inclusive rather than exclusive approach in interpreting the issue of intermarriage is more faithful to Islam. Mulia notes the widely held view that that a strong and harmonious family is one that is built on shared beliefs and values and argues that there are no signs that interreligious marriage is more likely to end in divorce or family breakdown. She also challenges the prevalent view that children will be brought up with no faith.¹¹⁰ Mulia agrees with other Indonesian scholars surveyed in this study who suggest that an unwarranted and unnecessary fear of Christianisation has contributed to rigid approaches to intermarriage. The tendency to celebrate the conversion of non-Muslims to Islam while rejecting conversion of Muslims to other faiths is another prevalent attitude which she seeks to combat.

The contributions of Zainal Kamal and Siti Musdah Mulia provide examples of the intense *intra-dialogue* that is going on within the Indonesian community in rethinking traditional *fiqh*. Contesting views on intermarriage reflect contrasting theological approaches within Islam.

Progressive Muslims like Kamal and Mulia have argued that interfaith couples in Indonesia are experiencing human rights violation and discrimination. Concerned about reports of problems interfaith couples have been encountering they, along with others, have used their position of influence to advocate for change and to develop some alternative strategies to assist couples that might be a model to others.¹¹¹ In 2005 the Indonesian Conference of Religion and Peace (ICIP), conducted research with a number of couples and the results, including ten case studies, were published.¹¹²

¹¹⁰ See unpublished study by Nuryamin, *Penelitian tentang Implementasi UU Perkawinan* [Research into the implementation of the Indonesian Marriage Law (Jakarta: PSW IAIN, 1990)]. Mulia cites this research that suggests that the mother tends to have most influence in the religious education of children. Findings concluded that in mixed marriages when the husband is Muslim, 50% of the children become Muslim whereas when the Muslim partner is the woman around 80% of the children become Muslim.

¹¹¹ An interview with Muslim scholar Kausar Azhari Nur on Dec 27, 2003 confirmed that he and Kamal had been conducting Muslim marriages during the past year. During 2004 the organisation Paramadina received public criticism after it became known that Nur and Kamal were conducting interfaith marriages.

¹¹² See Ahmad Baso and Ahmad Nurcholish, ed., *Pernikahan Beda Agama: Kesaksian, Argument Keagamaan dan Analisa Kebijakan* [Marriage between People of Different Religions: Testimony, Religious Argument, and Responsible Analysis] (Jakarta: Komnas HAM ICRP, 2005).

In recent years the Indonesian Conference of Religion and Peace (ICIP) has been drawn more actively into assisting couples.¹¹³ The Indonesian Conference of Religion and Peace has developed a code of ethics which is explained to couples seeking their assistance. ICIP's code has three main elements: permission from both sets of parents is required; couples undergo counselling to explore the various challenges interfaith couples may face; and two marriage ceremonies are arranged so that according to both faiths the marriage is recognised.¹¹⁴ ICIP stresses that respect is the basis for their work with interfaith couples and encourage couples to develop mutual respect as the foundation for their marriage. ICIP also discourages efforts on the part of either partner to convert the other partner. ICIP works with couples throughout the process leading up registration of the marriage.¹¹⁵ ICIP has also identified the need to establish a support group for couples and a website to provide information. The services provided by the Indonesian Conference of Religion and Peace reflect the emergence of progressive Muslim and Christian voices which challenge exclusive understandings of scriptural texts and advocate for policies that uphold the religious freedom and human rights of all Indonesians.

8. CHRISTIAN RESPONSES TO THE 1974 MARRIAGE LAW

Interfaith marriages between Muslims and Christians raise significant questions for both religious communities. The Marriage Law brought more visibly onto the agenda of churches the need to define their position. For churches that had religious precepts permitting members to marry someone of another faith, such marriages could occur lawfully in the context of a church service and be ratified through the registry office. Civil Registry offices are reluctant to assist couples unless they have

¹¹³ This coincided with Paramadina stepping back from active involvement with couples following critical media attention. During 2006 ICIP assisted 22 couples: offering counselling and helping in arranging the legalisation of their marriage through working with a network of religious leaders and contact people in Civil Registry Offices. From extract from interview with Siti Musdah Mulia on Dec. 29, 2006.

¹¹⁴ Extract from interview with Siti Musdah Mulia, Dec 29, 2006. Parents are able to consult with ICRP staff about the legal, theological, practical or procedural issues in an interfaith marriage. The counselling and preparation process may take up to one year and some couples may decide not to proceed. A team of people assist in the preparation and ICIP is able to call on a number of Muslim clerics, Christian clergy, Hindu priests etc to assist in marriage ceremonies. ICIP's stated reason for having a double ceremony is so that couples begin their married life showing respect for both faiths.

¹¹⁵ Documentation is standardised for all marriages and each partner must supply a copy of their birth certificate; passport; KTP (identification card); baptism certificate, a letter of support from parents/*wali*; and a letter of recommendation from their locality/ place of residence.

the support of a local church. With a letter of recommendation from the church marriages can be registered without undue difficulties.¹¹⁶

Indonesian Protestant churches adopt a range of different positions in relation to intermarriage.¹¹⁷ Some churches allow ministers to conduct interreligious marriages such as *Gereja Kristen Jawa* (GKJ) and *Gereja Kristen Indonesia* (GKI). Other churches only permit Christian marriages where both are baptised Christians. *Gereja Kristen Protestan Indonesia Barat* (GPIB), *Gereja Kristen Jawi Wetan* (GKJW) and *Gereja Masehi Injili Minahasa* (GMIM) hold this position.¹¹⁸ There are also churches such as *Gereja Kristen Protestan di Bali* (GKPB) that do not have a clear policy either allowing or banning such marriages.¹¹⁹

In 1975 the GKI Synod agreed to a procedure to follow in relation to interreligious marriages. Where a GKI member and a person of another faith request marriage the non-Christian partner is required to complete a written statement in which they agree to:

- (i) have a Christian marriage
- (ii) not put obstacles in the way of their husband/wife continuing to express their Christian faith and attend Christian worship
- (iii) not oppose children being baptised and having a Christian education.¹²⁰

¹¹⁶ It is possible that marriages may be declared legal but from the point of view of the Muslim partner's religious community the marriage may be considered invalid if it has not been conducted according to the religious precepts of their religion.

¹¹⁷ The researcher met with a number of Protestant ministers from a range of churches to hear more about how their church's policy affected their pastoral ministry.

¹¹⁸ See for example the following extract from *Tata Gereja GMIM 1999* (GMIM Church Regulations), Chapter X Section 28 (iv) "Those who are accepted for marriage need to confess their faith and promise to serve God through the life of their family". Both partners need to be baptised before GMIM can agree to conduct a Christian marriage.

¹¹⁹ A number of independent and Pentecostal churches may also be in this situation so the decision on whether such marriages are allowed depends on the views of individual ministers and local leaders.

¹²⁰ See *Tata Gereja* GKI Regulations Section 30 clause 9b. The researcher was given a copy of the statement used by one GKI congregation in East Java. The Muslim partner agreed: not to have another marriage ceremony that would be in conflict with the Christian faith; permit their partner to practise their faith; and allow children to be baptised and given a Christian education. The Indonesian text which is signed by the non-GKI partner: "Menyatakan persetujuan saya terhadap pelaksanaan Kebaktian Peneguhan dan Pemberkatan Nikah kami di Jemaat GKI (*Tempat*) pada tanggal (*Date*) dan menyatakan tidak akan melakukan upacara-upacara lain yang bertentangan dengan iman Kristen. Sehubungan dengan hal tersebut saya menyatakan: 1. Memperkenankan isteri/suami saya untuk tetap hidup dan beribadah menurut iman Kristen. 2. Jika dalam pernikahan ini kami memperoleh anak atau anak-anak, saya memperkenankan anak atau anak-anak kami dibaptis dan dididik secara Kristen. Pernyataan ini saya buat dengan sadar dan tanpa paksaan dari Pihak mana pun. Apabila ternyata saya

GKI Minister and Lecturer at Duta Wacana Christian University, Rev Dr Yayah Wijaya suggests churches should adopt a pastoral rather than a disciplinary approach to interreligious marriage. He is of the view that the third condition in the GKI policy on mixed marriages is problematic. “Someone who is equally strong as a Muslim will find it difficult to comply.”¹²¹ Wijaya would like to see the GKI further develop its theology of religions. Drawing on his former pastoral experience in a congregation in Salatiga Wijaya saw much evidence that mixed families could be places of dialogue, mutual respect, equality, faith and freedom. Wijaya believes that mixed families can be a sign of the kingdom of God and in the context of mixed family life Wijaya suggests that mission is about “implementing the family of God in the family of human beings” rather than being focused on creating a Christian family.¹²²

The *Gereja Kristen Jawa* (GKJ) like the GKI has many of its members who are in interfaith marriages and this has prompted the GKJ to give serious consideration to the issue and formulate a church policy on interfaith marriage. If the couple includes one partner who is not a member of the church he/she is required to agree in writing to a GKJ marriage (and expected to agree to be married in the GKJ only). The non-GKJ partner is also required to put in writing that they will permit their wife/husband to continue as a GKJ member, worshipping in the GKJ. In the final part of the clause the non-GKJ member states that they will allow their family to receive a Christian education and that children may attend church if they wish to do so.¹²³

In the course of this inquiry a number of Christian clergy were interviewed. Those who came from churches that do not permit interfaith marriages had examples of cases in which they were disappointed not to be able to assist members of their own congregation (and in some cases members of their own family) who requested an interreligious marriage. Former Chair of the GPIB (2000–2005), Rev Rufus Waney would like to see his church offering a more supportive approach to interfaith couples. His efforts to encourage the GPIB to rethink its policy on intermarriage have

tidak melaksanakan pernyataan saya ini, saya bersedia ditegur atau dinasihati oleh Majelis Jemaat di mana isteri/suami saya menjadi anggota Jemaat.

¹²¹ Extract from interview with Rev Dr. Yahya Wijaya, January 12, 2007.

¹²² Extract from interview with Yahya Wijaya. Jan 12, 2007. He recalled how, in moving circumstances an elderly interfaith couple died on the same day. In Salatiga they were able to have both funeral services conducted on the same day though in different sections of the cemetery.

¹²³ *Tata Gereja GKJ* [GKJ Church Regulations] (2005), Section 49, 3, Clause 7. The final section of Clause 7 does not require baptism and in this respect differs from GKI policy.

to date been unsuccessful. He believes more educational work is needed with lay leaders whose voice carries considerable weight in the denominational structures of Reformed churches.¹²⁴ In his opinion, many GPIB members still tend to express the view, “How can your family be a good example of Christianity if your spouse goes to the mosque or if you have Muslim children?”¹²⁵ Rufus Waney is of the view that missiologically “interreligious marriages are not a barrier for God in working out his plan of salvation for the world”.¹²⁶ Rufus Waney and his brother Paul Waney who is also a GPIB minister, have given serious consideration to the question of interreligious marriage and continue to be advocates for change.¹²⁷

Catholic policy on intermarriage explained in Chapter Three largely reflects current Catholic practice in Indonesia.¹²⁸ In an interview with Catholic theologian and lecturer Al Purwa Hadiwardoyo he reported the high rate of Catholic–Muslim intermarriage. In Jakarta for example, as many as 50 percent of Catholics married Muslims; in Central Java the figure is thirty five percent and in Eastern Indonesia, where the Catholic community is more strongly represented, the figure drops to ten percent.¹²⁹ He noted that in some cases Catholic partners converted to Islam so the marriage could proceed but in many cases they continued to practise their Catholic faith after the marriage. A Catholic member who had pronounced the *kalimat syahadat* can be formally received back into the Catholic fold by making a confession of faith in church front of a priest and two witnesses.¹³⁰ Fifteen to twenty percent of Catholic–Muslim marriages end in divorce. This is the same rate of divorce as for

¹²⁴ Extract of interview with Rev Rufus Waney, March 31, 2008. Waney reported that the Ministers Conference was generally supportive of introducing changes to GPIB policy but these were not successfully carried at the national Synod which was made up of two thirds elders/ lay people.

¹²⁵ From extract of interview with Rufus Waney, March 31, 2008.

¹²⁶ See Rufus Alexander Waney, “Missiological dimensions in interreligious marriages between Christians and Muslims in Indonesia”, (M.Th., School of Mission, Fuller Theological Seminary, 1991).

¹²⁷ Rufus Waney completed a Masters degree on the subject and Paul Waney has written on interfaith marriage and missiology. See Paul A.Y. Waney, *Mixed Marriages: A Preliminary Inquiry towards a Biblical, Historical and Pastoral Approach* (Jakarta: Pustaka Sinar Harapan, 2005). Rufus and Paul Waney grew up in Riau in a community that was 97% Muslim. They also had the experience of having a close family member marry a Muslim and the disappointment of her church not being able to conduct a Christian ceremony.

¹²⁸ Interviews were conducted with Roman Catholic leaders including Dr. Piet Go, then chief executive of the Bishops Council of Indonesia (KAWI) and co-author of *Kawin Campur Beda Agama dan Beda Gereja* [Mixed Marriage between Different Religions and Different Churches], (1987); Dr Ismartono, the executive secretary for KAWI’s Commission on Interfaith Relations, and Al. Purwa Hadiwardoyo from the Catholic Theological Seminary in Yogyakarta.

¹²⁹ Extract from interview with Al Purwa Hadiwardoyo, Yogyakarta, December 13, 2006. The Catholic population in Java is only 2%.

¹³⁰ Extract from interview with Al Purwa Hadiwardoyo, Dec 13.2006. This confirms the view of social researchers who suggest that members of small groups have more opportunity to interact with members of large groups increasing the likelihood of interfaith marriage.

marriages between two Muslims but substantially higher than it is for couples in which both are Catholics.¹³¹ Hadiwardoyo highlights the difficult situation interfaith couples currently face and expresses the hope that in the future Catholics and Muslims might be able to have their marriage celebrated in a jointly conducted ceremony as is the case for Catholic– Protestant marriages.¹³²

An important new resource on interreligious marriage was published in December 2008 by an interfaith team based in Salatiga that included GKJ and GKI ministers. The booklet sets out to encourage discussion within the churches on the subject of preparing interfaith couples for marriage and is a resource for couples, their parents, ministers, Elders Councils and local congregations.¹³³ Examples are provided of current practice in a number of Christian churches in which churches provide the Civil Registry Officers (KCS) with a covering support letter stating that the non-Christian party is a *simpatisan*.¹³⁴ With this assurance marriages are usually able to be registered with the KCS without difficulty.¹³⁵

There is a degree of diversity in policy and theology within the Indonesian Christian churches in terms of how interfaith marriage is viewed. The Roman Catholic Church and some Protestant churches such as the GKJ and GKI assist interfaith couples to have their marriages legally registered whilst operating within the restrictions of the Marriage Law. Even in those churches which have clear policies on interfaith marriage some variation was noted.¹³⁶ Where churches lack a clear policy on interfaith marriage a variety of approaches may be adopted depending on local views.

¹³¹ Catholic-Muslim marriages could be described as being as successful as marriages between two Muslims but for Catholic couples the rate of divorce in Indonesia is only 1%. Hadiwardoyo notes that before the 1974 marriage law 35% of Muslim marriages ended in divorce but with the passing of the Marriage Law that figure has been reduced to 15%-20%.

¹³² Al Purwa Hadiwardoyo, *Perkawinan Menurut Islam dan Katolik: Implikasi dalam Kawin Campur* [Marriage according to Islam and Catholicism: Implications for Mixed Marriages], (Yogyakarta: Kanisius, 1990), 81.

¹³³ PERCIK, *Pergumulan Persiapan Perkawinan Beda Agama* [Struggles surrounding Interfaith Marriage Preparation] (Salatiga: Pustaka Percik, 2008). The booklet includes a section on interreligious marriage in the Bible and gives a number of short case studies. An overview of current practice in a number of churches and some local variations is provided along with an outline of how churches working with KCS assist couples to have their marriages legalised.

¹³⁴ *Ibid*, 23. A *simpatisan* is considered someone who is linked with, and currently studying about, Christianity. The booklet notes that there are cases where a Muslim partner “pretends” to be linked to the Christian community as a *simpatisan* in order to fulfil marriage registry office requirements and this might be considered a manipulation of data or giving false identification. (It could also be inferred that the number of interfaith marriages are therefore being under-reported).

¹³⁵ Churches usually have a person who acts as an assistant to the KCS facilitating communication and ease of administration.

¹³⁶ Protestant churches such GKI and GKJ have clear policies but there was evidence from interviews that ministers and elders’ councils may adapt the policy to suit their circumstances.

Congregations may reject intermarriage altogether or may choose to respond to couples on a case by case basis.

9. INTERRELIGIOUS MARRIAGE AND THE POPULAR PRESS

Newspaper articles about interreligious marriages of well-known Indonesian artists and public figures, musicians and Indonesian celebrities are regularly reported in the media.¹³⁷ Some articles are critical and others supportive of interfaith couples.¹³⁸ Some couples pursued their case through the courts or travelled overseas to marry. One article noted that an increasing number of Indonesian interfaith couples use the ‘overseas registration loophole’. They marry overseas in countries which issue marriage certificates to non-residents and the Indonesian government recognises marriages legally conducted overseas. A 2006 article cited that the Indonesian Embassy in Singapore had on average twenty Indonesian couples marrying in Singapore every month.¹³⁹

Articles that regularly report on interfaith marriages in the popular press incite considerable controversy.¹⁴⁰ Despite the widespread view that interreligious marriages are now prohibited in Indonesia it is clear that public discourse on the topic is far from over.

¹³⁷ The marriage of high profile couple Deddy Corbuzier (Catholic) and Karlina (Muslim) for example, was reported in March 2005. Zainul Kamal was strongly criticised for legitimising their interfaith marriage. The marriage of Ari Sihasalle and Nia Zulkarnaen also received significant media attention, as both were well-known actors. Nia was from a devout Muslim background, the daughter of a respected Muslim leader. Their marriage was conducted in a civil ceremony in Perth and a Catholic blessing in Jakarta. Nia called a press conference in October 2003 to tell the public she was still a Muslim and her husband was still a Catholic.

¹³⁸ The well-known actor Nurul Arifin (Muslim) was much criticised for her marriage to Mayong Suryo Laksono (Catholic) in 1991. She went public in 2004 to speak positively of her interfaith marriage in the hope of increasing community understanding and reportedly was inundated with emails asking for her advice. <http://www.wwrn.org/article.php?idd=20459&sec=59&con=19> (accessed Jan 22, 2007).

¹³⁹ Takeshi Fujitani, “Law and intolerance hampers inter-religious marriages”, *World Wide Religious News*, Feb 15, 2006. <http://www.wwrn.org/article.php?idd=20459&sec=59&con=19> (accessed March 3, 2006).

¹⁴⁰ For example see Patung, “Ratna Ani Lestari”, *Indonesian Matters*, May 5, 2006. <http://www.indonesiamatters.com/322/regent-accused-of-blasphemy/> (accessed July 9, 2006). During 2006 Ratna Ani Lestari, the Regent of Banyuwangi, East Java was beset by protests when thousands of people were brought onto the streets by Islamic organisations accusing her of being an apostate for her marriage to a Balinese Hindu (Professor Gede Winasa, the Jembrana Regent who ran in the election as a candidate for Governor of Bali in 2008). Some articles suggested that Ratna Ani Lestari is now not a practising Muslim.

10. CONCLUDING REMARKS

This survey of the social, cultural, legal and religious context of intermarriage in Indonesia has highlighted challenges facing Indonesia in terms of how it manages diversity and religious plurality, gives recognition to Muslim aspirations, and upholds religious freedom as guaranteed in Indonesia's Constitution.¹⁴¹

The colonial period recognised multiple marriage laws. An independent Indonesia which aspired to have a unifying law found it extremely difficult to arrive at an agreed understanding. The process of formulating Marriage Law showed that Islam could be influential in the shaping of public policy and enhanced the public position of Islamic law.¹⁴² Muslim voices succeeded in forcing the State to give greater attention to religious bases of authority in exercising its law-making power.¹⁴³ A question raised for Christians and other minorities was whether Islam would wish to occupy a more influential place in the shaping of public policy, a question that has been asked with more urgency in recent years.

There have been few legal issues have generated greater controversy over a longer period in Indonesia than interreligious marriage and contesting viewpoints have tended to become more rather than less pronounced.¹⁴⁴ The formulation of the Indonesian Marriage Law took place in a climate in which the Muslim and Christian communities were experiencing considerable religious revitalisation and there were Muslim concerns about Christianisation. The Suharto government, like the Dutch colonial strategy before it, promoted Islam's ritual and religious role but restricted Islam's political influence to regulations on marriage, divorce and inheritance.¹⁴⁵

¹⁴¹ The 1945 Constitution of the Republic of Indonesia, Article 28E states, "Every person shall be free to choose and to practise the religion of his/her choice ... Every person shall have the right to the freedom to believe his/her faith (*kepercayaan*), and to express his/her views and thoughts, in accordance with his/her conscience." Article 29 states, "The State shall be based upon the belief in the One and Only God" and "The State guarantees all persons the freedom of worship, each according to his/her own religion or belief." <http://asnic.utexas.edu/asnic/countries/indonesia/ConstIndonesia.html> (accessed March 3, 2006).

¹⁴² Johns, "Indonesia: Islam and Cultural Pluralism", 219.

¹⁴³ Cammack, Young and Heaton, "Legislating Social Change in an Islamic Society: Indonesia's Marriage Law", 73.

¹⁴⁴ Mark Cammack, "Legal Aspects of Muslim-Non-Muslim Marriage in Indonesia", 1.

¹⁴⁵ Steenbrink, "Indonesian Politics and A Muslim Theology of Religions", 223-246.

In the post New Order context conflicting theologies of religions have become more visible and the debate on the political role of Islam in society has resumed.¹⁴⁶ An analysis of intermarriage in Indonesia highlights the internal debates within the Muslim community about the validity of contextual approaches to sacred texts and the extent to which classical understandings of *syari'ah* can be reformulated. The differing and indeed contesting views relating to interreligious marriage raises important questions about the role of Islam in Indonesian society, the place of *syari'ah* in public policy, how the majority Muslim community understands its relationship with non-Muslims, and particularly, what Islam stands for, its mission and vocation. These questions will be vital in shaping the future of Indonesia.

¹⁴⁶ See Lev, *Islamic Courts*, 6. Lev refers to the “tug of war between contending principles” in relation to Islam’s place in the evolution of the State of Indonesia.