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Religious Pluralism or Conformity in Southeast Asia's Cultural Legacy

Anthony Reid

Marketing Islam through Zakat Institutions in Indonesia

Asep Saepudin Jahar

The Register of the Qadi Court "*Kiyahi Pĕqih Najmuddin*" of the Sultanate of Bantĕn, 1754-1756 CE.

Ayang Utriza Yakin

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Table of Contents

Articles

Book Review

Ayang Utriza Yakin

The Register of the Qadi Court "*Kiyahi Pěqih Najmuddin*" of the Sultanate of Bantěn, 1754-1756 CE.

Abstract: *The present study focuses on manuscript LOr 5626 from the archives of the Qadi of the Sultanate of Bantěn (1527-1813), in Indonesia. This codex is preserved in the Leiden University library, which acquired it from C. Snouck Hurgronje. It consists of the 'legal cases' brought before the* Kiyahi Pěqih Najmuddin*, the Islamic judge in Bantěn, by the inhabitants. The register, which covers the period from 1754 to 1756, is the oldest* 'sijill' *(court record) in Southeast Asia, and it contains cases on marriage, divorce, inheritance, litigation, private transactions, loans, debts, and violence. The manuscript demonstrates the judicial practice exercised by the qadi of Banten and reveals important findings on the relationship between Islamic legal theory and practice This essay hopefully will contribute to Islamic legal history in general both by providing textual evidence that the qadi record (*sijill*) existed in Southeast Asia during the eighteenth century and by presenting its contents.*

Keywords: Bantěn, *Kiyahi Pěqih Najmuddin*, Qadi, Islamic law, Adat, Register, Record, Nikāḥ, Talāq.

 DOI: 10.15408/sdi.v22i3.2354

Abstrak: *Artikel ini mengkaji naskah LOr 5626 dari Arsip Kadi Kesultanan Banten (1527-1813), di Indonesia. Manuskrip yang diterima dari C. Snouck Hurgronje ini tersimpan di Perpustakaan Universitas Leiden. Naskah itu berisi daftar catatan "kasus-kasus hukum" yang diajukan oleh penduduk Banten ke hadapan* Kiyahi Pĕqih Najmuddi*n, gelar kadi di Kesultanan Banten. Catatan yang meliputi periode dari 1754 sampai 1756 adalah catatan pengadilan (*sijill*) tertua di Asia Tenggara. Daftar catatan kadi itu meliputi kasus-kasus tentang pernikahan, perceraian, warisan, perselisihan, jual-beli, utang-piutang, dan kekerasan. Naskah tersebut memperlihatkan praktik pengadilan yang dilakukan oleh Kadi Banten dan menunjukkan temuan penting mengenai hubungan antara teori hukum Islam (fikih) dan penerapannya. Artikel ini diharapkan memberikan sumbangsih bagi kajian sejarah hukum Islam dengan menyediakan bukti tekstual bahwa catatan hukum kadi itu telah ada di Asia Tenggara pada abad ke-18 dengan juga memaparkan isi catatan tersebut.*

Kata kunci: Banten, Kadi, Hukum Islam, Adat, Daftar, Nikah, Talak.

ملخص: تتناول هذه المقالة مخطوطة من أرشيف القاضي لسلطنة بانتين (١٥٢٧-١٨١٣م)، باندونيسيا. كانت المخطوطة التي استلمت من ش. سنوك هرجرونجي موجودة بمكتبة جامعة ليدن. تحتوي المخطوطة على قائمة سجل «القضايا الفقهية» التي كان يتقدم بها المواطنون في بانتين إلى Kiyahi Pĕqih Najmuddin أو الشيخ الفقيه نجم الدين حامل لقب القاضي بسلطنة بانتين. هذا السجل الذي يغطي الفترة من ١٧٥٤م إلى ١٧٥٦م يمثل أقدم سجل المحاكم في جنوب شرقي آسيا. تشمل قائمة سجل القاضي المسائل حول الزواج، والطلاق، والإرث، والمنازعات، والشراء والبيع، والديون، والعنف. تظهر المخطوطة ممارسة التحكيم التي يقوم بها قاضي بانتين، وتشير إلى اكتشاف هام حول العلاقة بين نظرية الفقه وتطبيقاته. يرجى من هذه المقالة أن تسهم في دراسة الأحكام الفقهية مع توفير أدلة من النصوص على أن سجل الأحكام كان قد وجد في جنوب شرقي آسيا في القرن الثامن عشر الميلادي مع عرض لمحتوى السجل.

الكلمات المفتاحية: بانتين، القاضي، الفقه الاسلامي، العادات، السجل، الزواج، الطلاق

Although numerous books and articles treated *sijills*[1] (qadi records) and examined the practices of the Muslim qadis in the Ottoman Empire between the sixteenth and nineteenth centuries,[2] little attention has been given to Southeast Asia. In fact, no qadi court has left written records from the fourteenth to the eighteenth century (Yakin 2005, 158). Indeed, the qadi court of the sultanate of Bantĕn (1527-1813) is the oldest Southeast Asian judicial institution that has organized, written records dating back to the mid-eighteenth century.

The record of Bantĕn's qadi was mentioned for the first time in Pigeaud's *Catalogue* of Leiden University (Pigeaud 1968, 333–334). In 1995, Martin Van Bruinessen (1995, 165–199) wrote an article in which he discussed the qadi of Bantĕn and its manuscripts, and raised scholarly awareness of this very important document. In 2003, Dinar Boontharm used the qadi's register as the main reference for a social history of Bantĕn. Because the text was written in *pegon* (Javanese in Arabic script), Boontharm who does not read Javanese, could not refer to the original document.[3] Neither Van Bruinessen nor Boontharm studied this codex from the perspective of philology or legal history.

To date, there are no philological studies of the qadi record. The study of Javanese legal manuscripts is complicated for many reasons: including the use of Arabic terms and the employment of technical terms. Proper access and scholarly interpretation of the document is impossible without the knowledge and command of Javanese, the language of the register, supplemented by an understanding of the law of the country and the history of Bantĕn.

The aim of this essay is to analyse the judicial practice of the qadi court of Bantĕn in the eighteen century by providing a content analysis of the register, while a critical edition of the register will be published separate from this research essay. This approach was inspired by the work of Aharon Layish (1991, 1998) and of Alessandra Vianello and Mohamed M. Kasim (2006), who published philological studies of the respective qadi records. Philology is the study of the written texts and their history, consisting of four scholarly basic practices: identifying fragments, editing texts, writing historical comments, and putting the texts in their historical context (Gumbrecht 2003, 2–3).

I use legal history and philology as tools of analysis because history is to understand the past and for this we need primary sources that enable us to penetrate more deeply into legal history. This essay hopefully will

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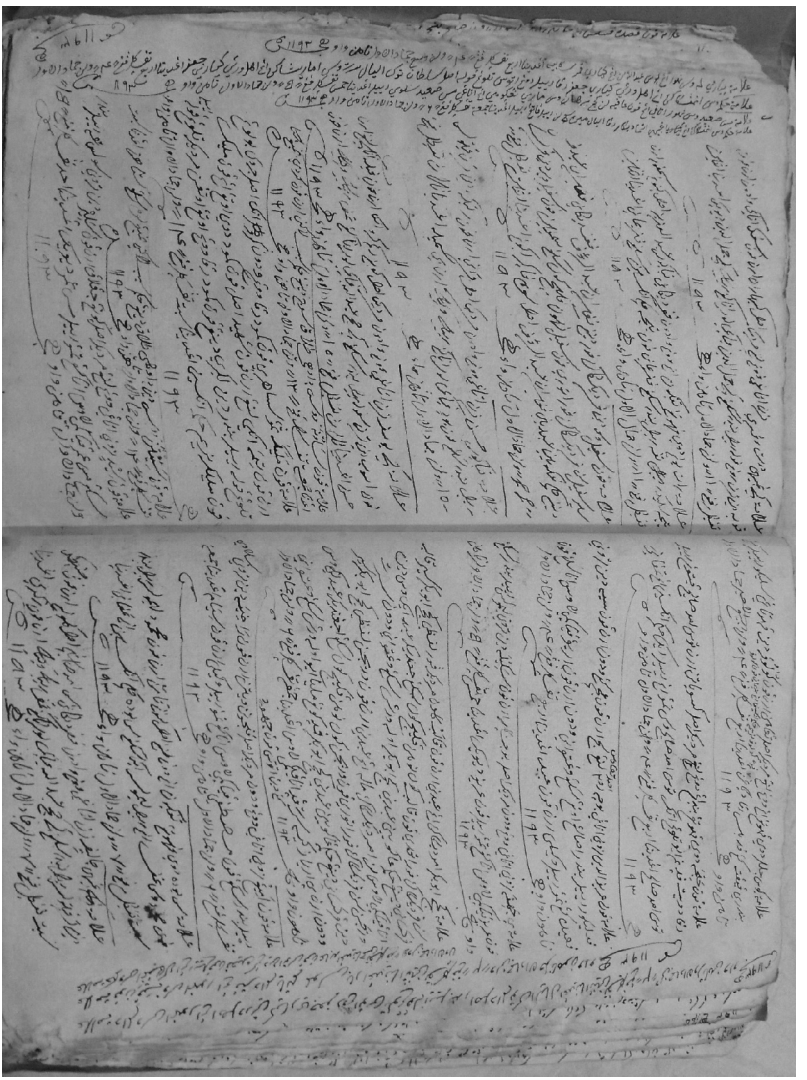
contribute to Islamic legal history in general both by providing textual evidence that the qadi record (*sijill*) existed in Southeast Asia during the eighteenth century and by presenting its contents.

The Archive of the Qadi of Bantĕn

The archive of the qadi of Bantĕn came to Leiden through the famous Dutch orientalist Christiaan Snouck Hurgronje (1857-1936), who came to Java in 1889 as special advisor to the Dutch East Indies government on questions of religion. In 1890, he visited Bantĕn to gather information about the religious institutions, such as the qadi of Bantĕn, and also to collect manuscripts (Gobée and Adriaanse 1965).[4] According to Jan Just Witkam (2007), there are 149 manuscripts originating from an indigenous *shaykh* in Bantĕn, who was under suspicion of heretical convictions. During his visit in 1890, Snouck Hurgronje discovered the manuscripts in Serang where they had been deposited, after having been confiscated and stored for quite some time. In fact, Snouck met with the highest 'indigenous' authorities of Bantĕn, such as the brothers Soetadiningrat (*Regent* of Pandeglang, 1870-1893) and Soetadinata (*Patih* de Menes, 1888-1894). It is more than plausible that Snouck received 149 manuscripts from them including the archive of the qadi of Bantĕn. Leiden University received those manuscripts on 28 July 1906 from Prof. Dr. C. Snouck Hurgronje.

The archive of the qadi of Bantĕn consists of five manuscripts. One manuscript under the code L.Or 5598 is a compilation of the laws of the Sultanate of Bantĕn (Yakin 2013). Four other manuscripts under the codes L.Or. 5625, 5626, 5627, and 5628 are the court records of the qadi of Bantĕn (Pigeaud 1968, 333–334).[5] In the early twentieth century, these four original manuscripts were copied by Tengku Muhammad Nurdin, the Acehnese scribe, at the request of Snouck Hurgronje. The copied manuscripts, consisting of six books, are registered under Cod. 7740 A-F and are kept in the same place (Pigeaud 1968, 466).[6]

The qadi court register covers records over a period of more than 100 years, between 22 Dhū al-Qa'dah 1151 A.H.[7] (3 March 1739 C.E.) and 17 Rajab 1263 A.H.[8] (1 July 1847 C.E.). However, it does not constitute a continuous series since there are considerably long gaps within these years. The manuscripts consist of two sets of continous years, which are 1167-1169/1754-1756, 1188-1194/1774-1780, and 1223-1226/1809-1811. It is the only register of qadi that survived and is known to this day. Other registers are missing.



The Register of the Qadi Court Kiyahi Pĕqih Najmuddin

 DOI: 10.15408/sdi.v22i3.2354

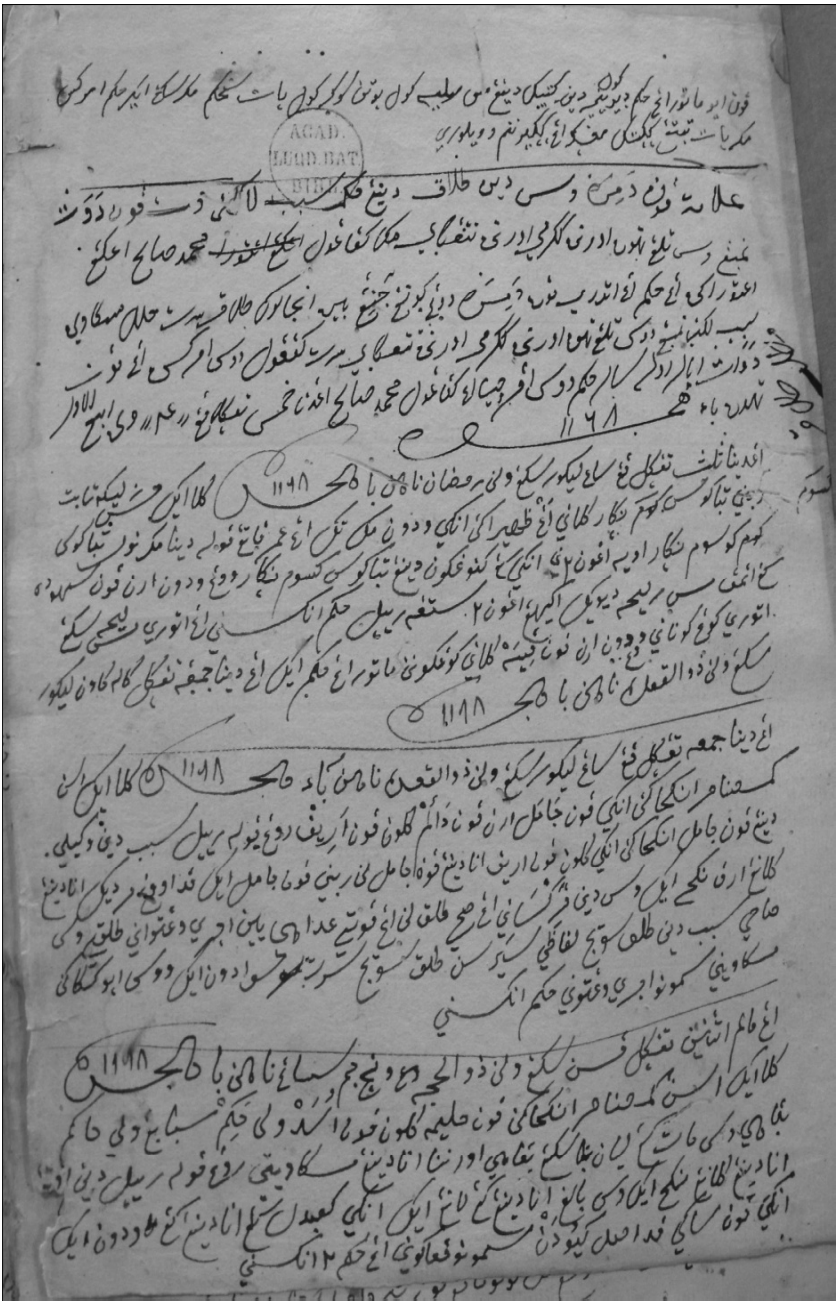
The dates of entries recorded in the manuscript revealed a chronological hiatus. For various reasons, some records must have been lost or destroyed in the course of time. One possibility is that the qadi or his employee, be it his scribe or his representative, wrote folios that were not bound together; this could have easily caused the dispersion of the register, especially after the dissolution of the sultanate by the British in 1813. Another possibility is that the Bantěnese did not have a suitable place for storage, allowing for climate and insect damage to the paper. A third possibility is that the qadi's manuscripts were burned following the civil war among the Bantěnese elites or the war between Bantěn and the European colonizers, be it Dutch or English, which took place repeatedly during the 17th-19th centuries.

The Description of the Manuscript

The 5,000 records found in the four manuscripts covered more than 600 pages, while the six-copied manuscripts were more than 2,000 pages long. As the qadi's archive thus consisted of a huge number of records, it was impossible to explore them exhaustively in their entirety. Therefore, this essay is limited to the study L.Or. 5626. This manuscript was selected because it is the oldest one, covering the years 1754-1756. Besides, the manuscript is the thinnest one, compared with the three other manuscripts, which allows me to study the manuscript in its entirety instead of just parts.

L.Or 5626 consisted of some seventy-two records mixed with other documents, such as an original sealed certificate of land ownership (*piyagěm*) from the Prime Minister Pangeran Wargadiradja, dated 4 Jumādī al-'Awwal 1221/20 July 1806 for Ngabehi Sata Pracanda from Margasana; and an original sealed letter dated 18 April 1834 destined for the qadi *Kiyahi Pěqih Najmuddin*. It also contained some prayers, citations of Quranic verses, an explanation of the recommended fasting on Monday, and other miscellaneous papers in Arabic script.

Broadly speaking, the manuscript L.Or. 5626 is in a very bad condition, even lacking the original cover. Brown paper was supplied by the conservator of manuscripts in Leiden University to protect the manuscript. It has no binding: folios were simply collected, put into one bundle, and stitched together with black thread. These were neither consciously arranged nor organized in a systematic fashion following the Islamic calendar. The lack of care implied that the



Page 1 of manuscript 5626

 DOI: 10.15408/sdi.v22i3.2354

bundling was done during a later period. The folios themselves were in poor condition and badly damaged and torn. Turning the pages causes a small portion of the paper to flake off. There are also holes in the text due to insects.

The manuscript and the text respectively have the following dimensions: 22 x 34 cm. and 18 x 31 cm. LOr 5626 and consist of seventy unnumbered folios (Pigeaud 1968, 333). The text of the manuscript was written in the Javanese language in Arabic script (*pegon*) without vowel points (*gundhil*). It was written with a pen and black ink, bold and thick. The text was poorly formed, most likely in *riq'ah* style, but readable. It was written on Dutch laid paper (*papier vergé*). No watermark was found, but the presence of a counter-mark on this document indicated the manufacturer's name: JH & Zoon, which was abbreviation from JAN HONIG & Zoon. This counter-mark was useful for dating the paper-making which was in 1741 (Voorn 1960, 136;188).[9] The manuscript is therefore the original text as its origins pre-dates the records from 1754 to 1756.

The seventy-two records found in this manuscript were dated from 1163/1750 to 1263/1847. However, almost all records, namely sixty-nine, were dated between 1167/1754 and 1169/1756,[10] while three records came from different years. The first of these dealt with the deposit of Syarif Makhrus' property with the judge and was dated 28 Rabī' al-'Awwal 1163/7 March 1750; the second record concerned the colorization of the mosque flag and the genealogy of a royal family dated 17 Ša'bān, without any year being mentioned; and a third record concerned the central mosque renovation dated 17 Rajab 1263/1 July 1847. These three records will neither be transliterated, translated, nor analyzed in this article. Furthermore, two records (one without a year and one from 1847) were not written on the same paper produced in 1741. Accordingly, it is very difficult to analyze them, which prevents a general description about the qadi's record in the mid-18th century.

Based on the aforementioned information, the manuscript contains sixteen folios of legal records dealt with by the qadi. However, excluding the aforementioned three records, this paper is limited to a presentation of sixty-nine records in the manuscript which were written on thirteen folios.[11] Each folio covers between four to seven records and has between twenty-five to twenty-eight lines of text. Every record consists of approximately three to seven

lines.[12] The records were not numbered. The space between the lines are particularly cramped.

There was no information about the scribe, but it was probably an official scribe of the qadi or his secretary, who wrote the records.[13] Most likely he was a Javanese of Bantĕn if we consider the way he wrote the letter *dāl* with a dot which is known as one of the Bantĕnese scribe particularities (Wieringa 2003, 499–518; 513; Yakin 2013, 43). It is not known how many scribes were involved in recording the entries in the manuscript. Yet on the basis of the handwriting, it may have been more than three scribes.[14] Moreover, it is more plausible that the manuscript was written by different scribes as it contains records from different years.

As previously mentioned, Manuscript 5626 was copied by Tengku Muhammad Nurdin at the request of Snouck Hurgronje and registered under Cod. 7740C. However, it was not an accurate copy because the first six records in the original manuscript were not found in the copied version. The copied manuscript and the text respectively have the following dimensions: 18 x 22,5 cm and 10 x 17 cm, with about fourteen lines on every page (Pigeaud 1968, 466)[15] and consists of some fifty folios. The text was written in black ink, bold and thick in *naskhi* style and readable. These were numbered as were all the records, even if they were wrongly calculated, i.e. sixty-four records including the aforementioned *piyagĕm*.

The Content of the Manuscript

As previously noted, manuscript 5626 contained sixty-nine records spread over three years, 1167-1169/1754-1756, and seven records (number 1, 18, 37, 39, 41, 42, and 44) were not dated. It is most likely that it was the scribe who forgot to write the year. The following is a detailed account of contents of the register during the period under review.

A. 1167/1754

Eleven records were registered in 1167/1754 and took place in the two months of Dhū al-Qaʿdah and Dhū al-Ḥijjah (between August and October 1754). For the month of Dhū al-Qaʿdah (August, 20 to September, 18), there were ten records recorded (no. 30 to 39), while for the month of Dhū al-Ḥijjah (between September, 19 to October,

 DOI: 10.15408/sdi.v22i3.2354

18) there was only one record (no. 40). It is noteworthy that all eleven records were written on pages 7 and 8 of the manuscript, including the undated records (no. 37 and 39) on page 8. That means these two records should also have taken place Dhū al-Qa'dah 1167/1754 as well. The eleven records concern several types of records, but the main records were the "*padu*" (literally: dispute).

B. 1168/1754-5

There are eleven records,[16] but only seven were dated in the year 1168/1754-5, while four other records[17] were not dated. However, these four records are found on the same folio with the dated records, so we can accept that all these records occurred in 1168 A.H.[18] The eleven records took place within a time-frame of six months[19] in the year 1168 /1754-1755. One record occurred in 1754, but most of them (nine records) came from 1755. Each record happened in a separate month, except for Sha'bān 1168/May 1755 where three records were found. The eleven records had various types of lawsuits, but the majority of the seven records concerned family matters (marriage, divorce and inheritance).

C. 1169/1755-6

Forty-seven records were recorded for 1169/1755-1756, which were found on folio 3-6 (records no.6-29) and 11-14 (records no.47-69). These records covered the first six months of the year 1169, from Muḥarram to Jumādī al-'Akhir,[20] and related to mainly *nikāḥ* (marriage, twenty-two records), handing over property (six records), debt (five records), divorce (three records), staying over in a family/ acquaintance's house (four records), and other records.

The Cases under the Qadi's Jurisdiction

For the records, from the years 1754-1756, discussed in this manuscript the majority of the cases pertained to non-litigious records and were divided into the categories listed as: viz. mostly to (1) family matters, (2) *padu*, (3) handing over property, (4) repayment and acknowledgement of debt, (5) giving an accommodation to someone, (6) violence against women, and finally (7) a miscellaneous category that covered selling and buying transactions, unexpected visit of a child, acknowledgement of a defeat, and information

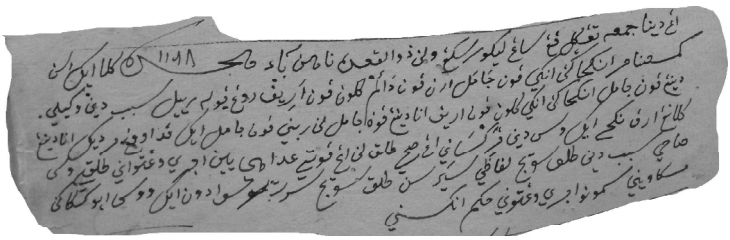
about a death. Hence, it is clear that the register's contents reflected a variety of categories of cases. However, it is interesting to note that the register did not include cases of murder or those connected with large commercial transactions. Most likely, murder was the responsibility of the Palace (*dalĕm*) or the Prime Minister (*bumi*), while large commercial transactions were the responsibility of the chief of customs and the seaport (*syahbandar*).

Family Issues

The largest part of the qadi's registers concerned family issues. This category included marriage, divorce, inheritance, and child-care. Family matters represented 46% of the register, thirty-two out of sixty-nine records, and were further divided into those concerning marriage (twenty-four), divorce (five), inheritance (two), and child-care (one).

A. Marriage[21]

All records concerning marriage pertained to the registration of marriage. In them the scribe or the secretary merely summarized the marriage process. One original text on marriage, with its respective transliteration and translation, should be mentioned here:



"Ing dina Jumu'ah tanggal ping sanga likur saking wulan Zū al-Qa'dah tahun Bā' 1168 Hijrah, kala iki isun Ki Mas Manamar anikāḥakĕn anake pun Jamal, aranpun Da'im, kalawan pun Aripa rong puluh reyal, sabab den-wakili dening pun Jamal anikāḥakĕn anake kalawan pun Aripa. Ana dening pun Jamal lan rabine pun Jamal iku padha wong mardika. Ana dening kalaning arĕp nikāḥ iki wus den-pariksane ing ṣaḥ ṭalāq lan ing pawate 'idahe. Yen ujare wong tuwane ṭalāq wus ṣaḥe sabab den-ṭalāq sawiji lapaẓe "sira sun ṭalāq sawiji." Sĕrta wadon iki wus anyukakĕn maskawine. Samono ujare wong tuwane. Ḥakim anĕkseni."

On Friday the 29th of the month of Dhū al-Qa'dah, 1168 A.H., in the year Bā' [6th September 1755 C.E.], I, Kyai Mas Manamar joined in marriage the daughter of Jamal, called Daim, and Aripa with a dowry

 DOI: 10.15408/sdi.v22i3.2354

> of twenty *reyal* because Jamal gave me the power of attorney to marry his daughter to Aripa. Jamal and his wife were free persons. Before the marriage, it was ascertained that Daim was lawfully divorced and her waiting period [*'iddah*] was finished. Her parents stated that the divorce was lawful because her former husband had pronounced the divorce formula: «*You are divorced from me with one* ṭalāq» and the dowry was returned.[22] This was stated by Daim's parent. [The marriage] was witnessed by the judge.[23]

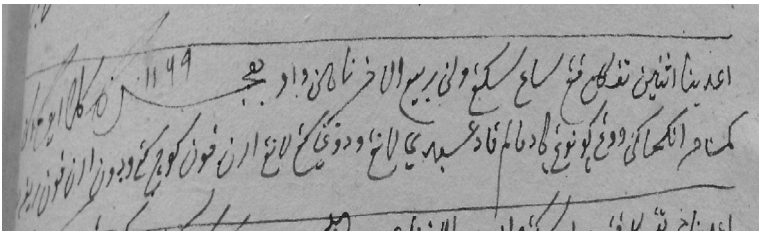
The scribe or secretary of the qadi recorded the basic information such as the personal status, social status, witness (*saksi*), the dowry (*maskawin*), and the guardian (*wali*). However, the offer and acceptance (*ījāb* and *qabūl*) were not recorded. The important point here seems to be that the information the qadi chose to record and the language used in the records showed that the qadi was using *fiqh*-norms.

Personal Status

In the twenty-four marriage records, one can distinguish two types or status of woman: unmarried (virgin) and divorced women.[24] Nevertheless, the records did not mention whether the unmarried women were *baligh*. There were eleven unmarried brides[25] and thirteen were divorcees.[26] In fact, the text mentioned that the latter group of women were divorced, based on their own testimony. However, the text did not include any information about their former husbands. The majority, twelve of thirteen women, had been divorced by the 'normal' divorce (*ṭalāq*, the husband's unilateral divorce)[27] and one by conditional divorce (*ta'liq ṭalāq*).

Social Status

Looking at the social status of the couples, it is interesting to note that the twenty-four marriage records identifed two categories of the couples' social status: free persons and slaves. Only two couples were slaves, both the bride and the bridegroom, which represented a small portion (two records or 8%) of the marriages registered. The overwhelming majority of couples appearing before the qadi to be joined in marriage were free persons (twenty-two or 92%). The records thus indicated that the qadi was familiar with the law regarding the requirements for marriage of slaves, viz. the permission of the owner. However, the records did not mention this permission explicitly, but one record noted that the owner sent an envoy informing the judge about the slave.



Ing dina Ithnen tanggal ping sanga saking wulan Rabi' al-'Akhir tahun Wãwu 1169 Hijrah, kala iki isun Ki Manamar anikaḥakĕn wong Gunung Gadu Malĕm, padha 'abdi lanang wadone. Kang lanang aran pun Kuci. Kang wadon aran pun Ripah.

On Monday the 9th of the month of Rabī' al-'Akhir 1169 A.H., in the year Wãwu [12th January 1756 C.E.] I, Ki [Mas] Manamar joined in marriage a man and a woman from Mt. Gadu Malem. Both were slaves, the man was named Kuci and the woman Ripah.[28]

Among the twenty-two couples, nineteen were entirely free persons in that they were not dependant on anyone. Two couples had *batur* status and one *qahum* status.[29] The two terms had a special meaning in Bantĕn's social hierarchy. They applied to subordinates, servants, or serfs, depending on the context. They were used as markers for people working under a person whose status was higher than their own; such as a prince, and in this respect they were the 'batur' of a prince. It is interesting in itself that the manuscript recorded the social status of the persons.

Guardian[30]

All twenty-four marriages were contracted by a *wali ḥakim* or a magistrate guardian (legal representative) and not by their lawful guardian (*wali*), both for single and divorced women. It means that the judge (*ḥakim*) replaced the lawful guardian of the brides. There were various reasons mentioned in the manuscript for the absence of a lawful guardian at the time of marriage. The first is *'adam wali* or the non-existence of guardian, which represented 50% of the marriages (twelve). Lack of a guardian was for two reasons: the bride had no lawful guardian whatsoever (ten)[31] or the lawful guardian had passed away and no person in the paternal line could act as a guardian (two).[32]

The second reason why a woman would need the judge to act as a guardian was explained in the text itself '*gā'ib*' (away, absent or missing) meaning that the lawful guardian was not present at the time of marriage. According to the text, one guardian was far away; having

 DOI: 10.15408/sdi.v22i3.2354

moved to Lampung and apparently was living there so that the bride had to ask the judge to join her in marriage.[33] With respect to another record, it was simply mentioned that the guardian was missing (*gā'ib*) without any further information. A third reason was that of a *wali 'aḍal* or a 'reluctant guardian'.[34] This meant that the lawful guardian did not want to conclude the marriage for his daughter for a reason that the text did not mention.

The fourth reason mentioned in the text was that the lawful guardian was a '*fāsiq*' (sinful person) preventing him from acting as a guardian.[35] The fifth reason was that the lawful guardian was too young and not mature enough to act as a guardian or the guardianship was not sufficiently strong (as for example the guardian being only a uterine brother).[36] The sixth reason was that the lawful guardian had transferred his guardianship to the judge.[37] All these reasons for use of a *wali hakim* were indeed recognized in *fiqh*, and for five records[38] guardianship was not mentioned at all. I do not know why these records were treated differently. Perhaps, the scribe forgot to write it down in the register.

Witnesses[39]

Of the twenty-four marriages only five were attended by witnesses, e.g. two Muslims males with their names and occupations recorded.[40] Two marriages were witnessed by the judge himself,[41] while 70,8% or the majority of the marriages (seventeen) did not have recorded information about the witnesses. No further explanation was given concerning those who acted as witnesses.[42] In that situation, it is assumed that the judge or an official from the qadi court was a witness, which the scribe forgot to record. In fact, most of the marriage records did not contain a statement of "*Ḥakim aněkseni*" (the judge witnessed it [the marriage]).

Dowry[43]

According to the qadi register for 1167-1169/1754-1756, the dowry in Bantěn, was calculated in *reyal*, the currency for that time, and the amount ranged from two to twenty *reyal*. The payment of the dowry could be paid in advance (five records), but in most records (eighteen or 75%) payment was deferred (*den-utang*). In eleven (45,8%) records the dowries amounted to twenty *reyal*[44] and in six or 25 % of the records the amount was ten *reyal* (6).[45] In other records, it was eight *reyal* (2)[46],

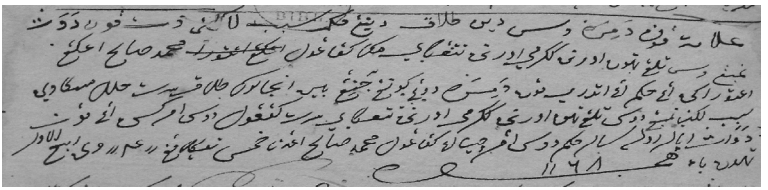
two *tahil* gold (equivalent to eight *reyal*) (2),[47] two golden *reyal* (1),[48] or two *reyal* (1).[49] Only one record had no dowry mentioned at all.[50] It became apparent that the fair dowry or the common dowry accepted by the people in Bantĕn was twenty *reyal*.

B. Divorce[51]

Of the 69 divorce records provided only five concerned the dissolution of marriage,[52] all of records related to the couple's first divorce. The text itself used the term '*ṭalāq siji*' (first *ṭalāq*) that meant they could remarry. It is important to note that the divorces occurred either by unilateral divorce (*ṭalāq*) or by redemption divorce (*khulu'*)[53].

Reason for Divorce

Two records provided information on the reason for the divorce. One example should be mentioned here, based on the original text, with its respective transliteration and translation:



'Alamat pun Damirah wus den-ṭalāq dening Pĕqih, sabab lakine den pun Dawat nambang wus tĕlung tahun, oranana kĕkirime oranana tĕtinggale. Maka Ki Pangulu Muḥammad Ṣaleḥ ingkang angaturakĕn ing ḥakim ing aturipun Damirah wong Gunung Jĕning yen anjaluk ṭalāq sĕrta ḥalal maskawine, sabab lakine nambang wus tĕlung tahun oranana kĕkirime oranana tĕtinggale, sĕrta Ki Pangulu wus amariksa ing pun Dawat a-ny-l-r rolas s-l-r-. Ḥakim wus a-ng-r-ny-b ing Ki Pangulu Muḥammad Ṣaleḥ ing dina Khĕmis tanggal ping 4 wulan Rabī'u al-'Awwal tahun Ba' 1168 Hijrah.

The matter was that Damirah was [declared] divorced by the *pĕqih* [judge] because her husband, Dawat, ignored her for three years, never sending [food] parcels nor providing the obligatory financial support[54]. It was Kyai Pangulu[55] Muhammad Saleh[56] who informed the judge as to the statement of Damirah, a resident of Mt. Jĕning, who asked for a *ṭalāq* [divorce] and a ruling on the lawfulness of the dowry because her husband ignored her for three years, leaving her without [food] parcel or the obligatory financial support. Kyai Pangulu had investigated the husband, Dawat, who raised (?) 12 (……) [*reyal*]. The judge handed (?) this [money] to Kyai Pangulu Muhammad Saleh [as compensation for Damirah] on Thursday the 4th of the month of Rabī'u al-'Awwal 1168 A.H., in the year Bā' [19th December 1754 C.E.].[57]

 DOI: 10.15408/sdi.v22i3.2354

In this first record, the wife filed a petition for the negligence of her husband. During three years he had not provided any maintenance or provisions for a dwelling.[58] It is important to note that the text used the word *den-ṭalāq* (was divorced) in this record, but in Islamic law it should be part of *faskh*, which means the dissolution of the marriage by the court for incapacity to fulfill the obligation of the marriage. This is totally different from the *ṭalāq* as a unilateral divorce pronounced by the husband. In the second record, the wife asked for divorce arguing that the husband was addicted to gambling.[59] In the other three records, the text did not mention the reason for the divorces, although they were granted.[60]

Process for Divorce

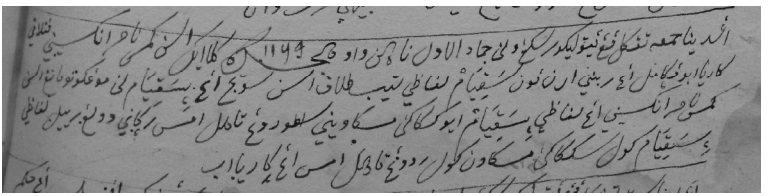
The process through which an official divorce was obtained from the qadi court was well documented.[61] The party went before the judge and explained the reason for seeking a divorce. The judge then ordered his official to carry out an investigation to discover whether the information given was true or false. Once the investigation was completed, the process of divorce started. The process was witnessed by the judge or the judge's official.[62] It seemed that this procedure was noted only in the case where the wife was claimed that it should be treated as *faskh*. The divorce verdict was then pronounced by the judge who declared that the marriage was dissolved. The record was then closed if it was a divorce by mutual consent. If it was a judicial divorce (*faskh*), the wife received compensation from her former husband.[63] The latter should be interpreted as *mut'ah*, even though the word itself does not exist in the text.

Besides the five mentioned divorce records, there were thirteen marriage records where the brides were divorced by former husbands through unilateral divorces (*ṭalāq*) or redemption divorces. It should be noted that these divorces were not submitted to and did not come about via the qadi court. Of the thirteen, twelve records listed regular divorces,[64] while only one record noted a *ta'liq ṭalāq* (conditional divorce).[65] For the regular recorded divorces, the text mentioned nine records of the single divorce (minor separation),[66] while three records concerned triple divorces (major separation).[67] When divorces were by mutual consent for the single *ṭalāq*, the husbands uttered the word *ṭalāq,* for example: "*You are divorced from me with one* ṭalāq".[68] In the same vein, the phenomenon of the triple divorce also occurred, for

example, in the record of Siyah, the former husband said: "*You are divorced with my three repudiations*."[69] It is important to bear in mind that all the *ṭalāq* aforementioned did not take place in front of the judge. The *ṭalāq*s were referred to by the judge in order to simplify the process for obtaining another marriage.

Redemption Divorce

Apart from the unilateral divorce (*ṭalāq*), another type of divorce was found, namely a *khulu'* divorce. However, it should be noted that the term *khulu'* itself is not mentioned in the text, but after having examined the text very carefuly, some records in the manuscripts clearly revealed that was about a *khulu'* divorce as noted in the following example. The couple appeared before the judge and later, the husband pronounced the *khulu'* divorce before the judge: "*My first* ṭalāq *falls upon you Saqiyam*".[70] The wife replied by returning her dowry to the husband "*I hand over my dowry two* tahil *gold* (ca. 75 gram) *to you Abu Arya Pagamal*".[71] Below is the original text, with the respective transliteration and translation:



Ing dina Jumu'ah tanggal ping pitulikur saking wulan Jumādī al-'Awwal tahun Wāwu 1169 Hijrah, kala iki isun Ki Mas Namar anĕkseni panalaqe Ki Arya Abu Pagamal ing rabine aran pun Saqiyam. Lafaẓe "Tiba ṭalaq isun sawiji ing Saqiyam." Lan mongkono maning isun Ki Mas Namar anĕkseni ing lafaẓe Nyi Saqiyam anyukakakĕn maskawine rong tahil ĕmas, rĕgane wolung reyal. Lafaẓe Nyi Saqiyam "Kula sukakakĕn maskawin kula rong tahil ĕmas ing Ki Arya Abu."

On Friday the 27th of the month of Jumādī al-'Awwal 1169 A.H., in the year Wāwu [28 February 1756 C.E.] I, Ki Mas Namar, witnessed the divorce of Ki Arya Abu Pagamal from his wife, [Nyi] Saqiyam. He pronounced: "*My first* ṭalaq *fell upon you Saqiyam*." In the same way, I, Ki Mas Namar, witnessed the response of Nyi Saqiyam at the moment she returned her dowry of two *tahil* in gold amounting to eight *reyal*. Nyi Saqiyam said: "*I hand you over my dowry of two* tahil *in gold to you Ki Arya Abu [Pagamal]*."

Another example of the redemption divorce formula, as offered and accepted by the opposite party, was illustrated by the record of Ismah

 DOI: 10.15408/sdi.v22i3.2354

vs Kari. The husband (Ismah) said: "*Give me back your dowry*," and the wife (Kari) replied: "*I agree*." The husband then said: "*My* ṭalāq *falls upon you*."[72] Another example was from the record of Aripa. The former husband said: "*Give me back your dowry*," and Aripa concurred with this. Her husband pronounced accordingly: "*My first* ṭalāq *falls upon you*."[73]

It is interesting to note that the thrice *khulu'* was found in the register, for example in the record of Nyi Dawiyah, the former husband said: "*Give me back your dowry*" and Nyi Dawiyah replied "*I agree*". The husband divorced Nyi Dawiyah immediately. He pronounced "*My three* ṭalāqs *fall upon you*." Nyi Dawiyah replied "*I accept this* ṭalāq."[74] Another example of the major separation was the record of Nyi Dhempul, the *ṭalāq* formula of her former husband was: '"*Give me back your dowry*." She replied "*I am pleased to give you back my dowry*."' Then, the husband pronounced: "*My three* ṭalāq *fall upon you*."[75] Unfortunately, the text did not mention the reason the wife asked for a divorce from her husband.

Conditional Divorce

Four divorce records[76] recorded in the register were brought about through a *ta'liq ṭalāq* or a conditional divorce. In such records, the husband stated a condition for divorce unilaterally and that the divorce would be realized if the wife fulfilled the condition. One example was the record between Naim and Tiyah. Naim (the husband) said: "*In the event Tiyah gives me back her dowry for twenty reyal and takes responsibility of maintenance of my child forever, then one ṭalāq will fall upon my wife Tiyah*."[77] Thereafter, the wife only needed to go to the judge to fulfill the condition for divorce and the judge dissolved the marriage. I do not have any information when this *ta'liq ṭalāq* was pronounced, viz. immediately after the process of offer and acceptance (*ījāb* and *qabūl*), as we have seen the practice today, or at the time of marriage. One example should be mentioned here:

> *Ing dina Jumu'ah tanggal ping sangalikur saking wulan Rabī' al-'Awwal tahun Wāwu 1169 Hijrah, kala iki pun Na'im ana'liq ing rabine aran pun Tiyah. Ta'liqe "Samangsa-mangsane pun Tiyah anyukakakěn maskawine rong puluh reyal, lan tinggal napqahe anaq kula ing sa'umure arěpe, maka tiba ṭalāq kula sawiji ing pun Tiyah." Maka pun Tiyah aněmbadani ing sakehe ta'liqe iki. Ana dening kalaning ana'liq lan němbadani ta'liq iki pada ḥaḍir ing ajěnganing ḥakim, maka saking arah iki pun Na'im lan pun Tiyah wus mari laki rabi. Aṣale pun Tiyah anyatu ṭalāq ing ḥakim,*

sabab lakine aran pun Na'im totohan pupugiyan, maka pun Na'im angaku ing ḥakim, ingḥale wus ana'liq. Ta'liqe kang wus sĕbut iki, maka saking iki pun Tiyah aněmbadani ta'liqe bahe. Saking tibaning ṭalāq, ḥakim aněkshĕni.

On Friday the 29th of the month of Rabī' al-'Awwal 1169 A.H., in the year Wāwu [2nd January 1756 C.E.] Naim pronounced the conditional divorce to his wife, namely Tiyah. The *ta'liq* formula was "*In the event Tiyah gives me back her dowry for twenty reyal and takes a responsability for maintenance of my child forever, then one* ṭalāq *will fall upon my wife Tiyah*." Naim uttered the conditional divorce and Tiyah fulfilled it before the judge. Accordingly, Naim and Tiyah were divorced and no longer husband and wife. The reason Tiyah asked for divorce [*ṭalāq*] was because her husband, Naim, had been using gambling stakes the "*pupugiyan*"(?). Naim admitted this before the judge. He had proclaimed the conditional divorce with the aforementioned conditional divorce formula, so that Tiyah had only to fulfill this conditional divorce [which she did]. The *ṭalāq* fell upon Tiyah and was witnessed by the judge.

It is interesting to note that the term *ta'liq ṭalāq* is well known in *fiqh*. Indeed, the *fuqahā'* agreed with the validity of conditional divorce stating that the divorce is valid once the condition has been fulfilled (Bellefonds 1965, 387–388). This term *ta'liq ṭalāq* is found in almost all *fiqh* references of four Sunni-schools.[78] This indicates that the qadi of Banten used *fiqh* as his source of adjudication, even though there was no explicit reference to a specific *madhhab* or its opinions. This is to say that the qadi of Banten conformed to *fiqh*-norms in legal making decisions.

Another interesting point to note is that the *ta'liq ṭalāq* in Bantĕn was the first conditional divorce known in Indonesia and dated back to 1755. This was in accordance with the laws enacted by Sultan Zainul Arifin (1733-1748) to institutionalize *janji bumi* (the state oath) which allowed a wife to request a divorce when a husband violated this state promise, i.e. bad behavioral conduct of a husband (Yakin 2013, 285–286). Unfortunately the *Undhang-Undhang Bantĕn* (The Compilation of the Laws of Bantĕn) did not explain the criteria for a husband's bad conduct which allowed a wife to ask for a divorce. Judging by the examples of bad conduct of husbands in the register under review, one husband did not provide the obligatory support or provide a dwelling for his wife. The institutionalization of *ta'liq ṭalāq* as a *janji bumi* seemed to have been initiated in Bantĕn during the 18th century. This was the first concrete application of *ta'liq ṭalāq*, while an

 DOI: 10.15408/sdi.v22i3.2354

earlier claim that it was applied in the 17th century failed to offer any material proof. [79]

C. Inheritance

Two records[80] concerning inheritance were mentioned in the register, although further information was not provided.[81] It is more than probable that the heirs came before the judge and submitted their record to be settled, as everyone wanted their share. In the first record, the decedent was a man named Sayan who left three heirs: wife, daughter, and brother. The judge divided the inheritance of twenty-nine *reyal* according to *fiqh*.[82] The text used *fiqh* terms for heritage's share in Arabic: *nisfu (1/2)*, *thumun* (1/8), and *'aṣabah* (rest). It was obvious that the first share was the decedent's daugther, the second share was the decedent's wife, and the latter share was the decedent's brother.

In the second record, the decedent was not mentioned, but was obviously a man. He left five family members behind, namely Ratu Saidah (perhaps his wife), Yabiba (maybe his mother), one daughter and two sons: Tubagus Udin and Tubagus Bakir. The judge divided the bequest of forty-seven *reyal* and one *tali* and some luxurious possessions among the five people according to *fiqh*.[83] The text used *fiqh* terms for heritage's division in Arabic: *thumun* (1/8) and *sudus* (1/6). This indicated that the wife received one-eighth (*thumun*) as the decedent had children and one-sixth (*sudus*) was the share of the decedent's parents since the decedent also had children.

The important point here is that the division of the inheritance by the qadi indicates an understanding of *fiqh*-norms. Also, there was nothing in the text that indicated a deviation from Islamic inheritance based on local custom or values. In particular, the qadi applied the *quranic-fiqh* norm that a son's share was twice the share of a daughter.

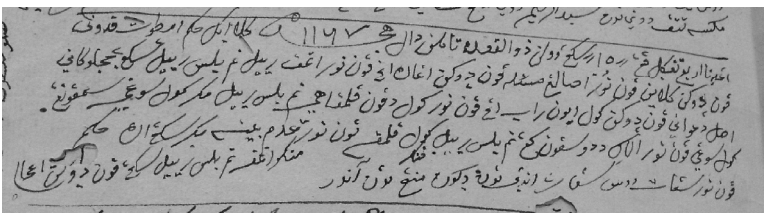
D. Child-Care

The register contained only one record about childcare.[84] The record involved royal descendants or members of the royal family as the husband bore the title *Raden*, equivalent of Ratu Bagus in the preceding record. The husband had hired a woman to take care of their forty-day-old baby and the wife gave her baby directly to this female 'nanny' with the salary of one half *reyal*. The wife's female servant informed the judge as to this child-care arrangement and the judge stood as witnessed in this record.

Padu (dispute)

The *padu* or dispute was the second most frequent type of record (10 records/14%) that the qadi court settled between individual litigants. There were a large variety of disputes contained in the register, but in general they concerned private relationships and transactions, such as disputes over a marriage proposal, dowry, debt, gift, legacy, plot of land, keris (Javanese dagger), and violence.[85] The lawsuits were briefly summarized without clarifying statements or further information as to the nature of the process between submission of the record and the decision. At any rate, what we can draw from the text is that the plaintiff came to the qadi court, explained his view of the record, and asked for a settlement against the defendant. The defendant then appeared before the judge and the process of litigation started. The plaintiff accused the defendant of violating his rights. After hearing both the plaintiff and the defendant, the judge made a judgment in favor of one of the parties. The 'procedure' was summarized from the records; however, I do not have any information that confirms the 'procedure' was followed for all *padu*'s cases.

It should be noted here that two records[86] did not contain a judgment. The records were brought before the judge, but there was no decision or settlement and the text did not provided no further information. Concerning another eight records, the judge adjudicated the 'lawsuits' in various ways. First, in a situation where there was no evidence,[87] the judge ordered the defendant to take the oath against the accusation of the plaintiff. Once the accused pledged an oath, the judge adjudicated, generally in favour of the defendant.[88] In some records, the defendant even received compensation. For example, one defendant obtained 12 *reyal* as compensation because there was no evidence.[89]



Ing dina Arba' tanggal ping 10 wulan Dhū al-Qa'dah tahun Dāl 1167 Hijrah, kala iki ḥakim ameṭot padune pun Dhokan kalayan pun Nur. Aṣaling mas'alah pun Dhokan angarah ing pun Nur atampa reyal nĕmbĕlas reyal saking jĕjalukane. Aṣal da'wane pun Dhokan "Kula ayun rabi ing pun Nur. Kula dipunpalimpahi nĕmbĕlas reyal, maka kula sunge. Sampuning

 DOI: 10.15408/sdi.v22i3.2354

> kula sunge, pun Nur alaki. Dadosipun kang nĕmbĕlas reyal punika kula palimpahi." Pun Nur munkir anampa nĕmbĕlas reyal saking pun Dhokan ingḥale 'adm al-bayyinah. Maka saking arahe ḥakim pun Nur sĕpata, wus sĕpata andhĕp pun Dhokan, mĕnang pun Nur."
>
> On Wednesday the 10th of the month of Dhū al-Qa'dah 1167 A.H., in the year Dāl [29th August 1754 C.E.] the judge ruled on a dispute between Dhokan and Nur. The origin [of the dispute] was that Dhokan had accused Nur of receiving sixteen *reyal* as she had requested. In fact, Dhokan had wanted to marry Nur and had been asked to give her the aforesaid money. "*If I give the money, Nur would marry me*. So I gave her sixteen *reyal*." Nur however refused to acknowledge that she had received sixteen *reyal* from Dhokan and there was no a proof [*'adm al-bayyinah*]. The judge ordered Nur to swear an oath against [the allegations of] Dhokan. Nur won [the case].

The records indicated another way for the judge to rule, when the plaintiff failed to present a witness,[90] the judge rejected the record. In fact, the judge evaluated the argument of the plaintiff and if it was not convincing, consistent, or plausible, he settled the record in favour of the defendant.[91] Alternatively he merely asked the defendant to take an oath denying the accusation and subsequently found in favour of the defendant.[92] Occasionally when the plaintiff could not present a witness before the judge, he was required to pay a fine, which was given to the defendant as compensation.[93]

A third way that was noted in the records was when the plaintiff brought evidence before the judge against the defendant, but his testimony was inconsistent. Hence, the judge rejected the record; that meant the judge issued a judgment in favour of the defendant.[94] It was simply the way the qadi dealt with the facts of that one particular record.

The fourth way was when the parties in a dispute (in the relevant records the spouses) accused each other of having a debt, but eventually concluded an amiable settlement (*ṣulḥ*) before the judge, the latter only witnessed that settlement and noted it in the register. However, if one of the parties still owed something, he/she had to pay.[95] These four ways revealed that the qadi of Banten relied on the *fiqh* system as his legal source, even though there was no explicit reference to specific *madhhab's* thoughts and opinions.

A fifth and interesting response was when the judge adjudicated a record by casting lots between the two groups in litigation. The specific record for the case, was litigation regarding some assets and properties, which were claimed to be a gift from the parent or alternatively a legacy

from the prince. The judge settled the dispute by parceling the assets between the two groups by casting lots, so that one part of the goods went to the first group, and the second group received the other part based on the results of the lots.[96] This action was as an example of the qadi applying *adat*-rules, because there was no legal basis for casting lots. The qadi might have thought this was a reasonable way to settle the issue in that circumstance, based on his understanding of local customs.

In this group of *padu* records, I found Arabic terms which were central to *fiqh* discourse, such as *da'wah* (accusation/7records no. 30-32, 38, 40, 43, 46), *'adam bayyinah* (no proof/record no.35), and *ṣuluḥ* (amiable settlement/record no.30). The terms *da'wah*, *bayyinah* and *ṣulḥ* referred to the *fiqh* system. Basically, the qadi employed the *fiqh* legal decision making system based on the hadith "*al-bayyinatu 'alá man idda'ā wa al-yamīnu alá man ankara*" (al-Qastalānī 1990, 404) and the saying of Umar "*al-bayyinatu 'alá man idda'a wa al-yamînu alá man ankara*", *wa al-ṣulḥu jā'izun bayn al-muslimīn*.[97]

In contrast, as noted earlier, for some records the qadi used customary law (*'adat*) as his judicial source, mixed with *fiqh* to 'Islamize' this 'custom' as the below example shows:

> Ing dina Aḥad tanggal ping 14 wulan Dhū al-Qa'dah tahun Dāl 1167 Hijrah, kala iki ḥakim amethot padune pun Raḍiyyah lan pun Sidin. Aṣaling mas'alah pun Sidin den-tĕrka dening pun Raḍiyyah angucapakĕn jemer(?) lan anabok. Pun Sidin munkir ingḥale 'adam bayyinah. Maka saking ḥakim pun Sidin sĕpata, wus sĕpata, mĕnange pun Sidin rolas reyal.
>
> On Sunday the 14th of the month of Dhū al-Qa'dah 1167 A.H., in the year Dāl [2nd September 1754][98] the judge ruled on a dispute between Rodhiyyah and Sidin. The origin of the problem is that Sidin was accused by Rodhiyyah of uttering bad words(?) and beating her. Sidin denied [the accusations]. Since there was no proof [*'adam bayyinah*], the judge [ordered] Sidin to swear an oath, which he did. Sidin then won the record [and received a compensation] of twelve *reyal*.[99]

In this example, the judge ordered the defendant to swear an oath as the plaintiff had no proof (*'adam al-bayyinah*), a *fiqh* term. What strikes me is that at the end of the record the defendant obtained 12 *reyal* as compensation because there was no evidence. This could be interpreted as defamation by the plaintiff, but more likely was a traditional law penalty for bothering the court with an unsubstantiated claim, in Javanese customary law it was called as *Anir Yukti Karah* (Hoadley 2009, 149). In this record the qadi used *fiqh* mixed with customary law. The same thing was noted for

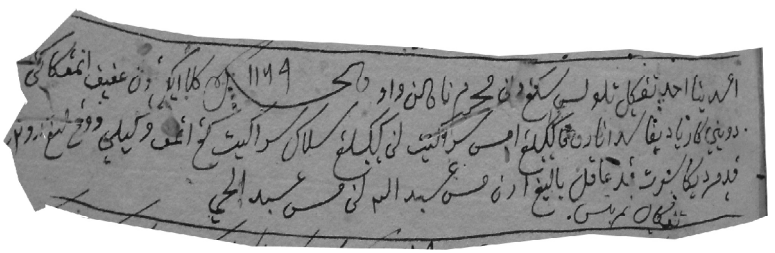
 DOI: 10.15408/sdi.v22i3.2354

the records under the category of debt (*utang*) and handing over property (*anampakakěn*), it was more than probable that the qadi used the 'custom' of Banten bounded by Islamic norms, ethics, and spirits.

It is important to note that the judge did not mention what sources underpinned his decision. Only a general statement was noted at the end of the record, for example on the dispute of the repayment of debt, namely: "*From the judge's viewpoint, he ruled that Nyi Mas Wadon [the defendant] won the record against Mas Bari [the plaintiff]*."[100] An example from another record, on the dispute over the possession of keris, the judge said: "*His claim [the plaintiff] was rejected due to the inconsistency between proof and his testimony*."[101] For this record, one could think that the "law" governing this record seems obvious: "the owner of the keris was entitled to possess it." The solution was based on the fact that the information before the qadi showed that the person claiming to be entitled to the keris was not its owner. Another interesting feature of the litigation was that most of the litigants were common people (seven records)[102] and the rest royals,[103] which indicated that the qadi court was open to everyone regardless of social status.

Handing Over Property (anampakakěn)

Handing over property to its owner or somebody else by the judge was the object of quite a large number of records in the register (nine records/13%). Generally speaking, the judge received the object from someone (giver/donor), recorded it, and after due process handed it over to somebody else (receiver/acceptor). Alternatively, the owner entrusted some valuable good to the judge who handed it over when the owner returned and reclaimed it. This was all witnessed by the judge and registered by the scribe as proof that the transaction had taken place. In such recorded actions, the judge acted as a notary and accepted in all likelihood only moveable property. Below is one example, with its respective transliteration and translation:

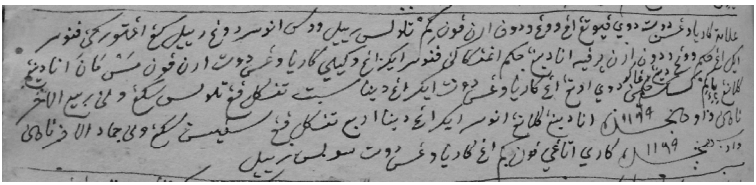


Ing dina Aḥad tanggal tĕlu wĕlas saking wulan Muḥaram tahun Wāwu 1169 Hijrah, kala iki pun Apiq anampakakĕn duwene Ki Arya Dipa Sĕdana rupa gĕgĕlang ĕmas sarakit lan gĕgĕlang salaka sarakit. Kang atampa wakile wong lanang roro padha mardika sarta padha 'aqil balig aran Mas 'Abdullah lan Mas 'Abdul Ḥayyi."

On Sunday the 13th of the month of Muḥarram 1169 A.H., in the year Wāwu [19th October 1755 C.E.] Apiq returned the property of Ki Arya Dipa Sedana, namely a pair of golden bracelets and a pair of silver bracelets. Those who received them were his envoys: two free persons of sound mind and of age named Mas Abdullah and Mas Abdul Hayyi."[104]

The majority of the property handed over concerned precious items and valuable goods, such as a pair of golden and silver bracelets,[105] large amounts of cash,[106] or even very luxurious and expensive possessions, such as a pair of a diamond rings,[107] and types of keris[108] or pike.[109] Most of the records were informative and short, mentioning the names of the giver and the receiver. It is interesting to note that the social status or background represented by this recorded category included and indicated a variety among the social classes. There were four commoners, three royals[110] (members of the royal family or its descendants), and two people from the elites,[111] and the commoners also possessed valuable objects.

Repayment and Acknowledgment of Debt



'Alamat Ki Arya Wangsa Duta duwe piyutang ing wong wadon aran pun Kima tĕlulas reyal. Wus anusur rong reyal. Kang angaturaken iki ing ḥakim wong wadon aran Nyi Rapiyah. Ana dening ḥakim anampakakĕn panusur iki ing wakile Ki Arya Wangsa Duta aran pun Mas Mana. Ana dening kalaning Nyi Kima kasaksi dening ḥakime ngaku duwe utang ing Ki Arya Wangsa Duta iki ing dina Sĕbtu tanggal ping tĕlulas saking wulan Rabī' al-Ākhir tahun Wāwu 1169 Hijrah. Ana dening kalaning anusur iki ing dina 'Arba' tanggal ping sapisan saking wulan Jumādī al-'Ākhir tahun Wāwu 1169 Hijrah. Kari utange pun Kima ing Ki Arya Wangsa Duta sĕwĕlas reyal.

The reported matter was that Ki Arya Wangsa Duta loaned the sum of thirteen *reyal* to a woman, named [Nyi] Kima. She repaid her debt in

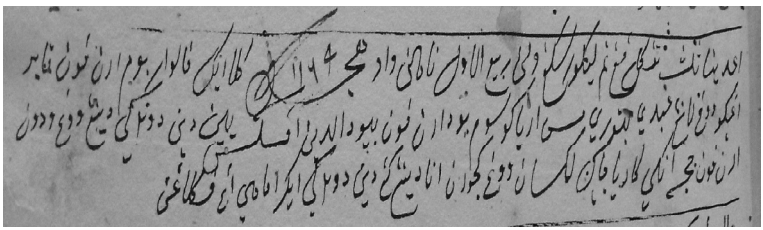
 DOI: 10.15408/sdi.v22i3.2354

two-*reyal* installments. A woman, named Nyi Rapiyah, brought the money to the judge. [Afterward], the judge handed over this repayment in installments to the agent of Ki Arya Wangsa Duta, namely Mas Mana. Nyi Kima acknowledged that she owed Ki Arya Wangsa Duta as witnessed by the judge on Saturday the 13th of the month of Rabī' al-'Ākhir 1169 A.H., in the year Wāwu [16th January 1756 C.E.]. She repaid her debt in installments on Wednesday the 1st of the month of Jumādī al-'Ākhir 1169 A.H., in the year Wāwu [3rd March 1756 C.E.]. The remaining debt of Nyi Kima to Ki Arya Wangsa Duta was eleven *reyal*.[112]

The register contained a small number of debt issues. One record concerned the acknowledgement of a debt. However, the text did not specify whether the repayment was due on demand or deferred.[113] The judge witnessed this acknowledgment and wrote it down in the register to serve as evidence, which the debtor could not deny. Five records concern the repayment of the debt.[114] The creditor received the repayment directly from the debtor.[115] The judge witnessed the repayment by the respective parties and recorded it in the register, which served most likely as proof that the debtor repaid the debt. The judge played an intermediary role between creditor and debtor in that he received repayment of the debt from the debtor and handed it over to the creditor or his representative, even though there were no legal conflicts.[116] This repayment of a debt was done in installments.[117] If the debtor could not repay the debt in cash (Bantĕn's currency in *reyal*), the creditor would accept, for example, repayment with a pair of gold earrings[118] or a plot of rice fields.[119]

This record seemingly served to avoid any disputes at a later date. The records made by the qadi were probably used to prove the existence or payment of a debt. This written statement of the qadi provided proof that the debt existed and that the payments were made. It is interesting to note that the parties in the debt issues were more or less equally distributed among free persons, common people, and royals.

Giving an Accommodation to Someone



Ing dina Thĕlatha tanggal ping nĕmlikur saking wulan Rabī' al-Awwal tahun Wāwu 1169 Hijrah, kala iki paliwara bumi aran pun Qabir anggawa wong lanang 'abdi, bature Mas Arya Kusuma Yuda, aran pun Bayududin, apiksa yen den-dhodhok dening wong wadon aran pun Jijah, anake Ki Arya Jaga Laksana wong Kajoran. Ana dening kang den-dhodhoki iki omahe ing Pakalangan.

On Tuesday the 26th of the month of Rabī' al-Awwal 1169 A.H., in the year Wāwu [30th December 1755 C.E.] the *paliwara* [officer of the judge], named Qabir, brought a male slave [*abdi*], called Bayududdin, the servant [*batur*] of Mas Arya Kusuma Yuda, to [the judge] to inform him that Jijah, a daughter of Ki Arya Jaga Laksana from Kajoran, had been spending the nights in his [Bayududdin] house in Pakalangan.[120]

The register contained five records concerning accommodating someone in one's house,[121] the host was required to inform the judge about his guest. This was in accordance with the law in force at that time, namely the *Undhang-Undhang Bantĕn* (the 'code' of Bantĕn), which regulated people spending nights in someone's house. The table of contents listed three articles (no. 110-112) regulating people giving accommodations to strangers or unknown people; however the articles were not found in the 'code' itself. I argue that this is probably due to the fact that folios containing many articles, most likely including these three articles, were lost. However, in another article, we read that the Dutch were prohibited from overnighting in a Bantĕnese house (Yakin 2013, 71; 202). This regulation was applied to everyone regardless of their social status: common people[122] and royals.[123] Interestingly, only women stayed in someone's house overnight and the home owners were members of their own families.[124]

The reason the women stayed in their families' homes was generally due to a 'family problem' of some kind[125]. In one record, the husband had passed away and the entire inheritance had been auctioned by the brother-in-law[126]. One record concerned a woman whose husband had evicted her from their house.[127] Another record concerned a woman, with two daughters, whose husband had neglected them for five years in the sense that he had not provided the obligatory maintenance or dwelling.[128] These women did not know where they could stay and so they went to their families for support. In the last record, a young lady stayed over at someone's place because she was a guarantee of her parents' debt.[129]

 DOI: 10.15408/sdi.v22i3.2354

Violence Against Women

The manuscript contained three records of violence against women.[130] Very clearly the victims were indeed women and the culprits were men. Two women were beaten: one on the face[131] and the other on the knee and the back.[132] One woman was attacked with a pike and her right breast and left hand were seriously wounded. Unfortunately, the name of the culprit and his relation to the woman was not mentioned in the record.[133] The records were reported to the judge and recorded in his register, but no sanction was mentioned. It was possible that the scribe did not write down the sanction because the parties in litigation had resolved the dispute in a mutually amicable manner.

The World of the Qadi of Banten

The manuscript revealed legal practices that occurred in Bantĕn during the second half of eighteenth century. Moreover it provided some important information, such as the following:

A. Administration of the Qadi Court

Based on the entries recorded in the register, it became apparent that the qadi listened, witnessed, and recorded 'records' coming before him. Because the qadi had many administrative tasks, it seemed obvious that he did not work alone. Indeed, various names appeared in the text, probably corresponding to the judicial officials of Bantĕn. The word qadi itself did not appear in the text; it was the word '*ḥakim*' (judge) that was used. In fact, two words in the text, *Ḥakim* and *Kiyahi Pĕqih Najmuddin*, were used interchangeably. As previously mentioned, the former was the title of the qadi of Bantĕn. Accordingly, the word *ḥakim* referred undoubtedly to the qadi himself. Other terms were found in the text as well, such as *pangulu*[134] and *paliwara*.[135]

It has been assumed that the *pangulu* was the qadi's representative appointed by him. The *pangulu* was the adjunct of the qadi in every village outside of the city of Bantĕn and served as his representative for people whose houses were too far away from the centre of government of Bantĕn.[136] One name was repeatedly mentioned in the text, namely Ki Mas Namar (or Manamar). In the record, it appeared he was authorized by the *ḥakim* to join couples in

marriage. As such, Ki Mas Namar was likely to have been a *pangulu* appointed by the qadi for a village distant from the city of Bantĕn. Unfortunatelly, I do not have any available sources to show who Ki Mas Namar was, or even who the qadi of Bantĕn was at the time under review (1754-1756). In a much later local source, dated most likely in the 1890s, there was a list of *pangulu* in 1837, some 122 all told. Another list clearly stated that there were 162 *pangulu* in Bantĕn.[137] Unfortunately, this list did not mention for what year this large numbers of 'adjuncts' of the judge were valid. Logic suggests it was most likely in the very beginning of the 19th century.

The *paliwara* was another functionary of the qadi court, which appeared as well in the *Undhang-Undhang Bantĕn*, the "code" of Bantĕn (Yakin 2013, 101–102). This fact corroborated that the qadi had many officials who assisted him in executing his duties. In addition there were two more titles found in the "code" of Bantĕn that did not appear in the register of the qadi. They were '*jaksa*' (Yakin 2013, 282–284; 300–301) and '*karta*' (Yakin 2013, 126; 144–145; 150; 159; 300–301). According to a local source dated 1892, '*karta*' (or *kĕrta*) was a staff or a personnel of the judge.[138] In brief, the *Kiyahi Pĕqih Najmuddin* was the highest authority in the qadi court. His officials were the *pangulu*, *karta*, *jaksa*, and *paliwara* who served as his adjuncts. These officials represented the qadi in village in Bantĕn.

Based on the aforementioned explanation, it is evident that there existed a relatively developed system employing a number of officials in the qadi court of Bantĕn. Unfortunately, I do not have any sources to explain more about the education and professional training of the qadi of Bantĕn and its officials, their religious and social background for the period under study. However, I only know according to the local source that the qadi of Banten originally came from the Lebak Parahiang (Lebak) or Cimanuk (Pandeglang) regions.[139]

B. The Place of the Qadi Court

The judicial proceedings of the qadi court took place in the royal square (*alun-alun*). According to *De Eerste Schipvaart der Nederlanders* (the First Voyage of the Dutch) in 1596, the court was situated in the royal square and it continued to be that way throughout the 17th century. The court of justice sat in the daytime

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under the banyan tree. There were many 'records' settled each day by the court. More than 500 people attended the judgment process (van der Chijs 1881, 1–62).[140] The practice of justice, in the royal square, continued during the first half of the 18th century according to F. Valentijn, who documented the process during his stay in Bantĕn in 1724-1726 (Guillot 1989, 130). However, I found the term *Bale Watangan* in the register which meant courtroom,[141] but I do not know where *Bale Watangan* was located. The indigenous document about *Kiyahi Pĕqih Najmuddin,* written at the end of the XIXth, century stated that the office of the qadi was in *Bale Bandung*.[142] The notation suggested that the court was removed from the royal square to *Bale Bandung* and the 'office' hours of the court were also opened at night in the 18th century as documented in the records.

C. Competence and 'Procedure' of the Qadi Court

The register's records of the qadi clearly recorded that the qadi of Bantĕn accepted almost all types of records, ranging from family matters to criminal records. The procedure for submitting a record in the qadi court was quite simple. The subsequent explanation is based on the records. The litigants came to the court whenever they wished. In fact, the qadi court's hours were not fixed. The opening and closing of the "office" of the qadi court depended most likely on the qadi himself. The qadi and his officials worked every day, seven days a week, and all the time, day and the night. Many records came to the qadi court at night. Afterwards, the applicant saw the cadi and explained what was happening. The qadi accepted the record and recorded it in the register, most likely the recording was done by his secretary or the scribe.

When the qadi accepted a record, the issue that the person brought before the qadi determined how the qadi dealt with it. The first possibility was that the qadi passed judgment in favour of one party. In this record, the qadi acted as a judge and resolved legal disputes. A second possibility was that he only recorded the record as reported. In this instance, the qadi acted as a notary, as for acknowledgment or repayment of a debt. The record was reported to the qadi court in anticipation of a potential source of conflict that might arise. A third possibility was that the qadi served as a depositary, the record

described the goods entrusted to him, and the good were later passed on to the owner. The fourth possibility was that the qadi acted as a guardian and registrar for marriages and deaths. Having said this, it was obvious that the qadi carried out different roles as a judge, arbitrator, mediator, notary, guardian, registrar, and depositary. And finally, if a party was not satisfied with the decision of an adjunct of the qadi, the *pangulu* for example, he/she could appeal to the qadi[143]. If a party disagreed with the qadi's decision, he/she could appeal to the *bumi* (Prime Minister) or *dalěm* (Palace) (Yakin 2013, 301–303).

D. Judicial Source of the Qadi

Adat-Rules Applied

From the records that appeared in the register, it was very difficult to ascertain whether the qadi used customary law (*hukum adat*), *sharī'ah* or *fiqh* as his source of adjudication because the text did not mention his sources.[144] However, after having examined the record carefully, it appeared that the qadi of Banten used his personal discretion solidly based on the *fiqh* tradition, while at the same time recognizing custom. He mixed *fiqh* and custom for some records.

Through reading the records in the register, it was revealed that the qadi of Banten used his vast personal discretion (*ijtihād*) in making decisions. He used his own interpretation in every record and based his understanding on Javanese culture and his understanding of Islamic legal doctrine. The qadi understood the particular legal system of Bantěn. Indeed, Bantěn and its cultural characteristic influenced the qadi work's system and ethics. He used Javanese language in decision-making, but used Arabic-*fiqh* terms for legal concepts.

Fiqh-Norms Applied

The qadi referred, without doubt, to *fiqh* when it pertained to family matters. After examining the register, it was clear that a number of records presented before the qadi court concerned family matters, namely marriage, divorce, and inheritance. In these records, Arabic terms that were central to *fiqh*, such as *nikāḥ*, *mahr*, *wali*, *'adam wali* (*gā'ib*, *fāsiq*), *wali 'adal*, *ṭalāq*, *ta'liq ṭalāq*, *'iddah*, *faskh*, and *warīth* (*nisfu, sudus, thumun,'aṣabah,*) appeared frequently. Hence the qadi of

 DOI: 10.15408/sdi.v22i3.2354

Bantĕn drew upon *fiqh* as his source of adjudication for family law. However, the judge did not refer either to the verses in the Quran, the hadits from the Prophet or the opinions from legal interpretations by Muslim jurists (*fiqh*). Obviously, the qadi applied the prescription of *fiqh* for the Muslim society of Bantĕn.

Jurisprudence

The records indicated that the qadi of Banten drew on jurisprudence, apart from *fiqh* and custom, in the records under the category 'giving an accommodation to someone'. This was in accordance with the law in force at that time, namely the *Undhang-Undhang Bantĕn* (the 'code' of Bantĕn), which regulated people spending nights in someone's house (Yakin 2013, 71).[145] This 'code' was basically a compilation of previous decisions (jurisprudence) of the qadi of Banten which was based on customary law.

Jināyah: Islamic Penal Law?

The terms such as *ḥad*, *diyat* or *qiṣāṣ* were not used to resolve criminal records. According to the 'code' of Bantĕn, the judge was forbidden to sentence someone into *qiṣāṣ* or *ḥad* punishment in criminal matters.[146] In fact, the authorities of the Dutch in Batavia were opposed to the application of "Islamic criminal law" in the kingdoms and principalities under their domination, such as in Cirebon. It was understood that in the principality of Cirebon, the Dutch authority banned the application of these penalties (*qiṣāṣ* and *ḥad*) in 1688 (Hoadley 1994, 53). Likewise, since its defeat in 1682 by Dutch, Bantĕn was under their domination. Accordingly Bantĕn was prohibited from applying such laws. Besides, the qadi was possibly thinking that the 'harsh' punishment could lead to discontentment and even more anger exhibited by the inhabitants of Bantĕn since they might think the judgements and penalties did not fit with their traditions and local customs. Therefore, for the record under the category "violence against women," the qadi of Bantĕn used 'custom' as his judiciary source.

E. Role of the Qadi of Bantĕn

It seems that preserving a register of the records coming before the qadi court was a common activity of judicial procedure. However one does not know when exactly this custom was institutionalized in

Bantěn. The paramount contribution of judicial practice of the qadi of Bantěn, with respect to family law, was the registration of marriage and divorce. Another important fact was the obligation to inform the judge (read: government) of a visit to someone's house (i.e. to accommodate someone at home). Apparently the recorded location of citizens was necessary in case something unexpected happened and the court was unable to locate or identify each person involved. For example, if a crime took place the qadi court investigated it and had extensive knowledge of who was there. In brief, the qadi court was very central to the administration of the 'state.'

F. Social Structure from the Qadi's View

Last but certainly not least, the records in the register revealed the social structure of Bantěn. Many names were found in the register, but unfortunately there were no available sources that contained in depth information about the names mentioned in the text. This was mainly due to the fact that they were in general common people and historical sources seldom paid attention to this social class. The people who appeared in the qadi court were both free persons and slaves. With respect to the free persons, they were both 'indigenous' people of Bantěn (local people) and foreigners (Chinese, Arab or Indian/Persian). Concerning the Bantěnese free persons, they were both royals and common people, urban and rural.[147] Based on this information, it may be concluded that the qadi court of Bantěn was open to everybody, be it local people or foreigners[148], free persons or slaves, commoners or royals.

It is noteworthy that many women appeared before the qadi court in records of divorce, marriage, violence, and other issues, such as crime. For example, five divorce records were brought before the court by women and thirteen women were remarried by the qadi. Many women appeared before the judge to testify that they were victims of violence. That meant that in Bantěn, women had a certain amount of freedom and the right to divorce. Moreover they were often brave and courageous enough to ask for justice after being victims of physical violence. I argue then that the qadi of Bantěn gave free access to the Bantěnese women to submit their records.[149] Needless to say, ultimately, this register of the qadi of Bantěn is a very important source for those who are interested in

 DOI: 10.15408/sdi.v22i3.2354

knowing more of the social history of Bantĕn, as well as for those who want to analyze more deeply the register of the *Kiyahi Pĕqih Najmuddin* from purely legal perspectives.

Concluding Remarks

The manuscript documented the legal practice of the qadi of Bantĕn. The duty of *Kiyahi Pĕqih Najmuddin*, title of the qadi of Bantĕn, included registering legal records brought before him, adjudicating disputes, and administering oaths in order to establish a legally relevant fact based on his understanding of particular legal system (customary law/*hukum adat*) bounded by *fiqh*. The example of the qadi of Bantĕn illustrated an encounter between *fiqh* and local customs. By taking customary law as one of his legal sources, apart from *fiqh*, he tried to 'Islamize' local legal culture. The qadi of Bantĕn understood very well that what he did was part of the qadi's work ethic. The decision of the qadi of Bantĕn to use customary law as one of his sources should be regarded as an individual's effort and personal interpretation (*ijtihād*) supplementing *sharī'ah*, the two fundamental sources, i.e the *Qur'ān* and the *Hadith/Sunnah*. He understood very well that according to Islamic legal theory (*usul al-fiqh*), under the concept of *'urf* and *'ādat,* he was allowed to make judgments and decisions that relied on customary law.

By the end of the third/ninth century, Muslim jurists (*fuqahā*) rejected customary law as a formal source of *fiqh*, and customary law was accepted from the fifth/eleventh century by jurists, mainly those of the Hanafite School. It is noteworthy that customary law was also been widely accepted and used in the Ottoman Empire from the sixteenth century (Libson 2003, 68–79). Thus the *qadi* Bantĕn, in taking customary law as one of his sources, was not in conflict with *fiqh*. By including custom within the larger scope of Islamic legal theory, the qadi transformed custom from a 'rival' of the *fiqh* into a complementary legal tool. This enabled the legal tradition to adapt itself to different social and cultural settings and to accommodate change in particular social and historical contexts (Shabana 2010).

The qadi of Bantĕn applied *fiqh* for almost all records. This was true especially for family issues. When *fiqh* was applied the qadi followed perfectly the Islamic norms and accordingly initiated social change within the receiving society. He played a paramount role by

incorporating customary law into *fiqh* and accommodating *fiqh* to customary law, thus making a contribution to Islamization of Banten society. Furthermore, the Javanese culture of Bantĕn gave a basic moral provision to the qadi for using his discretion based on '*rasa*', literally 'feeling' or own judgment based on his 'feeling' and thinking in adjudication. The qadi of Banten vastly applied his personal discretion (*ijtihād*) in legal decision making. Such practices were not unique for the qadi of Bantĕn, but appeared also in other parts of the Muslim world as seen, for instance, in the Ottoman Empire. The work of the qadi of Bantĕn revealed that he was part of a web of qadi in the Muslim world. Therefore, we can no longer hold to the argument that *fiqh* was only a theory and had nothing to do with the practice. The record of the qadi of Banten showed clearly that he implemented the *fiqh* norms in his adjudication and ultimately in his decisions. This tells us definitively that the *fiqh* was applied law.

 DOI: 10.15408/sdi.v22i3.2354

Endnotes

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1. For further discussion about the term of "qadi record" (*qāḍī dīwān*) before and after the Ottomans (*sijill*), see Hallaq 1998, 415–436.
2. See for example, among others, Agmon 2004; Çiçek 2002; Ergene 2001, 2002, 2003, 2004; Gerber 1981; Jennings 1978, 1979; and Ze'evi 1998.
3. Boontharm acknowledges in his thesis that he has not mastered Javanese. In all sincerity he had requested the Department of Javanese at the Faculty of Humanities at Universitas Indonesia for the translation of the qadi's record. Titik Pudjiastuti and Munawar Holil were appointed as project managers by the faculty and then ten students were charged with undertaking the translation from Javanese to Indonesian. Based on this Indonesian translation, Boontharm analyzed the social and cultural history of Bantĕn in the XVIIIth century (Boontharm 2003, i; 20–21). Unfortunately the whole register was not translated, only parts of it. Thus his analysis of it is based on scattered translations according to need. Accordingly, I found a number of serious mistakes in his thesis which are discussed below.
4. Snouck wrote in a letter dated August 15, 1892 to the Dutch East-Indies government on the result of his visit to Bantĕn, see Gobée and Adriaanse 1965, 1986–1999. Upon Snouck's visit in 1890 to Bantĕn, he wrote clearly "*Deze en dergelijke indrukken werden gedurende mijn verblijf in Bantĕn in 1890 bevestigd en versterkt*", see Gobée and Adriaanse 1965, 1987. The activities of Snouck to collect and gather various manuscripts coming from all over the Indonesian archipelago are evidenced in this book and in its Indonesian version "*Nasihat-Nasihat Snouck Hurgronje Semasa Kepegawaiannya kepada Pemerintah Hindia Belanda 1889-1936*," published by INIS, Jakarta, in 10 volumes.
5. According to Pigeaud, L.Or. 5628-5 has sequentially 248, 90, 76, and 182 pages, so the total is 632 pages. But, according to my calculation the total number of pages is less than 632 pages. The difference in calculation may come from, among other things, whether empty pages or other materials (in small papers) contained in the manuscript are counted.
6. According to Pigeaud the six copied manuscript total 2.639 pages. But, I examined and calculated these six manuscripts and it totals 2033 pages. In fact, Pigeaud included the empty pages, while I did not calculate these.
7. The oldest record found is dated 22 Dhū al-Qa'dah 1151/3 March 1739, see L.Or.5628, p. 284. This is the unique record from 1739 within the 1165/1752's records.
8. The latest record found is dated 17 Rajab 1263/1 July 1847, see L.Or. 5626, p. 15. This is the unique record from 1263 within the 1167-9/1754-6's records.
9. The counter-mark found in this manuscript complied with the picture number 133, p. 188, and JH & Zoon is the abbreviation of Jan Honig & Zoon, p. 136, source N3062.
10. Boontharm has mistakenly stated the LOr 5626 contains only the record of 1749 which is its sole record, see Boontharm 2003, 254.

11. If we see this 70 records, they were recorded in the time of three souvereigns: the Queen Syarifa (1748-1752), Sultan Abul Muhammad Wasi Muhali Zainul Halimin (1752-1753), and Sultan Abul Nasar Zainul Arif Muhammad Asyikin, (1753-1777).
12. One page, page two, contains only one record dated 1163/1750 written on twenty lines and this record was neither transliterated nor translated.
13. By analyzing the text, it becomes apparent that it was not the judge himself who recorded the records. I found repeatedly the sentences in the text for example « The judge witnessed… » or « The judge deferred the power of attorney to me… ». It is not likely that the judge himself wrote 'the judge' instead of using the personal pronoun.
14. See the style writing between pages 1-14 of manuscript; there were obviously more than three scribes writing the records.
15. I examined the copied manuscript and calculated that these six manuscripts total 2033 pages.
16. Records numbers 1 to 5 are on folio 1, while numbers 41 to 46 are on folios 9 and 10.
17. The record numbers are 1, 41, 42, and 44.
18. Two records (numbers 41 and 42) are on folio 9 with record no. 43 dated 9 Rajab 1168/21 April 1755, so it is likely that the two records come from the same year and month. One record (no. 44) is found on folio 10 with the record number 45 and 46 which were dated Sha'bān 1168/May 1755. Finally record no. 1 is found on folio 1 with record no. 2 dated 4 Rabī'u al-'Awwal 1168/19th December 1754, and therefore is likely to belong to the same month and year as well.
19. Rabī 'al-'Awwal, Rajab, Sha'bān, Ramaḍān, Dhū al-Qa'dah, and Dhū al-Ḥijjah.
20. The number of records per month is as follows: Muḥarram and Rabi' al-'Awwal: seven records each, Ṣafar and Rabi' al-'Akhir: five records each, Jumādī al-'Awwal and Jumādī al-'Akhir: thirteen and ten records respectively.
21. Marriage is termed in Arabic *nikāḥ* in the manuscript.
22. The form of this divorce was most likely *khulu'* divorce.
23. Most likely what was witnessed by the judge was the marriage itself.
24. These two status, either unmarried or divorced women, did not appear to have any relevance what is required for the marriage to be valid in Islamic law.
25. There is no indication in the text that they were married, see record no. 5, 10-12, 25, 50-53, 56, and 66.
26. Record no. 4, 14-16, 27, 48, 54-55, 59, 62-63, 68-69. That indicates the women remarried.
27. Nine divorces are the first *ṭalāq* [*ṭalāq bā'in sughrā*] and three divorces by the three *ṭalāq*s [*ṭalāq bā'in kubrā*].
28. Record no. 25, page 6.
29. Record no. 63 and 69 for *batur* and no. 68 for *qahum*.
30. Guardian is termed in Arabic "*wali*" in the manuscript.
31. Record no. 12, 14, 15, 27, 52, 53, 62-63, 68, and 69.
32. Record no. 5 and 11.
33. Record no. 16.
34. Record no. 59.
35. Record no. 55.
36. Record no. 10.
37. Record no. 4 and 51.
38. Record no. 25, 48, 50, 54, and 56. The text did not mention the reasons.
39. In the manuscript, witness is termed in Javanese *sĕksi* by using the verb '*anĕksĕni*'.
40. Record no. 12, 27, 54, 55, and 56. Their profession was were either a *mĕrbot* (the employee of mosque, who cleaned the mosque) or a *mu'adhin* (who called for the five

 DOI: 10.15408/sdi.v22i3.2354

prayers).
41. Record no. 4 and 5.
42. Record no. 10-11, 14-16, 25, 48, 50-53, 56, 59, 62-63, and 68-69.
43. Dowry is termed in Javanese *maskawin* in the manuscript.
44. Record no. 4, 14, and 15 (payment in advanced), 5, 11, 27, 48, 52, 54-55, and 59 (payment in deferred).
45. Record no. 12 (payment in advanced), 10, 16, 51, 62, and 63 (payment deferred).
46. Record no. 50 and 66 (payment deferred).
47. Record no. 68 and 69 (payment deferred).
48. Record no. 53 (payment deferred).
49. Record no. 56 (payment was in advanced, but 1 cent in deferred). This record concerns a slave.
50. Record no. 25 concerns a slave.
51. Divorce is termed *ṭalāq* in the manuscript.
52. Record no. 2, 17, 23, 41, and 57.
53. The term "*khulu'*" itself is not mentioned in the text, but after having examined very carefully, some records in the manuscript are pertaining to the redemption divorce.
54. *Tětinggale* means 'what is left' and should be understood here as referring to the *nafaqah* in Islamic law. It means what the husband should give, in money or otherwise, to his wife and family.
55. *Pangulu* is etymologically derived from *hulu,* which means 'head'. It is a title that was previously used to refer to the representative of the Sultan of Bantĕn in Lampung; later it was also used for a chef (in any function whatsoever), the responsible of the mosque or the legal representative of the qadi.
56. Kyai Pangulu Muhammad Saleh was most likely the *Kiyahi Pĕqih Najmuddin* [Qāḍī]'s official, bearing the functional title of '*Pangulu*', translated generally as 'judge'.
57. There is a probability of a one day error in the date due to converting to Common Era in this study.
58. Record no. 2.
59. Divorce record, record no.23.
60. Record no. 17, 41, and 57.
61. This process is summarized from the record no. 2 and no. 57.
62. Record no. 57.
63. Record no. 2. The term *faskh* (annulation of marriage) is mentioned in this record.
64. What I mean by regular divorce is the divorce came about by pronouncing divorce directly to his wife without any condition that differentiates it from the conditional divorce, see record no. 4, 14, 59, 62, 63, 68, and 69.
65. Record no. 15, 16, 27, 48, 54, and 55.
66. Record no. 4, 14, 16, 48, 54, 59, 63, 68, and 69.
67. Record no. 27, 55, and 62.
68. In Javanese: "*Sira sun ṭalāq sawiji.*" Record no. 4.
69. Record no. 55. It is worth discussing the issue of whether this is one *ṭalāq* or three under Shafii-*fiqh*.
70. In Javanese: *"Tiba ṭalāq isun sawiji ing Saqiyam".*
71. In Javanese: *"Kula sukakakĕn maskawin kula rong tahil ĕmas*". It should be emphasized here this is not *khulu'* divorce and the word *khulu'* itself does not exist in the register.
72. In Javanese: *"Sukakĕna maskawinira." Maka ujare wadon: "Suka." Maka lafaẓe si lanang: "Sira wis ṭalāq sawiji."* Record no. 68
73. In Javanese: *"Sukakĕna maskawine nira," maka kahana suka, maka nuntĕn kocap somahe "Tiba ṭalāq isun sawiji ing sira."* Record no. 48.

74. In Javanese: *"Sukakena mas kawinira, maka kocap 'kula suka,' maka nunten kula dipun ṭalāq. Lafaze "tiba ṭalāq isun tetĕlu amah kabeh." "Aṣale kula palampah ṭalāq. »* Record no.16.
75. In Javanese: *"Sukakĕna maskawine andika". Maka ujare pun Dhĕmpul "Suka maskawine isun". Maka ujare lakine aran pun Landung "Tiba ṭalāq isun tĕtĕlu ing andika."* Record no. 27.
76. Record no. 15, 17, 23, and 41.
77. In Javanese: *"Samangsa-mangsane pun Tiyah anyukakakĕn maskawine rong puluh reyal, lan tinggal napqahe anaq kula ing sa'umure arĕpe, maka tiba ṭalāq kula sawiji ing pun Tiyah"*. Record no. 23.
78. It is interesting to note that the term *ta'liq talāq* is well known in Islamic law. For example, in the Shafi'i school, al-Nawāwī (d.1277) obviously dedicated one sub-chapter to the conditional divorce in his book *Minhāj al-Ṭālibīn*, see al-Nawāwī 2000, 552–564. Later on, this book was commented lengthy by al-Ramlī (d.1596) and furthermore he gave a special title "*faṣl fi ta'liq al-ṭalāq bi'azminatin wa naḥwihā*" (Chapter on the Conditional Divorce by Time and Likewise) in his book *Nihāyat al-Muḥtāj*, see al-Ramlī 1967, 11–59.
79. Hisako Nakamura asserted that the *ta'liq ṭalāq* dates back to the early of XVIIth century and the initiator of conditional divorce in Java was Sultan Agung. In fact, Hisako quoted Muhammad Adnan who made the statement without providing any support for his assertion, Nakamura 2006, 11–13.
80. Record no. 42 and 44.
81. It is interesting to note that in the first record, the legator and the beneficiaries were most likely free persons and common people. However in the second record, it is equally obvious that the legator and the heirs came from the royal family since the wife and the two sons bore the noble's title: *Ratu* was the title of the wife, which indicates a daughter of the sultan, or grandchildren; *Tubagus* (the abbreviation from Ratu Bagus) was the title for the sons of the sultan or the children of a prince or his grandchildren from a mother who was not a queen. We have to admit though that these two inheritance's records are not completely understood.
82. Record no. 42.
83. Record no. 44.
84. Record no. 3.
85. Record no. 6, 30, 31, 32, 33, 35, 38, 40, 43, and 46.
86. Record no. 6 and 40.
87. The text used the Arabic term: *'adam bayyinah* that means no proof.
88. Record no. 31 (Dhokan vs Nur).
89. Record no. 35 (Rodhiyyah vs Sidin).
90. The text used the Javanese term or Arabo-Javanese: *orana saksi* or *'adam saksi* or *saksi oranana* that means no witness.
91. Record no. 33 (Mas Bari vs Nyi Mas Wadon) and record no. 46 (Prince Dipati Mudha vs Mirah).
92. Record 38 (Muhammad Saleh alias Bandhol vs Masud and his wife Mas Siti).
93. Record no. 34 shows that Mas Bari (the plaintiff) acknowledged his defeat against Nyi Mas Wadon (the defendant) and was fined 10 *reyal*. This fine was given to the defendant as most likely the compensation.
94. Record no. 32.
95. Record no. 30. In this record, the husband had to repay the dowry.
96. Record no. 43.
97. This is explained very largely, for instance, by Shafi'i and his school, see al-Shāfi'i n.d.,

 DOI: 10.15408/sdi.v22i3.2354

40 and al-Nawāwī n.d., 168.
98. This date fell on Monday, not Sunday.
99. This compensation is probably taken from the fine that Rodhiyyah was sentenced to pay.
100. Record no. 33.
101. Record no. 32.
102. Record no. 31, 32, 33, 35, 38, and 40.
103. Record no. 6, 43, and 46. We found "*Gus*" as the abbreviation from "*Tubagus*" (*Ratu Bagus*) in record no. 6, and "*Tubagus*" in record no. 43, and "*Pangeran*" in record no. 46. These titles were the noble title given only to the royal family and its descendants.
104. Record, no. 9, page 3.
105. Record no. 9, no. 8 (bracelet wrapped in gold), no. 39 (silver tray), and no. 60 (harvest knife with a gold sheath).
106. Record no. 47 (60 *reyal*) and no. 13 (six parcels of money).
107. Record no. 45.
108. Record no. 36.
109. Record no. 65.
110. We found the title from the royal family or its descendants, such as *Pangeran* (prince) and Raden (record no. 13), *Ratu* (record no. 45), and *Tubagus* (record no. 60).
111. We found "*Ki Arya*" (record no. 9) and "*Ki Ngabehi*" (record no. 65), which are the titles given to the elite in the society acting as a government or its official.
112. Record 61, page 13.
113. Record no. 22.
114. Record no. 7, 18, 19, 29, and 61.
115. Record no. 7, 18, 29, and 61.
116. Record no. 19.
117. Record no. 18, 29, and 61.
118. Record no. 19.
119. Record no. 7.
120. Record no. 61, page 13.
121. Record no. 21, 28, 58, 64, and 67.
122. Where the parties were ordinary people are recorded no. 21, 28, and 58.
123. We find the royal family title "*Tubagus*" in the record no. 64 and "*Ratu*" and "*Pangeran*" in the record no. 67.
124. They were respectively the female cousin of the house owner (record no. 28 and 64) and the sister of the house owner (record no. 58). Furthermore, record no. 67 stated clearly that the owner of house was her family (*sabab iki sanake yen ature ing ḥakim.*).
125. Record no 21 does not provide any information about the reason.
126. Record no. 64.
127. Record no. 58.
128. Record no. 67.
129. Record no. 28.
130. Record no. 1, 20, and 37.
131. Record no. 37.
132. Record no. 1.
133. Record no. 20.
134. Record no. 2, 6, and 62.
135. Record no. 21.
136. *UBL*, Cod. Or. 7936 B, the explanation about Fakih Najmuddin from Sutadinata to Snouck Hurgronje, 7 pages, 21 September 1892, p. 1.
137. *UBL*, Cod. Or. 7936 B, the list of *pangulu*, 6 pages.

138. *UBL*, Cod.Or. 7936 B, the explanation about Fakih Najmuddin from Sutadinata to Snouck Hurgronje, in Roman script, seven pages, 21 September 1892, p. 5. *Kerta/karta* in Cirebon and Central Javanese legal systems means a 'court' of law, usually composed of *nayaka*.
139. *UBL*, Cod. Or. 7936 B, the explanation about *Fakih Nadjmoedin*, 12 pages, p. 1.
140. I referred to the Indonesian translation for personal use, the electronic library of Mujahid Chudori, Serang, Bantĕn, p. 44.
141. Record no. 33.
142. *UBL*, Cod.Or 7698 B, the explanation about *Fakih Nadjmoedin*, 12 pages, p. 2. Most likely, *Bale Bandung* was the name for the office of the qadi.
143. *UBL*, Cod.Or.7936 B, the explanation of Sutadinata to Snouck Hurgronje, in letter dated 21 September 1892, 7 pages, p. 2.
144. In fact, the opinion of Baudouin Dupret (2007), should be taken into consideration in this analysis.
145. We find in the table of contents three articles (110-112) regulating people giving an accommodation to stranger or unknown people, although these articles are not found in the 'code' itself. This is probably due, as I argue, to the fact that the folios containing many articles, most likely including these three articles, were lost. However, on p. 202, art.4 we read that the Dutch were prohibited from overnighting in a Bantĕnese house.
146. « […] *Lan ora kĕna pisan2 iku ingukumakĕn ing wong kang tuměka ing ḥukum qiṣaṣ atawa ḥukum ḥad* […] », see Yakin 2013, 282.
147. In the text, we read clearly that many people lived in the mountains or mountainous area.
148. If their records involved Bantĕnese people, they had to go to the qadi court, for example in family matters. In fact, these foreigners were married to the Bantĕnese women. If another issue occurred only among foreigners themselves which did not involve Bantĕnese, they had their own 'court'.
149. Compare to Muslim women in Midde East, see Rapoport 2005, 137 and Tucker 1998, 221.

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Indexes

Studia Islamika: 2015

Volume 22, Number 1, 2015

1. M. A. Kevin Brice, *Si Bule Masuk Islam: Western Converts to Islam in Indonesia - more than just Converts of Convenience?*
2. Ahmad Suaedy & Muhammad Hafiz, *Citizenship Challenges in Myanmar's Democratic Transition: Case Study of the Rohingya-Muslim*.
3. Friederike Trotier, *Strengthening the Muslim Community in Indonesia and Beyond: The 2013 Islamic Solidarity Games in Palembang*.
4. Ali Munhanif, *Al-Shawkah al-Siyāsīyah li al-Afkār al-Dīnīyah: Al-Ḥarakah al-Tajdīdīyah al-Islāmīyah wa al-ṭarīq ilá Nuqṭat Iltiqā' al-Islām wa al-Dawlah*.
5. Dadi Darmadi, *Al-Islām wa al-Malāyū wa al-Siyādah fī al-Muḥīṭ: Sulṭanat Brunei wa al-Isti'mār Eropa fī Borneo*.
6. Jajat Burhanudin, *Islam dan Kolonialisme: Sayyid Usman dan Islam di Indonesia Masa Penjajahan*.

Volume 22, Number 2, 2015

1. Yuki Shiozaki, *The Historical Origins of Control over Deviant Groups in Malaysia: Official Fatwá and Regulation of Interpretation*.
2. Yanwar Pribadi, *The Suramadu Bridge Affair: Un-bridging the State and the Kyai in New Order Madura.*
3. Mikihiro Moriyama, *Poet in an Islamic Community: Cultural and Social Activities of Acep Zamzam Noor in Tasikmalaya, West Java.*
4. Jajang A. Rohmana, *Al-Qur'ān wa al-Isti'mār: Radd al-Shaykh al-Ḥājj Ahmad Sanusi (1888-1950) 'alá al-Isti'mār min Khilāl Tafsīr Mal'ja' al-Ṭālibīn.*
5. Mahrus As'ad, *Tajdīd al-Tarbīyah al-Islāmīyah 'inda al-Shaykh al-Ḥājj Imam Zarkasyi.*
6. Suryadi, *Isra Mikraj dalam Naskah-Naskah Indonesia*.

Volume 22, Number 3, 2015

1. Anthony Reid, *Religious Pluralism or Conformity in Southeast Asia's Cultural Legacy.*
2. Asep Saepudin Jahar*, Marketing Islam through Zakat Institutions in Indonesia.*
3. Ayang Utriza Yakin, *The Register of the Qadi Court "*Kiyahi Pěqih Najmuddin*" of the Sultanate of Banten, 1754-1756 CE.*
4. Yahya Mohamed Ahmed Ghaleb, *Ishkālīyāt al-Intimā' al-Waṭanī 'inda al-Muhājirīn al-Ḥaḍārimah fī Indūnīsīyā fī al-Nisf al-Awwal min al-Qarn al-'Ishrīn.*
5. Aan Hasanah, *Al-Qiyam al-Thaqāfīyah wa Ṭābi' al-Sha'b li Jayl al-Muslimīn al-Shubbān al-Indūnīsīyīn.*
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2. Booth, Anne. 1988. "Living Standards and the Distribution of Income in Colonial Indonesia: A Review of the Evidence." *Journal of Southeast Asian Studies* 19(2): 310–34.
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6. Ms. *Undhang-Undhang Banten*, L.Or.5598, Leiden University.
7. Interview with K.H. Sahal Mahfudz, Kajen, Pati, June 11th, 2007.

Arabic romanization should be written as follows:

Letters: *ʾ*, *b*, *t*, *th*, *j*, *ḥ*, *kh*, *d*, *dh*, *r*, *z*, *s*, *sh*, *ṣ*, *ḍ*, *ṭ*, *ẓ*, *ʿ*, *gh*, *f*, *q*, *l*, *m*, *n*, *h*, *w*, *y*. Short vowels: *a*, *i*, *u*. long vowels: ā, ī, ū. Diphthongs: *aw*, *ay*. *Tā marbūṭā*: *t*. Article: *al-*. For detail information on Arabic Romanization, please refer the transliteration system of the Library of Congress (LC) Guidelines.

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تم اعتماد ستوديا إسلاميكا من قبل وزارة التعليم والثقافة بجمهورية إندونيسيا باعتبارها دورية علمية (قرار المدير العام للتعليم العالي رقم: 56/DIKTI/Kep/2012).

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ستوديا اسلاميا

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