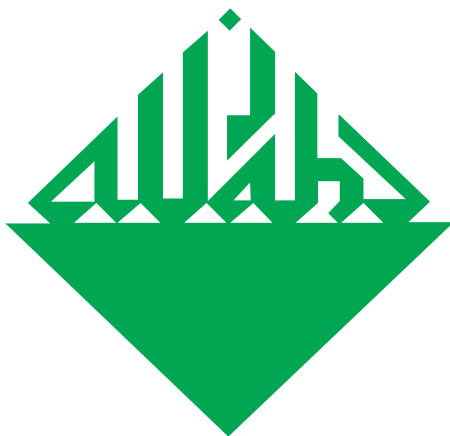


STUDIA ISLAMIKA

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Asep Saepudin Jahar

Bureaucratizing Sharia in Modern Indonesia: The Case of *Zakat*, *Waqf* and Family Law

Abstract: *This article examines the “bureaucratization” of Sharia in Indonesia, giving special attention to zakat, waqf and other aspects of family law. The bureaucratization of Sharia aims to modernize the legal system for Muslims in order to provide certainty and justice in solving legal disputes. While some scholars view the incorporation of Sharia into state law as an attempt at Islamization, this study argues that this process reflects increasing bureaucratization rather than Islamization. The incorporation of Sharia into state law is a project of formalizing a state-defined brand of Islam and Sharia legislation. This phenomenon has precedence in premodern Muslim governance and can be traced from the colonial period. In contemporary Indonesia, the Ministry of Religious Affairs and religious courts have played a central role in bureaucratizing Sharia. To support the argument, this study will explore Indonesian family law, including zakat and waqf.*

Keywords: Bureaucratization, Islamization, Shariatization, *Waqf*, *Zakat*, Family Law.

Abstrak: Artikel ini menjelaskan birokratisasi syariah di Indonesia dengan memberikan perhatian khusus pada contoh hukum serta pelaksanaan zakat, wakaf, dan hukum keluarga. Birokratisasi syariah bertujuan untuk memodernisasi sistem hukum bagi umat Islam dalam rangka memberikan kepastian dan keadilan dalam menyelesaikan sengketa hukum. Saat beberapa sarjana memandang bahwa inkorporasi hukum syariah ke dalam hukum negara sebagai upaya Islamisasi, kajian ini berpendapat bahwa fenomena ini justru menunjukkan penguatan birokratisasi daripada Islamisasi. Inkorporasi syariah ke dalam hukum negara adalah proyek formalisasi label hukum Islam dan syariah dalam perundang-undangan. Fenomena seperti ini sebenarnya bukan hal baru, tetapi telah dipraktikkan pada masa pemerintahan colonial. Dalam konteks Indonesia modern saat ini, Kementrian Agama dan Peradilan Agama telah memainkan peranan penting dalam terlaksananya birokratisasi syariah. Untuk memperkuat argumentasi tersebut, kajian akan difokuskan pada penerapan hukum zakat, wakaf dan hukum keluarga di Indonesia.

Kata kunci: Birokratisasi, Islamisasi, Syariatisasi, Wakaf, Zakat, Hukum Keluarga.

ملخص: تناول هذا المقال بقرطة الشريعة الإسلامية في إندونيسيا مع إيلاء الاهتمام الخاص بقوانين الزكاة والوقف والأسرة، والتي تهدف إلى تحديث النظام القانوني للمسلمين قصد توفير الثقة والعدالة في حل النزاعات القانونية. فبينما يرى بعض العلماء أن دمج الشريعة الإسلامية في قانون الدولة هو محاولة لأسلمة القوانين، فإن هذه الدراسة ترى أن هذه العملية تعكس، في واقع الأمر، تعزيزاً للديموقراطية بدلاً من الأسلمة. إن دمج الشريعة الإسلامية في قانون الدولة هو مشروع إضفاء الطابع الرسمي على تسميات أحكام الشريعة الإسلامية في التشريعات. وهذه الظاهرة ليست جديدة، بل كانت تمارس من قبل الحكومة الاستعمارية. وفي سياق إندونيسيا الحديثة، فقد لعبت وزارة الشؤون الدينية، والمحاكم الدينية دوراً رئيساً في بقرطة الشريعة الإسلامية. ومن أجل دعم هذه الحجة، تركز الدراسة على تطبيق الزكاة، والوقف، وقانون الأسرة في إندونيسيا.

الكلمات المفتاحية: بقرطة، أسلمة، تطبيق الشريعة الإسلامية، الوقف، الزكاة، قانون الأسرة.

The institutionalization of Islamic law (sharia) in Indonesia is not exclusively defined by the emergence of Shariatization in itself, but rather by the need for regulated administrative processes in religious practices that involve public matters. This procedure requires an institutional infrastructure in which the state is in authority. The incorporation of religion into the bureaucratic process can be considered a form of “substantive rationality” in which the content of the law is ‘rational’ because it is derived from an external ideology and belief system (Mohamad 2010, 505–24, 509). Islamic jurisprudence as developed by classical Muslim jurists requires adaptation and reinterpretation in accordance with the values and diversity of society. This both fulfils Muslim needs and also embodies social balance and harmony. The incorporation of Sharia into the legal system is, among other processes, an attempt to fulfil societal interests and the rationalization of law. For instance, Sharia rules about marriage and economic activity are so embedded in Muslim social life that they require specific regulation in order to secure justice and harmony.

This analysis examines the emerging mode of religious (Islamic) bureaucratization in Indonesia. Some scholars claim that the rise of Shariatization is an effort to consolidate political power, especially in the enforcement of Sharia by-laws in a number of Indonesian districts (Buehler 2008, 225–85). Sharia by-laws are a viable way for political candidates to attract constituent support in order to gain power in district offices. Broadly speaking, while it is acknowledged that Sharia by-laws are a useful means of addressing many of the challenges local political elites are confronted with, such as raising revenue for political ends, establishing linkages with the electorate, and monitoring constituencies, this study argues that other factors are more compelling. The rise of religious institutionalization through state institutions and official rules is a form of rationalization. These processes aim to organize social life, including religious traditions, under the management of the state system.

In the Indonesian experience, bureaucratizing Sharia was already in force at various levels especially in the post independent era. Family law and its procedures for the formation and dissolution of marriages in Sharia courts, *waqf* administration and the management of *waqf* land used for mosques, and *zakat* collections, among other examples, were administered within the state system. Implementing the social

aspects of Islam and serving the needs of Muslims can only be achieved if it is embedded institutionally. Although the content of Sharia is understood to be divinely ordained, its enforcement must be carried out procedurally within modern democracies. Religious matters are transformed into laws to be governed by secular authorities; even if change is justified by the use of theological arguments, a shift can only occur through bureaucratization (Mohamad 2010, 512).

Due to the increasing trend of relying on good governance systems, it is possible for modern Sharia to evolve into a full-blown system of formal, rational laws, with little room for arbitrariness and inflexibility. This development is occurring not because the modern state is adopting Islamic values, but because Indonesia requires legitimized rule, and in Indonesia rules are guaranteed by the constitution (Hooker 2008, 1–18). This means that Islamic reforms work through bureaucratic administration, which embeds Islamic values, beliefs and goals within a rationalized system, accompanied by the professionalization of its legal agents. Weber's concept of routinized charisma, or charisma attached to an office rather than to a person or a leader, may be applied to the bureaucratic approach in Indonesia. The group of traditional *ulama* who swayed authority in religious issues are now being replaced with a salaried, professional class. The *ulamas* hold positions in *zakat* and *waqf* agencies and they are active on the Sharia board. Formally working in the offices of religious courts, the *ulama* also act as consultants and Islamic legal trainers for newly appointed judges (Mohamad 2010, 509; Zaman 2002, 2). This mechanism of organizing sharia practices within the structure of the state system is unavoidable because it deals with public issues. The bureaucratization of Islam is viewed as a strategy used by the secular state to neutralize religion-based political rivals. Because the state accommodates religion, the leadership structure is administered as a modern social institution (Mohamad 2010, 510).

A number of studies have juxtaposed Islamic movements with the agendas of political Islam, Islamization and Shariatization within Indonesia. These studies, conducted by Arskal Salim (2003), Zachary Abuza (2007), Mitsuo Nakamura (2005), Robin Bush (2008), Michael Buehler (2008, 2013), among others, focused on the increasing demands for Islam in public affairs in modern Indonesia. In their perspective, Islamic law (Sharia) has been used as an ideology that competes with or may even replace state rules. These studies conclude that the formalization

of Sharia in Indonesia, through the promulgation of specific laws, is related to the Islamization, or Shariatization, process. Using a different conceptual approach to adaptation, this analysis argues that the increasing enforcement of Sharia in Indonesia is more or less limited to a specific form of bureaucratization within the state system.

Other studies on bureaucracy, administration and Islam have also been conducted in Southeast Asia. Mueller and Steiner (2018, 3–21) highlight how the bureaucratization of Islam in Southeast Asia has manifested, taking on some different characteristics. Kerstin Steiner (2018, 27–56) also wrote on “Branding Islam” in relation to Islam, law and bureaucracy. She argues that the bureaucratization of Islam is an effort to adapt Islam in a modern world and ease its administration for Muslims. This kind of bureaucracy, Steiner emphasises, is a product of the state’s brand of Islam. In Indonesia, Kevin W. Fogg (2018, 117–40) also conducted research about bureaucratic administration within a traditional Muslim-based organization, al-Khairat in Central Sulawesi. Fogg focused on Al-Khairat to examine the leader’s charisma, arguing that Islamic organizations have bureaucratized Islam and also challenged the trend of legalization. Fogg also demonstrates that the bureaucratic structure of al-Khairat serves to reinforce and perpetuate the charisma of the founder.

Yüksel Sezgin and Mirjam Künkler (2014, 448–78) also focused on the politics of judicialization and bureaucratization in India and Indonesia. Their findings indicate that Islam in Indonesia, and Hinduism in India, have been politically organized differently. With regard to the bureaucratization of Islam in Indonesia, they argue that the Pancasila is used as the basis of the state’s constitution in supervising religious practices in Indonesia. The Ministry of Religious Affairs (MORA) implements the bureaucratization of Islam and other recognized religions. Dominik M. Müller (2018, 141) has also investigated the bureaucratization of Islam in Brunei, exploring its relationship with socio-cultural change, and the inclusion of Islamic orthodoxy into state rules in the broader global context. This paper, therefore, seeks to fill gaps in research. It argues that the implementation of Islam in Indonesia with special reference to *zakat*, *waqf* and other aspects family law is not an attempt at Shariatization or Islamization but rather the strengthening of a modern and democratic state that necessitates the bureaucratization of religion.

The institutionalisation of Sharia within state institutions and official rules is a form of rational bureaucratization. It aims to organize social life, including religious traditions, under the state system. A consequence of embedding Islam into a state system is that it requires administration to be bound by formalised and rational written rules. The position of MORA (the Ministry of Religious Affairs) and Religious Courts as state institutions are important aspects to be considered in relation to the bureaucratization of *waqf*, *zakat* and family law.

Modernization and Bureaucratic Islam

In Muslim countries, a modernization trend involves the adoption of bureaucratic mechanisms as vehicles to manage organizations within and outside state institutions. This is carried out to meet the legal standing of social matters irrespective of the political motives of politicians. Coexisting with legal pluralism, Islam in Indonesia is required to adapt to and negotiate with a modern system. It must conform with secular rules rather than replace existing laws. This is a characteristic of modern nation states in which bureaucratization is unavoidable (Saeed 2003). Bureaucratization may take varying approaches, according to particular social needs and realities. It can be structured under the state system or subordinated to the state. The enforcement of Sharia, which has sacred connotations, requires more or less assured legitimacy, a procedure and a formal process. The employees assigned to serve as stakeholders are salaried and objectively represent the government rather than adopting religious clerical roles. This phenomenon is in line with the trend towards the transformation of the religious bureaucracy and religious institutions which is akin to a secularized adaptation of Islam rather than a process of de-secularization.

In some Muslim countries, such as those in the Middle East and North Africa (MENA), the shift from a traditional model of Islamic law to a modern western system of law has been gradual. The modernization of law primarily involved personal statute law, which was institutionalized at religious courts dealing with family law cases. This process, among others, secures the implementation of human rights. In particular, it improves the status of wives who suffered great hardships due to strict adherence to traditional Sharia injunctions. This phenomenon therefore has nothing to do with Islamization of law. Instead, it was a response to modernization and the need to fulfil needs relating to social harmony and justice.

The bureaucratization of the Islamic system is a strategy the secular state adopts to neutralize religion-based political rivals. As the state accommodates religion, its leadership structure is administered as a modern social institution. The blend of divinity and modernity in Sharia administration secures the people's interests and needs. There remains the question of whether this represents a challenge to Sharia's immutability, or it is a secularization of Sharia. The debate around secularism and secularization within Muslim societies may not be identical counterpart non-Muslim experiences in the West. While in Islam it is believed that religion and the state are totally inseparable, studies conducted on this subject show that many different perspectives exist.

A strict separation of religion and the state and thus total secularity is virtually impossible, even in the West which has long claimed to be secular. In Europe and in the United States, the separation of the state and religion has been negotiated in a variety of ways. In effect, each variety of negotiation failed to exclude religion from politics, law and public life (Mohamad 2010, 511).

A similar example of bureaucratizing religion can be seen in Singapore, which claims to be a secular state. In Singapore, religious practices in public affairs have been recognized since 1966 and the Singaporean government remains involved in the management of religion; it also directly interferes in determining religious behaviour and norms (Steiner 2015, 1–16). As pluralistic societies, Indonesia and Singapore share similar experiences in terms of the diversity of religion in both countries. Regardless of Singapore's governmental system, which is variously seen as a liberal democracy, a stable semi democracy (Case 2002), an illiberal democracy (Mutalib 2000, 313), a semi-authoritarian state (Jayasuriya 1999), and a soft-authoritarian regime, it uses religion to reach political objectives through the careful control of religion by the state. The state has a key role in determining policies regarding the relationship between the state and religion (Hooker 1984).

A cursory look at this kind of administration of religion can be found in the Mohammadan Marriage Ordinance (no. 6) of 1880, which is procedural and administrative in nature and is confined to laws pertaining to personal (Hooker 1984). In 1915, an advisory board for Muslim affairs was established to act as the official Muslim spokesperson in dialogue with the government and as the advisor

to the government on Muslim affairs. However, it became doubtful whether the advisory board represented the Muslim community and its religious competence was questioned. In 1957, the Shariah court that later became the registrar of Muslim Marriages was also introduced to manage Muslim marriages and divorces (Pasuni 2018). The introduction of the Administration of Muslim Law Act (AMLA) in 1966 provided Singapore's administration with the legal framework to manage Islamic law. The government tries to control the enforcement of Islamic law through a formal body called MUIS (Majelis Ulama Islam Singapura/Board of Singaporean Muslim Scholars) which functions to enact and interpret the Sharia (Hooker 1984). MUIS is considered a continuance of the colonial bureaucratization of religious laws in Singapore, particularly with regard to Islam. The members of the MUIS council, according to article 7 (1) of AMLA are appointed by the President of Singapore and the appointment of the person who acts as chief executive must be approved by the Minister-in-charge of Muslim Affairs after having been proposed by MUIS. As of 2005, seven members are to be appointed directly by the President of Singapore as stated in AMLA no. 35 of 2005 (Hooker 1984). This direct government involvement indicates two assumptions: the first is that the state enjoys direct control over Muslim affairs and the second is that the state rules in matters of bureaucratizing Islamic law in Singapore. Regardless of the state policy of controlling MUIS, our concern here is with MUIS's responsibilities which include the organization of religious, social, education, economic, and cultural activities, the management of mosques, religious schools, and hajj affairs, halal certification and issuing fatwas. MUIS's position, therefore, is crucial to responding and accommodating both Muslim affairs and government policy in negotiating with and conforming to Singaporean Law regarding religious practices. Sharia has been transformed into written Islamic law, which is the legal basis for social and religious settlements among Muslims (Pasuni 2018, 67).

In Indonesia, the incorporation of Sharia into the bureaucratic system is a manifestation of the modern state. The state's involvement in this kind of administration is not an attempt to control or restrict Muslim affairs, but rather to administer Muslim social relations in accordance with the state's constitution. It reflects the infusion of modernity and divinity, in which Pancasila becomes the sole basis of the constitution.

Zakat Administration

The position of MORA as the state institution that organizes Muslim affairs is significant in post-independence Indonesia. Since its inception by a Japanese ruler in the period 1942-1945, it later became an important institution. MORA was not exclusively established to cater to Islam but also to organize other religions such as Catholicism, Protestantism, Hinduism, and Buddhism regarding in education, social and religious harmony, and tolerance. As the result of political bargaining, MORA functioned to implement government policy about religion in the broader interest of maintaining national unity (Sezgin and Künkler 2014, 448–78). Therefore, MORA organizes Islam and other religions as a central administrative body. In terms of Muslim affairs, MORA administers *zakat* and *waqf*, Islamic schools and universities, hajj (pilgrimage) management, and religious offices (KUA, *Kantor Urusan Agama*).

Paying *zakat* is one of five pillars of Islam; thus, all Muslims once they accumulate wealth have to pay *zakat*. According to Quranic instruction, *zakat* is not voluntary in nature, and the state is authorized to collect *zakat* funds from all Muslims on its territory. It is defined as a religious tax to be used for the benefit of society in general but particularly to alleviate the needs of the poor. In practice, however, in states where Islamic law is not enforced constitutionally, this religious obligation is carried out in a voluntary way.

In Indonesia, paying *zakat* is voluntary for every Muslim. This means that the state offers Muslims the freedom to abide to this religious obligation or in accordance with their own beliefs. The state merely provides the regulations to ensure that *zakat* collection is properly organized for the benefit of the public. As the regulations on *zakat* are only concerned with administrative matters, no Muslim may be forced to pay *zakat* in a way similar to the obligation to pay taxes to the state. Every Muslim has the liberty to exercise their own discretion on both paying and calculating the amount of *zakat* they are to pay or not to pay at all. Therefore, *zakat* payment depends on the personal piety of Muslim citizens. The law provides that *zakat* administration is carried out by *zakat* agencies in both government and non-government institutions. Hence the 'ulama' and other religious figures' exhortations and the innovative efforts exercised by *zakat* agencies play a critical role in persuading Muslims to pay their *zakat*. In this light, *zakat* has

become a “religious market commodity”. A plethora of publications, advertisements and the like are employed to promote *zakat* payment (Jahar 2015, 405–42).

In the long history of Islamic administration in Indonesia, the mechanism of *zakat* administration was first introduced through the Ordinance of the Dutch Indies Government no. 6200, dated 28 February 1905. This regulation attempted to regulate the practice in such a way that no conflicts and disagreements emerged in society. *Zakat* matters were regulated in detail, including its distribution, so that it is entirely under the authority of the Muslim community in Indonesia (Direktorat Pengembangan Zakat dan Wakaf Departemen Agama RI 2002, 284).

After Indonesia became independent, the first regulations the Indonesian government made in *zakat* matters related to rules about *zakat fitrah*. These regulations were made by circular letter on *zakat fitrah* matters no. A/VII/17367, dated 8 December 1951 in which it was stated that the Ministry of Religious Affairs was not involved in the way *zakat fitrah* was collected and disbursed. The Government, through the Ministry of Religious Affairs, was only allowed to: 1) Persuade and encourage Muslims to meet their *zakat* obligations; and 2) To ensure that *zakat* distribution was done in accordance with Islamic teachings. This means that the ministry’s involvement was limited to recommendation and supervision in order to minimize corruption.

In the New Order regime, *zakat* administration was also proposed to be organized by the government in order to secure its outcomes. In response to such Muslim demands, Soeharto issued Presidential Decree no. 07/PRIN/10/1968, dated 31 October 1968 (Fadlullah 1993, 94). This initiative of President Soeharto was not in support of the implementation of Sharia but for his political goal to elicit the support of the Islamic community during the initial phase of his presidency. The New Order regime was reluctant to legalize *zakat* administration by placing it in a government institution. Soeharto, however, neither restricted nor instructed MORA to organize *zakat*. The Ministry of Religious Affairs, for instance, was allowed to raise funds from Muslim civil employees in 1984 for social welfare purposes. With regard to *zakat* administration, the Ministry of Religious Affairs issued instruction no 16/1989, pertaining to *zakat*, *infāq*, and *ṣadaqah*. This instruction went to the lowest level of the Ministry’s hierarchy, the Religious Office (KUA) at the sub-district (*kecamatan*) level.

In 1991, a collaborative agreement between the Ministry of Home Affairs and the Ministry of Religious Affairs led to the issuance of joint letter no 29 and 47/1991 on Assistance in Zakat Organization. This joint agreement was followed up by the Ministry of Religious Affairs with its instruction no 5/1991, which concerns technical guidance and procedures of *zakat*, *infāq* and *ṣadaqah* agencies. In 1998, the Ministry of Home Affairs issued letter no. 7/1998 with the same instructions. These *zakat* rules were not meant to facilitate Muslim religious affairs in *zakat* administration, but rather sought to bolster the political support of Muslims and strengthen the New Order regime (Jahar 2006, 156–57).

Zakat in the Post New Order Regime

There are two important laws on *zakat* administration after the New Order regime: Zakat Act no. 38/1999 and Zakat Act no. 23/2011. Both acts are promulgated in response to the demands of implementing *zakat* administration under a legal institution that can directly lead to social and economic improvement. Carefully reading the consideration statements of these rules, the fundamental goal of *zakat* administration is to secure justice and embody social welfare among Muslims. The bureaucratic nature of *zakat* is concerned with a mechanism of good governance in regard with transparency, justice distribution, supervision and impact for religious, economic and social purposes. Therefore, the new rule allows public involvement in accelerating *zakat* fundraising to collect funds collectively through collaboration with private and public institutions. *Zakat* agencies, for instance, were allowed to cooperate with banks and private enterprises in collecting funds. Both the government and non-government institutions equally share their rights to organize *zakat*.

As stated in both Zakat Act no. 38/1999 and Zakat Act no. 23/2011, *zakat* consists of two types: *zakat* collection on personal property and wealth or a person's ownership in a certain institution (company), and *zakat fitrah*. The former covers commodities that have economic value such as gold, silver and money, as well as goods derived from economic activities such as trading, agricultural cultivation, fishery, mining and all kinds of public services (e.g. hotels, hospitals, etc.). This statute also covers some forms of voluntary alms such as *hibah* (gift) and *ṣadaqah*, among others. The broad coverage of *zakat* is indicative of a modern interpretation; it fundamentally stands to overcome poverty and implement justice among people, rather than being a mere ritual obligation.

In these Acts, two types of zakat institutions are authorized to legally organize zakat: BAZNAS (national body of zakat administration) and LAZ (non-government zakat agency). BAZNAS is a non-structural government body that collects zakat at national, province and district levels. This body is responsible to the president through the Ministry of Religious Affairs. As the government body, BAZNAS is also authorized to control LAZ (the non-government zakat agencies). In other words, LAZ is required to regularly report on their zakat activities to be submitted to MORA. LAZ, in this position, organizes zakat and all alms-giving matters among people and non-government institutions. These two zakat bodies, therefore, serve to organize almsgiving funds collected from Muslim people and the breadth of this sort of alms-giving covers all kinds of religious donations including *ṣadaqah*, *hibah*, and *infāq*, which are not obligatory under religious doctrine.

In the latest version of Zakat Act no. 23/2011, BAZNAS's position is more significant particularly regarding its role in zakat supervision. In Zakat Act no. 38/1999, LAZ and BAZ (the government zakat-based bodies) are almost equal in terms of their position in zakat administration, and they coordinate each other's activities. In Zakat Act no. 23/2011, however, BAZNAS is authorized to supervise LAZ and to recommend LAZ establishments. For instance, a LAZ may not legally be recognized as a zakat institution until it has received BAZNAS's legal recommendation. In the past, this authority was given to the directorate of *zakat* and *waqf* at the Ministry of Religious Affairs. Zakat collection under the umbrella of BAZNAS is coordinated by zakat collection units (UPZ, *Unit Pengumpul Zakat*) at the provincial, district and sub-district level.

Zakat Administration Agency

As BAZNAS exists at the national, provincial, and district/city levels, the heads of provinces and districts generally use their role in *zakat* administration to increase their political power (Buehler 2008, 256). These opportunities can be used because requests to found BAZNAS in different regions is made to the Minister of Religious Affairs by a governor, regent, sub regent or mayor. In implementing *zakat* administration, BAZNAS formed a Zakat Collection Unit (*Unit Pengumpul Zakat*) in order to cooperate with government or non-government institutions in the regions. Therefore, this administrative

mechanism is not a form of shariatization but rather an effort to organize zakat among Muslims through a modern management system. This approach may result in two consequences: first, *zakat* distribution will be used for priority actions in supporting the needs of poor people. Second, *zakat* collection among Muslims can be estimated each year for the benefit of program development in alleviating poverty.

While at the national level the legal standing of *zakat* law is administrative and aims to secure a bureaucratic administrative approach, the local governments in the provinces and districts try to make voluntary religious funds obligatory. Regardless of their voluntary nature, as stated in Zakat Act no. 23/2011, a district government, in some cases, can assume control over *zakat* administration under its authority as a means to further its political interests. Therefore, the *zakat* agency, BAZNAS, is authorized to collect *zakat* from bureaucrats and government employees (Buehler 2008, 260). In other cases, *zakat* collection is obligatory for all government employees and is directly deducted from their monthly salaries. This approach funds religious functionaries to enable them to perform their duties, such as Quranic reading teachers or imams at mosques. This attention to religious practice is seen as a means to strengthen political support among local leaders and the Muslim community, and to show that the government leader is reputed and well-known for their concern for both Muslims and poverty. Politically, this strategy will generally receive direct community support.

The promulgation of the Law on Zakat Management no. 38/1999 which was recently amended with Zakat Act no. 23/2011 continues to claim that official *zakat* collection is carried out by both government and Muslim-based non-government organizations. The law still ensures that its concern is on the mechanism and administrative issues pertaining to *zakat* management rather than direct state involvement in the organization of *zakat* matters. There is indeed direct involvement of government and non-government institutions on *zakat* management through both National Bodies of Zakat Collection (BAZNAS, *Badan Amil Zakat Nasional*) and Private Zakat Collection Bodies (LAZ, *Lembaga Amil Zakat*). Government involvement, however, is merely administrative in nature and tries to guarantee that fund-raising is organized through a modern system. In order to create this mechanism, the government transferred its authority to BAZNAS to facilitate and

control *zakat* funds in both BAZNAS and LAZ. The way in which *zakat* is collected demonstrates the voluntary approach taken in regulations related to *zakat* payments. It means that there is no sanction for those who intentionally do not pay *zakat*.

The administrative nature of *zakat* is also represented in minor reductions for taxpayers who have paid *zakat*. This intends to maintain people's duties in two ways. First, to secure religious duties on paying *zakat* (religious tax); second, people are still required to pay tax in their obligations as citizens. *Zakat* in the post New Order regime, although formalistic in nature, has already been elevated to its positivist legal position. It is recognized as a reduction of a total amount of wealth and is stipulated as such in Chapter III article 22 of Zakat Act no. 23/ 2011.

Since its formal recognition by state at the outset of the Soeharto regime in 1967, the *zakat* system remains bureaucratic in nature. This means that the state applies administrative regulations to justify its practice in accordance with regulation. For instance, the establishment of BAZNAS in 2001 through the President Decree no. 8, seeks to facilitate *zakat* in government, such as in the province and district levels. BAZNAS, however, is not authorized to go beyond such an administrative role. This *zakat* board is not authorized to control *zakat* in all philanthropic institutions, except when there are violations committed by *zakat* administrators. Together with its administrative underpinning, the state, however, still maintains its foothold in securing its interest through the composition of BAZNAS members. BAZNAS must consist of non-government people, Ulama, intellectuals and bureaucrats (Fauzia 2013, 247).

Waqf Regulation

The state's administration of *waqf* is also supervised by MORA. There are three crucial institutions that control *waqf*: MORA, religious offices (KUA) and the Board of Indonesian Waqf (BWI, *Badan Wakaf Indonesia*). BWI is a newly created body that seeks to enhance the development of *waqf*. This institution, much like BAZNAS under the *zakat* system, is a semi-independent institution authorized to control the administration of *waqf* across the country. The *waqf* system in Indonesia has a long, deep-rooted tradition among Muslims that dates to the pre-independence period. As a tradition, its use grew in response to the need to support public facilities, such as traditional Islamic schools (*madrasah* and *pesantren*) and mosques.

The administrative system of *waqf* has been in place since colonial times (Jahar 2006, 353–95). The implementation of *waqf* regulations aims to regulate a prevalent legal practice in society, and to guarantee its accountability and legal validity in the public interest. For this reason, the regulation in force during colonial times was not a form of Islamic sharia but rather a form of administration. The main intent of the Colonial Government was that *waqf* donations would not turn into a form of politics. The Dutch Colonial Government issued its state regulation “*Bijblad* 1905 No. 6196 on Toezicht op den bouw van Mohammedaansche bedehuizen (a letter of the Government Secretary dated 31 January 1905 No. 435). Further, in 1931 and 1935 it also issued the *Bijblad* 1931 no. 125/3 Toezicht van de Regering op Mohammedaansche bedehuizen Vrijdagdiensten en Wakafs and letter No. 1273/A cited in *Bijblad* 1935 no. 13480 respectively. These rules ordered every district head (*bupati*) to register mosques and all matters of *waqf* that were assigned to the mosques. A *waqf* deed should include the size, form and original purpose of the endowment to be specified in the registration (Jahar 2005, 85–86).

In 1949, long before the New Order period, the government had already regulated *waqf* through a Government Decree and by the Decree of the Minister of Religious Affairs No 9 and 10, 1952. These regulations explain how the founding and administration of *waqf* should be achieved in society in accordance with the objective of land *waqf* as stated in Islamic sharia, and in state regulations, because in general many *waqf* were still founded orally without any proper registration. The Ministry of Religious Affairs and the Religious Office were the two organizations that dealt with this matter. The Ministry of Religious Affairs also issued technical instructions about *waqf* on 22 December 1953. As a follow-up in the streamlining of *waqf* regulations, the Central Office of Religious Affairs issued circulation No. 5/D/1956 dated 31 December 1956, with the recommendation that *waqf* land endowments would in future be done on paper. Subsequently, on 5 March 1959, the Minister of Home Affairs and the Minister of Religious Affairs issued joint decrees No. Pem.19/22/23/7 and SK/62/Ka/59, containing the Transfer of Authority for Land-Owned Waqf Legalization from the Regent to the Head of the Agricultural Supervision Board. The implementation of these joint decrees was then regulated in a Letter from the Agricultural Supervision Board No. Pda.2351/34/II dated

13 February 1960. This traditional model of *waqf* strongly aspired to common practices among Muslims, as well as the majority of people who worked in farming and agriculture.

Under the New Order, *waqf* was administered in Government Regulation no. 28/1977 on Waqf Administration. This regulation was based on the common practice of *waqf* among Muslims. For instance, it maintained that *waqf* was required to accord with religious provisions regarding its legal procedure and the purpose of its establishment. A *waqf*, furthermore, is required to be property that is fully owned by the *waqf*'s founder and should also be an endowment that can be used forever. This requirement was based on the conviction that a *waqf* is an act motivated by religious norms, which entail the provision of something long-lasting.

Establishing a *Waqf*

In Government Regulation no. 28/ 1977 on Waqf Administration of Land and Waqf Act no. 41/2004, the founder was authorized to appoint the *waqf* administrators and the criteria for *waqf* beneficiaries. In this regard, the administrator acted on behalf of the founder's discretion and in accordance with the stipulations in the *waqf* deed. The *waqf* deed (*waqfiyah*), therefore, remained the fundamental source of *waqf* management. While in Islamic jurisprudence the legal act of *waqf* is exclusively individual, the *waqf* regulations expanded its entitlement to institutions or any legal bodies that intended to create a *waqf*. The inclusion of legal institutions into the category of *waqf* founders, which is not explicitly mentioned in the classical texts of Muslim jurists under Sunni schools of law, is a considerable development in the field of Islamic jurisprudence. It may also be viewed as an attempt to meet changes in the modern world, particularly economically. The recognition of legal institutions in the *waqf* system illustrates that the concept of *waqf* in particular, and Islamic law in general, are being adapted to the changing social conditions of Indonesian society. On the one hand, a modern system is adopted in order to promote the fulfilment of *waqf* objectives, while on the other the religious foundation of *waqf* is maintained as its legal and philosophical basis. For instance, the intention (*nīyah*) of the founder - be it an individual or organization/institution - in assigning property as *waqf* remains a determining factor for the legal validity of *waqf*.

The establishment of a *waqf* involves abiding to the regulations included in the state system. To meet this requirement, establishing a *waqf* can be instituted through a Religious Office (KUA, *Kantor Urusan Agama*) representing the Ministry of Religious Affairs. A *waqf*, for instance, is only legally valid if it has been made at a Religious Office. The transaction itself is generally carried out through an oral statement pronounced by the founder and witnessed by at least two other persons. Once a *waqf* has been created, the founder is relieved of any authority he or she had over the *waqf* property. It is immediately transformed into a charity in accordance with the founder's stipulations and then falls under the administration of the *waqf* system. The administrator moreover is required to organize the *waqf* in line with the founder's stipulations as included in the *waqf* deed, because not abiding to these stipulations in the deed is regarded as a violation of *waqf* rules.

Waqf is also included in the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), which covers three main areas: marriage, inheritance and *waqf*. In the KHI, there are two main *waqf* categories. The first is the content of the *waqf* rules, particularly with regards to the administrative system to be used and the objective of the *waqf*; second is the position of the government regarding the legal procedures of *waqfs* and their administration. Judges have used the KHI since 1991 as their legal manual when deciding on cases filed at religious courts.

Administration System

There is no doubt that the *waqf* administration mechanism in the KHI is similar to that of Government Regulation no. 28/1977. The KHI concentrates on the legal aspects of *waqf* transactions made by a founder including those before and during the transaction, and after it has been handed over to the administrator as well as the needed documents, the *waqf* objectives, and various other basic requirements. *Waqf* development is hardly seen as the main concern of *waqf* administration. A *waqf* is seen as a mere religious transaction, and generally touches upon basic elements such as the founder's intention and maturity, whereas the way *waqf* should be organized and managed is neglected.

Compared to Government Regulation no. 28/1977, the KHI places more emphasis on a greater role for the Religious Office, the MUI and the *waqf* administrator. A *waqf*, for instance, is required to be managed

by a number of administrators chaired by a chairperson. However, the KHI does not specify the terms of an administrator's duties. This can be attributed to the assumption that the administrative tasks are decided by the founder's stipulations as written down in the *waqf* deed, and which are generally assigned to the administrator for an unlimited period of time. Unlike Government Regulation no. 28/1977, which gives the Religious Office a dominant role, the KHI determined that in addition to the MUI, the Religious Office is to supervise and determine the administration system.

Following the abovementioned rules on *waqf*, in the post New Order governance *waqf* administration was reformed through enactment of *waqf* Act in 2004. The *Waqf* Act no. 41/2004 was issued in the early reformation era. It contains a similar principle found in the Government Regulation introduced in the New Order era, which also states that a *waqf* is for religious and social purposes, such as enhancing social welfare. This new law expanded the objects that could be turned into a *waqf* and established a control system that is administered by the Body of Indonesian *Waqf* (BWI). The issuance of *Waqf* Law no. 41/2004 may be regarded as an attempt to resolve the deficiencies of the *waqf* system through the reform of the legal system. This mechanism is expected to reduce the occurrence of disputes caused by different interpretations of *waqf* and to encourage *waqfs* to be developed and used in the most efficient and beneficial manner. The implementation of *Waqf* Law no. 41/2004 has two main objectives. Firstly, it attempts to legally regulate the *waqf* system in order to justify its practice. Secondly, it aims to organize *waqf* administration to ensure that *waqf* is used as effectively and efficiently as possible for the benefit of social and religious affairs. The most significant change pertinent to the statute in defining *waqf* is reflected in the authority of the *waqf* administrator, the flexible mechanism of *waqf* assignment, the establishment of the Body of Indonesian *Waqf* and the wider range of *waqf* objects. Moreover, the system of *waqf* administration is now backed by legal guarantee and protection, the abuse of which is defined as a violation of the law.

The reform of the *waqf* system in Indonesia can be seen as a modern trend of Muslim intellectuals adapting Islamic jurisprudence (*fiqh*) to modern social conditions by way of reinterpreting Islamic norms on the basis of *maṣlahah* (public interest). Compared to the *waqf* system that was in use prior to 2004, which entailed that a *waqf* was mostly created

and administered based on tradition, the current *waqf* framework — based on law no. 41/2004 — is developed in line with the modern concept of law. Monetary *waqf*, for instance, which in the past was a hotly debated topic, is defined in Waqf Law no. 41/2004 as a *waqf* commodity.

A breakthrough in *waqf* regulation came with the expansion of the items that could be endowed as *waqf* to include all categories with economic value. The role of the Body of Indonesian Waqf (*Badan Wakaf Indonesia*, BWI) was also expanded. All these matters, however, remain under the purview of non-government bodies, such as Muslim-based organizations Nahdlatul Ulama, Muhammadiyah, Dompot Dhu'afa, and so on, to ensure that the state remains neutral in relation to religious affairs, and to strengthen the role of civil society (Fauzia 2013; Yunita 2015, 80–83). It has been argued that the contribution of religious-based civil society organizations such as NU and Muhammadiyah to religious, social, and educational life is significant. The establishment of mosques, *madrrasah* (schools) hospitals and co-operations is funded through *waqf* and other voluntary religious funds.

The *waqf* administrator (*nazir*) is responsible for organizing the *waqf* in accordance with the founder's wishes as stipulated in the *waqf* deed. The process of how the productivity and development of *waqf* are to be organized was removed from state intervention. The state only provides the rules and the general mechanism in relation to the parties that are involved in *waqf* matters and their rights and obligations. The administrator, for instance, is entrusted to guard the *waqf* and to increase its productivity. The state seems to overestimate the significance of *waqf* contribution in religious, social and economic affairs. The transparency of management in allocating *waqf* income by administrators is left almost completely uncontrolled. Therefore, *waqf* assets, despite comprising a large quantity of land, did not effectively endow a productive contribution for public welfares in society. A crucial problem is the lack of state control and management over *waqf*. This shortfall can be attributed to a system that focuses merely on the bureaucratic nature of Sharia, which assigns *waqf* administrators exclusively to individual, organization or legal institutions. The administration of *waqf* is exercised by the Body of Indonesian Waqf, which involves legalizing the proposed newly-elected *waqf* administrators at some *waqf* institutions. The Body of Indonesian Waqf

has no active or authoritative powers that may empower it to control *waqf* institutions across the country. The BWI's administrative function over *waqf* is meaningless unless it is empowered with independent authority over violations in *waqf* management.

The regulation also mentions the administrator's right to derive income from their administration of the *waqf* (a maximum of ten percent of the total income). Some requirements of *waqf* administrators include: a. administrators are required to be Indonesian citizens who are sound of mind and live in the region where the *waqf* is located; and b. administrators are authorized to develop *waqf* assets. If one of the administrators dies, another sitting administrator is allowed to nominate candidates for the post after having obtained consent from the Minister of Religious Affairs (or the Religious Office). The law moreover stipulates that the Religious Court is authorized to decide disputes over *waqf*.

The exchange of *waqf* is only possible if the administrator has obtained legal permission from the Department of Religion (a Religious Office) and the Body of Indonesian Waqf. This bureaucratic mechanism is to ensure the legality of a *waqf* and to secure its purposes after its establishment. The exchange might only be possible if the substitution is equal to or has a higher value than the original *waqf*. The Body of Indonesian Waqf (BWI) has a crucial role monitoring *waqf* developments in society and also in strengthening the competence of *waqf* administrators. The interest of the state in this body resembles the interest it has in other non-governmental institutions pertaining to the protection of children, women and broadcasting. The BWI is not an extension of the government or part of the government but it is an independent institution, although it operates directly under the president. Its task is to control *waqf* practices, especially in legalizing the *waqf* managers appointed by the *waqf* founders, and to again legalize managers whose legalization has already expired.

Administrators can be persons, organizations or institutions that are officially recognized by law. The appointment of *waqf* administrators should be registered at a Religious Office and the Body of Indonesian Waqf. When within a year a *waqf* is left undeveloped, a Religious Office or the Body of Indonesian Waqf is authorized to assign other administrators to run the *waqf*. This mechanism aims to ensure the ultimate purpose of *waqf*: that is, generating benefit for the beneficiaries and the public in general.

It is clear from the above that the government regulation focuses merely on the registration and legalization of *waqf* property in accordance with Islamic teachings in fulfilling religious, economic and social benefits. The role of the state as facilitator for the legalization of *waqf* can also be seen in the mechanism behind making monetary *waqf*, which requires financial institutions such as banks that do not rely on the accumulation of interest (Islamic banks). These banks are only used to collect the financial *waqf* funds while the development and the benefit of these funds remain with the administrators. This would be impossible if *waqf*, as a public matter, was not legalized by the state through regulations. This is because financial *waqf* can be used for financing efforts that are not limited to poor people but also to entrepreneurs, as long as they make a profit with the *waqf* money they use as capital. Thus, the *waqf* funds are used with an eye to make profit from the businesses financed by the *waqf*.

Regulating Family Law

The enforcement of legal procedure in family law is not a new trend in Indonesia. It has even been exercised in the pre-independence period in 1945, particularly during the sultanate rules, and continued in colonial times. This bureaucratic mechanism of Muslim personal law was also emphasized in article 49(1) in resolving cases of marriage, inheritance, wills, *hibah* (gift), which is made under the rubric of *waqf* (religious endowment) or *sadaqah* (voluntary giving). The reinforcement of the religious court through its act no. 7/ 1989 works to ensure legal certainty among parties subject to family affair cases. The foundation of religious courts was also accompanied by the issuance of *Kompilasi Hukum Islam* (the Compilation of Islamic Law), to be used as a basic reference during adjudication.

In the long term, family law evolved alongside the modern state system, particularly through the modernization of religious court administration and the codification of Islamic law. In the early 1970s, the New Order government proposed the Marriage Law Act. This Act attempted to unify laws relating to various marital practices that conform to customary and religious laws (Nurlaelawati 2010, 68). The accommodation of the religious law of marriage, especially in Islam, did not seek to replace the existing state rules; rather, it tried to strengthen social stability and harmony. It has also emphasized

that the nexus between sharia and positivist Indonesian law was made through a selective approach (Hooker 2008, 290). The positivist law of marriage is selected out of the *fiqh*, such as that compiled in the KHI (the Compilation of Islamic Law), and becomes a standardized reference in deciding cases at religious courts. KHI was a mark of new development in contemporary Indonesian sharia.

Long before the New Order regime came to power, especially after Indonesia gained its independence in 1945, the institutionalization of Sharia in family affairs was a gradual process. Under the regulation no. 5/1946, the Ministry of Religious Affairs was assigned to organize religious courts, which preside over marriage (*nikāḥ*), divorce (*talāq*), and reconciliation (*rujū'*) issues. The state's involvement in Muslim affairs and their religious injunctions does not intend to politicize nor Islamize state institutions, but rather to unify and modernize the administrative system in the practices of Muslim marriage, divorces and reconciliation. These reforms aim to create legal certainty and stability for Muslim families (Nurlaelawati 2010, 51).

Another step forward in ensuring legal certainty within Muslim society was the introduction of the *Kompilasi Hukum Islam* (the Compilation of Islamic Law). It was made effective in 1991 through the issuance of the President Instruction no. 1/1991. The *Kompilasi* was to be applied as a substantive law of the religious courts in response to uncertainty of adjudicating cases made by religious judges by referring to *fiqh* literature. This law also intends to unify family law norms throughout Indonesia. It is also regarded as a continuation of existing judicial practice within the Islamic courts and the reforms in the 1974 Marriage Law (Huis 2015, 102–3). As the *Kompilasi* was made on the basis of various *fiqh* literature in fulfilling diverse interpretations among Indonesian ulama, its substantive features are a response to existing issues and needs in the Indonesian Muslim tradition. The content of *Kompilasi* with regard to family issues tries on the one hand to hybridize sharia, while on the other it aims to regulate Muslim family affairs through administrative and bureaucratic approaches.

How marriage is regulated to maintain legal certainty and justice among parties involved in Muslim family law is described as follows. Once traditional *fiqh* literature is used as a legal reference, marriage contracts or divorce can be effective and binding according to *fiqh* rules (Islamic jurisprudence). Marriage in classical Islamic jurisprudence is effective and

binding in the presence of at least two witnesses. Administrative matters such as registering a marriage contract is not included as a requirement. An unregistered marriage in social affairs may affect disputes or uncertainties among spouses when there is a need for a claim in property or child identification to whom he/she are legally justified due to the absence of administrative documents. Therefore, the law through such procedures and its related requirements aim to create legal certainty for all family affairs. The *Kompilasi*, for instance, states that a marriage should be concluded in the presence of an official marriage registrar. Registration then stands to validate the marriage among spouses as recognized in classical *fiqh* (Nurlaelawati 2010, 102–3). A combination of Islamic norms on marital mechanisms relating to the spouse, witness, dowry, offering and accepting and finally registration at the religious office is a form of bureaucratization. It means that state intervention on such matters is an attempt to ensure legal certainty and justice for the population.

In 1973, the “New Order” government in Indonesia transformed Islamic family law, which is sanctioned by the Quran and the Sunna, and comprehensively elaborated in Islamic jurisprudence, which incorporated it into state law. An attempt to create family law was initially made by the Ministry of Justice which then responded with strong opposition from Muslim clerics and Muslim based organizations. The New Order regime initiative on such regulations was accused of controlling Muslim religious activities as well as reducing religious values of the marriage contract. Muslims perceived the proposal of the draft bill of Marriage as a political manoeuvre exercised by the New Order regime to reduce the role of Islamic institutions by strengthening civil administration (Nurlaelawati 2010, 68–69). President Soeharto, however, tried to reduce political Islam by employing Islamic values and teachings to serve Muslim social needs through the modernization of the legal system. The enactment of the law has two objectives: to reduce the frequent occurrence of polygamy, divorce and child marriages and to unify Indonesian marriage law as part of a program of national unification under the Pancasila state ideology. Cammack (1989, 53–73; Tholabi 2009, 172) argues that the inclusion of family law into the Indonesian legal system aimed to accomplish several indirect bureaucratic objectives. These require the institutionalization of Islamic law by the government along with its secular counterparts in order to establish a modern system rather than Shariatization or Islamization.

The objective of religious institutionalization through bureaucratic procedures was to cover everything and also make it applicable to everybody. There is no longer any room for personal interpretations, particularly if a judge or other person involved in the process adheres to a particular school of law (*madhhab*), which is commonly practiced by Muslim jurists when they issue fatwas. Therefore, under this system, a judge may refer exclusively to the compilation of Islamic law (Islamic law), which is not as concerned with the detailed arguments developed by Muslim jurists in classical *fiqh* literature. Islamic law has been transformed into a legal manual ready for use by judges.

The National Marriage Act no. 1/ 1974 and the promulgation of the institution of the religious court in the Religious Court Act no. 7/1989, together with the Compilation of Islamic law (the so called KHI) of 1991, were adopted as the foundation for legal references. This created a bureaucratic approach to settle disputes pertaining to family law. The inclusion of the 1989 Islamic Judicature Act created a special court that presides over Muslim cases pertaining to family law, which until then had long been dealt with in a religious court affiliated with the national court. The promulgation of Act no. 7/1989 on religious courts did not change the New Order's position with regard to the sharia *vis à vis* the Pancasila, but rather intended to institutionalize Islamic traditions and align them with the national constitution. In the case of family law, the state was concerned with the issue of how to govern the procedural and administrative aspects related to family affairs. Polygamy, for instance, despite permitting a man to have more than one wife by the sharia, was seen to lead to social disorder once it was practiced arbitrarily and uncontrolled by state rules. The existence of religious courts, therefore, provided legal certainty to family affairs and thus protected disadvantaged parties (generally women and children). The existence of religious courts provided legal certainty for all family affairs which were previously regulated merely on the basis of religious interpretation and settled without due court processes.

The legal administrative family law became a model for the judicial system in general with the implementation of Act no. 7/1989, after which it was no longer considered only a sacred religious matter. Because of this, the legal process required that the procedures applied in the national law system were adhered to where court judges act as government officers who are obliged to comply with the legal regulations

instead of exclusively following *fiqh* (Islamic jurisprudence) when they decide a dispute. Furthermore, judges are required to hold academic degree (at least a Bachelors) in Sharia.

Along with Law No. 7/1989, the Compilation of Islamic Law No. 1/1991 also functioned as the legal code for all Muslims who, after it was issued, have to resort to religious courts for the adjudication of disputes involving marriage, divorce, inheritance and *waqf* (Alfitri 2007, 249–70). In response to the expansion of the jurisdiction of the religious courts, in 2006, Law No. 3/2006 was put into effect amending the jurisdiction of the religious courts beyond marriage, divorce, inheritance and *waqf* as stipulated in Law no. 7/1989 to which eleven forms of *mu‘āmalah* transactions were added: transactions in banks and micro-finance institutions, commercial transactions involving insurance, reinsurance, bonds, mutual funds, secured transactions, commercial financing, pawn operations, pension funds and business contracts (Alfitri 2007, 249–70). The inclusion of this regulation intended to accommodate demands for settling social and legal issues among Muslims and to solve their social and legal problems.

These rules are to be used by parties who require legal approval in terms of social and family relations to settle disputes. The state’s intervention to accommodate Muslim laws into the state system is by no means a form of shariatization under the rubric of state laws. As will be discussed below the sharia is basically bureaucratized as a consequence of modern society, particularly in divorce cases.

There are two types of divorces: *ṭalāq* divorce and “complaint” divorce (*cerai gugat*). The former is authorized for a husband while the latter is for a wife. As *ṭalāq* (divorce) in Islamic jurisprudence is defined as a private matter, particularly for the husband, for it to be legally binding, pronouncing a divorce is categorized as an act of a legal institution requiring bureaucratic and procedural processes. The legal validity of the proper recitation of the *ṭalāq* formula, “I divorce you”, is only considered a legal divorce if it is conducted in front of a judge in a religious court (Hooker 2008, 24).

In the past, particularly prior to the promulgation of the National Marriage Act no. 1/1974, *ṭalāq* was merely measured by the individual’s intention and proper recitation with reference to God’s law and represented a direct personal responsibility in relation to God (al-Zuhaily 1997, 648). It was therefore beyond the control of state regulation. This

act, however, is no longer recognized and a divorce only comes into effect once it has been stated in front of a judge in a religious court. The final decision on a divorce will be made by a judge after attempts to reconcile the parties have proven unsuccessful. This means that the personal acts performed by a husband or a wife—even though they are religiously valid in terms of God's law—have been bureaucratized through a judicial process in order to be legally effective. A Muslim husband's unilateral repudiation of his wife or *ṭalāq* is thus no longer valid (Cammack 1989, 157). This means that religious cum divine law has been institutionalized by a secular legal system. This Process was established in order to create certainty and to set out the proper administrative steps that had to be taken before evidence presented to finalize the divorce could be accepted. The legal grounds for this judicial process have also been used as the rationale behind and the reasons for concluding a case. Some legal grounds are: adultery; compulsive drinking, drug-taking or gambling; desertion for a period of two years; a jail sentence of a period of five years or more; endangerment of one spouse vis à vis the other; disability preventing the carrying out of marital duties; and continuous arguments caused by irreconcilable differences. Once these facts have been proven, the court is authorized to make the court "decision" that the marriage is terminated (Cammack 1989, 61).

While in Islamic jurisprudence (*fiqh*) women's rights on divorce cases are not explicitly declared, National Marriage Law no. 1/1974 places significance on women's rights. It is stated, for instance, that a domicile category was created so that filing for divorce has to be done in the place where the wife lives. A husband wishing to repudiate his wife is required to file his petition with the court in the district/municipality where his wife resides, rather than in his own district (Cammack 1989, 158). In another case, the significance of the divorce procedure is determined by the legal document issued by the court, which conclude whether the divorce has been pronounced or if the parties remain married. If the document is awarded through the judicature, both spouses may enjoy their rights to, among others, property shares, rights of being a guardian of the children or to legally remarry with another partner after the divorce certificate has been issued (Cammack 1989, 163).

This transfer of authority from individuals (men or women) to state officers such as judges in religious courts was made to efficiently organize family affairs among Muslims. This bureaucratic model at

times reduces or simplifies the substance of the dispute settlement, particularly in the cases of *li'ān* and *shiqāq*. In other words, this mechanism of solving or dissolving Muslim marriages has formalized the procedures that have to be followed to settle marriage disputes and divorces. Imposing such legal requirements also aims to control the incidence of divorces. The rules pertaining to the settlement of a divorce are not merely perceived as part of divine law but also as an indispensable part of secular legal and social matters. It is therefore the state that has been given the authority to regulate divorce rather than the Sharia that is elevated to a status equal to the state's constitution. As it has become state law, religious interpretation beyond or even in opposition to the Act is considered illegal. The state seems to have adopted the role of guaranteeing the people's harmony and rights in accordance with the state's principles.

This modern approach maintains normative values and a bureaucratic system in family affairs. The settlement of family disputes such as complaint divorces (*cerai gugat*) or settling irreconcilable differences between spouses through the appointment of an arbiter representing each spouse (*penyelesaian shiqāq*) is transferred to a judge in a religious court. It means that the *shiqāq* procedure has evolved into a divorce procedure, because judges are recognized as arbiters for both and they hold the power to terminate a marriage if reconciliation efforts fail (Cammack 1989, 159). In other words, family affairs have been transformed into state law in an attempt to create justice among individuals. The state functions to ascertain that any form of family dispute is settled based on the law. The state does not represent the faith but rather regulates people's lives, within their own social and legal contexts, through its institutions. Sharia values have been transformed and adapted into state laws as a means of regulating sharia within the sphere of bureaucratic mechanism.

The bureaucratic approach in dealing with family disputes in religious courts is used to determine the validity of both the process and the procedure of certainty. *Li'ān* (adultery perpetrated by one or both parties), for instance, is treated the same as complaint divorce or *ṭalāq* (divorce filed by the man), even though this procedure is disputed among Muslim legal experts particularly at the level of substantial issues caused by the extension of the *li'ān* option to wives. Religious courts consider women and men's authority to be equal because both spouses

are entitled to bring their case to the court. The process of settling disputes in religious courts is as follows. For instance, a husband who suspects that his wife has committed adultery is requested to take four solemn oaths that his wife has committed adultery or that the child born to her is not his. The wife is also offered the opportunity to deny the accusation by taking four oaths of her own. The process of taking these oaths four times for both parties refers to religious norms dictated in the Quran, the Sunna and in Islamic jurisprudence. It is equal to the four witnesses required to prove the crime of adultery, and if the wife refuses to take the oaths of denial she stands convicted of that crime. If she does deny, then the only outcome of the procedure is to permanently dissolve the marriage (Cammack 1989, 160). This approach intends to accommodate the Sharia within the state administrative system in order to maintain part of the sharia rules but not its diversity.

The fact is that this religious administration is a product of the bureaucratization of the Sharia to secure human rights in general. The role of religious courts in such matters is to secure spouses' rights and reduce the frequency of divorce. Reconciliation is the first step assigned by the courts to the couple at the first hearing. The divorce decision will be made if the couple cannot be reconciled and there are sufficient reasons for divorce (Cammack 1989, 158). As aforementioned, the state does not intend to enforce religious law, and by so doing gradually become a religious state. If religious practices are arbitrarily exercised among Muslim people, the social structure is at risk and will gradually create disharmony. For the state, it will cause uncertainty and lead to social problems for the people in general. To cope with these issues, one solution is the institutionalization of religion, not state intervention leading to shariatization. This modernization of the legal system had also consequences for the formal and substantial requirements for law enforcers (judges). The effect of the bureaucratization of family law was the elimination of the traditional law experts who originated from *pesantren* (Islamic boarding schools), except for those who hold academic degrees in sharia or Islamic Law.

Conclusion

Within Indonesia, the bureaucratization of Sharia has emerged as a response to the need to organise Muslim life within the framework of a modern state. This study has examined the laws of *zakat*, *waqf* and

family law to show how the government seeks to implement Sharia within a state framework constitutionally committed to democratic legal pluralism and Pancasila. Although sharia has undergone bureaucratization, the content of sharia law has been developed, adapted and selected out of the general principles of the classical *fiqh* of the Sunni school of law. Indonesia's approach to regulating Muslim life has parallels to other Southeast Asian countries including Malaysia, Singapore, Brunei, and the Philippines. This phenomenon reflects a trend of modern state governance which requires rationalization and certainty in regulating society. Positivization of the laws aims, among other things, to create certainty and justice for all Muslims in legal matters.

In the context of Islam, bureaucratization has two consequences. First, Islamic doctrines have been modernized (not to say secularized) in the public sphere. Second, legal issues associated with these teachings have already been institutionalized and are regulated based on formalized law manuals. The increasing bureaucratization of Islamic practices in Indonesia seeks to ensure that people's rights are protected, and people's religious duties are performed, within the state-mandated framework of Pancasila. If Islamic practices are not incorporated into bureaucratic modes of state governance, this may encourage undesirable conservative forms of Islamic legal tradition.

Endnotes

- I would like to extend my thanks and gratitude to the anonymous reviewers who have made valuable comments and suggestions for revision to make this paper readable.
1. The concept of harmony and balance was discussed in Roscoe Pound's *Philosophy of law*. According to Pound, fulfilling, balancing, and harmonizing people's interests is part of a "social engineering" process. Pound further states that people's interests are naturally inherent to their life (Martin 1965, 38).
 2. The concept of bureaucracy, as it is used in this paper, broadly refers to what is tied with the state system and to other characteristics such as formalization, written rules, following jurisdictional arenas, and the hierarchical system. See Fogg (2018, 118–19) and Weber (2009).
 3. The scope of religious administration is evident in regulations pertaining to *zakat* and *waqf*, and much of family law. The recent regulations pertain to hajj and Islamic finance laws. For the purpose of this study, *zakat* and *waqf* law are used as examples.
 4. In 1642, Islamic law was introduced to serve as the guidelines for the qadi or penghulu in creating legal judgement in family issues. The compendium of van Clookwijck in 1700s and the compendium of Freijer in 1760. In 1750, the compendium of Mogharraer (best known as al-Muḥarrar of Abū al-Qāsim 'Abd al-Karīm ibn Muḥammad al-Rāfi', who died in 623 H). See for example Van der Chijs (1890, 395–407). See Nurlaelawati (2010, 228).
 5. The incorporation of sharia into state law was defined by Hooker as a process of choice and selection. It is made through selecting sharia values to be adopted as an element of law whenever it is relevant and in tandem with the principle of Pancasila and the basic constitution of UUD 1945. These efforts were contested by the political circumstances of the given time and place. It is, however, believed that such processes were inevitable in a sense that Muslim or Islamic law is living in the community. The irrelevant calls for an "Islamic state" was transformed into the necessity of modern bureaucratic structure by borrowing a legal instrument from outside the sharia (Hooker 2008, 1).
 6. Muhammad Qasim Zaman emphasized the role of 'ulama in influencing society and responding to social conditions. They also significantly contributed to the discourse as well as the religio-political movement. Thanks to 'ulama, there has also been a growing number of religious institutions of learning (Zaman 2002, 2)
 7. The concept of bureaucracy, as it is used in this paper, broadly refers to what is tied with the state system and to other characteristics such as formalization, written rules, following jurisdictional arenas, and the hierarchical system (Fogg 2018, 118–19; Weber 2009).
 8. A special issue published in the *Journal of Current Southeast Asian Affairs* in 2018 launched studies on the bureaucratization of Islam. These papers cover a wider field of research, discussing discourses such as Fatwa in Southeast Asia, and offering different approaches.
 9. The scope of religious administration is evident in regulations pertaining to *zakat* and *waqf*, and much of family law. The recent regulations pertain to hajj and Islamic finance laws. For the purpose of this study, *zakat* and *waqf* law are used as examples.
 10. In various regions in Indonesia, there are many attempts to create Sharia regulations as a means of political maneuver to garner the political support of local people. However, this politization of Islam or Islamization failed. In his study of some regions in Indonesia, Buerler found that the inclusion of Sharia regulations aims to accumulate economic capital, cultural capital, and social capital. The efforts of massive collecting religious alms (*zakat*) in the region is seen to establish strong solidarity with local

- leaders and floating votes (Buehler 2013, 75).
11. Various models of bureaucratization within Muslim countries include Malaysia and Turkey. While the former adopts Islam into the state system with its bureaucratic characteristics, the latter, however, places Islam either as formally or symbolically under the subordination of the state (Liow 2004; Smith 2005).
 12. This process does not involve the Islamization of law but rather a negotiation between a Western model of the positivization of law and the traditional law of Sharia (Al-Muhairi 1995, 34).
 13. This program is not replacing the secular system with Islamic law but rather adopting a modern model of legal codification that originated from sharia in accordance with modern interpretations. This codification is then used as the main reference of adjudication (Al-Muhairi 1995, 35, 38).
 14. Steiner, "Governing Islam: the State, the Administration of Muslim Law Act (AMLA) and Islam in Singapore," 9. In the case of the debate surrounding the wearing of a *tudung* (a Muslim headscarf), the MUIS has taken the position to partake in issuing a fatwa together with the mufti and the government. The issue became a national controversy when four Muslim girls went to public school wearing a *tudung*, which was perceived as a form of "civil disobedience." The government decision over this case was not to everybody's liking. He MUIS position is deeply imbedded in the bureaucratic structure and therefore controlled by the state.
 15. See also Yahaya (2015, 496–515).
 16. Pancasila is the state philosophy and forms the basis of its constitution. All rules in Indonesia should conform with the spirit of Pancasila. It consists of five principles: (1) Monotheism; (2) Humanity; (3) Nationality (4) Democracy, and (5) Social justice.
 17. The Quran, 9: 103. Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them increase, and invoke [Allah's blessings] upon them. Indeed, your invocations are reassurance for them. And Allah is Hearing and Knowing.
 18. The *zakat* (a form of tithe) is paid annually by Saudi individuals and companies within the provisions of Islamic law as laid down by Royal Decree No. 17/2/28/8634 dated 29/6/1370 H. (1950). The *zakat* is an annual flat rate of 2.5 percent of the assessable amount.
 19. Zakat Act no. 23/2011, article 4 (5). The independence of those who pay *zakat*, the *muzakki*, is also evident when we look at the mechanism of *zakat* calculation. Every Muslim, for instance, has the freedom to calculate his or her *zakat* on the basis of *zakat* rules without any intervention from the *zakat* collector, although the *zakat* collector can calculate the amount of *zakat* levied on the property if the owner requests it. It means *zakat* is an individual free duty which cannot be enforced by the state.
 20. *Zakat fitrah* is an obligatory almsgiving distributed specially to the poor prior to performing Eid prayer (iedul fitri celebration after Ramadhan month). This kind of *zakat* is applied to Muslims of all ages once he/she has more sufficient food for a day.
 21. President Soeharto received his mandate to become the second president in Indonesia from his predecessor Soekarno. The most important support for his politics came from the Muslim community next to that of the military.
 22. The Ministry of Religious Affairs issued its instruction no 2/1984, on 3 March 1984 on Infaq Rp. 1000 during the month Ramadhan. This instruction was guided by the decree of the directorate general of Muslim Community Guidance and Hajj Affairs no. 19/1984, on 30 April 1984.
 23. Article 5, 6, 7, 8, 9, 10 of Act of Zakat no. 23/2011. BAZNAS's officers consist of community leaders, professionals and government elements. Its members are appointed and dismissed by the president of the Republic of Indonesia through the Ministry of

Religious Affairs.

24. Article 17 and 18 of Zakat Act no. 23/2011.
25. Article 19 of Zakat Act no. 23/2011
26. Zakat Act no. 38/1999 is no longer used as a legal basis of zakat administration and is replaced by new Zakat Act no. 23/2011.
27. Article 6, 7, 8 and 9 of Zakat Act no. 38/1999.
28. Article 14, Zakat Act. 23/2011. Article 17, 18 and 19 of Zakat Act no. 23/2011. There are three categories of LAZ: national, provincial and district. Up until now, there are 17 LAZs operative at the national level. There are (1) LAZ Rumah Zakat Indonesia, (2) LAZ Daarut Tauhid, (3) LAZ Baitul Maal Hidayatullah, (4) LAZ Dompot Dhuafa Republik, (5) LAZ Nurul Hayat, (6) LAZ Inisiatif Zakat Indonesia, (7) LAZ Yatim Mandiri Surabaya, (8) LAZ Lembaga Manajemen Infak Ukhuwah Islamiyah, (9) LAZ Dana Sosial Al Falah Surabaya, (10) LAZ Pesantren Islam Al Azhar, (11) LAZ Baitulmaal Muamalat, (12) LAZ Lembaga Amil Zakat Infak dan Shadaqah Nahdlatul Ulama (LAZIS NU), (13) LAZ Global Zakat, (14) LAZ Muhammadiyah, (15) LAZ Dewan Da'wah Islamiyah Indonesia, (16) LAZ Perkumpulan Persatuan Islam and (17) LAZ Rumah Yatim Arrohman Indonesia. A LAZ belonging to the national category may raise funds all over the country through its branches, whereas those belonging to the provincial and district categories are restricted to raise funds only in those places.
29. Article 7 of Zakat Act no. 38/1999.
30. These units are required to report all activities to BAZNAS in the regions concerning with zakat administration
31. Article 6, 15, 16 of Zakat Act no. 23/2011.
32. Article 16, Zakat Act no. 23/2011.
33. The district of Bulukumba in Sulawesi is one example that implements this model.
34. The efforts of some leaders to further their political interests through the adoption of sharia by-laws are quite strong. This strategy has nothing to do with ideology or trying to create a more Islamized society, rather it is just to collect political support. See Buehler (2008, 263). The *zakat* funds collected in Barru, South Sulawesi were distributed before and after local elections, which successfully consolidated the local leader's power. H. Andi Muhammad Rum and his deputy H. Kamrir Daeng Mallongi were reelected in 2005 with 52 per cent of the votes. Zakat funds are generally channeled to Quranic Reading teachers and imams in mosques (Buehler 2008, 266–67).
35. See also Widyawati (2011, 107–9).
36. This government regulation consisted of 7 sections and 18 articles covering categories such as the definition of *waqf*, the founder, *waqf* declaration, administrator, *waqf* purposes and objects of *waqf*. The regulation dealt with the way a *waqf* was to be established and how it was to be registered. It also regulated the exchange of *waqf* land, *waqf* dispute resolution, the supervision of *waqf* organization and the fines for violations.
37. Article 2 of Government Regulation no. 28/1977.
38. Unlike Māliki jurists who allow the dedication of *waqf* for a restricted period of time, Shāfi'i jurists argue that *waqf* must be permanent. This opinion is held by most Indonesian Muslims.
39. Article 5 of Government Regulation no. 28/1977. See also Article 9 of Act. No. 41/2004 on *waqf*, and government regulation no. 42/2006 on *wakaf*. See also Trisna Laila Yunita (2015, 89). The KHI does not specify the founder's right to participate in *waqf* administration. The founder may also lawfully participate in *waqf* management, if she/he is involved as administrator.
40. Article 7 of Waqf Act. No. 41/2004.

41. As discussed in chapter one, Muslim jurists of the schools of law elaborated that a *waqf* was only legal when it was made by an individual who met *waqf* requirements. They, however, did not elaborate the legality of *waqf* derived from organizations or legal institutions.
42. Article 1 (2) of Waqf Statute no. 41/2004.
43. Article 44 (1) and (2); 67 (1), (2) and (3) of Waqf Statute no. 41/2004.
44. KHI was issued through the Presidential Instruction no. 1/1991. This compilation aims to unify the legal reasoning used by judges in Indonesian religious courts in order to achieve legal certainty for Indonesian Muslims seeking resolution of familial problems. It contains 229 articles consisting of marriage, inheritance, and endowment (Nurlaelawati 2010, 93–135).
45. In Indonesia, *waqf* is commonly managed according to the founder's wishes but neglecting the main purpose of developing the benefits accrued from the *waqf*.
46. This *waqf* act is enacted on 27 Oct 2004 by the President of Republic of Indonesian Susilo Bambang Yudhoyono.
47. Article 1 of Waqf Act no. 41/2004.
48. Consideration of Waqf Statute no. 41/2004 especially part a and b.
49. In this respect, *waqf* is no longer restricted to abiding to the founder's directives, but rather the administrator is authorized to develop a *waqf* in a more flexible manner. For instance, now the *waqf* can be designated for a limited period of time and no longer only into eternity. Article 1 (1) of Waqf Statute no. 41/2004. The temporary nature of *waqf* assignment is primarily held by Málíki jurists and it was not commonly recognized by Indonesian Muslim jurists until Waqf Act no. 41/2004 was enacted.
50. Article 16, 24, 47 of waqf act no. 41/2004.
51. Article 28, 29 and 30 of waqf act no. 41/2004.
52. Muhammadiyah, for instance, has established more than 11.666 non-profit institutions across the country besides mosques and religious facilities. The Nahdhatul Ulama (NU), on the other hand, has made crucial contributions to the establishment of Pesantrens across the country, and thousands of institutions (Fauzia 2013, 276–77).
53. Article 11 of waqf act no. 41/2004.
54. It is only in recent times that the government paid special concern to *waqf* due to its potential as a source of funding in financing public constructions such as toll road, airports and some other public facilities. Its concern, however, is merely on its potential financing, not on its authority and management. The President of Indonesia Joko Widodo has encouraged Muslim organizations to promote *waqf* funds to finance public infrastructure. In response to the President's initiatives, ICMI (Indonesian Muslim Intellectuals Association) proposed a special enterprise on Indonesian Waqf Ventures. This was decreed through the National Committee of Sharia Finance, led directly by President. See Daily Newspapers of *Republika*, 29 September 2017.
55. Article 8 of Government Regulation no. 28/1977; see also article 11 of the Regulation of the Minister of Religious Affairs no. 1/1978. In some countries, a *waqfiyah* (*waqf* deed) has a significant role in defining the obligation and rights of administrators. See for example Aharon Layish (1997, 358).
56. Article 6 of Government Regulation no. 28/1977.
57. Article 6 (4) of Government Regulation no. 28/1977. See also article 9 of the Regulation of the Minister of Religious Affairs no. 1/1978.
58. See UU No. 7/1989 on the Authority of the Religious Court particularly on article 49. See also article 12 of Government Regulation no. 28/1977. See also article 62 of waqf act. No. 41/ 2004.
59. Article 11 of Government Regulation no. 28/1977. See also article 41 of *waqf* act no.

- 41/2004.
60. Article 12 and 13 of Regulation of the Minister of Religious Affairs no. 1/1978. See also article 41 of Waqf Act. No. 41/2004 and government regulation no. 42/2006 on the implementation of Waqf Act no. 41/2004, especially article 49.
 61. Waqf Act. No. 41/2004, article 49 and 63-66.
 62. The government created several commissions in order to guarantee social and human development. There is a Commission for Indonesian Child Protection, Commission for Women Rights Protection, and a Commission for Indonesian Broadcasting. The BWI is a kind of body that determines the implementation of *waqf* in Indonesia.
 63. Officially, an administrator is assigned for a five-year period that can be extended for another period when the administration board is in agreement to do so.
 64. Article 2 part II of Waqf Act no. 41/ 2004.
 65. Article 6 Waqf Act no. 41/ 2004.
 66. Bank Muamalat, Bank Syariah Mandiri, Bank Tabungan Negara Syariah, Bank Mega Syariah, Bank Negara Indonesia Syariah, Bank Syariah DKI, and other Syariah banks.
 67. Article 28, 29 and 30 of Waqf Act no. 41/ 2004.
 68. In Java and Madura, the regulation on religious courts was based on Staatsblad 1882 no. 152; Staatsblad 1937 no. 116 and 610. In South and East Kalimantan regencies, such as the regulations of the Qadi Deliberation (*Kerapatan Qadi*) and the Great Qadi Deliberation (*Kerapatan Qadi Besar*) were based on Staatsblad 1937 no. 638 and 639. Outside Java and Madura, the regulation of religious courts was based on the Government Regulation no. 45 in 1957 (Nurlaelawati 2010, 57). See also the Law of Religious Court no. 7/1989, article 107. It needs to emphasize that Muslim family law plays a greater role among Muslim laws than any other element of Muslim affairs and therefore requires certainty in legal resolutions. Otherwise, it can gradually deteriorate social cohesion and stability.
 69. The introduction of *Kompilasi Hukum Islam* aims to minimize, if not eliminate, legal disputes on a variety of views in the classical *fiqh* texts. A short overview of KHI is outlined in the following pages.
 70. Pancasila is the foundation of state ideology, which consists of five principles: belief in one god, humanity, Indonesian unity, democracy, and social justice.
 71. Polygamy and arbitrary divorces have been commonly practiced among Muslims, legitimized by various interpretations of *fiqh* (Islamic jurisprudence) developed by Muslim jurists. Such trends lead to unjust treatment suffered by women and children. Divorces, for instance, are made outside religious offices which eventually affect legal uncertainty. To cope with this, traditional practices, the administration of marriage and Muslim family affairs is not simply a religious matter, rather it is a part of state administration.
 72. The issuance of KHI was interpreted by some scholars and political experts as a maneuver of President Soeharto to retain his power. The fact remains that the existence of KHI has contributed significantly to the resolution of legal disputes at the religious court, and thus ensuring certainty for the parties seeking justice (Nurlaelawati 2010, 90–91).
 73. It is common that Muslim jurists might have issued various legal judgments even in similar cases, such as the rights of male or female on divorce, and the number of divorces made in one place. The *Kompilasi* was made to cope with such differences and come with only one legal judgment in making legal certainty and justice.
 74. The nature of fatwa is interpretable and one mufti to another may have different opinion in valuing the same issue. Since the family law enacted in 1974, all Muslims should comply to this act regardless of their affiliation with certain legal schools.

75. The issuance of *Kompilasi Hukum Islam* (the Compilation of Islamic) has become a tool of social engineering that aims to secure social stability and harmony, particularly for issues commonly disputed by Muslim jurists on divorce cases. *Kompilasi* then stands to manage and control the practices of marital disputes in particular and family affairs in general.
76. The legal basis of KHI was made in the Presidential Instruction no. 1/1991.
77. Q.(4: 3).
78. In some countries such as Syria, Iran, and Pakistan, administrative procedures in marriage law have been applied to secure the parties involved in contract, albeit Islamic jurisprudence does not require it. It functions to provide legal evidence for those having been married and all consequences that may be related to it (Nasution 2002, 158; Tholabi 2009).
79. In Islamic jurisprudence, complaint divorce is considered *khulu'*. It means that a wife files a petition to the court to ask it to pronounce a *ṭalāq* decision for which she has to pay a certain amount of money in compensation.
80. Divorce in Indonesia is now not merely of religious injunction but also a matter of judicial process. Therefore, unrestricted divorce by husband is no longer admitted. The classical steps of repudiation are still retained as the religious standard but its practice has a legal effect and should be done at the religious court.
81. This law has directly influenced the rate of divorce in society. It is said that the rate of divorces decreased and so does the declining rate of marital disruption (Jones 1994, 259; Katz and Katz 1978; Nurlaelawati 2010, 207).
82. See also the Instruction of President on Compilation of Islamic Law (KHI), article 116. In the KHI, the rationale behind divorces are adultery, incurable diseases, continues and irreconcilable disputes.
83. With regard to *shiqāq*, Islamic jurisprudence elaborates that it slightly different from that defined by the marriage law no. 1/1974. In Islamic jurisprudence, *shiqāq* requires a reconciliation made by two delegates from every spouse and aims to make a compromised solution on the case that the spouse faced (al-Zuhaily 1997, 527).
84. Before matters such as the division of joint property, the right to raise children, propositions for contracts with banks and other rights related to family matters can be arranged, a formal letter that the talaq has been accepted by the court has to be produced (Cammack 1997, 163).
85. See also KHI (Compilation of Islamic Law) at article 116. In this article there are 8 reasons for divorce, including apostasy. The reasons for divorce can be declared by either the husband or the wife, as a complaint. This means that the husband or wife have an equal right to propose divorce, to the extent there is a sufficient evidence and reason for making it.
86. In Islamic jurisprudence, *li'ān* is identical to a man's right to accuse his partner of having committed adultery.
87. This oath generally involves declaring that it has been made in the name of God or so called "*wallāhī*" to justify his suspicion.
88. Q. (24: 4; 6 and 8).
89. The petition made by a husband or a wife is required to state the name, age, and residence of both parties as well as the reasons that form the basis for *talaq* divorce. In the process, there is a series of procedures starting with a closed session within thirty days after the file has been registered by the clerk (Cammack 1997, 158).
90. In general, they are experts in their command of the legal texts but they do not carry academic titles and because of that they cannot become judges. In general, they turn into notable religious figures in society.

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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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5. Utriza, Ayang. 2008. "Mencari Model Kerukunan Antaragama." *Kompas*. March 19: 59.
6. Ms. *Undhang-Undhang Banten*, L.Or.5598, Leiden University.
7. Interview with K.H. Sahal Mahfudz, Kajen, Pati, June 11th, 2007.

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