

POLITICAL BACKDROP OF INDONESIAN MARRIAGE LAW OF 1974

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Abstrak

Penetapan UU Perkawinan tahun 1974 oleh pemerintah didasari oleh beberapa pertimbangan politis, yaitu, pertama, untuk menciptakan sistem hukum yang sesuai dengan positivisme negara yang memberikan kedaulatan dan kekuasaan bagi negara sebagai sumber makna hukum dan sosial. Kedua, penegasan atas otoritas hukum ini dimotivasi oleh keinginan untuk membangun kesadaran dan identitas nasional yang mengatasi kekuatan-kekuatan disintegratif dari perbedaan afiliasi etnis, agama dan bahasa. Ketiga, perhatian untuk meningkatkan status hukum dan sosial perempuan Indonesia. Keempat, politik akomodasi Orde Baru yang dipengaruhi oleh pragmatisme politik untuk menurunkan ketegangan sosial dan untuk mendapatkan dukungan dari kelompok-kelompok Muslim untuk melawan kekuatan militer yang mengancam kekuasaan Orde Baru. Pendeknya, UU Perkawinan tahun 1974 diharapkan dapat dijadikan alat untuk melakukan transformasi politik dan sosial menuju masyarakat sipil dan negara yang beradab.

Abstract

The insistence of government to stipulate Indonesian marriage law was underlied by some political reasons, namely, first, creating legal system accorded to state positivism by which endowed a sovereignty of state as the source of legal and social meaning. Second, the government's assertion of law-making authority over the family was motivated partly by desire to forge an Indonesian national consciousness and civic identity to overcome the disintegrating force of local ethnic, religious and linguistic attachments. Third, a concern to improve the social and legal status of Indonesian women. Fourth, politics of accomodation of the New Order driven by political pragmatism to decrease social unrest and attain support from Muslim groups against military power that threatens its status quo. In result, marriage law of 1974 was expected to perform social and political transformation in Indonesia leading to either civil society and civilized state.

Kata kunci: *Indonesian Marriage Law of 1974, state positivism, politics of accomodation, social and political transformation*

A. Introduction

In the mid 1970s, the New Order stipulated Indonesian marriage law inviting a high controversy among Indonesian people. As the goverment advanced the bill in 1973, protest movement arose especially from Muslim people who regarded this law

as substantially in contradiction with Islamic law. Muslim was particularly directed to the bill's restriction on undepolygamy and its acceptance of interreligious marriage.¹ Instead, the bill also proposed the higher authority of civil court (pengadilan umum) over religious

court by authorisizing of the validity of marriage and the propriety of polygamous marriage. In case, Simon Butt quoting A.H. Johns, explains that the main problem is the state's apparent assumption of power over Islamic law:

these provisions...set civil law above the revealed law....set civil law above the revealed law of Islam in a manner perceived as a blasphemous. For a Muslim marriage to be valid (under Islamic law), all that was necessary was a contract made in accordance with the syari'ah between the groom and the bride's father or guardian. No human authority had the right to require more.²

It is the subordination of Islamic law that rose a harsh opposition among Muslims manifested in some ways such as walk-out performed by PPP in parliament, condemnation of Muslim preachers over the bill during Friday prayers, demonstrations againts it in Jakarta and elsewhere.³ Even, Muslims accused that this bill was drafted without any involvement of Muslim scholars especially the Ministry of Religion as an institutional representative regulating Muslim affairs.⁴ Hence, it was conceived that this policy was run to undermine and eliminate Islamic influence in country in which respectively under the Old and New Order, Muslims politics was suppressed and gained no significant political accomodation.

After being protested and negotiated, the New Order finally agreed to remove all articles contradictory with Islamic law, while the Muslim side as well approved the goverment requirements added in the bill. This bill was then enacted in 1974 and became the general marriage law for Indonesian people regardless religion and ethnicity. The questions arises are why did the New Order stipulate marriage law 1974 to regulate whole Indonesian marriage practices in the midst of diversity of Indonesian community and which was

highly resisted by most Muslim people as a majority in number? What did the political reasons underpin the stipulation? This questions will be answered in the following discussion respectively elaborating the historical account of marriage law pre 1974 and that of 1974, and the political considerations driving the goverment to stipulate marriage law of 1974.

B. Historical Account of Marriage Law pre 1974.

Before the coming of Islam in Indonesia, there were a variety of traditions and custom (adat)⁵ of the indigeneous people in the life of society. The adat itself as well varies according to ethnic group and cultural background of the natives. As far as marriage is concerned, it is in adat laws, in varying degrees, a matter of kinship group, family, community, and personal concern. As Ter Harr states, marriage is also the means by which the organized relationship groups which form autonomous communities preserve their existence, by which sub-clans, sub-tribes or extended family extends its line into the future, and this makes it a family matter. Therefore, marriage and marriage laws have very important position in adat laws.⁶

The introduction of Islam into Indonesia has brought a great transformation of the indigeneous adat. Given a new culture of Islam, the indigeneous people seek to incorporate and transform Islamic teachings into their culture as M.C. Ricklefs call it, mystic synthesis.⁷ In the similar line, Stephen C. Headley highlights the impact of encountering Islamic and Javanese worldviews and teachings which results process of aculturation and accomodation of both cultures. This process is not in linear relation, rather dialectical and mutual one. It means not only Islam that accomodates Javanese value but also Javanese as well takes advantage from the coming of Islam for their own interest.⁸

This dialectical relation between Islam and the indigenous adat influences either in worldview and cultural practices, including in terms of laws. As Nasution and Katib argue, the adat and the Islamized communities have more and less incorporated elements of Islamic teachings, especially the rules of marriage and other areas of family law.⁹ Akh. Minhaji in his *Islamic Tradition and Local Tradition: A Socio-Historical Approach*, also explores the impact of Wedhatama's teaching on Islamic legal thought in Indonesia. As represented in two Indonesian prominent Islamic scholars, Hasbi Ash-Shiddieqy and Hazairin, both proposes the need to construct specifically Indonesian Islamic law which takes local identity into account.¹⁰ For this amalgamation of adat laws and Islamic tenets, it is not surprising that later on the British and Dutch authorities at first assumed that adat laws were basically the same as those of Islam. The person mainly responsible for this opinion was Christian van den Berg, a prominent Dutch advisor; he called this opinion as the theory of *receptio in complexu*. Later Snouck Hurgronje through the so-called *receptie* theory proposed that adat law was not the same as Islamic law with some deviations in it, but it was based upon the indigenous Indonesian way of life and culture.¹¹ In other word, adat law was not just Islamic law mixed with local custom, but also contained many additional elements which were greatly varied as one moved from one Indonesian locality to another.¹² On the other hand, Hazairin maintained that adat law was to some extent the same as that of Islam because of its adoption of Islamic tenets.¹³ As such, Azra concludes that besides its adoption of certain Islamic tenets, adat law apparently keeps its own distinctive character which differs from those of genuine Islam.¹⁴

The Dutch East Indies Company, which began to exercise its control on parts to the whole region of the Indonesian archipelago from 1619 up to the eruption of the Second World War, initially did not

pay much attention to the rule of law among the natives, as their main attention was to succeed their trade interest. Though there were some regulations enacted, they were just de facto to secure their trade mission.¹⁵ It was only in and around their main settlements that the Dutch law was later introduced. The implementation was adapted to local conditions and supplemented by special laws and regulations applicable to the Dutch East Indies. When the British temporarily controlled the East Indies between 1811 to 1816, they also implemented a legal system which treated Islamic law as identical with the customary law, particularly by attaching a Muslim adviser (*penghulu* or *qadi*) to the general court. After the Dutch returned to archipelago, by their regulation of 1819 regarding civil and criminal procedure for the native population, they maintained the legal conditions as they found them.¹⁶ Thus, until the later part of the nineteenth century the predominant Dutch view of Indonesian law was that it was Islamic. In the further development, however, the Dutch recognized the distinction between *shari'a* and adat law. And in the struggle between Islam and adat everywhere in Indonesia, the Dutch mainly took the side of adat and tended to promote the development of adat law in order to impede the progress of Islam. Therefore, they began to change the status quo of the law.¹⁷

This change was reflected in the law policy of the Dutch colonial administration which began to take a clear shape in 1848 by starting to make a codification of law in Indonesia. The Dutch also enacted a civil code (*Burgerlijk*) and a commercial law (*wetboek van koophandel*) for Europeans in Indonesia which later on were developed as a different groups of the population. Therefore as far as the marriage laws are concerned, there were four kinds of marriage laws in force in Indonesia during the colonial rule, as follows:¹⁸

1. The Islamic marriage law regulating the marriage among all Muslim Indonesia.
2. The Civil Code regulating the marriage among persons who are subjects to western laws, i.e. the Europeans and the Chinese.
3. The ordinance of 1933 for marriage of Christian Indonesians.
4. The adat law for marriage of persons who are neither Muslims nor Christians (differing from one area to another).

As long as Islamic marriage law is concerned, there is no single legal codification of the Islamic marriage law enacted by the Dutch. In other words, the regulations on it were preserved merely in various *shari'a* and *fiqh* books. In 1953, for instance, Ministry of Religion stipulated a decree directed to all religious courts to limit their references only 13 books.¹⁹ Since the vast majority of Indonesian Muslims follow the Shafi'i school of law, it is mostly the principles and practices of this school that are implemented.²⁰ The school was chosen, as B.J. Boland holds, relating to the attachment of the Minister of Religion who belonged to Nahdlatul Ulama that had preference to Shafi'i school.²¹

It is as well worth to mention the institutions that applied those rules above. As suggested by van der Berg that perceived the necessity of maintaining religious court as an institution in which the Muslim community could solve their family problems, later on 1 August 1882 the Islamic court called *priesterraden* (priest's court) or *Raad Agama* were formally and legally established. They were functioned as a specific competence over marriage, divorce, inheritance, and other issues such as *hibah* (grants) and *waqf* (endowment) alongside with the *langraaden* (civil court). Instead of its competence, the *priesterraden* was under the authority of *landraad* (the general court), on which the former depended for

executorial authority.²² Therefore, the Islamic court was in quite a weak position vis-a-vis the civil court, since it was possible for the latter to nullify decisions of the former if it is considered that Islamic court had overreached civil court jurisdiction.²³ While for Hisyam and Euis, the establishment of an official religious court shows that the Dutch government had officially recognized and strengthened the long-time existence of the religious court.²⁴

The legal institution and mechanism above, for Lukito, exhibit the law sentralism carried out by the Dutch as a character of civil law tradition attached to it. It is perceived that law sentralization is a part of colonial ideology which in one side, it admits a phenomenon of law pluralism, while in other hand such pluralism is sentralized and directed to the state law. Hence, the various and plural existing laws in society are affirmed as far as they are coherent with major principles of justice and fittingness established by the Dutch.²⁵ This policy was undertaken as a part of political strategy to gain the colonized acceptance of the Dutch legal authority to regulate their public affairs. As asserted by van Vollenhoven, admitting the plural and diverse law, it could prevent injustice. In the context of plural society, mixing is an important thing so that the relation between the colonizer and the colonized would be massively accepted and internalized in legal consciousness of the people as legal power.²⁶

After the independence of Republic of Indonesia, administration of Islamic court and matters concerning Muslim marriages which previously had been administered by the Ministry of Justice now came under the jurisdiction of the newly Ministry of Religion. In a very short time of its establishment, the ministry introduced the law No. 22 Of 1946 which was intended to unify the administration of Muslim marriage and divorce throughout the country under the control of the ministry itself. Though this law was mostly debated in the revolutionary parliament

(KNIP), especially opposed by the nationalists and secularists who perceived this law would strengthen the position either *qadi* (penghulu) and other *Islamic* functionaries of Islamic law in the new state, the law was finally passed in parliament under the strong pressures of Muslim leaders.²⁷ The crucial difference between the law No. 22 of 1946 and other laws concerning the procedures of marriage, which were enacted before, were that for Muslims registration was not necessary for the validity of their marriages, divorces and reconciliations. It was sufficient for Muslims to register this act at the local, Muslim-run District Religious Office (Kantor Urusan Agama) rather than at the Civil Registrar's Office (Kantor Urusan Sipil) which then merely served non-Muslims and was under the jurisdiction of the Ministry of Justice.²⁸

C. Enactment of Marriage Law of 1974

Efforts to reform marriage law derived from the Dutch legislation with national law was an announced priority from early in Indonesia and began shortly after independence. Although a number of marriage law proposals were debated in the 1950s and 1960s, none the proposal were enacted. In 1950, the ministry of religion formed a Governmental Committee to draft a marriage bill. In 1952, in response to demands from religious groups, the committee had abandoned its original aim and instead, formulated drafts based on diversity of laws according to the different religious groups. In march 1954, the committee completed its works on a draft of marriage bill. The draft was not discussed in parliament until 1958, together with the counter draft submitted by the religiously neutral nationalist group. The result was a deadlock in parliamentary debates. New attempts were made when the government submitted two marriage bills to parliament; in 1967 a marriage bill for Indonesian Muslim, and in 1968 a marriage bill on basic principles of marriage applicable to all religious groups.

Parliamentary debates on these bills during the years, 1952-1968, however, did not produce any result.²⁹

The main reason for the failure is closely related to irreconcilable interests of the conflicting groups. Muslims groups expected to preserve the status quo or to confine small changes to a special statute applicable just for Muslims.³⁰ They fear that the general statute might introduce uncontrolled reform that might weaken Islamic law over Muslim family life. On the other hand, Christian group favored a more general statute which would better accord to their own marriage rule and which would minimize Islamic influence. They feared that statutory autonomy in marriage law could lead to similar demands for Islamic autonomy in other areas of social, political, economical life, which ultimately would threaten the minority interests of Christians. Even the Chinese resistance to a unified marriage law was even stronger. Unification, as a unified marriage law, as Lev points out, would place them on an equal position with Indonesians, possibly even subjecting them to a certain principles of Islamic law.³¹

Apart of the failure of the previous marriage bills, the government again submitted a Marriage Bill to the parliament on July 31, 1973. This bill, however, caused one of the most controversial and most hotly debated issues in 1970s among the Muslims outside the parliament's building and among the members of the parliament itself.³² The Muslims were upset because neither Minister of Religion nor any Muslim leaders had been involved when it was drafted.³³ Furthermore, they felt that most of the Bill's articles in many respects were contradictory to the doctrines of *shari'a*, thus it was seemingly deemed to eliminate Islamic influence in Indonesia. It is not surprising that the perception at the time was full of rumors of plots of Christianization.³⁴ According to Alwi Shihab, this suspicion was logical because

in 1969, the Chatolic faction in the parliament (DPRGR) had already put forward its opinion regarding the necessity of a national Marriage Law while it also rejected a draft of Islamic marriage regulations.³⁵

There were several main articles of the proposed Bill which aroused controversy. Firstly was article 2(1), which stipulated that civil registration was necessary for the validity Muslim marriage. This article, which was reflective of the fundamentally secular character of the Bill generally, made registration with the state the basic condition for creating a valid marriage.³⁶ While in Islamic law, the validity of marriage is determined by marriage contract between the groom and the bride's father or guardian. It is clear that civil registration is not stipulated by the Islamic law as a condition of a valid marriage. Although for the past years Muslims prior to the proposed Bill have been required by the Indonesian government to register their marriages with Islamic registrar, it has been never suggested that this registration was necessary for a valid marriage. Furthermore, the Muslims feared that making civil registration would be to make marriage less of religious affair and more a matter of state registration.³⁷

Secondly, were articles 3 and 40, which stipulated that a Muslim seeking a divorce, and a Muslim wishing to conclude a polygamous marriage was required to apply for the necessary permission to a civil court instead of a religious court. The Muslims objected to both substance and procedure of these provision, especially the latter. For Muslims to go to civil court rather than religious court in marriage matters is to make Islamic court subjected to civil court and it was clearly against God. Furthermore, since the Islamic court is a symbol of Islamic authority and a guarantor of the application of the *shari'a*, then the proposed articles were conceived as a threat to Islamic power in Indonesia. The Muslims felt that those proposed articles were intended to eliminate the

power and function of religious courts, which according to the Law No. 14 of 1970 of equal rank with the civil court.³⁸

Thirdly, was article 11(2), which stipulated religious differences were not a hindrance to marriage. The opposition of this article was partly based on the perceived incompatibility of the provision with Islamic law. Although Muslim jurist has expressed a range of opinion on the permissibility of Muslim-non-Muslim marriage, the most widely opinion held approves one category of marriages between Muslim and non-Muslim – marriages between Muslim men and non-Muslim women who adhere to a religion of divine revelation (*ahl al-kitab*), that is, either Christian or Jews. Marriages between Muslim men and women who are not *ahl al-kitab* and all marriages between Muslim women and non-Muslim men are forbidden.³⁹ But later, MUI released fatwa on banning all types of marriage including that with those of *ahl al-kitab* based on consideration of maintaining the most common good (*maslahat*) for Muslims.⁴⁰ Furthermore, as Rasjidi claimed, the article was perceived as a means to christenize Muslims or to convert them to other religions.⁴¹ Hence, Muslims were suspicious of "the game of the Chatolics", especially those who were behind this draft.⁴²

The intensity of Muslim opposition to the Marriage law proposal both in parliament and outside parliament has apparently persuaded Soeharto that he had overreached himself. The task of resolving was assigned to the military. In late November representatives from the Armed Forces faction in the legislature met with the representatives of the Muslim PPP to work out a compromise. The agreement which reportedly had the approval of Soeharto, promised Muslim interests that Islamic law and Islamic legal institution would not be diminished. It was also agreed that article 2 regarding the requirements for marriage would be revised to give overriding effect to the

religious law of parties. The representatives in return agreed to a requirement that marriages be registered in the interest of administrative regularity and to the implementation of measures to prevent arbitrary divorce and polygamy.⁴³

Finally, the revised Bill was passed by the parliament on December 22, 1973, and was signed by president Soeharto on January, 2 1974, and become Indonesian Marriage Law No. 1 of 1974. Following the promulgation of this new marriage law, its Implementing regulation was enacted on April 1, 1975 by Government Regulation No. 9 of 1975, and was enforced on October 1, 1975. This Implementing Regulation is mainly concerned with the procedures of marriage, divorce, and the like, and other technical matters.⁴⁴ The statute enacted finally met the Muslim interests and demands that all articles contradicting to Islamic law was taken out. Again, pressure of Muslims results empowerment of Islamic tenets in some aspects of Indonesian life. However, the agenda of the government is not only to meet a certain group interest, since this marriage law is intended to unify the existing diverse marriage laws.

D. Political Rationale of the Marriage Law of 1974

The elaboration of marriage law reform in Indonesia both pre 1974 and at 1974 provides an account on how attempts to reform marriage law and unify the diverse marriage law is continually given a great attention from the government, though for many times their efforts to enact it are hindered by the conflicting interests of the different groups. The question arises then is what are the political consideration driving the government to carry out unification of marriage law given a huge diversity of Indonesian population in regard with marriage law?

The main agenda of the state in stipulating marriage law is to create a legal system accorded to positivism state, that is, a set of regulations which prepared in

strictures of state institution. Enactment of marriage law, thus is regarded as a manifestation of state sovereignty as a source of legal and social meaning amidst the possibilities of other legal agents. This function is realized by the unification of law operating in the country to achieve uniformity and certainty.⁴⁵ As mentioned by van Vollenhoven, law is an area in which the state could perform its authority to show its power over the people⁴⁶ and create the subjectivity of the people since it is internalized by them in their legal consciousness resulting to public acceptance. As such, Louis Althusser proposes that the non-repressive state apparatuses, such as legal institution, media, schools, religious institution, and other institutions are useful to maintain state domination and public acceptance.⁴⁷ In this sense, power and authority of the state is not always repressive, but also productive, as Michel Foucault holds, for it has produced a range of laws regulating many aspects of people life.

Given a unification and uniformity of marriage law, the prevailing diversity and pluralism of marriage law in Indonesia are at stake eliminated and adapted to the legal principles of the state. As in case of marriage law of 1974, registration of marriages to the civil court is required to be legal marriage and further deserve all the rights generated from the legal family, such as inheritance, legal status of the children, rights of wife, and so forth. Though Islamic law is incorporated within marriage law, such incorporation is accorded to the legal principles of the state. As such, Lukito argues that codification of marriage law of 1974 has worstly effected role of Islamic marriage law because of the monopoly of state law which is in essence opposite to Islamic concept of God as a solely single law making.⁴⁸ However, in contrast, I think human beings are as well the main actors of law-making, as the God laws are constructed in the historicity of humankind for their wellbeings. Though there are some perceived unchangeable

Islamic laws, there are much more laws that can be revised and contextualized in regard with the individual and social conditions. In this sense, I do not think that codification of marriage law brings a bad effect to Islamic law, but it is a form of articulation on how Islamic laws are implemented in particular Indonesian culture and identity and in state-nation boundaries.

Connected to the former reason, the government's assertion of law-making authority over the family was motivated in part by desire to forge an Indonesian national consciousness and civic identity to overcome the disintegrating force of local ethnic, religious and linguistic attachments. Given a Indonesia's diversity on culture, ethnicity, language, religion and other primordial attachment, it is not surprising that a central concern of all Indonesian political authority has been holding its variegeted population together. Among the other techniques (including simple military violence), the Soeharto regime worked to make the many and diverse parts of Indonesia cohere by cultivating an Indonesian, as opposed to ethnic or linguistic, identity. National law thus becomes a mechanism the government has been used for transcending local attachments.⁴⁹ In regard with marriage law, though the content is partly derived from Islamic law, the articulation does not attach any other religious affiliation. This matter is convinced that the law regulates and applies to all Indonesian people regardless ethnic, religious, and other affiliations. Using this perspective, the failure of the previous marriage law is because there was a separate marriage law based on religious affiliation, that is, Islamic marriage law and another law was a general law applicable for all non Islamic fellows. This separate marriage laws seem to priotize Muslims as distinct citizens among other non Muslim people and in turn contradicts with the spirit of unification.

Instead, Cammarck explains that "because family law rules were rooted in a traditional Islamic worldview and institutional base, the enactment of a single set of marriage law rules for all Indonesians would have special significance, since it would marked the goverment's successful secular unification of a subject that had traditionally a potent symbol of division".⁵⁰ As such, the marriage law gained strong support from the Indonesian ruling elite, many of whom perceived Muslim activism as a potent political threat.⁵¹ The enactment of this law was expected to reduce the domination of Islamic law in nation life, since its domination was deemed as threatening the existence and right of other non-Muslim community.

Another reason that urged the government to enact marriage law was a concern to improve the social and legal status of Indonesian women particularly those of the Islamic faith. For over 60 years, women's organizations had lobbied the goverment to improve the legal rights of Muslim women in marriage. These groups identified Islamic law on polygamy and divorce as the main problems. Islamic marriage law was largely uncodified and it provided women with few rights in marriage.⁵² Since long before independence they had argued for restrictions on a husband's right to take a second wife and tried to end his unilateral capacity to declare divorce.⁵³ Maria Ulfah Santoso, for instance, as a leader of Istri Indonesia (Indonesian Women) founded on 1932, supported a modern marriage law that would not violate Islamic law. She recommended some significant recommendations for marriage reform, that is, 1) before the husband delivers the *talak* (unilateral repudiation divorce), the couple should present themselves before the *penghulu* who should attempt to reconcile them; 2) the Religious Council (*Raad Agama*) must have a power to annul any *talak* uttered in a casual manner, prior to the reconciliation hearing before the

Penghulu; 3) the Penghulu must explain fully the implications of the conditions of the *taklik talak* (conditional divorce in marriage contract); 4) the form of *taklik talak* should be comprehensive as a basis for a divorce initiated by women.⁵⁴

The voices of women organizations have succeeded to bring influence in policy making. In post independence era, these groups enjoyed some success that women achieved a greater degree of formal legal equality. In 1955 election, for example, five Muslimat women were selected as NU candidates and elected to the DPR.⁵⁵ Daniel S. Lev admits that the Indonesian family law regime has long been one of the most liberal in muslim countries. Contracts of marriage are elaborate and flexible, partly because of pressure and advice by women's organizations. In addition, the religious offices and courts have been quietly symphatetic to women in bad marriage.⁵⁶ In this sense, state and its institutions provide rules and mechanisms which support and enliven gender equality. Different from other views that oppose state for being perceived as an impedement of creating gender equality and thus civil society, some feminists, including the women activists in Indonesia, indeed, perceive state as one of the sources of gender justice believing (1) that publicly sanctioned principles of sexual equality will help to protect women to wage explotation, domestic violence, or cultural pressures of their communities or groups; and (2) that public provision for child care, health care, and age care is an intrinsic part of the "feminization" of policy and the creation of sexually egalitarian world.⁵⁷ State could intervene society by providing rules or provisions to warrant individual rights and freedoms and maximalizing public sphere in which civil society could freely aspire and participate discursively in policy making, accessing and controlling the distribution process of the policy product. As such, state intervention can be only torelated as it does not supress the

civic force, potential and public arena to contest the aspirations and interest of people to gain public acceptance. In the case of Indonesia, marriage law reform is carried out to give greater rights for women in marital relation in order to gain what they deserve appropriate to human rights.

Reform of marriage law in international arena, also influenced the goverment' stance to promulgate Indonesian marriage law. By the early 1970s, most countries with large Muslim populations had instituted legal reforms to improve women's rights under Islamic family law. Indonesia, for Butt, did not want to appear "backward" to the world, particularly in the context of its attempts to attract foreign investment to increase its economic development (*pembangunan ekonomi*).⁵⁸ Demand of international interest of promoting democratic state which affirms social equality, influences the economical sector since social equality will affect social integrity and stability condusive for economic activities.

In the similar line, Cammarck argues that preference of goverment to take marriage law reform was influenced by ideas that first developed in the West. The Indonesian marriage law has its own unique history rooted in local individuals and circumstances, the same general forces that impelled modifications of marriage and divorce rules in the rest of Islamic world were also at work in Indonesia. Indonesian leaders, like elite in many other Islamic countries, were highly impressed by the technological accomplishments of the European and North American power and formulated policies of social and economic change based on models derived from the West. Consistent with this general perspective, their agenda for social included promoting greating social equality including gender equality.⁵⁹ Though the West influence cannot be denied, the articulation of social equality seems to be accorded to the local circumstances. As Hefner proposes, rather than imposing the Western concepts to non Western countries as Samuel Huntington

insists, it is better to search for cultural elements which are conducive for cultivating democracy and social equality, that is, "social capital" and "civil society" in local context.⁶⁰ As such, negotiation between Western ideas and local culture is apparently discerned during the process of marriage law reform in Indonesian history. Such negotiation is a manifestation of attempt to contextualize the Western ideas into the plural ideas of Indonesian culture.

Beside of the political considerations above, the enactment of marriage law of 1974 was resulted by politics of accommodation of the New Order driven by political pragmatism. Relation between Islam and state at the time, as Dody S. Truna holds, was signified by the relationship filled by mutual suspicion and limited accommodative.⁶¹ Marriage law was one of limited accommodation taken by the New Order at the time. This accommodative attitude was committed for that the most effective solution amidst the prevailing social and political tensions. Damien Kingbury depicts the increasing unrest to the New Order policies and attitudes stemmed from the growing corruption, patronage and favoritism toward Chinese business rather than local one, pressure of military to step Soeharto down, as well as the Malari riot.⁶² This social unrest would be contra-productive and a threat for the New Order power. In addition, the increasing oppositions toward the proposed marriage bill in and outside parliament has worsen the situation and uplifted unrest and to New Order. Given this situation, in order to maintain its status quo and national security, Soeharto finally agreed to make compromise and negotiation with Muslim groups to revise the draft by deleting articles contrast to Islamic law. By so doing, he gained simultaneously two benefits, that is, decreasing social unrest and attaining Muslims support against military power threatening its status quo.

E. Conclusion

Indonesian marriage law of 1974 marks an achievement of Indonesian

people to integrate the diverse or even contradictory interests in deal with marriage law. The historical account on marriage law reveals the diverse law applied to the different groups. Attempts to unify this diversity has been taken by the state, but it always failed as the conflicting groups and their interests failed to reconcile. It seemingly shows that the overwhelming primordial interest preceded over the interest of national community has effected the failure to reach a common interest.

The enactment of marriage law of 1974 was based on several reasons: first, creating legal system accorded to state positivism by which endowed a sovereignty of state as a source of legal and social meaning. Second, the government's assertion of law-making authority over the family was motivated partly by desire to forge an Indonesian national consciousness and civic identity to overcome the disintegrating force of local ethnic, religious and linguistic attachments. Third, a concern to improve the social and legal status of Indonesian women. Fourth, politics of accommodation of the New Order driven by political pragmatism to decrease social unrest and attain support from Muslim groups against military power that threatens its status quo.

Elaboration of the political considerations as a basis for enacting marriage law of 1974 reveals the multiplicity of the government reasons to deal with the diversity of marriage law prevailing in Indonesia. Unification of marriage law thus can be perceived as a success of the government in compromising and negotiating the conflicting interests among the different groups. It is a progress attained by the New Order supported by participation of diverse communities, social organizations and state apparatuses paving a way for that unification. In this sense, contrast with Anderson's statement that strong state will be the winner, while the people become the loser, both people and state negotiate and make compromise for the betterment of both sides. State gains, people gains.

Endnotes:

¹ Simon Butt, "Polygamy and Mixed Marriage in Indonesia: Islam and the Marriage Law in the Courts", in Tim Lindsey, *Indonesia, Law and Society* (Sydney: The Federation Press,), p. 266.

² *Ibid.*

³ Mark Cammack, "Legal Aspect of Muslim-Non-Muslim Marriage in Indonesia", in Gavin W. Jones, Chee Heng Lee, and Maznah Mohamad, *Muslim-Non-Muslim Marriage: Political and Cultural Contestations in Southeast Asia* (Singapore: Institute of Southeast Asian Studies (ISEAS), 2009), p. 111.

⁴ Azyumardi Azra, "The Indonesian Marriage Law of 1974: an Institutionalization of the Shari'ah for Social Changes" in Arskal Salim and Azyumardi Azra, *Shari'a and Politics* (Singapore: Institute of Southeast Asian Studies (ISEAS), 2003), p. 82.

⁵ In many studies of adat as a law, there are various definitions on adat which are classified into three major definitions. First, term of adat is meant by law, teaching, regulation, morality, custom, social agreements. Second, adat is specifically used in relation to general customary practices prevailing in certain broad areas, such as indonesia, thailand, and so on, in which each territory professes its own particular custom depending on its cultural identity and language. Third, adat means as a compilation of literatures from and/or on customs produced by scholars, administrators and law experts. However, as adat conceived as a form of law tradition, it consists of three aspects; first, in its prescription form, adat is composed by several interrelated institution in society; second, as a regulation, adat is a conduct to obey a certain regulation in the related institution; third, as an interpretation, adat is decisions emerge from adat functionaries. Ratno Lukito, *Tradisi Hukum Indonesia* (Yogyakarta: Teras, 2008), p. 8-12.

⁶ On marriage according to adat laws with its aspects such as preliminary steps to marriage, marital forms, child

(minor) marriage, polygamy, divorce, marital property, etc., see B. Ter Harr, *Adat Law in Indonesia*, (New York: Institute of Pacific relation, 1948), p. 164-194 as quoted by Azyumardi Azra, "The Indonesian Marriage Law of 1974: an Institutionalization of the Shari'ah for Social Changes" in Arskal Salim and Azyumardi Azra, *Shari'a*, p. 78.

⁷ M.C. Ricklefs, *Mystic Synthesis in Java* (United States of America: EastBridge, 2006), p. 33-150.

⁸ Stephen C. Headley, *Durga's Mosque, Cosmology, Conversion and Community in Central Javanese Islam* (Singapore: ISEAS, 2004).

⁹ Harun Nasution and Ahmad Khatib, "The Positions of Adat Laws, Shari'a and Secular Law in Indonesia", in *Studies in Islam*, 11 No. 1-2, New Delhi, 1974, p. 62-67. M. B. Hooker, "The State and Syari'ah in Indonesia 1945-1995", in Timothy Lindsey (ed.), *Indonesia*, p. 97-110

¹⁰ Akh. Minhaji, *Islamic Tradition and Local Tradition: A Socio-Historical Approach*, (Yogyakarta: Kurnia Alam Semesta Press, 2008), p. 219-227.

¹¹ Harun Nasution and Ahmad Khatib, "The Positions of Adat Laws, Shari'a and Secular Law in Indonesia", in *Studies*, p. 63.

¹² On the examples of the degrees of adat adoption of Islamic law, see Ter Harr, p. 177-179 and p. 182-183; Hooker, "The State and Syari'ah", p. 98-99.

¹³ See, Hazairin, *Hukum Kekeluargaan Nasional* (Jakarta: Tintamas, 1962), and *Pergolakan Penyesuaian Adat Kepada Islam* (Jakarta: Bulan Bintang, 1952).

¹⁴ Azra, "Indonesian Marriage Law", p. 79.

¹⁵ Lukito, *Tradisi Hukum*, p. 195-196.

¹⁶ H. Waster, *Custom and Muslim Law in the Netherlands East Indies* (London, Transaction of the Grotius Society, 1940), p. 51, as quoted by Azra, "Indonesian Marriage Law", p. 79.

- ¹⁸ *Ibid.* See also Cammmark, "Legal Aspect", p. 103-104.
- ¹⁹ Mudzhar, *Fatwa-fatwa*, p. 44.
- ²⁰ Azra, "Indonesian Marriage Law", p. 80.
- ²¹ B.J. Boland, *The Struggle of Islam in Modern Indonesia* (Netherlands: The Hague, 1982), p. 173.
- ²² Muhammad Hisyam, *Caught Between Three Fires: the Javanese Pangulu under the Dutch Colonial Administration 1882-1942* (Jakarta: INIS, 2001), p. 59-60; Euis Nurlaelawati, *Modernization, Tradition and Identity: the Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), p. 46.
- ²³ Azra, "Indonesian Marriage Law", p. 80.
- ²⁴ Nurlaelawati, *Modernization*, p. 46.
- ²⁵ Lukito, *Tradisi Hukum*, p. 206-208.
- ²⁶ Ahmad Baso, *Islam Pasca-Kolonial: Perselingkuhan Agama, Kolonialisme dan Liberalisme*, (Bandung: Mizan, 2005), p. 115.
- ²⁷ Azra, "Indonesian Marriage Law", p. 80.
- ²⁸ *Ibid.*, p. 81.
- ²⁹ *Ibid.*, p. 82.
- ³⁰ Cammmark, "Legal Aspect", p. 109. B.J. Boland exemplified some articles that were hotly debated in parliament, such as the problem of polygamy, link of the wedding to a certain religious institution, etc. See B.J. Boland, *The Struggle*, p. 167-168.
- ³¹ Azra, "Indonesian Marriage Law", p. 82.
- ³² Bowen, *Islam, Law and Equality: An Anthropology of Public Reasoning* (New York: Cambridge University Press, 2003), p. 180.
- ³³ Cammmark, "Legal Aspect", p. 109.
- ³⁴ *Ibid.*; Azra, "Indonesian Marriage Law", p. 82.
- ³⁵ Jan Sihar Aritonang and Karel Steenbrink, *A History of Christianity in Indonesia* (Leiden & Boston: Brill, 2008), p. 210.
- ³⁶ Cammmark, "Legal Aspect", p. 109.
- ³⁷ Azra, "Indonesian Marriage Law", p. 83.
- ³⁸ *Ibid.*
- ³⁹ Cammmark, "Legal Aspect", p. 110.
- ⁴⁰ *Ibid.*, p. 122.
- ⁴¹ *Ibid.*, p. 110. Jan S. Aritonang, *Sejarah Perjumpaan Kristen dan Islam di Indonesia* (Jakarta: PT BPK Gunung Mulia, 2005), p. 426.
- ⁴² Aritonang and Steenbrink, *A History*, p. 210.
- ⁴³ Mark Cammmark, "Legal Aspect", p. 112.
- ⁴⁴ Azra, "Indonesian Marriage Law", p. 84.
- ⁴⁵ Mark Cammmark, Lawrence A Young and Tim Heaton, "Legislating Social Change in an Islamic Society: Indonesia's Marriage Law", in Tim Lindsey, *Indonesia*, p. 293-294. Ratno Lukito, *Hukum Sakral dan Hukum Sekuler: Studi Tentang Konflik dan Resolusi dalam Sistem Hukum Indonesia* (Tangerang: Pustaka Alvabet, 2008), p. 262.
- ⁴⁶ Baso, *Islam Pasca-Kolonial*, p. 115.
- ⁴⁷ Yasraf Amir Piliang, *Transpolitika: Dinamika Politik di dalam Era Virtualitas* (Yogyakarta: Jalasutra, 2005), hal. 110.
- ⁴⁸ Lukito, *Hukum Sakral*, p. 262-263.
- ⁴⁹ Cammmark et.al, "Legislating", p. 294.
- ⁵⁰ *Ibid.*
- ⁵¹ Butt, "Poligamy", p. 270.
- ⁵² *Ibid.*, p. 268.
- ⁵³ John R. Bowen, *Islam*, p. 179.
- ⁵⁴ Kathryn Robinson, *Gender, Islam and Democracy in Indonesia* (New York: Routledge, 2009), p. 45.
- ⁵⁵ *Ibid.*, p. 53.
- ⁵⁶ Daniel S. Lev, "On the Other Hand", in Laurie J. Sears (ed.), *Fantasizing the Feminine in Indonesia* (Durham & London: Duke University Press, 1996), p. 193.
- ⁵⁷ Anne Philips, "Does Feminism Need a Conception of Civil Society". in

Simone Chambers and Will Kymlicka (ed.), *Alternative Conception of Civil Society* (Princeton and Oxford: Princeton University Press, 2002), p. 82

⁵⁸ Butt, "Polygamy", p. 269.

⁵⁹ Cammack, etc, "Legislating", p. 293.

⁶⁰ Robert W. Hefner, *Civil Islam: Muslims in Democratization in Indonesia* (Princeton and Oxford: Princeton University Press, 2000), p. 23.

⁶¹ Ahmad Imam Mawardi, "The Political Backdrop of the Enactment of the Compilation of Islamic Laws in Indonesia" in Azyumardi Azra & Arskal Salim (ed.), *Shari'a*, p. 131-132. See also Bahtiar Effendy, *Islam and the State* (Singapore: ISEAS, 2003).

⁶² Damien Kingsbury, *The Politics of Indonesia* (Australia: Oxford University Press, 2005), p. 72-73. See also Benedict R. O'G. Anderson, *Language and Power: Exploring Political Cultures in Indonesia* (Ithaca and London: Cornell University Press, 1992), p. 115-116.

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