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Inter-Religious Marriage from Socio-Historical Islamic Perspectives

Noryamin Aini*

In 1986, popular Indonesian actor and singer Jamal Mirdad married another popular Indonesian actor, Lydia Kandou.¹ The marriage, however, was not as popular as were the two artists because Jamal Mirdad is a Muslim and Lydia Kandou is a Christian.² Another recent mixed marriage involved famous pop diva Yuni Sara, a Muslim, and Henry Siahaan, a Protestant business man. Because legal problems blocked their marriage in Indonesia, they were married in another country.

These instances are not isolated, and are even becoming more common as other public persons, notably actors and also lay people have entered into inter-religious marriages ("IRMs").³ Socially, however, these marriages are on the fringe of Indonesian society, as many Indonesians do not favor IRMs, and Indonesian law reflects that view. IRMs are difficult to obtain in Indonesia; indeed, for many Indonesians they are impossible to obtain. Some people view the social issues surrounding IRM as human rights violations, although this article does not concern itself with the human rights verdict.⁴

* Faculty of Sharia and Law, State Islamic University of Syarif Hidayatullah in Jakarta, Indonesia. A draft of this paper was presented at the Fourteenth Annual International Law and Religion Symposium at Brigham Young University, held on October 7-9, 2007 in the United States in Provo, Utah. I am indebted to Tore Lindholm and Nicola Corbin who assisted me in the early preparation of the paper. The participants of the conference helped me in other ways to sharpen the content of the paper. Last, but not least, I am grateful to the editors of the BYU Law Review who helped me in translating and developing the ideas of this paper.

1. While not well known in the West like Yuni Sara, Jamal Mirdad and Lydia Kandou are very popular in Indonesia, performing in movies and on television. Running a search on any Internet search engine will confirm their large body of work.

2. *Mixing It Up*, TEMPO, Nov. 6-12, 2001, available at <http://www.tempo.co.id/majalah/arsip/2nd/edition09/law-5.html>.

3. For example, Bucek Depp, a Muslim actor, married Unique Priscilla Maureta Hadisoemarto, a TV personality and a Christian. See *Mixing It Up*, TEMPO, June 10, 2003, available at <http://www.tempo.co.id/majalah/arsip/1st/edition20/rel-2.html>.

4. For a jurisdictional example of a couple filing a grievance on the ground of human rights violation when their inter-religious marriage was prohibited in Malaysia and Indonesia, see *Refugee Status Appeals Authority*, <http://www.refugee.org.nz/Fulltext/72558-01.htm>.

The nuance of social resistance and the psychological burden of IRM can easily be grasped from a private letter sent by a prominent Indonesian activist of religious plurality and freedom, Professor Nurcholish Madjid, to his daughter who was marrying a Jewish boy in the United States.

His religion (Judaism) differs from ours, which to many people sounds absolutely stigmatic, though this problem may be solved by his conversion to Islam. If not, 99 percent of Islamic doctrines will falsify your marriage. It [IRM] is one amongst the most fundamental sinful actions in our religion after *shrik*,⁵ rebellion against parental authority, killing a person without any legal reason, and destruction of ecology. Two other things are also worrying daddy-mom, namely, his cultural background which is greatly diverse from ours, and his race, Jewish. All these things are seriously worrying daddy-mom. . . .

Mom-daddy strongly advise you to heed the following points;

1. If your marriage plan is quite firm, he must convert to our religion, Islam.
2. The ceremony of his confession to Islam has to be witnessed by a considerable number of people;
3. The whole process of confession has to be openly known by your seniors;
4. It is very important that the confession be documented formally, which means having records of formal witnesses and their signatures. Additionally, the confession has to be done at a recognized institution; headed by authoritative figures;
5. Then, he has to learn our religion very seriously; . . .
6. After all these have been firmly worked out, your marriage can be performed formally in accordance to our *Shari'at*. Hence, it will be valid either according to religious or civil laws. As a result, you, daddy-mom and all our relatives would be free from any slander and gossip.⁶

5. The term refers to "*musrik*," which means "polytheist." However, there are other views of what *musrik* means. An expert staff member at the Indonesian Ministry of Religious Affairs said, "[t]he common perception of [*musrik*] is a non-Muslim, whereas worshipping others can mean worshipping money, wealth, anything."

6. NIKAH BEDA AGAMA MENURUT ISLAM [INTER-RELIGIOUS MARRIAGE ACCORDING TO ISLAM] 21–24 (Hidayat & Jaelani 2003).

As this excerpt shows, Indonesians wishing to obtain an IRM face opposition from their family, society, and church leaders throughout the world. The cultural and religious pressure couples face cannot be underestimated.

This article endeavors to examine the legal controversy concerning IRM and its impacts, especially on women's lives, in Indonesia from a socio-historical perspective. As an introduction, Part I looks briefly at Islamic marriage laws, providing some historical background and also showing the current state of the law. Part II examines how Islamic marriage laws have been implemented in Indonesia. Part III explains how a couple obtains an IRM within—or, as the case may be, outside of—Indonesian marriage laws. Part IV discusses various difficulties that spouses in IRMs in Indonesia face.

I. INTRODUCTION TO ISLAMIC MARRIAGE LAWS

Most religious doctrines discourage IRMs. However, modern Islam predominantly forbids IRMs, although the historical roots of the doctrine and the modern justifications differ in some respects from other religions.

A. Historical Reasons for Forbidding IRMs of Muslims

To understand why Islamic laws seek to prevent IRM, and why many Indonesian Muslims support these laws, our study must necessarily look beyond Indonesian legal contexts to broader socio-historical settings of the development of Islamic law. Islam is a world religion that came to Indonesia over hundreds of years, from 1200 to 1600, in a slow and complicated fashion.⁷ In fact, Islamic marriage law (*fiqh al-munâkahât*) was mostly formed during the second and third century of the Islamic calendar before Islam came to Indonesia.⁸ Islamic marriage law is normative law predicated on an interpretation of the original Islamic *Ulama* (or Muslim community). The long history of religious segregation embedded itself into the current laws prohibiting IRM.

7. See M.C. RICKLEFS, A HISTORY OF MODERN INDONESIA SINCE C. 1300, 3-14 (1991); see also M.C. Ricklefs, *Six Centuries of Islamization of Java*, in CONVERSION TO ISLAM, 100-128 (Nehemia Levtzion ed., 1979).

8. See NORMAN CALDER, STUDIES IN EARLY MUSLIM JURISPRUDENCE (1993); JOSEPH SCHACHT, ORIGINS OF MUHAMMADAN JURISPRUDENCE (1950).

1. Scriptural interpretations leak into law

During the formational period of Islamic history, many *Companions*,⁹ including Uthmân ibn ‘Affân (the Third Guided Caliphate, d. 36/656), Thalhah ibn Ubayd Allâh (d. 36/656) and Sa’ad ibn Abi Waqqâsh (d. 44/664), were parties to IRMs,¹⁰ and the practice was socially accepted.¹¹ It was also narrated that Khuzaifah ibn Yaman, another Companion, married a woman who was a Zoroastrian polytheist.¹² It is evident that many historically significant Companions practiced IRM, and moreover, there was no intense public resistance from *Ulama* and other Muslim leaders against the practice.¹³

9. See Fu’ad Jabali, *Companions of the Prophet: A Study of Geographical Distribution and Political Alignments*, in 47 ISLAMIC HISTORY AND CIVILIZATION: STUDIES AND TEXTS 42–83 (Wadad Kadi & Rotraud Wielandt eds., 2003) for a description of Companions. “He among the Muslimin who was in the company of the Prophet or has seen him, is to be counted among the Companions.” *Id.* at 41 (citing IGNAZ GOLDZIEHER, MUSLIM STUDIES 2:222 (S.M. Stern ed., C.R. Barber & S.M. Stern trans., 1971)).

10. IBN KATSÎR, TAFSÎR AL-QUR’ÂN AL-‘ADHÎM Vol. 1, 297 (1999); see also YOHANAN FRIEDMAN, TOLERANCE AND COERCION IN ISLAM: INTERFAITH RELATIONS IN THE MUSLIM TRADITION 177–86 (2003); al-Tabari, *Biographies of the Prophet’s Companions and Their Successors*, in 39 THE HISTORY OF AL-TABARI: AN ANNOTATED TRANSLATION 16 n.59 (Ella Landau-Tasseron trans., 1998).

11. See FRIEDMAN, *supra* note 10, at 177–86, 190. *But see id.* at 192 (“Naturally enough, from the historical point of view we cannot easily substantiate the notion that marriage with kitabi women was forbidden until the revelation of Qur’an 5:5. Yet we can say with reasonable certainty that marriage to Jewish and Christian women confronted widespread opposition during the first two centuries of Muslim history.”) A *kitabi* is a non-Muslim, the word being related to *kitâbiyyah*, which is a person of Holy Scriptures who is Jewish or Christian.

12. Khuzaifah was one amongst the most prominent jurists and recommended to Uthmân to compile the Qur’an Scriptures. See MUHAMMAD IBN AL-HASAN, AL-HAJWIY AL-TSA’LABÎ AL-FÂSÎ AL-FIKR AL-SÂMÎ FÎ TÂRIKH AL-FIQH AL-ISLÂMÎ, at 190–191 (1397 H.) [hereinafter Prophetic Tradition]; IBN QUDÂMAH, AL-MUGHNÎ Vol. 6, 582. Even the Prophet Muhammad was reported to have had some non-Muslim wives. See NUR AHMAD FADHIL LUBIS, ISLAMIC JUSTICE IN TRANSITION: A SOCIO-LEGAL STUDY OF THE AGAMA COURT JUDGES IN INDONESIA 230–31 (1994). Quoting Tabari, “[M]atrimony with kitabi women became permissible according to all Sunni schools of law.” See FRIEDMAN, *supra* note 10, at 181, 183, 185–86, 190.

13. *But see* FRIEDMAN, *supra* note 10, at 192 (arguing that with reasonable certainty marriage to Jewish and Christian women confronted widespread opposition during the first two centuries of Muslim history). My counterpoint is that if the opposition to IRM was widespread, then IRM would have been rare. The facts do not support this, but it was seemingly true during the later era of Abu Bakr (d. 13 H/634) and Umar ibn Khattab (d. 23 H/644), the first and second Guided Caliphates, especially when Umar threatened people who were willing to marry

It was only after changes in the political atmosphere and social structure of the Muslim community—such as the growth of Islam, the merging of political alliances, and the increase of religious authorities in Islamic lands—that many Muslim jurists prohibited IRMs.¹⁴ Modern Islamic legal discourses on IRM usually spring out of theological assumptions that are based on scriptural texts. Several Qur'anic verses and prophetic traditions articulate the broad outlines of Islamic notions of IRMs.¹⁵ The Qur'anic verses consistently use a particular term when discouraging IRM,¹⁶ and the prophetic traditions also use the Qur'anic term to discourage IRM.¹⁷ But many Qur'anic verses are also open to the willful choice of IRM. Casting a type of deciding vote, orthodox Islamic law endorses the discouragement of IRM, and orthodox Islamic legal discourses interpret the core texts in a way that prohibits all forms of IRM. Hence, the institution of IRM that was practiced in the early years of Islam has become, over time, a prohibited practice.

Adopting orthodox Islamic marriage laws,¹⁸ the Indonesian *Ulama* Council (*Majelis Ulama Indonesia*, MUI) issued a special

non-Muslim women. However, in the post-Umar period, opposition to IRM again declined, as indicated by a number of IRM performed by many great Companions including Uthmān ibn 'Affān (the Third Guided Caliphate). See IBN KATSĪR, *supra* note 10, at 297.

14. See FRIEDMAN, *supra* note 10, at 175–76.

15. At this point, the QUR'AN discourages IRMs in some verses, such as QUR'AN 2:221, 24:3, 60:10. *But see id.* 5:5 (appearing to grant at least limited permission for Muslim men to marry non-Muslim women, at least, stated implicitly); Hera Diani, *A Leap of Faith: Taking the Plunge in Inter-religious Marriage*, JAKARTA POST, Sept. 19, 2004, available at <http://www.thejakartapost.com>. For more detail on this interpretation from a liberal Muslim, see Zainun Kamal, *Menafisir Kembali Perkawinan antar Umat Beragama*, in TASIR ULANG PERKAWINAN LINTAS AGAMA: PERSPEKTIF PEREMPUAN DAN PLURALISME. [REINTERPRETION OF IRM: FEMINIST AND PLURALISM PERSPECTIVE] (Maria U. Anshor & Martin L. Sinaga eds., 2004).

16. For instance, QUR'AN 2:221, 24:3, 60:10 uses the term “*mushrik*,” which means “polytheist.”

17. See a genuine (*shahih*) *hadith* in IMAM AL-BUKHĀRĪ, *hadith* No. 5285. Nāfi' (d. 120 H/737) narrated:

Whenever Ibn 'Umar (Abd Allāh ibn Umar ibn Khattab) was asked about marrying a Christian lady or a Jewess, he would say: 'Allah has made it unlawful for the believers to marry ladies (*mushrik*) who ascribe partners in worship to Allah, and I do not know of a greater thing, as regards to ascribing partners in worship, etc. to Allah, than that a lady should say that Jesus is her Lord although he is just one of Allah's slaves.'

AHMAD IBN ĀLĪ IBN HAJAR AL-'ASQALĀNĪ, FATH AL-BĀRĪ BI SHARH SHAHIH AL-BUKHĀRĪ, Vol. 10, 522 (2000).

18. Classical Islamic law, or shari'a, has many facets. For a discussion of shari'a's marriage law, see AZZIAH Y. al-HIBRI & ELEANOR ABDELLA DOUMATO, *Marriage and*

fatwá (legal opinion) in 1980 that forbade IRMs.¹⁹ The impact of this *fatwá* has been intense for many Indonesians. Following this *fatwá*, the Religious District Office, authorized to perform marriages, refused to perform marriages for many inter-religious couples who wanted to be married.²⁰ The secular organization that operates under the authority of the Ministry of Home Affairs and is responsible for formally documenting and administering such marriages also refused to grant IRMs.²¹ But because some couples view love above religious and legal obligations, a number of inter-religious couples attempt to get around government barriers.²² Although Indonesian marriage law strongly discourages, and even prohibits IRMs, adherents of a variety of religions do enter into such marriages.²³

2. Arabic paternalism embedded in marriage laws

Islamic marriage law is based on an Arab social system and supporting culture that are highly patriarchal and paternalistic. This cultural system extends many special privileges and dominance to males. Patriarchal cultures clearly differentiate between social laws applicable to males and those applicable to females, thus basing human affairs on gender. In this patriarchal framework, male and

Divorce, in 3 THE OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD 48 (John L. Opposito ed., 1995).

19. MAJELIS ULAMA INDONESIA, HIMPUNAN KEPUTUSAN DAN FATWA 91-92 (*Sekretariat MUI*, Masjid Istiqlal Jakarta, 1995) (according to Nadirsyah Hosen, Human Rights Provisions in the Second Amendment to the Indonesian Constitution from *Shari'ah* Perspective 200, 211); see also *A Leap of Faith: Taking the Plunge in Inter-religious Marriage*, JAKARTA POST, Sept. 19, 2004, available at <http://www.thejakartapost.com>.

20. See JOHN R. BOWEN, ISLAM, LAW, AND EQUALITY IN INDONESIA: AN ANTHROPOLOGY OF PUBLIC REASONING 242 (2003).

21. *Id.* at 244; Fitri Wulandari, *Religious Scholars Back Interfaith Marriage*, JAKARTA POST, Dec. 15, 2001. According to Government Regulation No. 9, 1975, and Act No. 32, 1954, marriages based on Islamic norms shall be registered at the Office of Religious Affairs at the Sub-District level, whereas marriages performed outside Islamic norms are to be registered at the Civil Registry Office.

22. TASIR ULANG PERKAWINAN LINTAS AGAMA; PERSPEKTIF PEREMPUAN DAN PLURALISME [REINTERPRETATION OF IRM: FEMINIST AND PLURALISM PERSPECTIVES] (Maria U. Anshor & Martin L. Sinaga eds., 2004). The first two chapters of the book document the variety of experience of people practicing IRM. See also *infra* Part I.C; *Son of Mixed Marriage Speaks Up*, JAKARTA POST, Apr. 24, 2005; *Interfaith Marriage Remains Sensitive Issue*, JAKARTA POST, Apr. 24, 2005 [hereinafter *Interfaith Marriage*].

23. See BOWEN, *supra* note 20, at 245; *Interfaith Marriage*, *supra* note 22.

female worlds are distinctly differentiated, with females inclined to domestic life. Consequently, in regards to public affairs, the voice and rights of women are founded on females' ideological acceptance of males as their guardians and spokespersons. Within this framework of cultural patriarchy, women existentially fall under the authority of men. All social actors therefore function under the standardized and culturally accepted legitimacy of the laws. This status of males as the guardians of females has important implications toward the rights and authority of women to secure their own fates and to choose a spouse.

3. Political disharmony leads to religious segregation

Islamic marriage laws originated during an era of disharmony between the social-political sector and religion. Historically, during the formative years of Islam (roughly during the first centuries of the Islamic calendar), war and minor confrontation between Muslims and non-Muslims colored the relations between religious peoples of both groups. This tension heavily influenced the *fiqh*, or Islamic jurisprudence, which expands and interprets Islamic law.²⁴ As a result, Islamic jurisprudence segregated all people into different communities of residence by their religious affiliation, the public policy behind this segregation being centered on issues of stability and safety. Citizenship also became a Muslim issue, differentiating between non-Muslims protected by the Muslim State (*ahl al-dzimmi*) and those non-Muslims (infidels) who could be attacked.²⁵ In addition to this, there was a further division between peaceful regions (*dār al-islām*) and regions in conflict (*dār al-harb*).

In this context, the standard of social and legal treatment to citizens was not grounded on normal, neutral, and simple discretion, but on the strategic needs of the religion and the state. Consider how many countries mandate compulsory military service for civilians so as to increase state security. Similarly, as a way to prevent a religious attack from an enemy, the Prophet, his successors, and

24. Ibn Khaldun, a prominent Islamic historian, defines the *fiqh* as "knowledge of the rules of God which concern the actions of persons who own themselves bound to obey the law respecting what is required (*wājib*), forbidden (*harām*), recommended (*mandūb*), disapproved (*makrūh*) or merely permitted (*mubāh*)." REUBEN LEVY, *THE SOCIAL STRUCTURE OF ISLAM* 150 (1957).

25. See BADRĀN ABŪ AL-'AINAIN, *AL-'ALĀQĀT AL-ĪJTIMĀ'ĪYYAH BAIN AL-MUSLIMĪN WA GHĀIR AL-MUSLIMĪN* (1984) (focusing on the legal status of inter-religious relation between Muslims and non-Muslims).

Muslim Caliphates invited all Muslim civilians to be involved in defending the Islamic state from attack of the non-Muslims. Religious conversion from Islam was therefore conceptualized as a vital criminal violation that might be punished by death²⁶ because a former Muslim would endanger the existence of all Muslims by allying with an enemy of Islam.

This segregation also applied to persons who might convert to Islam, as illustrated by the distinctions among prisoners of war. Classical Islamic laws of war, according to a certain *mazhab* (school of Islamic law), legalized enslaving prisoners of war—Muslim and non-Muslim.²⁷ Muslim prisoners of war were treated differently than their captors of the same faith; in essence, the norm for treating prisoners of war followed classical doctrines that permit treating them as second class. But of even lower social status than the enslaved Muslim prisoner of war was the non-Muslim prisoner. Those persons who adhered to a religious faith other than Islam were labeled outsiders, and they were often suspected as a potential threat to the Islamic state and Muslim *ummah*.²⁸ Because those of other faiths were accused as being a threat, or at least as being a former enemy, non-Muslims hardly could be welcomed into an Islamic state. Former prisoners of war and *mawlá*, those of non-Arab

26. For a critical analysis of Islamic Criminal Law (*Fiqh al-Jináyah*) in this subject, see Noryamin Aini, *Riddah: The Ambiguity of Islamic Legal Discourses*, 4 REFLEKSI: JURNAL KAJIAN AGAMA DAN FILSAFAT 1 (2002).

27. Qur'an 8:67-68 states,

It is not fitting for an apostle that he should have prisoners of war until he hath thoroughly subdued the land. Ye look for the temporal goods of this world; but Allah looketh to the Hereafter: And Allah is Exalted in might, Wise (67); Had it not been for a previous ordainment from Allah, a severe penalty would have reached you for the (ransom) that ye took (68).

Muslim *Ulamas* have various opinions concerning the correct meaning of these verses. Umar ibn Khattab (d. 33 H/644), Sháfi'i (d. 204 H/820), and Abú Yúsuf (d. 189/805) were of the opinion to execute the prisoners for various reasons, such as to destabilize Muslim enemies. On the other hand, some argued that the prisoners should be treated decently or even allowed to pay compensation to achieve freedom and return to their homes. See AL-SHÁFI'I, *AL-UMM*, Vol. 4, 316 (1321-1325H); ABÚ YÚSUF, *KITAB AL-KHARÁJ* 195-96 (1352 H); see also SAYYID QUTB, *FI DLILÁL AL-QUR'ÁN*, Vol. 3, 1550-52 (1979) for a detailed interpretation of Qur'an 8:67-68.

28. For a good summary on this topic, see MADJID KHADDURI, *WAR AND PEACE IN THE LAW OF ISLAM* (1995).

origins in general, could not enjoy full participation in society, even if they had confessed Islam.²⁹

This social and political disharmony between Muslims and non-Muslims became the critical context surrounding the process of constructing Islamic marriage laws, which were later adopted and incorporated into the Indonesian marriage laws. The exclusion of non-Muslims from the dynamics of society, especially through family law, can clearly be seen in the concept of *fiqh*. Many basic social and legal relationships, as well as legal rights, were modeled within the framework of religious affiliation on the theory that differences between persons adhering to different religions can divide and derail social interaction. Under Islamic Law, religious differences affect many kinds of legal problems, and the resolution of many legal cases turns on religious identity. Additionally, the Qur'an prohibits—or at least warns—Muslim *ummah* not to appoint a non-Muslim as leader, including as the head of the family.³⁰

4. Dutch imperialism strengthens religious segregation

With the adoption of Islam in most of Indonesia by the time the Dutch arrived, *fiqh* permeated the common laws (*adat*) of the archipelagos. The permeation included the prohibitions on IRMs for Muslims. This point cannot be separated from the historical setting: the Dutch Colonial rulers used a political strategy of *dividet et emperor* aimed at extending the Dutch imperialism in Indonesia. To implement this strategy, the Dutch segregated the Indonesian population along racial, ethnic and religious lines. As the legislative enforcement for the *dividet et emperor* strategy, *Indische Staatsregeling* (IS or the Dutch Indies Constitutional Law, 1926) Articles 131 and 163 were enacted to set a legal policy of

29. IGNAZ GOLDZIHNER, MUSLIM STUDIES 1:101-103 (S.M. Stern ed., C.R. Barber & S.M. Stern trans., 1967).

30. See Qur'an 4:144 ("O you who believe! Do not take the unbelievers for friends rather than the believers; do you desire that you should give to Allah a manifest proof against yourselves?"); see also Qur'an verse *al-Mumtahanah*, 60:1 ("O you who believe! Do not take My enemy and your enemy for friends: would you offer them love while they deny what has come to you of the truth, driving out the Apostle and yourselves because you believe in Allah, your Lord? If you go forth struggling hard in My path and seeking My pleasure, would you manifest love to them? And I know what you conceal and what you manifest; and whoever of you does this, he indeed has gone astray from the straight path.").

segregation.³¹ Article 163 of the IS categorized the citizens of the Dutch Indies into three castes: Europeans, Eastern foreigners (those of Chinese and Arab ancestry), and indigenous people.

With the population officially segregated, the Dutch rulers were able to apply different laws to each caste. Article 55 of the IS categorized three types of laws (*Nederlandche Onderdanen*) that were exclusively applied to each caste; Dutch Civil Code laws were applied to Europeans, while *adat* was applied to Eastern foreigners and indigenous people.³² Because *adat* is a system of common laws, in most respects the Eastern foreigners and indigenous people were able to choose their own laws. This political and legal strategy was applied broadly, allowing various groups of differing religion, creed, race, and ethnicity to create their own *adat*. A Dutch legal anthropologist, van Vollenhoven, has taxonomically mapped nineteen regions of Indonesian *adat* laws (*adatrechtskring*) based upon cultural and language classifications, and he has recognized each type of regional *adat* law as applying to a separate community.³³

This Dutch legacy of ethno-religious segregation has been sharpened by the issue of racial and primordial identities to create several societal problems. For example, in Indonesia, religions are now often linked to social class and ethnicity.³⁴ It is self-evident that in Indonesia, to some extent, a religious affiliation is easily known from ethnic identity and geographical origins. For example, Batak ethnic and Menadonese people are usually Protestant;³⁵ the Chinese are Buddhist or Confucians;³⁶ the Balineses are Hindu;³⁷ the East

31. See SIONG GIOK, PERKAWINAN TJAMPURAN 9 (1958).

32. See SUBEKTI, POKOK-POKOK DARI HUKUM PERDATA 6 (1970).

33. See M. B. HOOKER, A CONCISE LEGAL HISTORY OF SOUTH-EAST ASIA 192 (1978); TANeko SOLEMAN & B. HUKUM ADAT, SUATU PENGANTAR AWAL DAN PREDIKSI MASA MENDATANG [ADAT LAW: AN INTRODUCTION AND PREDICTION FOR THE FUTURE] 44-50 (1987); C. VAN VOLLENHOVEN, PENEMUAN HUKUM ADAT [THE DISCOVERY OF ADAT LAW] (1981) (especially Chapters 2-3); R.S. WIGNJODIPOERO, PENGERTIAN DAN ASAS-ASAS HUKUM ADAT [THE CONCEPT AND FOUNDATIONS OF ADAT LAW] 86 (1985).

34. This is not a particularly unique phenomenon. For example, in North America Christian fundamentalists are associated with the working class, while Episcopalians are associated with the upper class. See Lyle Larson & Brenda Munro, *Religious Intermarriage in Canada in the 1980s*, 21 J. COMP. FAMILY STUDY 239 (1990).

35. See generally KATHRYN BOVILL, TOBA BATAK MARRIAGE AND ALLIANCE (1986).

36. L. TIAHAJA, *Pluralisme Hukum dan Masalah Perkawinan Campuran [Legal Pluralism and the Issue of Intermarriage]*, in HUKUM DAN KEMAJEMUKAN BUDAYA [LAW AND CULTURAL PLURALITY] 100 (E.K.M. Masinambow ed., 2000).

Timorese and east-southeast islanders are Catholic; while the Sundanese, Javanese, Maduranese, Bugise, Atjehnese, Minang, and Banjarese are predominantly Muslim.³⁸

Multiple layers of traumatic burdens placed on the population through Dutch colonialism entrenched the ethno-religious segregation. In addition to economic imperialism, the Dutch sponsored Christian missions: the "missionary" (Catholics) or "Zending" (Protestants).³⁹ As by-products of these proselytizing efforts, the Dutch introduced religious tension into the population that took the form of a contest between Islam and Christianity. Its least destructive mode appears in stereotypical attitudes towards others that are somewhat framed and influenced by the origins of each religious movement in Indonesia.

While both religions were imported to the archipelagos, there are marked differences. Many historians argue that the introduction of Islam to Indonesia was mediated by merchants through a slow process of persuasion. It is argued that Islam came to Indonesia, certainly to the interior high land of Java, at the late fourteenth century, when the indigenous religions had a well-established model of religious tolerance—Islam did not therefore confront the existing traditions.⁴⁰ Put differently, the introduction of Islam into the Javanese community never took either political or military form; conversions were never accomplished by conquest or power pressure from rulers. The only plausible proselytizing agents at that time were Muslim teachers and merchants. It is true that the majority of courtship families did not resist to Islam—and no elite opposition was pointed to Islamization⁴¹—but these leaders did not place overt pressure on

37. S.S. HERUTOMO & HARTATI, DAMPAK PERKAWINAN CAMPURAN TERHADAP TATAKRAMA DAERAH BALI [THE IMPACT OF INTERMARRIAGE TOWARDS BALINESE NORMS] (1991).

38. See Aini, *supra* note 26, at 35–36, 53.

39. See R. GOENAWAN & D. HARNOKO SEJARAH SOSIAL DAERAH ISTIMEWA YOGYAKARTA [THE SOCIAL HISTORY OF YOGYAKARTA] (1985); VAN VOLLENHOVEN, *supra* note 33, at 131–32. Muslims have feared the threat of Christianization for some time. Rumors spread in 1960 that Christians planned to convert Java in twenty years and all of Indonesia in fifty years. In fact, the Christian population has increased rapidly while the Muslim population is stagnant, or even declining. Muslims perceive this issue as a real threat. This rivalry has caused some strain, tension, and conflict in various Muslim-Christian relations. See M. ATHO MUDZHAR, FATWAS OF THE COUNCIL OF INDONESIAN ULAMA: A STUDY OF ISLAMIC LEGAL THOUGHT IN INDONESIA 1975–1988, at 64 (1993).

40. See Ricklefs, *supra* note 7, at 296–97.

41. See G.W.J. Drewes, *Indonesia: Mysticism and Activism*, in UNITY AND VARIETY OF MUSLIM CIVILIZATION 286 (G.E. von Grunebaum ed., 1955).

the population to convert. Because of this approach, the presence of Islam was unlikely to be taken as a threat or rival to the existing community. In fact, the introduction of Islam in many senses adapted and accommodated the Javanese syncretism, mysticism, and local traditions.

Christianity, however, came to the archipelagos as a vehicle of imperialism. It was clearly sponsored, mediated, and facilitated by the colonial regimes that existed on the islands. In areas without an Islamic tradition, mass conversions to Christianity resulted, but in Islamic areas there was resistance. As a result of the coming of the Portuguese missionary to Moluccas, the East Timorese, east-southeast islanders, and southeastern parts of Indonesia now have a homogeneous Catholic tradition. On the other hand, the Dutch colonialism *Zending* led to the massive conversion of indigenous people at North Sumatra, North Celebes and Toraja region of South Celebes to Protestantism. The cause of the imperialists' proselytizing failure among the islands' Muslims has been addressed. Zwemer, an Oriental Christian missionary during the early twentieth century, questioned why no more Indonesian Muslims converted to Christianity, and he concluded that the Islamic doctrine on IRM was a major factor.⁴²

In reference to imperialism and Christianization, historical evidence documents the nuances of the contests between Islam and the imperialist *Missionary* and *Zending* models. In the early period of Indonesian independence, the Muslim leaders of *Nahdlatul Ulama* (NU—the largest NGO associated with religion) issued two *fatwās* concerning holy war in the Way of God against imperialists and infidels (non-Muslims). The first *fatwā* was issued as the result of the Congress of NU in October 1945 in Surabaya, while the second was declared in Purwokerto at the end of the sixteenth NU Congress conducted in March 1946.⁴³ According to these *fatwās*, fighting against the Dutch is an individual obligation for every Muslim.⁴⁴ In this sense, the war against the Dutch for many Muslims was commonly associated as a war against infidels (Christians).

42. See SAMUEL ZWEMER, *THE LAW OF APOSTASY IN ISLAM* (1924).

43. The summary of the *fatwās* was that (1) the war against colonials was a religious necessity; (2) the statute made martyrs of those who died in the war; and (3) killing those who hampered national unity would result in liability. See Amiq, *Two Fatwās on Jihād Against the Dutch Colonization in Indonesia: A Prosopographical Approach to the Study of Fatwās*, 5 (3) *STUDIA ISLAMIKA* 77–78, 89, 90–91 (1998).

44. *Id.* at 90–91.

Imperialism and Christianization encouraged categorizing citizens into castes by affecting the way in which Indonesians behaved and interacted across religious boundaries in the post-independence era. Because Indonesians were grouped by religious affiliation, each community enjoyed their own rights and maintained their cultural identity. Meanwhile, they were freely able to live apart from other religious groups. The legal categorization during Dutch colonial periods had localized and segregated Indonesian communities through the application of law, and the impact of this policy was quite clear on the fashion and dress, lifestyles, religious affiliation, and other social-political activities. In short, this segregation was the construction of social-cultural identity. Europeans, mainly Christian, were the most privileged group, enjoying social protection and other social-political privileges. Extreme exclusion amongst castes created primordial sentiment and social and psychological barriers, particularly in the case of marriage.⁴⁵

B. Modern Reasons for Forbidding Muslims from Entering IRMs

From a modern perspective, the reasoning behind the Islamic legal prohibition on IRM can be divided into four broad types—theological, sociological, political, and ideological.

1. Theological

Several Qur'anic verses and Prophetic traditions describe the notion of IRM. Qur'anic verses, Chapter 2 and Article 221,⁴⁶ for example, addresses the subject, and the Prophetic traditions use the same

45. Siong has contended that laws and religious barriers were initially utilized by the Dutch colonials as a means of preventing European women from being married to indigenous men, especially Muslims, based on stereotypical assumptions that Islamic laws legalize polygamy, permit divorce easily, and do not guarantee an ex-wife's maintenance rights. However, due to such intense critiques, the Dutch colonials finally offered alternatives to bridge this socio-legal barrier by recommending that an Indonesian husband marrying a European girl should automatically submit to the Dutch Civil Code. See generally SIONG, *supra* note 31.

46. QUR'AN 2:221 ("And do not marry the idolatresses until they believe, and certainly a believing maid is better than an idolatress woman, even though she should please you; and do not give [a believing women] in marriage to idolaters until they believe, and certainly a believing servant is better than an idolater, even though he should please you; these invite to the fire, and Allah invites to the garden and to forgiveness by His will, and makes clear His communications to men, that they may be mindful.").

terminology when dealing with the issue of IRM.⁴⁷ According to these texts, the prohibition, or at least discouragement, of IRM applies exclusively to marriages with *mushriks*, and not to all non-Muslims.

Islamic scholars have varying opinions as to the correct meaning of *mushrik*. The majority of scholars believe that *mushrik* refers to every person who rejects the existence of God and the Prophets.⁴⁸ However, Muhammad Abduh and Rasyid Ridhâ, two prominent modern Egyptian scholars, interpret the text uniquely, beyond common discourses on the theme. They argue in their book "*al-Manâr*" that *mushrik* mentioned in the Qur'an refers only to a *mushrik Quraysh* (a noble Arab tribe) community of Mecca during the early period of Islam.⁴⁹ Their interpretation is clearly supported by the structure of the verse. The discouragement to marry *mushrik* women must contextually be viewed in line with the encouragement to marry *Muslim* slaves. The inference is that these distinctions both had historical significance: the distinction of *mushrik* couples and slaves referred to a legal practice that only existed at the early period of Islam.

An examination of the reasoning behind the social-historical discouragement of IRM supports the argument developed previously by Abduh dan Ridhâ. Historically, the *Quraysh* tribe displayed typical characteristics of hostility and vindictive attitudes against Islam. First, they hated Muhammad and saw him as their primary enemy. They even planned a series of scenarios and strategies to murder the Prophet. Furthermore, Muhammad and his followers were forcibly ridiculed and expelled from their motherland.⁵⁰ Second, the tribe had internalized a vindictive attitude and hostility not only towards Muslims, but also towards other Arab tribes, as they fanatically regarded their belief in their descent origin (*shu'ûbiyyah*).⁵¹ These traits led them to hate and obsessively seek the destruction of Islam by attacking Muslim communities. Historical facts indicate that the *mushrik Quraysh* repeatedly rejected offers of reconciliation, always refusing to allow Muslims to stay in their motherland. This

47. See generally Prophetic Tradition, *supra* note 12.

48. See Abd. Moqsih Ghazali, *Tafsir Islam Progresif tentang Nikah Beda Agama [Progressive Islamic Interpretation of IRM]*, 4 (1) ISTIQRÔ 235 (2005).

49. See ABDUH DAN RIDHÂ, *ABDUH DAN RIDHÂ* Vol.1, 193.

50. See CHARLES LINDHOLM, *THE ISLAMIC MIDDLE EAST: AN HISTORICAL ANTHROPOLOGY* 68 (1996).

51. GOLDZIHNER, *supra* note 29, at 137-91.

contention continued until their military defeat a few years before the Prophet died.

From this perspective, Abduh and Ridhâ's interpretation explains that the Qur'an and many prophetic traditions were revealed at least partly in response to then-existing circumstances that necessitated strongly discouraging Muslims to marry *mushrik* women and warning Muslim guardians not to marry off Muslim women to *mushrik* men. In addition to the political reasons for such rules, the more personal issue of intermarriage pertains to the spouses in such a marriage. The relevant question is that in an intermarriage with a *mushrik*, a tribe known to have full hostility and enmity to Islam, what could either party gain? Framing a marriage in a disharmonious and oppressing relationship from the start most likely will result in misery and sorrow. As a result, it was emotionally unwise for a Muslim to marry a *mushrik* when the chances of a harmonious marriage were slight.

Put differently, since the Qur'an strongly premises the marriage principle on compassion, love, help, and care to the spouse, Islam constitutes and maintains rules that may help Muslims to achieve the goals of the religion. This theology can be seen in Article 2 of the 1991 Compilation of Islamic Laws in Indonesia that defines marriage: "according to Islamic law, [marriage] is *nikâh* or *mithâqan ghalidzan* [a strong contract or agreement] to obey Allah, and doing it is a form of '*ibâda* [rite of worship]." This concept is not singular to Islam, as other religions also signify the religious dimension of marriage. Hinduism and Buddhism view marriage as sacramental. The theological discouragement to marry a *mushrik* is a kind of Islamic strategy to preserve the existence of the marriage institution and allow Muslims to better achieve the aims of their faith.

2. Sociological

Theoretically, differences may cause conflict, and this is true for social relationships and relates to the concept of *kafa'ah* (equality) in marriage.⁵² According to Islamic marriage law and traditional norms, a wise person marries a partner who shares similar traits. Similarity

52. See Farhat J. Ziadah, *Equality (Kafa'ah) in the Muslim Law of Marriage*, 6 AM. J. COMP. L. 505-09 (1957); Amalia Zomen, *Kafâ'ah in the Mâlikî School: A Fatwa from Fifteenth-Century Fez*, in R. GLEAVE AND E. KERMELI, *ISLAMIC LAW: THEORY AND PRACTICE*, 87-92 (1997).

between spouses will help the spouses to understand and adjust to one another. Because religious identity in Indonesia often overlaps with ethnic origin and cultural and social diversities, the difference of religious affiliation also results in a difference of social and cultural identity. Religious diversity therefore usually accompanies broader differences that could greatly affect the harmony of family. From this sociological point of view, the discouragement of IRM is a protection for society from religious and social-cultural-ethnic differences that could destabilize marriages.

Confirming the concept of *kafā'ah*, Siti Musdah Mulia extends sociological arguments for the discouragement of IRM.⁵³ She argues that the more diversity amongst husbands and wives, especially in terms of religious belief, the more fragile the marriage. In turn, religious differences will affect the children's stability in the family. According to traditional norms, marriage is not merely an individual contract, but an arrangement that unifies two extended families. While it is often true that IRM spouses have been successful in transcending religious differences, their families may find acceptance much more difficult. This issue is especially true for the many Indonesians burdened with socio-religious tensions.⁵⁴

Alī al-Shābūnī has also modeled the sociological argument from another angle to rationalize religious difference as a basis for forbidding IRM.⁵⁵ He proclaimed that the majority of *Ulamas* believe that because of religious differences, husband, wives, and children were worried to be trapped in *fitnah* (slander) and hostility. If this did happen, then the *fitnah* and hate would negatively influence the marriage and family. In effect, the family stability would be jeopardized. In addition, the Muslim party would have a difficult time exercising his or her full social rights if he or she lives within a non-Muslim community.⁵⁶

53. See Siti Musdah Mulia, *Menafsir Ulang Pernikahan Lintas Agama* [Reinterpret IRM]. in TASIR ULANG PERKAWINAN LINTAS AGAMA; PERSPEKTIF PEREMPUAN DAN PLURALISME [REINTERPRETATION OF IRM: FEMINIST AND PLURALISM PERSPECTIVE] 127 (Maria U. Anshor & Martin L. Sinaga eds., 2004).

54. Consider, for example, Bimo's and Taty's experience when they tried to marry. Bimo is a Catholic man and Tati is a Muslim woman. Tati often attempts to scatter the rumor of Christianization from her mind. However, it is not easy because she is frequently reminded of the misery that can occur in marriages involving people of different religions. *Id.*

55. See ALI AL-SHĀBŪNĪ, RAWĀ'Ī AL-BAYĀN, TAFSĪR AL-AHKĀM 537 (1980).

56. See MAULANA MUHAMMAD ALI, QUR'AN SUCI: TEKS ARAB TERJEMAH DAN TAFSIR, 119 (1993).

Related to the doctrine of *kafâ'ah*, a traditional notion of endogamous marriage seems appropriate to discuss here. The endogamy stance implies the political strategy for the internal development of religious community. Politically, all members of the group will seek to develop internal solidarity. Accordingly, all external things tend to be assumed as threats to the group's internal solidarity, and therefore the group should challenge external influences. In the early era of Islamic history, Muslim leaders paid intensive attention to preserving internal solidarity, IRM being one manifestation. For instance, Umar ibn Khattâb, the second Guided Caliphate (d. 24 H, Islamic Calendar/644), harshly threatened Muslims who intended to enter IRMs,⁵⁷ even though the practice of IRM was widespread during that era. Umar's argument challenging IRM seemed to be a phobia that no Muslim men would marry Muslim women. His anxiety could be sociologically and politically understood, since if the phobia were to play out, Muslim women would face serious problems finding partners.

Umar's argument and the doctrine of endogamous marriage also relates closely to the notion that the marriage institution is a means to develop and mainrain internal solidarity. Through endogamous marriage, economic, social, and political assets will not be transferred to another group.⁵⁸ Endogamous marriage will enable a group to maintain and increase internal solidarity and group cohesiveness. Therefore, the discouragement of IRM at the early phase of Islamic history had a social motive to maintain and preserve internal Muslim solidarity and solidity.

3. Political

Muslim rulers want to spread Islam, and that inevitably leads to encountering Christianity. The political idea of IRM can be clearly grasped from consideration of a 1980 MUI *fatwâ* that prohibited all forms of IRM. During the decades of 1960 and 1970, Muslims were enraged by rumors of Christianization,⁵⁹ and it was widely believed that repudiation from Islam was mainly caused by IRM. Hence, the

57. The story is told that Umar intended to lash Muslims who planned to marry non-Muslim girls. See THABARÎ, AL-, *JAMÎ' AL-BAYÂN FI TA'WÎL AL-QUR'ÂN* Vol. 2, 390 (1999).

58. See HAMADULLAH 'ABD AL-'ATI, *THE FAMILY STRUCTURE IN ISLAM* 67 (1977).

59. For more information concerning the polemic of Christianization that is masked by IRM, see Forum *Swaramuslim*, http://forum.swaramuslim.com/more.php?id=216_0_24_0_M.

1980 MUI *fatwá* was, in part, a response to the issue of Christianization. The rumor of Christianization was connected to the decline of Muslim populations. For ten years, from 1970 to 1980, the Muslim population decreased. The decline was predominantly publicized by Muslim preachers, and this created sentiment against non-Muslims, especially Christians. The political nuance of the consideration behind the MUI *fatwá* was also felt among Muslim elites. For example, Nur Ahmad Fadhil Lubis found that most Islamic Religious Court judges worry that IRM will jeopardize the existence of the Islamic marriage institution.⁶⁰

These political thoughts are not new. I have previously suggested that Umar's logic for prohibiting IRM was social, but he also had political motives: more Muslims meant increase and solidified political power. In a modern argument similar to Umar, Mahmûd Shaltût, a former rector of Al-Azhar University, Egypt, argues that allowing Muslim men to marry *ahl al-kitâb* women (people of Holy Scripture, or those people whose religions are based on divine revelations, such as Jews, Christians, and Zoroastrians) is essentially a political Islamization strategy. Theoretically, via the good manners of a Muslim husband, his spouse may be induced to convert to Islam.⁶¹

Forbidding Muslim women from marrying non-Muslim men can also be viewed as a political strategy. It is publicly well known in Indonesia that the prohibition of this type of IRM is based on an assumption that a Muslim wife and her children would be under her husband's authority. If a Muslim woman was under the influence of a non-Muslim husband, she might leave Islam for his religion and their children might not be raised as Muslims. If this speculation were true, this type of IRM would increase the non-Muslim population at the expense of the Muslim population.

Ibn Qudâmah (d. 630/1232), a prominent Muslim jurist living during the Middle Ages, went further to bring the political issue into legal stances of IRM. He argued that if a Muslim man married a non-Muslim slave who was *kitâbiyyah*—Jewish or Christian—then her children would automatically follow their father's Muslim religion. According to Ibn Qudâmah's argument, the marriage will be a medium to free human beings from enslavement. Since the Muslim patriarchal ideology privileges men to control and dertermine

60. See LUBIS, *supra* note 12, at 231.

61. See MAHMÛD SHALTÛT, *MIN TAWJIHÁT AL-ISLÂM* 253 (1959).

women's fate, IRM would benefit more the non-Muslim women in term of raising their children as Muslims even though they were slaves.⁶² This is essentially the same political motive above aiming to increase the Muslim population.

Maulana Muhammad Ali also develops the political notion of prohibiting IRM from an individual perspective. He posits that a Muslim woman would face individual political difficulty if she married into a non-Muslim's family (*ahl al-dzimmi*).⁶³ For example, she would lose the politically protected social rights that she would have in a Muslim family. While this concern is irrelevant if the political protection and social rights are the same for Muslims and non-Muslims, the political and social rights of Muslims and *ahl al-dzimmi* are not identical. For instance, a non-Muslim is not allowed to be appointed as a leader of Muslims, and they must pay *jizyah*—a personal tax on non-Muslims.⁶⁴ Basing his idea on the discriminatory rights of citizens, Ali worries that a Muslim woman marrying a non-Muslim man loses some of her rights, disadvantaging herself and her community.

In sum, the chief tenets of the various political arguments supporting the Islam doctrine of forbidding IRM rely on the ability of Muslims to convert non-Muslim partners to Islam. Beyond theological aims, these arguments focus on the nation-building of the Muslim community. Especially during the early era of Muslim history, Muslim leaders challenged and sometimes attacked dissident groups in the name of Muslim superiority and unity.⁶⁵ The policy reasons for attacking any group that refused to convert to Islam were to maintain the stability of the Islamic State and also to proclaim the superiority of Islam over other communities. Hence, the discouragement of Muslim women to marry non-Muslims was aimed at consistently maintaining the superiority.

62. IBN QUDÁMAH, *supra* note 12, at 595.

63. ALI, *supra* note 56, at 119.

64. QU'RAN 9:29. "*Jizyah*" is sometimes interpreted in English as "tribute"; it is a sign on the non-Muslim's submission to the Islamic state in which he or she resides. ABDULLAH YUSUF ALI, *THE HOLY QURAN* 507 (1991).

65. For example, Abu Bakr (d. 13 H/634) fought many tribes that attempted to be independent from the Islamic State. See ELIAS SHOUFANY, *AL-RIDDAH AND THE MOSLEM CONQUEST OF ARABIA* (1972).

4. Ideological

All Muslim jurists forbid Muslim women to marry non-Muslim men, based on ideological grounds that women are inferior to men and that men are more able to raise their children as Muslims. Patriarchal ideology strongly stereotypes females as inferior to males. Several Prophetic traditions literally state the weakness and inferiority of women without metaphor or symbolism, but the validity and meaning of these traditions still may be questioned.⁶⁶ Even assuming that the traditions are valid, Muslim jurists interpreting these traditions believed that due to their theological inferiority, Muslim women who married non-Muslim men would be unable to raise their children as Muslims.⁶⁷ Their anxiety on the subject is further fueled by related doctrines, such as the religious duty for every Muslim to raise his or her children in Islam.

In addition, Muslim jurists speculate that the Islamic doctrine of forbidding Muslim women from marrying non-Muslim men is to prevent and protect women's dignity and their faith. As such, it is widely believed that IRM may jeopardize a woman's faith, because it is assumed that women, being inferior to men, will end up converting to their husband's religion. Qualitative study in part has supported this assumption,⁶⁸ however, quantitative data significantly rejects the speculation.

Many Muslim women party to IRMs are still practicing Muslims, despite the assumed pressure from their husbands to leave Islam. A study based on Yogyakarta province census data from 1980, 1990, and 2000 found that, on average, 70% of children born to inter-religious married couples became Muslim if their mother was Muslim, whereas only about 50% of the children became Muslim if their father was Muslim.⁶⁹ This finding disproves and deconstructs the assumption of

66. See, e.g., FATIMA MERNISSE, *WOMEN AND ISLAM: AN HISTORICAL AND THEOLOGICAL INQUIRY* (1991).

67. See Mulia, *supra* note 53, at 127.

68. See SUARA HIDAYATULLAH, Aug. 2002, available at <http://www.hidayatullah.com> (documenting several cases of IRM ending with the conversion of Muslim parties, particularly Muslim women, to their spouses' religions). Readers should note that the magazine is written by and for Muslim radicals and has a national circulation in Indonesia.

69. See Noryamin Aini, *Potret dari Akar Rumput [Portrait from the Grass Roots]*, GATRA, June 21, 2003, at 20-21, available at <http://www.gatra.com/2003-06-16/majalah/beli.php?pil=23&cid=29479>.

female inferiority that jurists have used to support a prohibition on Muslim women marrying non-Muslims.

In summary, each of the modern reasons used to support the Islamic doctrine forbidding Muslim women to enter into an IRM are incomplete. Islamic legal theory allows for the reconstruction of Islamic laws in light of changing social and political contexts, and as such, it is time for the prohibition on IRM to be reviewed and reconstructed. An examination of the practical problems and inefficiencies of the current IRM laws in Indonesia also support this position.

II. THE IMPLEMENTATION OF ISLAMIC MARRIAGE LAWS IN INDONESIA

Religious doctrines greatly influence marriage laws in a variety of legal systems, and in the case of Indonesian marriage law this influence is obvious in leading to a prohibition of IRM.⁷⁰ The religious interests are clearly observed from Article 1 of Decree No. 1/1974 that rewrote prior Indonesian marriage laws. Article 1 states that "Marriage is a relationship of body and soul between a man and a woman as a husband and wife with the purpose of establishing a happy and lasting family (household) founded on belief in God Almighty." As a result, by law marriage is meant to be a religious ritual.

This section explains how Islamic marriage law has become a part of the marriage law of modern Indonesia and considers the importance of religion in marriage and religious marriages' role in the construction of personal and communal identity. The interplay of social, political and religious values has a discursive role in constructing marriage behaviors; the social and religious dimensions of marriage may not be rigidly separated. Because there is no clear delineation between the social and religious dimensions in marriage, categorizing marriage laws as religious or personal is not useful. The analysis, therefore, considers both aspects jointly.

70. See DJAKSA GDE, HUBUNGAN PERKAWINAN MENURUT HUKUM HINDU DENGAN PERKAWINAN MENURUT UNDANG-UNDANG NO, 1/1974. [IRM ACCORDING TO HINDUIST LAW AND THE DECREE NO. 1/1974] 17 (1976); K MUKTI, NASEHAT PERKAWINAN AGAMA BUDDHA DAN PENDIDIKAN KEPENDUDUKAN: KELUARGA BERENCANA DALAM AGAMA BUDDHA [BUDDHIST MARRIAGE ADVICE AND POPULATION EDUCATION] 15 (1983).

A. Creating the 1974 Marriage Law

Following a long and contentious process, the Indonesian Government in 1974 passed a national law on marriage, Decree No. 1/1974.⁷¹ This law attempts to accommodate competing interests that bear on issues of religion, gender equality, and inter-religious relations in Indonesia.⁷² Before Decree No. 1/1974, Indonesia did not have national laws on marriage, but rather the marriage laws that did exist were embedded throughout many different laws.⁷³ Each religious community was, for the most part, self-governed in this respect. The Ordinance on Christian Marriage governed the Christian community;⁷⁴ Islamic law governed Muslims; and other laws governed those of other faiths.⁷⁵ Decree No. 1/1974, however, applies to all religious traditions.⁷⁶ It states categorically that “a marriage is legitimate, if it has performed according to the laws of the respective religions and beliefs of the parties concerned.”⁷⁷ This statement is expounded to mean that “there is no [valid] marriage outside the religious doctrines.”⁷⁸

71. See June S. Katz & Ronald S. Katz, *The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems*, 23 AM. J. COMP. L. 653 (1975).

72. For a critical discussion on this issue, see *id.*

73. DOLORES A. DONOVAN, *Codification in Developing Nations: Ritual and Symbol in Cambodia and Indonesia*, 31 U.C. DAVIS L. REV. 693, 703-04 (1998); Katz & Katz, *supra* note 71, at 654-55.

74. SALEH. H.W. KITAB HIMPUNAN LENGKAP KETETAPAN-KETETAPAN MPRS/MPR 1960-1978 [THE COMPILATION OF REGULATIONS ISSUED BY MRPS/MPR 1960-1978] (1981:68) states that following the logic of the legal distinction, there was a diversity of laws on marriages for the different Indonesian religious and ethnic groups before the passage of the National Marriage Act No. 1, 1974. Specifically, (1) Islamic laws were applied to Muslim indigenous Indonesians; (2) *Huwelijks Ordonantie Christen Indonesia* (Ordinance on Christian Indonesian Marriages of 1933, changed in 1936) was applied to Christian indigenous in Java, Madura, and Ambon; (3) adat laws were applied to “other indigenous Indonesians”; (4) the Dutch Civil Code was applied to all Europeans origins; and (5) the Civil Code of 1847 with subsequent amendments in 1917 was applied to Arab and Chinese origins and other non-European foreigners. In other words, historically, there was a legal separation across the line of ethnic-religious origins of Indonesian citizens.

75. See ASMIN, STATUS PERKAWINAN ANTAR AGAMA: DITINJAU DARI UNDANG-UNDANG PERKAWINAN NO. 1/1974 [STATUS OF INTER-RELIGIOUS MARRIAGE ACCORDING TO MARRIAGE LAW NO. 1/1974] 5 (1986).

76. Katz & Katz, *supra* note 71, at 670.

77. ASMIN, *supra* note 75, at art. 2, pt. 1. This article implies that the Marriage Act discriminates against those who object to marrying in accordance with religious norms.

78. *Id.*

The political desirability of unifying and codifying Indonesia's diverse *adat* norms⁷⁹—a sort of common law—and religious marriage laws had been debated for nearly a century prior to passage of Decree No. 1/1974. Upon the seating of Suharto's government, the debate became especially heated and polemical as passage of the decree assumed more and more the air of a realistic possibility.⁸⁰ Suharto's New Order⁸¹ was not yet entrenched in power and faced considerable opposition from some Muslim factions of the population. The New Order most likely implemented Decree No. 1/1974 in an effort "to use the marriage law to administer the *coup de grace* to Islamic aspirations"—including the aspiration to make Indonesia into an Islamic state.⁸² By passing the law, the New Order capably used the issue as a political vehicle to resist the Muslim movement and consolidated Suharto's power in that important segment of the Indonesian population.⁸³ Those least happy with the new law were Indonesia's Protestants and Catholics, but not because they lost any rights. Protestants and Catholics were not pleased because the coalition of the New Order and the Muslim political powers excluded them from influencing the final outcome.⁸⁴

B. Assessing the Impact of the 1974 Marriage Law

The impact of Decree No. 1/1974 has been mixed, with some structural advances countered by increases in cultural and religious tensions.

To its credit, the new law on marriage successfully unified Indonesian law by replacing local *adat* and other laws that had been

79. For a brief introduction to *adat*, or Indonesian customary law, see Katz & Katz, *supra* note 71, at 654–55. For a more detailed treatment, see B. TER HAAR, *ADAT LAW IN INDONESIA* (1948).

80. See Katz & Katz, *supra* note 71, at 656–66.

81. Former Indonesian President Suharto (d. 2007) used the term "New Order" (*Orde Baru*) to characterize his regime in contrast with that of his predecessor, Sukarno (characterized as the "Old Order," or *Orde Lama*). The term is now synonymous with the Suharto years (1966–1998). See David M. Trubek et al., *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 *CASE W. RES. L. REV.* 407, 482 (1994).

82. Katz & Katz, *supra* note 71, at 660 n.41.

83. PAUL MARSHALL, *RADICAL ISLAM'S RULES: THE WORLDWIDE SPREAD OF EXTREME SHARI'A LAW* 164 (2005); ADAM SCHWARTZ, *A NATION IN WAITING: INDONESIA IN THE 1990s* 163 (1994).

84. Katz & Katz, *supra* note 71, at 660–65. Under Dutch rule, Indonesia's Protestants and Catholics had something of a favored status, which has decreased under self-rule.

dispersed in numerous regulations inherited from Dutch colonial legislation, religious compendiums, and local traditions.⁸⁵ Similarly, many people perceived that the new law, to some extent at least, transcended local divisions in a way that established and maintained a national unity, consciousness, and identity.⁸⁶ The new law was also significant as an attempt to improve the social and legal status of Indonesian women.

While instilling some national unity and advances for women, however, Decree No. 1/1974 also reflected the clear inspiration of classical Islamic law. In general, the articles of the decree give effect exclusively to those Islamic ideas represented by the Shafi'ite school.⁸⁷ Additionally, the Indonesian Ulama Council (*Majelis Ulama Indonesia*) issued a special *fatwá* in 1980 that adopted the orthodox or classical Islamic marriage laws, and one significant goal of the *fatwá* was to forbid IRMs.⁸⁸ Because Decree No. 1/1974 specifies that no marriage is valid outside of religious norms, the *fatwás* impact has been intense. The Office of Religious Affairs at the Sub-District level performs official Muslim marriages, but it refuses to perform marriages for many inter-religious couples who want to marry.⁸⁹ The Civil Registry Office, a governmental office where Buddhist, Christian, Hindu, or other religious marriages must be recorded in order to be legally valid, could document and administrate IRMs, but usually refuses to do so.⁹⁰

The pervasiveness of Islamic ideas in the Law have led some scholars to claim that Decree No. 1/1974 is a special marriage law for Indonesian Muslims, and that all references to intermarriage in the decree refer only to marriages across nationalities.⁹¹ In reality, Decree No. 1/1974 does implement *Shari'a* law; Suharto's government had to

85. *Id.* at 653–55.

86. Mark Cammack, *Islam, Nationalism, and the State in Suharto's Indonesia*, 17 WIS. INT'L L.J. 27, 53–54 (1999).

87. *Id.* at 52.

88. Nadirsyah Hosen, *Human Rights Provisions in the Second Amendment to the Indonesian Constitution from Shari'ah Perspective*, 97 THE MUSLIM WORLD 200, 211 (2007) (citing MAJELIS ULAMA INDONESIA, HIMPUNAN KEPUTUSAN DAN FATWA 91–92 (1995)); see also Diani, *supra* note 15.

89. BOWEN, *supra* note 20, at 242.

90. *Id.* at 244; Wulandari, *supra* note 21.

91. Only the last section of the decree, which consists of about ten articles, discusses the general legal issues relating to intermarriage.

agree to this concession in order to pass the new law.⁹² For example, it allows Indonesian courts to impose the marital provisions of the 1991 Compilation of Islamic Law⁹³ on Indonesian Muslim citizens. Although the Compilation is not quite the same as Western positive law, it is similar to such law, and it is now being used more widely by Religious Court judges faced with the task of rendering meaningful verdicts in cases affecting Muslims.⁹⁴ The Compilation boldly implements the *fatwâ* by saying “it is unlawful for a Muslim man to marry a woman in certain conditions, that is, a non-Muslim woman” and it is also “unlawful for a Muslim woman to marry a non-Muslim man.”⁹⁵ While some may feel that Decree No. 1/1974 allows each religion to implement its laws of marriage, its effects stretch beyond any single religion through Islamic rules on IRMs.

III. THE IRM PROHIBITION'S IMPACT ON INDONESIA'S WOMEN

IRM is perhaps most significant in the context of gender roles. The role of women in Islam has been the subject of much debate in Indonesia. Since the Indonesian Women's Congress (a federation of the most prominent women's organizations) first mobilized in 1928,⁹⁶ many women's organizations have lobbied the government to improve the legal rights of women in marriage.⁹⁷ Such organizations hoped a new law would counteract the effect of largely uncodified Islamic marriage laws, under which a woman “could be married, divorced, or made to share a husband with other wives, all against [her] will.”⁹⁸

As a result of these organizations' efforts, Decree No. 1/1974 does accommodate some of the gender issues raised by feminist activists. For

92. Katz & Katz, *supra* note 71, at 663.

93. For more information on the Compilation, see Cammack, *supra* note 86, at 51.

94. See Noryamin Aini, *Budaya Hukum: Melintas Batas Formalisme-Yuridis: Sentralitas Kompilasi Hukum Islam dan Kitab Kuning dalam Putusan Pengadilan Agama [Legal Culture: Crossing the Legal Formal Boundaries: The Centrality of The Compilation of Islamic Laws and Islamic Classic Books of Laws in the Religious Court Decisions]*, in 3 ERA HUKUM: JURNAL ILMIAH ILMU HUKUM, [SCIENTIFIC JOURNAL OF LEGAL SCIENCE] 10–12 (2002).

95. Decree No. 1/1974, Art. 40(c). Although Decree Number 1/1974 and the 1991 Compilation of Islamic Law forbid IRM, the Draft of the Marriage Law (original version July 31, 1973), Article 11(2) states that the difference of nationality, ethnicity, and religion or belief is not an obstacle to marriage.

96. 2 ENCYCLOPEDIA OF WOMEN & ISLAMIC CULTURES 35 (Suad Joseph et al. eds., 2005) [*hereinafter* ENCYCLOPEDIA OF WOMEN].

97. Katz & Katz, *supra* note 71, at 656–57.

98. *Id.* at 656.

instance, although Shafi'ite jurisprudence deliberately allows polygamous marriages for Muslim men, and although Indonesian religious courts may allow a Muslim man to take multiple wives in some instances, the Decree No. 1/1974 states clearly that "the principle of marriage is monogamous."⁹⁹ It thus appears that Indonesian lawmakers incorporating Islamic law into Indonesian family law have attempted to some extent to equalize the treatment of men and women.¹⁰⁰ In practice, however, it is not clear how effective these efforts have been.¹⁰¹ The fact that Indonesian family law may not be gender neutral in practice is visible in its application to situations involving IRMs.

Traditional Islamic law governing IRMs is not gender neutral. As stated previously, early Muslim jurists permitted Muslim men to marry non-Muslim *kitabiyah* women. These jurists, however, absolutely forbade Muslim women from marrying non-Muslim men.¹⁰² By means of the 1980 *fatwá*, however, the Indonesian Council of Muslim Scholars forbade Muslim men from marrying non-Muslim women.¹⁰³

99. Decree No. 1/1974, Art. 3.

100. For example, under traditional Islamic law it is very easy for a man to divorce his wife; merely saying *talaq* three times is all that is required. Poverty Reduction and Social Development Division, Sociological Status of Women in Indonesia, Malaysia, Philippines, and Thailand, http://www.adb.org/Documents/Studies/Sociolegal_Status_Women/ (2002) [*hereinafter* Sociological Status of Women]; see also Yakaré-Oulé Jansen, *Muslim Brides and the Ghost of the Shari'a: Have the Recent Law Reforms in Egypt, Tunisia and Morocco Improved Women's Position in Marriage and Divorce, and Can Religious Moderates Bring Reform and Make It Stick?*, 5 NW. U. J. INT'L HUMAN RIGHTS 181, 187-89 (2007). The process is much more difficult for a woman, and in practice women's ability to obtain a divorce is very limited. *Id.* at 21. Indonesian Marriage Law requires, however, that men as well as women petition the court before a divorce can be obtained. Katz & Katz, *supra* note 71, at 676; Dissertation, Islamic Law and Social Change: A Comparative Study of the Institutionalization and Codification of Islamic Family Law in the Nation-States Egypt and Indonesia (1950-1995), 251-52, available at http://deposit.ddb.de/cgi-bin/dokserv?idn=975583026&dok_var=d1&dok_ext=pdf&filename=975583026.pdf. [*hereinafter* Islamic Law and Social Change].

101. For example, Article 31 of the 1974 Marriage Law states that "the rights and position of the wife are equal to the rights and position of the husband, both in the family and in society." Sociological Status of Women, *supra* note 100, at 45. At the same time, however, Indonesia has made efforts "to identify women with the domestic domain" and "enshrin[e] the notion that men are heads of households and families." ENCYCLOPEDIA OF WOMEN, *supra* note 96, at 131.

102. See Mark J. Calaguas, Cristina M. Drost, & Edward R. Fluet, *Legal Pluralism and Women's Rights: A Study in Postcolonial Tanzania*, 16 COLUM. J. GENDER & L. 471, 518 (2007); Jansen, *supra* note 100, at *9.

103. KAREL STEENBRINK, DUTCH COLONIALISM AND INDONESIAN ISLAM: CONTACTS AND CONFLICTS 1596-1950, at 145 (Jan Steenbrink & Henry Jansen trans., 2006). Some

And while a *fatwá* may not be legally binding in all contexts, decision makers nevertheless give it much weight. Accordingly, it might affect not only a religious leader's decision as to whether to bless a marriage but also a civil authority's decision as to whether to perform a registration.¹⁰⁴ Thus, depending on how it is applied, Indonesian family law may be less discriminatory in practice than is traditional Islamic law. This will depend, however, on whether the religious and civil authorities are more persuaded by Decree No. 1/1974 or the 1980 *fatwá*.

Discrimination against women in the context of IRM can also be seen in the context of child custody determinations. In traditional Islam, mothers have a presumptive right to custody of young children because such children are considered better off with their mothers in their early years.¹⁰⁵ Together, Decree No. 1/1974 and the 1991 Compilation of Islamic Law codify this traditional right and bestow on women the presumption of child custody.¹⁰⁶ However, women do not automatically enjoy this right, which can conflict with the doctrine of Islamic theology that a Muslim party shall raise his or her offspring in the Islamic faith.¹⁰⁷ The mother's right may also conflict with Islamic custom, which also does not permit Muslim children to be raised in non-Islamic ways.

As a result of these conflicts, religious courts in Indonesia will likely deny custody of a child to a woman who was the wife of a Muslim man but who either never was or no longer is a Muslim herself. Decree No.

believe that the Council thus staked out a radical position that can only be "explained by . . . growing fear[s] in certain Muslim circles [that] Christian missionary activities or . . . 'Christianization'" will produce highly undesirable effects. *Id.*

104. Khaled About El Fadl, *The Place of Ethical Obligations in Islamic Law*, 4 UCLA J. ISLAMIC AND NEAR EASTERN L. 1, 16 (2005) ("Contrary to what many in the West believe, a *fatwa* is nothing more than a legal opinion that has no mandatory power, except that technically a *fatwa* deals with unprecedented questions of law. When a legal opinion or *fatwa* is elevated to the status of a positive law, which is compulsory and mandatory, it is called a *hukm*.").

105. Jansen, *supra* note 100, at *25.

106. Articles 105(a) and 156(a) of the 1991 Compilation of Islamic Law mention that before the child reaches the age of twelve, either pre- or post-divorce, the child is entitled to be educated and brought up by the mother or the relatives of the mother. After the age of twelve, the child has a personal right to choose whether he or she will follow the mother or father. However, before the child has reached the age of twenty-one, the financial support is still the husband's responsibility (either during marriage or after divorce). Islamic Law and Social Change, *supra* note 100, at 260.

107. Bolaji Owasanoye, *The Regulation of Child Custody and Access in Nigeria*, 39 FAM. L.Q. 405, 423 (2005).

1/1974 and the Compilation of Islamic Law give the religious courts jurisdiction to decide custody disputes between husbands and wives.¹⁰⁸ And in situations where a husband seeks a divorce based on his wife's repudiation of Islam, many decisions from the Religious Court of South Jakarta Municipality deny custody to the wife for theological reasons.¹⁰⁹ Indonesian law does not specifically target women, however, and it is likely that Indonesian courts would deny a husband custody of his children if his wife petitioned for divorce on the ground that her husband had repudiated Islam.

Nevertheless, the law does create a gender-based disparity. A woman who repudiates Islam loses her traditional presumptive right to custody, while a man who repudiates Islam loses no rights. He was never presumed entitled to custody in the first place.

IV. LEGALIZING AN INTER-RELIGIOUS MARRIAGE IN INDONESIA

Although Islamic marriage laws forbid IRMs, and Indonesian law enforces these provisions, the game of love is often played outside of religious rules, as demonstrated in a very public way by Jamal Mirdad and Lydia Kandou. Their case is not isolated; a number of inter-religious couples have attempted to get around government barriers.¹¹⁰ Thus, even though Indonesian marriage law strongly prohibits IRMs, adherents of a variety of religions enter into such marriages.¹¹¹ A Muslim man might seek to marry a Hindu or Buddhist woman, or a Christian man might seek to marry a Muslim woman, or a Hindu man might seek to marry a Christian woman. Part A explains how these couples currently go about obtaining valid IRMs.

108. Katz & Katz, *supra* note 71, at 677.

109. See, e.g., the Religious Courts' Decision of South Jakarta District, Indonesia, No. 1167/Pdt.G/1996/PAJS, 1996 and No. 939/Pdt.G/1999/PAJS, 1999. These decisions decline a mother's demand who has denounced Islam. However, the decisions of Religious Court of South Jakarta District seem inconsistent, since decision No. 92/Pdt.G/1994/PAJS honors a mother's custodial rights. Additionally, decision No. 0506/Pdt.G/1996/PAJS leaves the problem to the mother and father to negotiate the legal solution.

110. See *Son of Mixed Marriage Speaks Up*, JAKARTA POST, Apr. 24, 2005; *Interfaith Marriage*, *supra* note 22.

111. See BOWEN, *supra* note 20, at 245; Wulandari, *supra* note 21.

A. Obtaining a Marriage License

Inter-religious couples who want to marry in Indonesia face serious legal and bureaucratic obstacles. Before a marriage can be considered legally valid, Decree No. 1/1974 requires that it be blessed, or authorized, in accordance with the religious laws of the religious communities of the bride and groom.¹¹² However, because the state of Indonesia is secular,¹¹³ the state is not in a position to make declarations regarding religious laws. The only institutions authorized to declare that the marriage comports with the couple's religious laws are religious institutions, which speak through *Ulamas*, priests, monks, and so forth. Thus, would-be married couples must turn to religious spokesmen for the blessing of their marriages before those marriages can occur. This blessing is not always possible to obtain in the case of an IRM, especially for a Muslim.¹¹⁴ In addition, after the pertinent religious authority blesses the marriage, the couple must register the marriage with the appropriate civil authorities.¹¹⁵ According to Government Regulation, No. 9, 1975, and Act No. 32, 1954, the marriage based on Islamic norms shall be registered at the Office of Religious Affairs at the Sub-District level, whereas the marriage performed outside Islamic norms is to be registered at the Civil Registry Office.¹¹⁶

In fact, the problem of obtaining a marriage certificate for inter-religious couples is an unsolved issue. Historically, in the days of Dutch colonialism, adversaries of IRM launched polemics against IRMs forcing the colonial government to introduce laws regulating mixed marriage.¹¹⁷ After a long process, the colonial rulers passed the Mixed Marriages Regulation (*Regeling op de gemengde Huwelijken*, S. 1898 No. 158).¹¹⁸ The provisions of the 1898 Mixed Marriage

112. Decree No. 1/1974, Art. 2(1); see also Dolores A. Donovan, *Codification in Developing Nations: Ritual and Symbol in Cambodia and Indonesia*, 31 U.C. DAVIS L. REV. 693, 703 (1998).

113. Alfitri, *Expanding a Formal Role for Islamic Law in the Indonesian Legal System: The Case of Mu'amalat*, 23 J.L. & RELIGION 249, 249 (2007-08).

114. See *supra* Part II.

115. Cammack, *supra* note 86, at 59.

116. See BOWEN, *supra* note 20, at 241.

117. See STONG, *supra* note 31, at 7.

118. The 1898 Regulation was concerned with general forms of mixed marriage (inter-racial, IRM, and others). Article 1 of the Regulation states that "what is meant by a mixed marriage is a marriage between two people who are subject to different laws." In 1901, the Dutch colonial government added language specifying the status of IRM by providing that "difference in religion, race and origin is not a challenge to perform mixed marriage." This

Regulation resulted in more intense polemics and boycotts from Muslim leaders. After the end of colonial rule and into the 1950s, *Penghulu*—marriage registrars—mostly refused to register IRMs. As a result, many IRM couples failed to register their marriages. This led to government efforts to force the *penghulu* to register IRMs,¹¹⁹ and the dispute ended up in court.¹²⁰

In decision No. 432/1952 P., the Jakarta District Court ordered an IRM to be registered; the decision heated Muslim polemics. A group of *Ulamas* sent a resolution to the President of the Republic of Indonesia pushing the Indonesian Government to abolish the 1898 Mixed Marriage Regulation.¹²¹ Decree No. 1/1974 limited valid marriage to the confines of religious doctrines, but the Supreme Court affirmed the allowance of IRMs in 1979, and some government offices adopted this reasoning in a formal statement and began issuing IRM licenses.¹²² As noted, in June 1980, the Indonesian Government through the *fatwá* of the Council of Indonesian *Ulamas* prohibited Muslims from marrying non-Muslims. Armed with this *fatwá*, the General Court for the Central Jakarta District

point was a very radical provision on IRM during the Dutch colonial rule, insofar as it is widely against the Islamic laws that forbid IRM.

119. The head of the Civil Registry Office at Jakarta, on Aug. 25, 1950, sent a letter to the Office of Religious Affairs at Jakarta. The letter demanded that the *penghulu* register IRMs and stated that if an IRM was not registered, then the *penghulu* should write a letter stating the grounds for the refusal. SIONG, *supra* note 31, at 205.

120. After stalled negotiations and the continued refusal of the Office of Religious Affairs at the Sub-District Level to register IRMs—especially those involving Muslim partners—Rd. Adjeng Soemami Soeriaatmadja, a Muslim woman, turned to the General Court (*Pengadilan Negeri*) of the Jakarta District to permit her marriage to Ursinus Elias Medellu, a Protestant. She won, and they were married in a Protestant service.

121. *Id.* at 212–17. In contrast, the Supreme Court issued a Circular Letter (*Surat Edaran*) in 1975 (No. MA/Pemb. 0807, dated Aug. 20, 1975) instructing the lower courts to apply the 1898 Mixed Marriage Regulation in IRM cases. Since then, the General Court (*Pengadilan Negeri*) and the High Court began to rule that IRMs could be conducted at the Civil Registry Office. See S. POMPE, *A Short on Some Recent Developments with Regard to Mixed Marriages in Indonesia*, in 147 BIJDRAGEN TOT DE TAAL-, LAND- EN VOLKENKUNDE 262 (1991); see, e.g., Decision of the Governor of East Java, Sept. 15, 1980, concerning the Continuing Validity of the Mixed Marriage Regulation (HGR S. 1898 No. 158); Decision of the Head of the Jakarta Civil Registry, No.2158/-1.755.2/CS/1986 concerning Directions for the Implementation of Inter-Religious marriage at the Civil Registry of the Province of Jakarta; see also NANI SOEWONDO, ANALISIS DAN EVALUASI HUKUM TIDAK TERTULIS TENTANG HUKUM KEBIASAAN DALAM PERKAWINAN CAMPURAN [ANALYSIS AND EVALUATION OF THE UNWRITTEN LAW OF CUSTOM IN MIXED MARRIAGE] 19 (1991–1992).

122. See SIMON BUTT, *Polygamy and Mixed Marriage in Indonesia: The Application of the Marriage Law in the Courts*, in INDONESIA: LAW AND SOCIETY 135 (Timothy Lindsey ed., 1999).

decided to repudiate an earlier decision allowing an IRM,¹²³ despite the still valid Supreme Court's Circular Letter. The Supreme Court disqualified the General Court's decision.

This brief history shows that although the Supreme Court approves of IRM, the majority of the General Courts do not adopt this jurisprudence, adopting the 1980 *fatwá* instead. Generally speaking, the Office of Religious Affairs and the Civil Registry Office refuse to register IRMs. Hence, there is a paucity of IRMs registered at the Civil Registry Office, but this does not mean that IRM does not occur.

B. Special Problems for Inter-Religious Couples

In essence, Indonesia's law discriminates against inter-religious couples. Indonesia's dual system—a religious blessing and civil registering—gives rise to a variety of problems. First, although both the preamble to the 1945 Indonesian Constitution and Article 29 of the same document guarantee the right of each religious follower to practice his or her beliefs,¹²⁴ the marriage law restricts that practice to the limits imposed by governmentally recognized religious authorities. Thus, at least where IRMs are concerned, Indonesia's couples do not have the right to exercise their religions as they see fit so much as they have the right to exercise their religions as their *Ulama*, priest, or monk sees fit.

Second, although many early Muslim jurists permitted a Muslim man to marry a *kitabiyah*—a Jewish or Christian woman—as has been discussed, the 1980 MUI *fatwá* interacts with Decree No. 1/1974 to prohibit all forms of IRM involving Muslims.¹²⁵ As a result, Islamic religious leaders generally refuse to bless IRMs.¹²⁶ If the marriage is not blessed, it cannot be legalized.¹²⁷

Moreover, inter-religious couples also face obstacles from the civil authorities who must register their marriages. Indonesian government

123. The Court had previously allowed Andi Vonny Gani (a Protestant) and his fiancée (a Muslim) to register their IRM at the Civil Registry Office of Central Jakarta. Central Jakarta District Court decision No. 382/PDT/1986/PN.JKT.PS.

124. UNDANG-UNDANG DASAR REPUBLIK INDONESIA [CONSTITUTION] Preamble, art. 29 (1945).

125. KAREL STEENBRINK, *DUTCH COLONIALISM AND INDONESIAN ISLAM: CONTACTS AND CONFLICTS 1596–1950*, at 145 (2006).

126. See *Interfaith Marriage*, *supra* note 22.

127. See *id.*

offices will not usually register marriages for inter-religious couples.¹²⁸ According to the Indonesian Supreme Court, inter-religious couples can file a complaint with an Indonesian General Court in order to affect the necessary registration.¹²⁹ In practice, however, this avenue of relief is not very useful. Only seldom do the District or Municipality Courts (*Pengadilan Negeri*) affect a registration for an IRM.¹³⁰ This means that filing a complaint in a District Court offers only a slim chance of overturning an unfavorable decision by the registration offices.

One final impediment does not directly affect inter-religious couples so much as it affects their children. The Indonesian government does grant birth certificates to the children of couples who do not have a marriage certificate, but it marks the children as “illegitimate,” which means that they have no legal claims against their biological fathers.¹³¹ Marriage certificates only exist for legally valid marriages, and so if the couple’s marriage is not legalized, the couple cannot obtain “normal” birth certificates for any children born to them. Additionally, in order to obtain a legal relationship with the child, the father must then “admit” his relationship with the child—a *pengakuan*—and record the admission with the Civil Registry office.¹³² This creates a public record, but still does not grant the child any inheritance rights to the father’s family.¹³³

C. Circumventing the Marriage Laws

In spite of the legal and ecclesiastical condemnation and discrimination discussed above, in many circles IRMs are socially applauded and culturally admired. Thus, an inter-religious couple that wants to be married usually tries to find a way around the law, such as by using *hilah*, which is legal manipulation. Of the many possible solutions, some are available only to the wealthy, others require

128. See Wulandari, *supra* note 21; *Comments and Discussion*, 28 LAW & SOC’Y REV. 477 (1994).

129. See BOWEN, *supra* note 20, at 242.

130. See *id.* at 244.

131. Decree No. 1/1974. The Indonesian term for an illegitimate child is “*Anak luar kawin*,” which is placed on the birth certificates of children whose parents are not validly married. This is not always devastating, but can lead to social stigma. For further discussion, see Hera Diani & Tiarna Siboro, *Mixed Marriages: Law Hurts Happiness*, THE JAKARTA POST, Sept. 25, 2005.

132. See Children Born Out of Wedlock, <http://www.expatriat.or.id/info/childrenbornoutofwedlock.html>. For further information, the Web site points to the Indonesian law firm of Wijaya and Co.

133. *Id.*

struggles with the Indonesian bureaucracy, and still others require disingenuousness on the part of the marrying couple.

1. Foreign marriage

One alternative, feasible only for couples with sufficient financial means, is to travel to a country like Singapore or Australia,¹³⁴ where the couple can more easily secure legal recognition and formal registration. After fulfilling the legal requirements of that country, the couple marries. The couple then returns to Indonesia and files an appeal for recognition with the Civil Registration Office, which must register the marriage if it has been performed in accordance with the law of the country where it was solemnized.

2. NGO marriages

Another alternative, which does not require traveling abroad, is to turn to one of several socio-religious institutions, such as the Paramadina Foundation¹³⁵ or the Indonesian Conference on Religion and Peace.¹³⁶ Although these NGOs are condemned by some for masquerading as religions, so far the Civil Registration Office has validated the efforts of their religious leaders to bless IRMs.¹³⁷ As a result, increasing numbers of inter-religious couples relied on these NGOs for assistance, but today their future is in doubt because some have been forced to close due to threats made against them and their operators.¹³⁸ Even those couples who have availed themselves of these organizations must often pay bribes to corrupt Civil Registration Office officials, who will not register IRMs absent such payment.¹³⁹ This method can also pose difficulties for the couple's family, as traditional religious marriage ceremonies may become unavailable to those who chose to marry with a quasi-religious NGO in order to obtain an IRM.

134. Dewi Santoso, *Getting Around the Inter-religious Marriage Law*, JAKARTA POST, Dec. 1, 2003; *Interfaith Marriage*, *supra* note 22.

135. *Interfaith Marriage*, *supra* note 22.

136. Dewi Santoso, *Inter-religious Marriage Defended*, JAKARTA POST, Nov. 29, 2003, available at <http://www.thejakartapost.com>.

137. See *Interfaith Marriage*, *supra* note 22.

138. *Id.*

139. *Id.*; see also Cammack, *supra* note 86, at 65.

3. *Conversions of convenience*

A third alternative, also employed by many inter-religious couples who do not have the financial means to marry overseas, is to have one member of the couple “convert” to the partner’s religion in order to meet the requirements of the law, only to “reconvert” to the original religion after the marriage has been properly registered.¹⁴⁰ For example, in 1997 a Buddhist Chinese man publicly converted to Islam just prior to his marriage in order to marry his Muslim Javanese fiancée.¹⁴¹ He subsequently reverted to Buddhism. Similar documented occurrences have taken place in the cases of a Protestant woman who converted to Muslim to marry her Javanese boyfriend, a Protestant Batak woman who converted to marry a Muslim Sundanese, and a Catholic woman who converted to marry a Muslim.¹⁴²

While this option is legal and it works, it also has a certain religious disingenuousness that might deter some couples. Additionally, Islamic marriage law poses some hurdles for those couples attempting this method because it requires that a marriage be nullified if one of the spouses renounces Islam.¹⁴³ Still, this may not be too high a hurdle, as such “conversions” may not be reported to the Court by a divorce filing unless one of the spouses wants a divorce. But if the “fake” conversion is reported, then the Religious Court and General Court have frequently allowed the divorce due to the conversion of convenience.¹⁴⁴

In light of the foregoing, it is apparent that inter-religious couples have had serious problems with the Indonesian bureaucracy, especially in the Muslim/non-Muslim context. Some couples unable to marry overseas prefer to commit *hilah* in order to protect themselves. Others have pretended to alter their beliefs in order to avoid administrative

140. See Santoso, *supra* note 134; see also Australian Embassy, *Marriage in Indonesia*, <http://www.indonesia.embassy.gov.au/jakt/MarriageInd.html> (“Anecdotal evidence suggests that the process of converting to Islam is not a lengthy one. To start the process, speak with the Imam at the local mosque.”).

141. See Noryamin Aini, *Melangit Tanpa Akar [Sying without Roots]*, GATRA, Oct. 6, 2005, available at <http://www.gatra.com/2005-10-03/majalah/beli.php?pil=23&cid=88926>.

142. *Id.*

143. According to Decree No. 1/1974, a divorce will be effective if it is approved by the Court.

144. See, e.g., the Religious Courts’ Decision of South Jakarta District, Indonesia, No. 1167/Pdt.G/1996/PAJS, 1996, and No. 939/Pdt.G/1999/PAJS, 1999; see also Religious Court of Denpasar District No. 72/Pdt.G/2000/PA/DPS.

burdens. Thus, while bureaucratic resistance to inter-religious unions may be intended to limit cohabitation among inter-religious couples, its effect also has been to increase the incidence of hypocrisy in the Indonesian legal system and in the religions of Indonesia, which clearly undermines the integrity of these institutions

D. Comparing the Incidence of IRMs in the Muslim/Non-Muslim and Non-Muslim/Non-Muslim Contexts

Whatever method an inter-religious couples uses, statistical data confirm that of the inter-religious Indonesian couples who find ways to marry, couples in which one participant is Muslim are relatively less successful than couples in which neither participant is Muslim. In Jakarta province in 1970, *inter alia*, there were only 10 cases of IRM that were formally registered at the Civil Registry Office, and by 1986, the incidence peaked at 491 cases.¹⁴⁵

Based on Yogyakarta Province Census data, in 1980 at least fifteen out of every thousand Indonesian marriages were inter-religious.¹⁴⁶ That number increased to eighteen per thousand marriages in 1990 and decreased to twelve per thousand marriages in 2000. For Muslim communities, about six in one thousand marriages were inter-religious. Among non-Muslims, the rate was much higher: in 1980, in 1990, and in 2000, inter-religious unions accounted for at least five percent of all marriages that did not involve at least one Muslim spouse, which translates to a rate of fifty IRMs per thousand. Comparing the two communities, the incidence of IRM among non-Muslim marrying non-Muslims is roughly eight times higher than it is for Muslims marrying non-Muslims. Moreover, other studies found extremely high rates of inter-religious unions among Catholics. Professor Wiludjeng, whose study was based on data from the Catholic Jakarta Archdiocese from 1981 to 1989, found that one in three Catholic marriages was inter-religious.¹⁴⁷ Professor Tjahaja asserts that IRMs made up forty-three

145. See J. Kasiri, *Perkara Perkawinan Beda Agama [Issues on Inter-religious Marriage]*, TEMPO, Sept. 11, 1993, at 44, available at <http://www.tempo.co.id/majalah/arsip/1st/edition20/rel-2.html>.

146. See Aini, *supra* note 69, at 20–21.

147. See HENNY J.M. WILUDJENG, FAKTOR-FAKTOR YANG MEMPENGARUHI PELAKSANAAN JANJI PERKAWINAN CAMPURAN DI KEUSKUPAN AGUNG JAKARTA [FACTORS AFFECTING THE EXECUTION OF CONTRACT OF IRMs IN JAKARTA ARCHDIOCESE] (1991).

percent of unions involving Chinese Catholics in Jakarta in a particular year.¹⁴⁸

Interpreting the data is not easy, as many factors may account for the variances, including social differences. First, it is still possible that Decree No. 1/1974 and the Islamic laws are important factors in the disparity of the rates of IRMs in the Muslim/non-Muslim and non-Muslim/non-Muslim contexts. However, during the last two decades, the incidence of IRM has become more common in urban and metropolitan areas. This growth of IRM among the working urban young results from the social and economic dynamics of life in a city. Because they deal professionally with various races, and because the cities often have large segments of each of the religious communities, they are more socially and psychologically prepared to enter into an IRM. They are also benefited by financial prosperity that enables them to handle the marriage bureaucracy. As has been discussed, money often solves the problems associated with obtaining a marriage license for an IRM, whether by paying additional fees for registering marriage, or traveling overseas to perform the marriage.

In short, although the IRM rate in Indonesia is not as high as compared to many Western societies, the incidence of IRM are not few and far between. In fact, those entering an IRM are less stigmatized today than in the past. As evidenced by the public coverage of famous Indonesians entering into IRMs, the media is helping these couples express their previously unspoken and hidden experience. These public examples show that although positive law and religious norms forbid IRM, inter-religious couples will continue to get married. Love has its own law and logic, and as a result IRM finds a way to happen. Because no regulation or even sanction can stop it, it is likely that the practice of IRM gradually will increase and continue to gain acceptance. Eventually, the present legal barriers to IRM should react to this social change, either by the government loosening enforcement of rules against IRM or actually changing the rules.

148. See L. Tjahaja, *Pluralisme Hukum dan Masalah Perkawinan Campuran [Legal Pluralism and the Issue of Intermarriage]*, in HUKUM DAN KEMAJEMUKAN BUDAYA [LAW AND CULTURAL PLURALITY] 100 (E.K.M. Masinambow ed., 2000); Data of IRM in Indonesia, <http://islamlib.com/en/page.php?page=article&cid=449>.

V. CONCLUDING REMARKS

Although inter-religious couples in Indonesia today face a variety of difficulties, both before and during marriage, love is not often a planned affair. This means that IRMs do and will continue to occur in Indonesia. This is true even though the idea of changing either secular or religious law to allow these marriages is in open conflict with the ideas of Islamic religious authorities. However, inter-religious couples who hope to marry must do so very carefully. For, while love may be blind to religion, Indonesian society and legal structures are not.

This article's brief discussion of the law of IRM in Indonesia presents several contradictory issues. First, though the Supreme Court has passed a Circular Letter to the Lower Courts (District Public and Appeal), the enforcement of laws allowing IRM is rare. In general, judges and marriage registrars refuse to legalize and document IRM despite the Court. This fact leads me to suggest that the legal discourse of IRM is predominantly constructed along the line of religious doctrines. Second, the strict regulation of IRM by Muslim *Ulamas* leads to religious segregation and creates hypocritical religious behavior. Those couples engaging in religious conversion prior to marriage may increase the negative outlook on the impact of the prohibition of IRM and lead to calls for the laws to be changed. Third, inasmuch as lovers ignore their religious differences and continue to seek marriage, one wonders if religion should seek to destroy these marriages after they exist or to support them.

Inevitably, because lovers ignore religion and religions are intensely interested in marriage, IRM leads to conflicts between love and belief that may lead to unhappiness for IRM couples and families. Indonesian law and society certainly make the choice of IRM a difficult one. Hence, any couple with different religious backgrounds must found their marriage on principles that protect and guarantee household stability. Such principles will be essential for inter-religious couples who wish to face their challenges in a psychologically mature way and who wish to live with the kind of love, respect, and toleration that will allow them to overcome discrimination, both as they get married and as they stay married.