



Aligning religious law and state law: negotiating legal Muslim marriage in Pasuruan, East Java

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Abdullah Syamsul Arifin, Muhammad Fauzinudin Faiz & Muhammad Lutfi Hakim

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BOOK REVIEW

Aligning religious law and state law: egotiating legal Muslim marriage in Pasuruan, East Java, by Muhammad Latif Fauzi, Leiden, Boston, Brill, 2023, 236 pp., €69.00 (Paperback), ISBN 978-90-04-51610-6

Marriage law reform in the Muslim world has undergone significant changes over the past decade and has been a source of contention between traditional and modern egalitarian views of Islam (Black, Esmaeili, and Hosen 2013, 108). On the one hand, scholars view religious law as more important than state legal recognition of marriage because it is more socially acceptable (Scott 2000; Sonneveld 2011). However, in some countries with egalitarian gender norms, there is a demand for the right to legalize marriage by introducing mandatory marriage registration in the current nation-state context (Platt 2017). In everyday life, the dynamics of marriage practices not only involve state regulations and religious norms but also engage local actors. Therefore, the relationship between traditional mechanisms and state sovereignty in the marriage practices of post-colonial Muslim local communities has garnered the attention of legal anthropologists, including the author of the book under review.

The book, written by Muhammad Latif Fauzi and a development of Fauzi's doctoral dissertation at Leiden University in 2021, discusses the practice of *nikah sirri* (unregistered Muslim marriage) in the daily lives of Muslim communities in Pasuruan, East Java, who are faced with overlapping religious norms, customary norms, and state law. The book examines how the Indonesian state regulates Muslim marriage, how local communities implement and negotiate these regulations, and how local officials, both formal and informal, deal with these marriage practices. Through a socio-legal approach and thirteen months of field research, Fauzi finds that the state's efforts to reform Muslim marriage law and its bureaucracy retain an informality in implementing the law. According to Fauzi, this informality plays an important role because it allows for a compromise between people's deep interests in religious law and state law. At this point, informal actors, particularly *modin* (village religious officials), play a central role in helping local communities negotiate their interests in religious practice and the quest for state recognition. Therefore, Fauzi argues that the relationship between religious law and state law is not competitive but rather a form of mutual adjustment.

The book is divided into eight chapters. Chapter 1 explains the book's background and provides an overview of key concepts (pp. 1–28). The next two chapters, included in Part 1, discuss Islamic marriage law and institutions in Indonesia. Chapter 2 discusses recent developments in which the state simultaneously addresses the issue of the validity of marriage laws and the protection of citizens' rights (pp. 31–54). In this chapter, Fauzi argues that state-led modernization of Islamic marriage has moved away from legal norms that recognize the dual validity of marriage, both religious and legal, towards legal policies that focus on legal identity and citizens' rights. Chapter 3 discusses the modernization of the bureaucracy responsible for managing Muslim marriages (pp. 55–83). In this chapter, Fauzi examines bureaucratic reform in the administration of Muslim marriages and how it affects the day-to-day administrative practices of the Office of Religious Affairs (KUA).

Part 2 consists of five chapters that discuss the everyday practice of *nikah sirri* in Pasuruan. It begins with a brief profile of Pasuruan to help readers understand its socio-economic history, religious and cultural life, and the development of Islam in Chapter 4 (pp. 87–116). In Chapter 5, Fauzi maps the interaction between legal and social norms that influence marriage and the role of actors, both religious and social leaders, in negotiating marriage in a patrimonial social context (pp. 117–143). Next, Fauzi analyzes the relationship between formal actors (*penghulu* or marriage functionaries) and informal actors (*modin*) in Muslim marriage registration (pp. 144–168). Fauzi argues that the KUA, as the state institution responsible for registering Muslim marriages, must maintain its image as a body capable of striking the right balance between marriage, religious tradition, and modern administration.

Chapter 7 focuses on the perpetrators of *nikah sirri* and analyzes their attitudes towards seeking state recognition by registering their marriages with the KUA or obtaining *isbat nikah* (retrospective authentication of marriage) from the religious courts (pp. 169–194). After analyzing the legal norms on marriage, the functioning of the bureaucracy, and people's attitudes towards state recognition of marriage in the local context, in the final chapter Fauzi concludes that Indonesia is experiencing a process of continued penetration of state law into society (pp. 195–210). Although the state has used a citizens' rights approach to control marriage practices, efforts to reduce unofficial interference have been difficult. The practice of registering Muslim marriages still leaves room for informality that can serve to achieve a compromise between people's deep interest in religious law and state law.

The main strength of this book is Fauzi's ability to connect the issue of local people's *nikah sirri* practices with broader debates about Shari'a, the nation-state, and the bureaucratization of marriage. This book has four key findings concerning the reform of marriage law, the bureaucratic reform of marriage registration, changes in social practices in marriage, and the position of the *penghulu* and the legalization of *nikah sirri*. Based on his field research, Fauzi concludes that, instead of reforming the substance of Law No. 1/1974 on Marriage, which has the potential to cause controversy, the state uses the citizens' rights approach to control marriage practices and direct the community to comply with the state's legal framework. Fauzi asserts that recent legal reforms demonstrate the crucial role of the judiciary and civil bureaucracy in implementing legal reform. These findings complement previous studies that suggest family law reform can only succeed through judicial practice (Hoque and Khan 2007; Nurlaelawati 2016) and through the legislature.

Interestingly, the marriage registration bureaucracy reform left a gap for informal actors to continue playing a role at the local government level. The central government had removed them from the state apparatus and assumed that the local government could interact directly with the community without involving informal actors. Nevertheless, informal actors play an effective role in marriage registration, especially in communities that highly respect religious leaders and consider their religious legitimacy more authoritative than formal actors. These data show the competition for authority between formal and informal actors, contradicting Fauzi's main argument. However, he emphasizes that the relationship between the state and religion in Muslim marriage practices is a matter of mutual adjustment. This relationship is supported by local religious authorities who accept state intervention in marriage registration because classical *fiqh* (Islamic jurisprudence) understandings do not prohibit it and due to the rigidity of state law towards certain socially and religiously accepted practices (pp. 195–197). However, these arguments do not apply to marriage registration between interfaith partners. Although the classical understanding of *fiqh* does not absolutely prohibit it, especially for Muslim men,

such marriage registration can only be done through institutional authority and personal autonomy (Nasir 2020).

The focus on local marriage practices, on the one hand, provides a comprehensive and rich insight into the relationship between religious and state law. However, on the other hand, such a focus has implications for limitations in generalizability and broad applicability. This is due to the fact that practices in certain communities are not necessarily the same as in other communities. Moreover, reliance on informal actors in urban communities is often not as strong as in rural communities. In addition, although the book comes with abbreviations, a glossary, and an index, non-Islamic family law readers may have difficulty following some of the more technical terminology used frequently in the book. There are also some minor technical errors in some parts of the book that detract from the excellence of the work. However, readers with a basic knowledge of Islamic family law can still enjoy the book's overall content.

Overall, this book addresses two important elements in studying law and society: law in the books and law in practice. It presents a critical perspective on the relationship between locally-based legal norms and modern legal norms promoted by the state. With in-depth insights and contextual analysis, the book presents strong arguments and makes a valuable contribution to the relationship between religious law and state law in Indonesia. Therefore, this book is highly recommended for academics, researchers, and graduate students focusing on the fields of Islamic family law, law and society, legal anthropology, socio-legal, and Islamic studies.

ORCID

Muhammad Lutfi Hakim  <http://orcid.org/0000-0001-7287-504X>

References

- Black, Ann, Hossein Esmaeili, and Nadirsyah Hosen. 2013. *Modern Perspectives on Islamic Law*. Cheltenham: Elgar.
- Hoque, Ridwanul, and M. D. Morshed Mahmud Khan. 2007. "Judicial Activism and Islamic Family Law: A Socio-Legal Evaluation of Recent Trends in Bangladesh." *Islamic Law and Society* 14 (2): 204–239. <https://doi.org/10.1163/156851907781492511>
- Nasir, Mohamad Abdun. 2020. "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia." *Islam and Christian-Muslim Relations* 31 (2): 131–150. <https://doi.org/10.1080/09596410.2020.1773618>
- Nurlaelawati, Euis. 2016. "The Legal Fate of Indonesian Muslim Women in Court: Divorce and Child Custody." in. Vol. 15 of *Religion, Law and Intolerance in Indonesia*, edited by Timothy Lindsey and Helen Pausacker, 353–368. London: Routledge. <https://doi.org/10.4324/9781315657356-23>
- Platt, Maria. 2017. *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*. 1st ed. New York: Routledge. <https://doi.org/10.4324/9781315178943>
- Scott, Elizabeth S. 2000. "Social Norms and the Legal Regulation of Marriage." *Virginia Law Review* 86 (8): 1901–1970. <https://doi.org/10.2307/1073833>
- Sonneveld, Nadia. 2011. "Rethinking the Difference between Formal and Informal Marriages in Egypt." *Yearbook of Islamic and Middle Eastern Law Online* 15 (1): 53–77. <https://doi.org/10.1163/22112987-90000005>

Abdullah Syamsul Arifin


University Islamic Institute of Kiai Haji Achmad Siddiq, Jember, Jawa Timur, Indonesia

 abdullah@uinkhas.ac.id

Muhammad Fauzinudin Faiz

University Islamic Institute of Kiai Haji Achmad Siddiq, Jember, Jawa Timur, Indonesia

✉ mufaddin@uinkhas.ac.id

Muhammad Lutfi Hakim 

State Islamic Institute of Pontianak, Kalimantan Barat, Indonesia

✉ muhammadrutlihakim@iainptk.ac.id

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