

Chapter 13

Legislating social change in an Islamic society: Indonesia's Marriage Law

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In the mid-1970s, Indonesia, the world's most populous Islamic country, passed its national Law No 1 of 1974 concerning Marriage,² the first legislative revision of the country's marriage and divorce law. Prior to the passage of the law, the marriage and divorce of Indonesia's majority Muslim population was governed exclusively by the unamended rules of Islamic law. Although a statute passed in 1946 required registration of marriages, reconciliations and divorces, prior to 1974 there had been no legislative interference with the substance of Islamic marriage rules.

Among the government's purposes in proposing marriage legislation were limiting arbitrary divorce and polygamy and eliminating or reducing child marriage.³ To accomplish those objectives, the Law restricted a Muslim husband's power unilaterally to repudiate his wife or to take a second wife by requiring judicial approval and statutory grounds for both divorce and polygamy. The Law also required that marriage be based on the consent of the parties, that persons marrying under the age of 21 have parental consent to marry, and it imposed a minimum marriage age of 16 for girls and 19 for boys.

In this chapter, we evaluate the efficacy of the Law in achieving one of its social reform objectives – reducing the frequency of child marriage. As a part of the analysis we examine data from a large demographic survey that shows that statutory minimum age rules have had little, if any, direct effect on the rate of underage marriage by girls. The data show that while there has been a steady decline in the number of girls marrying below the age of 16, the Marriage Law has not had an appreciable effect on that trend. We interpret this 'failure' of the law to affect

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2 The statute and other primary legal materials are on file with the first author. Descriptions of the Marriage Law in English are available in Hanifa (1983: 14) and Soewondo (1977: 284).

3 This goal was stated in paragraph 4 of the official Elucidation to the statute. The Elucidation, which accompanies most legislative enactments, is accorded considerable weight in interpreting the statute. See Damien and Hornick (1972: 492, 528).

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At the same time, however, the capacity of the religious to sustain a worldview that legitimates the traditional pattern of early arranged marriages has been in decline, as documented by the secular decline in age at marriage presented in Figure 13.1. The speculation that flows out of these findings is central to making sense of the potential limited hold of Islam as an institutional force in Indonesia over the long run. Religion, of course, is never autonomous from its context. But technology provides the modern nation state with powerful tools for influencing religious development. Moreover, the ideology of state nationalism, with its assumption of the supremacy of the state's law-making authority, can be used to legitimate the state's effort to expropriate control over Marriage Law. Our findings suggest that while the state cannot directly force a weakening of the hold of the religious, the arsenal of state resources, including marriage age legislation as well as expanding educational opportunities and extensive family-planning efforts, enable the state to undermine and reshape assumptions about appropriate marriage practices grounded in religion.

On the other hand, our analysis demonstrates, once again, that the state exercises its power within definite limits shaped by, among other things, religious commitments. In the case of Indonesian marriage age regulation, Islamic marriage doctrine has not prevented the government from pursuing its social change agenda, but has constrained its choice of strategies. Most significantly, the state has been forced or persuaded to give greater attention to religious bases of authority in exercising its law-making power. The contested terrain of control of Indonesian marriage practice is an area of genuine struggle, with no inevitable victor. Rather, it is an ongoing negotiation, the most significant outcome of which is that both parties are being transformed by the process.

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