

POLYGAMY AND DIVORCE IN INDONESIA: THE NEW MARRIAGE LAW

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SINOPSIS

Undang-undang Perkahwinan yang disetujui dan disahkan oleh Dewan Perwakilan Rakyat Indonesia pada 22 Disember 1973 adalah hasil ikhtiar Indonesia untuk melaraskan tradisi pikiran moden dan ketekunan wanita yang mencari persamaan dalam perkahwinan.

Pada asasnya, Undang-undang Perkawinan ini menentukan bahawa seorang pria hanya boleh mempunyai seorang isteri dan mengizinkan ia beristeri lebih seorang, apabila ia memenuhi syarat-syarat khas atau dalam keadaan-keadaan istimewa. Undang-undang ini adalah satu undang-undang nasional yang meliputi semua orang Indonesia serta agama-agama yang diakui dalam negara itu.

SYNOPSIS

The marriage law which was adopted by the Indonesian Parliament on December 22, 1973 is the product of the Indonesian endeavor to harmonize traditions with modern concepts and of the perseverance of the women who seek equality within the bonds of marriage.

The new law makes marriage monogamous on principle and allows polygamy to be practised under certain conditions or circumstances. It is a national law involving all Indonesians of various religious convictions.

On December 22, 1973 the Indonesian Parliament adopted the first marriage law giving women matrimonial equality with men. December 22 is a symbolic day for the feminists of Indonesia: at the First Women's Congress, held from December 22 to 26, 1928, it had been established as *Hari Ibu* (Mother's Day) in honor of the Indonesian mother and wife. The law, known as *Undang-undang Perkawinan*, officially went into effect on October 1, 1975.

Indonesian feminism is said to have begun with Raden Adjeng Kartini, who was born in 1879 and died in 1904, four days after giving birth to a son. She has become known for her epistolary criticisms of the manner in which Muslim-Javanese women were treated within the traditional societal structure, particularly women of higher birth, as she was herself. Her letters were collected and published in 1911 in Dutch under the title *Door*

Duisternis tot Licht (Through Darkness to Light), later in English translation as *Letters of a Javanese Princess* (1921). Many of her criticisms have to do with the absence of women's rights within the framework of Muslim marriage, for example,

The Mohammedan law allows a man to have four wives at the same time. And though it be a thousand times over no sin according to the Mohammedan law and doctrine. I shall forever call it a sin. I call all things sin which bring misery to a fellow creature. Sin is to cause pain to another, whether man or beast. And can you imagine what hell-pain a woman must suffer when her husband comes home with another—a rival—whom she must recognize as his legal wife? He can torture her to death, mistreat her as he will; if he does not choose to give her back her freedom, then she can whistle to the moon for her rights. Everything for the man, and nothing for the woman, is our law and custom.¹

Since Kartini, much of the Indonesian pre-World War II literature has treated the position of women in this tradition-ridden society. The first Indonesian novel, *Sitti Nurbaya* by Marah Rusli, published in 1922, deals with the troublesome existence of a young girl who is sacrificed by her parents for reasons of indebtedness. The novel shows the injustices of traditional society: Sitti becomes the victim of poisoning by a vicious husband to whom she had been attached against her will.

The three principal works, considered to have the theme of women's emancipation in common, are the novels *Lajar Terkembang* (With Sails Unfurled) by Sutan Takdir Alisjahbana (1936), *Belenggu* (Shackled) by Armys Pane (1940), and *Buiten het Gareel* (Out of Harness) by Suwarsih Djojopuspito (1940).² Takdir Alisjahbana and Armys Pane are both from the Minangkabau; Suwarsih, a woman writer, is from Bandung. Noteworthy is that most of the literature dealing with the women's problem in Indonesia was written by men.

Takdir's novel gives, at some point, a clear indication of the sentiments with respect to the inferior position of the woman in a male-dominated society. One of his characters, Tuti, closely following Kartini, identifies the problem at a meeting of the women's organization she belongs to:

Life for the women in our country is gloomy, very gloomy. Women are not human beings like men, who have thoughts and views of their own and lead a life of their own. Women are merely slaves and servants. They are maids who are expected to work and give birth to baby boys. They are not entitled to property. The highest level a woman can reach is that of a decorative object, a plaything, appreciated while love lasts. But as soon as she loses her beauty, she's thrown out and traded in for someone else.³

1 Raden Adjeng Kartini, *Letters of a Javanese Princess* (Kuala Lumpur: 1976), p. 17.

2 See A. Teeuw, *Modern Indonesian Literature* (The Hague: 1967), pp. 64/5.

3 St. Takdir Alisjahbana, *Lajar Terkembang* (Jakarta: 1972/9), p. 37 (my translation).

It was to be foreseen that a long struggle lay ahead and that it could only meet with success if women formed a common bond. Thus, with the official beginnings of the nationalist movement for independence at the Second Youth Congress in Jakarta on October 28, 1928, the women formed their own movement in order to liberate themselves within the struggle for independence from the Dutch. It took forty-five years before the goal was reached.

With reference to the matrimonial behaviour of married couples, the new law stipulates marriage to be essentially monogamous. In case of a husband wishing to take an additional wife, however, permission of the court is required.⁴ Valid reasons for this permission may be the incapacity of the current wife to carry out her conjugal duties, when bodily injury or incurable illness interferes with the relationship, or in case she is sterile.⁵ In these cases it is up to the judge to decide. If the husband wants to practice polygamy without the reasons just mentioned, he must secure the consent of his current spouse or spouses. Furthermore, proof is required that he will be able to meet his financial responsibilities and, finally, he must guarantee that he will be just to all involved.⁶

The rationale behind this is to reduce the incidences of polygamy and divorce, the latter frequently connected with the former: often men simply divorce their wives in order to marry someone else. According to a report in *Tempo* of May 15, 1976, the law has shown to have had some beneficial effect in some parts of Indonesia since the date of its being put into effect.⁷

It may be argued that there is nothing new about this law, since such regulations are known to have existed for some time in several other Muslim countries and that it basically does not constitute a major change from what was already there to begin with. This law, it could be said, merely stipulates conditions under which polygamy may be practiced, the only difference being that before these were lacking. Hence, rather than being progressive, it only legalizes an already existing situation.

This seems to be the implication of a United Press report which refers to the event under the caption "Indonesian Parliament Legalizes Polygamy," calling the new law a "major political victory for the Muslim traditionalist majority."⁸ In Indonesia, however, certain things or events are often not what they seem or do not seem what one might think they are. Considering that a scholarly question has long been whether such a majority exists, particularly in Java, the juxtaposition of the adjective

4 *Undang-Undang Perkawinan di Indonesia* (Jakarta: 1976), I:3, p. 7.

5 *Ibid.*, I:4, p. 7.

6 *Ibid.*, I:5, p. 7.

7 "Hati-hati: Jangan Anda 'Kawin Liar.'" In: *Tempo*, May 15, 1976, (Jakarta) pp. 48—53.

8 This report appeared in the *Seattle Post-Intelligencer* on January 6, 1974, Lark Edition, p. A6.

'traditionalist' and the noun 'majority' is ambiguous.⁹ In this context it is also appropriate to qualify the phrase 'other Muslim countries,' used in the preceding paragraph. Strictly speaking, Indonesia is not a Muslim country, if we consider that Islam is not the state religion, as is the case, for example, in Malaysia. This has undoubtedly played a role in the drafting of the law, which not only shows a modernist view of the Scriptures, but has moreover a partly secular appearance, as any decision made by a religious judge must be approved by a general judge.¹⁰ Hence, it is the work of modernists rather than of what United Press reported as traditionalists.

To stay with our Malaysian example, efforts are presently being made there "towards a uniform Muslim family law," according to a report in the *New Sunday Times* of June 15, 1975. The Sultan of Trengganu, as the representative of the Malay Rulers, approved a draft proposal in May 1975, "recommending tougher laws on Muslim marriage, divorce, polygamy, and maintenance." As for polygamy, the main aspiration is "fairness," which implies that the husband "should have the permission of the Kadi's Court. The Kadi should make a decision after investigations have been carried out as to whether a second marriage is necessary. The question of the husband's ability to provide adequately and fairly should also be taken into consideration."¹¹ The Malaysian law, being exclusively a Muslim law, is not to include other religious groups.

Polygamy was already common in the Southeast Asian area long before Islam began its spread in the fourteenth century and imposed its own brand of polygamy on family life. Nevertheless, while Islamic polygamy was different from the kind it replaced, it could, for various cultural and social reasons, not be the same as the original institution. Muhammad advised that the survivors of the religious wars marry the widows of those killed on the battlefield and gave the example by marrying twelve women, seven of whom were widows.¹² Later he restricted to four the number

9 Though the majority of Javanese are statistically known as Muslims, their absorption of foreign cultures has resulted in a 'blend' in which Islam as one of the cultural-religious elements plays its role along with adat customs, Hindu-Buddhist elements, Western influences, etc. See in this context: J.C. Van Leur, *Indonesian Trade and Society* (The Hague: 1955), p. 95, where he says, "The sheen of the world religions and foreign cultural forms is a thin and flaking glaze; underneath it the whole of the old indigenous forms has continued to exist." Van Leur seems to believe that the cultural layers which accumulated in time on and over the original indigenous Javanese culture have never been able to diminish its importance; as a result it still plays the principal role in society.

10 *UUP*, XII: 63 (2), p. 22.

11 "Towards a Uniform Muslim Family Law." In: *New Sunday Times*, May 15, 1975 (Kuala Lumpur), p. 10.

12 Mohammed Marmaduke Pickthall says in *The Meaning of the Glorious Koran* (New York: ?), p. 301: "With the exception of 'Ayesah, the daughter of his closest friend, Abu Bakr, whom he married at her father's request when she was still a child, all his later marriages were with widows whose state was pitiable for one reason or

of wives allowed. This early form of polygamy was meant as a type of social security for the protection of unsupported women in Arabia, but was irrelevant as such in Southeast Asia. Particularly in Java, women generally held a prominent position both inside and outside the house, and this situation remained much the same when Islam came on to the Indonesian scene.

Under Islamic influence the concept of polygamy developed into a would-be social institution which was thought to take care of the excess of women in society, while at the same time it was said to prevent prostitution. This argument is still used by a good many opposed to the abolition of polygamy. Those who counter-argue say, not without justification, that there is no longer any validity in this claim and that polygamy is merely for the benefit of the men, who view women as sexual objects. The reaction to this is generally that since polygamy is a divine institution, man is not allowed to change it. But, so go the arguments against that, polygamy with its inherently male privilege of repudiation and divorce, frequently arbitrarily exercised, was, and still is, misused to serve the egotistical purposes of men. It is degrading to women (though sometimes welcomed) and, rather than preventing prostitution, enhances it when the former wife or wives are neglected and must support themselves and their children by resorting to prostitution or concubinage.¹³

Whatever the arguments, polygamy has always been, by divine right, unilaterally in the hands of the men, who are said to have been endowed with a better psychological and physiological stability than women and are therefore responsible for them. However, men have not shown that they can handle this responsibility. While they have made full use of their exclusive privileges, women have had no rights to speak of. Usually, "when she is thrown out and traded in for someone else," to quote Takdir once more, her situation is likely to be deplorable, if she does not have any resources to fall back on. Some statistics quoted later reveal how many women are victimized by their ex-husbands' irresponsibility and how great the indifference is with regard to them as fellow human beings.

In both the Koran and the Hadith we could find references that may suppose the lower status of women, but it largely depends on our interpretation of how low this status is and whether we wish to infer from them that men are superior. The Pakistani religious leader and scholar Mau-

another." Bint al-Shati in *The Wives of the Prophet* (Lahore: 1971) gives seven widows, three single women, and two divorcees. I have kept to Bint al-Shati's account.

13 See "The Ugly Facts" in: *New Straits Times*, June 17, 1975, p. 10: "Is it any wonder if a woman, who is deprived of all financial support, sells the only marketable commodity she possesses: herself? Is it any puzzle that the escalating numbers of broken homes have been reflected in the statistics on juvenile delinquency?" See also a report in *Mingguan Malaysia*, April 13, 1975, p. 8: "Ada perempuan memang sanggup bermadu..." a case history of five divorcees attached to married men without 'polygamous ties.'

lana Maududi 'proves' the physical and mental inferiority of women in a book, called *Purdah*, attributing it to their bodily structure, physiological processes, and reproductive functions. This book was first published in 1949 and went through its twelfth edition in 1967: an indication of its popularity.

Mid-1968 I was the guest of a lawyer in Lahore who talked about the biological differences between men and women. These differences, he alleged, were in favour of the men, making women inadequate for typically male professions. It was impossible for him to think of women as doctors or engineers, since their mental and biological make-up was not suited for the things men could do. There was an unmistakable connection between Maududi's 'proofs' and what this lawyer believed about male-female relationships. He was equally concerned about Western mores which, he thought, were objectionable, particularly in relation to allowing women too much freedom, for instance, at Western style dances entailing the danger of sexual stimulation. There are many Westerners who would agree with this lawyer.

Traditionally, attitudes toward sex are not positive, whether that be in Islam or Christianity, particularly when applied to women. The negative emphasis on sexual behaviour often distracts from the more pressing problems that result from polygamy and divorce, and women bear in one way or another the brunt of this negativism. In Malaysia this means that as yet they have no guarantee that their husbands will pay them alimony after divorcing them. Another side of it is that women are often considered the cause for immorality.¹⁵ It would require a total change in social and mental attitudes on the part of both men and women to begin considering sex as a positive ingredient of human life.

In 1975, the International Women's Year, it was appropriate for men to say reassuring things to and about women. Thus, Ashley Montagu contributes his own stating that women are superior to men: constitutionally, because they bear and nurture children: biologically, because they have two X-chromosomes. Women are besides more intellectual be-

14 Mashar Ul Haq Khan in *Purdah and Polygamy* (Peshawar: 1972) attacks Maududi on his conservative views which advocate the perpetuation of an 'unhealthy tradition in the Pakistani middle- and upper classes.'

15 In a report, entitled "It's Hitting Below the Belt, say Johore WI," the *Malay Mail* of June 14, 1976, p. 5, wrote that one Haji Jalok Daing Malibok had proposed in the Johore State Assembly that "women wear chastity belts as a prevention against female 'immorality'" against which the Women's Institute (WI) protested vehemently. Another report informs us that in the same State the head of the State Religious Department had said, "Muslim women have no need for the Western-style women's liberation movement; Islam already holds them in high respect" and: "Some Muslim women here were screaming for liberation, knowing all the time that the Islamic faith had given them liberation and freedom. In: "New Straits Times, June 7, 1975, p. 6: "Islam 'Has All the Lib that Women Need.'"

cause of their everyday experiences, which differ from those of most men.¹⁶ Montagu's statements are as one-sided as Maududi's and have as little validity. Different experiences—an ambiguous term as it is—do not give a higher intellectuality, nor does the latter make you a superior being. By the same token it does not make women inferior to have physiological processes and reproductive functions that are different from those of men, as Maududi claims. The concept of equality on the basis of being human, whether woman or man, would be more rational than claiming one sex to be superior to the other on either biological or psychological differences.

Women do not always come out the worse, however, dependent on how they relate marriage to their own interests. This may cause frustration and resentment on the part of other women, who happen to become involved. A point in case is the marriage of the father of a Javanese woman, called Fatima. Fatima's father had taken an additional wife at an already advanced age. According to Fatima, this woman had lured him into marrying her to be set up with a house and money. At the old man's death she was indeed left with that and, in addition, three children. She (the second wife) once hired a *dukun**, Fatima said, to cast an evil spell on the first family with black magic, whereupon Fatima's mother had to hire another *dukun* to neutralize the effect with white magic.

This tale from Java illustrates not only how tense things can get when the man of the house spends his time with another wife, but also that certain women benefit by the system. Fatima, who was divorced at the time (1972), had decided never to remarry, but had been under considerable pressure from sisters and aunts who insisted that she choose a husband. To reinforce this pressure, they dropped names of high-ranking military men and other well-to-do individuals. This rather embittered Fatima, who withdrew completely from her relatives. Thus it appears that the position of a single woman, whether pre- or postmarital, is hard to maintain in a society where traditions and progress are often indistinguishable one from the other.

There will always be such factors as relatives pressuring a woman to get married, as was the case with Fatima, and prostitution won't disappear just because there is a marriage law. Nor will polygamy vanish, if a man wants to practice it and he forces his wife to give her consent. But now, this wife can go to court for the injustice done to her and get a divorce, if she wants, independent of the consent of her husband. It cannot be denied, therefore, that this new Indonesian marriage law is no minor achievement.

16 "No Need for Equality—Women are Superior." In: *New Sunday Times*, April 20, 1975, p. 8.

*Medicine man, healer, sorcerer. The Malaysian equivalent is *bomoh*.

The struggle for emancipation is essentially an effort on the part of women "not to exist in society as slaves and servants, but as human beings who are equal to men," as Takdir's Tuti has it.¹⁷ This implies the acquisition of the same divorce rights as men. During the pre-marriage law era in Indonesia all the power issuing from the marriage contract was in the hands of the husband, whose only duty was to report to the religious official that he had divorced his wife. Often this was neglected. Her only protection came from the so-termed 'talik-at-talak' contract, if she insisted on it before the wedding. If the husband-to-be accepted its terms, he bound himself to grant his future wife a divorce, should he not come up to his obligations. The new marriage law allows women the right to request a divorce directly from the court.¹⁸

It is to be noted that the 'talik' aspect is proposed to be preserved in the Malaysian family law to "include clauses which will better safeguard the wife's rights."¹⁹ There is no mention of allowing wives the right to divorce their husbands, though in some states, according to another report, women may ask for a divorce, "and if the husband consents, the divorce is registered."²⁰ In the Malaysian proposal it says that "wives should report to the Kadi if their husbands divorce them outside the court."²¹ In Perak the 'talak' divorce has been illegal since 1965, "aimed at cutting down the number of divorces among Muslim couples in the State."²² The draft proposal also touches on maintenance for divorced women, following statistical information concerning the support situation in some states. In Kelantan, for example, of the 4325 divorcees in 1974 only 107 received financial support.²³

Going by these figures, there seems a pressing need for reform. In Marina Yusoff's observation that "in the case of divorce women do not ask for equality or social status. All they demand is that the father of her (sic:) children bear his part of the burden and contribute towards maintenance,"²⁴

17 *Lajar Berkembang*, p. 43 (my transl.).

18 *UUP*, IV:23b, 25, pp. 12/13.

19 See 11. Put more appropriately: a law for Malays and other Muslims.

20 "Know Where You Stand." In: *New Straits Times*, May 13, 1975, p. 8.

21 See 11.

22 "A Reminder on Muslim Divorces in Perak." In: *New Straits Times*, December 1, 1976, p. 19.

23 See 11. The figures reported for 1974 are as follows:

	Marriages	Divorces	Maintenance	%
Kelantan:	8509	4325	107	2.2
Kedah:	4662	1751		4.6
Selangor:		754	135	18

These figures were compiled by the Welfare Services Ministry. No responsibility is assumed for errors and omissions.

24 "Looking Back at Women's Progress in Malaysia." In: *New Sunday Times*, April 20, 1975, p. 16. (In 1975 Marina Yusoff was Wanita UMNO deputy leader).

the demand may not be pressing enough. If one is to believe an editorial in the *New Straits Times* of April 25, 1975, "reform of the marriage law is a struggle . . . against the apathy of the women it would benefit." It ends: "It is quite senseless to talk of equal rights for women, the end of discrimination, when they refuse what the men offer."²⁵ There could be a connection between the apathy of women and what the men have to offer. Equality may have been achieved in almost every other aspect of life, but as long as "women must understand that polygamy is a must in Islam,"²⁶ they may well feel that the proposed reforms will not actually benefit them.

Indonesia has shown that polygamy is not a must. Marriages are now monogamous on principle, and when a divorce is desired, it may be initiated by either husband or wife, or both. The request must be submitted to the court, upon which a court council will attempt to reconcile the couple before the divorce is pronounced. The 'talak' divorce, often given without good reason, has thus become a thing of the past. Most important, however, is the provision that the court can impose on the husband to contribute financially to the survival of his ex-wife and children.²⁷

The law also includes the other religious groups in the country and takes into account the various adat laws. From that point of view it is in line with what an Inspector of Religious Affairs in Jakarta referred to as "the Indonesian endeavour to harmonize traditional and religious concepts with the modern views of the twentieth century." As such it is a typically Indonesian law, because it reflects the national motto: Unity in Diversity.

To the western observer it may seem that nothing has changed, and he may well wonder how this law can give rights to women. But the mere fact that a law exists, laying down the rights and duties of men and women in married situations, constitutes the difference between legal protection and not having any protection at all. The "legalization of polygamy," as it was called by United Press, is in actuality the legalization of monogamy in combination with polygamy, allowed only under certain conditions or circumstances. For the modernists the ideal in Islamic marriage is monogamy, while polygamy is a concession to human nature, to be limited as much as possible.

The new law reflects the position of the modernists, standing somewhere between the traditionalists whose belief is based on the doctrines of medieval scholars and who claim that polygamy is founded on divine revelations, therefore inalterable, and the radicals who want equality on a

25 "Women's Rights." In: *New Straits Times*, April 25, 1975, p. 10.

26 "Suami isteri sama-sama tandatangan borang khas di depan Kadi." In: *Utusan Malaysia*, May 22, 1975, p. 8. (Mr. Othman Abdullah, Senator (Selangor)).

27 *UUP*, VIII: 41c, p. 17.

secular basis and unconditional abolition of polygamy, which they view as prostitution in disguise. The modernist approach to the problems of marriage, divorce, and polygamy goes farther back than the Tradition, involving the re-examination of the Scriptures.²⁸ Contradictorily, this is what makes the new marriage law progressive and modern.

In the end it has been the perseverance of a certain group of women, desirous to free themselves from the pernicious consequences that traditional marriage bonds could have in store for them, which has won them this round in their forty-five year old battle for equality. With this law, unwilling husbands may be hard-put to leave their wives financially helpless or, worse, reduce them to prostitution. To a degree, this marriage law is the realization of the aspirations of women like Takdir's Tuti, whose conclusion to her speech can be summarized in these words: "No longer will it be possible to lock a woman inside the house, and marriage is no longer the only purpose of her life. Since she does not like to do things against her feelings, she won't even marry, if this means that she has to give up her rights as an individual. In short, she is fully human and one hundred per cent free in all matters."²⁹

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28 See Clifford Geertz, *Islam Observed* (New Haven: 1968), p. 88: "Scripturalism seems likely to remain in the position of cheering on a modernism whose every advance undermine its own position. Or perhaps a reaction will set in, and the powerful antimodern forces which are also contained in scripturalism, the fundamentalist side of it, come to the fore." This more or less confirms that modernists, aside from processing a wide variety of opinions within their own group, are not as modern as the name might imply and not as traditional as the traditionalists. It could be argued that they must be seen as the group in search of a new meaning to Islam, fitting it in with their interest in modern development and its conveniences.

29 *Lajar Berkembang*, p. 43 (my transl.).

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