

A STUDY OF THE DISSOLUTION OF MARRIAGE

AMONG JAVANESE MUSLIMS

A Thesis Submitted for the Degree of

Master of Arts

The Australian National University

By

Hisako Nakamura

April 1981

This thesis is my own work and all sources used
have been properly acknowledged.

Hisako Nakamura

He is not "versed in the Dhamma" merely because he speaks much. He who hears little and sees the Truth mentally is, indeed, "versed in the Dhamma". He is not heedless of the Dhamma. (Dhammapada 259)

ACKNOWLEDGEMENTS

This thesis is a result of nineteen months of fieldwork carried out with my husband, Mitsuo Nakamura, between October 1970 and April 1972. Mitsuo's research was supported by a grant from the London-Cornell Project of Cornell University, financed by the Carnegie Corporation of New York. As his wife, my stay and travel expenses to and from Indonesia were paid for by that Project. I am very grateful to the Project for the opportunity to accompany my husband to the field and carry out my own research.

I also would like to express my deep appreciation to the Southeast Asia Program of Cornell University which granted my request for a scholarship to learn Bahasa Indonesia in the summer of 1968. The basis for this request was that an anthropologist's wife needs knowledge of the language of the people among whom her husband is working. Without this language training, my own fieldwork would have been impossible. I also thank Professor Robert J. Smith of Cornell University for his kind and timely suggestion to conduct my own research while I was with my husband in Indonesia.

In Indonesia the research was made possible by the very kind permission of Bapak Sowabi (Acting Chief of the Regional Office of Religious Affairs, The Special Region of Yogyakarta, Department of Religion), who allowed me to engage in field research on the dissolution of marriage among Javanese Muslims in the capacity of an assistant to my husband. Without his help my research could not have been undertaken within the limited time of my stay in the field. I am also grateful for the cooperation of the Offices of

Religious Affairs (KUA in MPP Kotagede, Kotagede I, and Kotagede II) and the Bodies for Marriage Counselling and Divorce Settlements (BP4) in Kemantren Kotagede and Umbulharjo of the City of Yogyakarta. Mr. Yoshitaka Masuko, a reporter from the Japanese newspaper Asahi, who was undergoing language training in Yogyakarta then, was helpful to me in collecting information from BP4. Thanks must also go to five local assistants who worked with Mitsuo and me: they are Muhadjir Darwin, Effa Djumairy, Dahrowy Hasjim, Wahzary Wardoyo and Yusron Asrofie.

During my study in the Department of Prehistory and Anthropology at The Australian National University (ANU), I have been under the considerate guidance of Professor Anthony Forge, who encouraged me to conduct my research using an interdisciplinary approach. Without the help of a number of people in various departments of ANU, I would never been able to develop this thesis. My sincere thanks go to Professor Anthony Johns (Indonesian Languages and Literatures), Professor John Barnes (Visiting Professor in Sociology), Dr. Barbara Andaya (Southeast Asian History), Dr. Virginia Matheson (Southeast Asian History), Dr. M. Ansori Nawawi (Political and Social Change), and Dr. Valerie Hull (Demography). In my department, Dr. Kirk Endicott was most helpful. Since the time when he chaired the thesis writing seminar in which I presented earlier versions of this thesis, he kindly read all the subsequent drafts and gave me many useful comments and encouragement. I also thank the participants of this seminar, all graduate students of my department and of the Department of Anthropology in the Research School of Pacific Studies, who shared

the common suffering and joy of writing a thesis. Among them, I owe special thanks to Larry Cromwell for his help in improving the style of my English and to Zam Dhofier for his assistance in advancing my knowledge of Islamic law.

To my supervisors, Dr. Margo Lyon and Dr. Graham Harrison, I would like to express my gratitude for their guidance. Dr. Lyon gave me much freedom to develop my own thinking and tolerated a major change in my thesis research. Dr. Harrison taught me how to use the computer for social science research although not much of my statistical analyses is presented in this thesis due to the change in my research focus. I also would like to thank the Data Processing Unit, the Computer Services Centre, and the Communication and Study Skills Unit of ANU for their help. Especially, I am grateful to Mrs. Brigid Ballard in the last unit for her genuine assistance in improving my skills for thesis writing. Her help has been most useful in converting my ideas into clear English. Furthermore, I would like to thank the Department of Anthropology, Human Geography and Linguistics, Research School of Pacific Studies, ANU, for having made their facilities and resources accessible to me. My special thanks go to Ms. Judith Wilson and Ms. Lois Carrington for their help in English editing, Ms. Henny Fokker-Bakker in Dutch translation, and Dr. Jacques Guy for the use of the computer terminals in his office.

Indeed, there are still many other people who have contributed to my thesis research in various ways at various points of time. I can only mention some of their names to express my appreciation for

their support and encouragement: Alice Cook, Joan and David Ecklein, Herb Feith, George Goldberg, Barbara Harvey, Eleanor Jordan, Audrey and George Kahin, Yukiko Masuko, Marjanne and Horton Murray, Jane Peace, Ken Pickering, Judith Reppy, Kay Sweeting, Bapak and Ibu R.M.S. Tjokrodiprodjo, Kazuko Tsurumi, Rozy and Glenn Vladimer, and Bapak and Ibu Haji Zubair Muchsin.

I would like to conclude my acknowledgements with my appreciation for the help of my family. My parents and parents-in-law have given me continuous encouragement and substantial help all through my study for this thesis. My children, Yuko, Taro, and Jiro, have also been helpful in letting me concentrate on the thesis research. Moreover, at the final stage of thesis writing, Yuko helped me in the preparation of the manuscript and Taro in drawing maps. Finally, my heartfelt thanks go to my husband, Mitsuo. He has been the closest teacher, supervisor, informant, assistant, and companion of mine from the beginning to the very end of this study besides being a sympathetic husband. I am very grateful for him and proud to present this thesis as a fruit of his tutelage.

Despite all these acknowledgements of the help of others, it should be clear that I alone am responsible for all the errors of fact and interpretation which can still be found in this thesis. I sincerely hope the reader will be kind enough to enlighten me on these mistakes.

A NOTE ON THE SPELLING OF FOREIGN WORDS

The spelling of Indonesian and Javanese words in this thesis follows the current official orthographies, adopted by the Indonesian government in 1972 and 1974 respectively. However, exceptions have been made in the case of some personal names and titles of books which retain their original spelling or follow the practice of the persons concerned. The spelling of words of Arabic origin has been problematic: in order to give consistency, I have followed their Indonesian transliterations employed in Junus (1956) and adapted them to the new orthography. I have appended at the end of this thesis a glossary listing a number of variant Indonesian spellings of Arabic words together with standard English transliterations as adopted in the Shorter Encyclopaedia of Islam.

A NOTE ON THE QUOTATIONS FROM THE QUR'AN

For the sake of economy, verses in the Qur'an are mostly referred to only by the two Arabic numerals in parenthese, the first referring to the number of the chapter (surah), and the second referring to the number of the verse, e.g. (2:23). The numbering of the Qura'nic verses in this thesis follows the Egyptian edition. I have quoted from Bell (1937) for the English rendering of a small number of the verses from the Qur'an.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

Chapter I: INTRODUCTION

- I-1 Circumstances of the Fieldwork
- I-2 Developments in Thesis Research
- I-3 The Framework
- I-4 The Structure of the Thesis

-----1

Chapter II: THE RESEARCH AREA

- II-0 Introduction
- II-1 The Geographical Boundaries of the Research Area
- II-2 Kotagede
- II-2-1 Population
- II-2-2 Land Use
- II-2-3 Occupational Composition
- II-2-4 Religious Affiliation
- II-3 Summary

-----19

Chapter III: THE DISSOLUTION OF MARRIAGE IN ISLAMIC LAW

- III-0 Introduction
- III-1 Marriage in Islamic Law
- III-2 The Dissolution of Marriage in Islamic Law
- III-2-1 The Concept of Divorce in Islamic Law
- III-2-2 The Right to Dissolve Marriage
- III-2-3 Procedures to Dissolve Marriage
- III-2-3-1 Talak
- III-2-3-2 Talik-Talak
- III-2-3-3 Khuluk
- III-2-3-4 Talak or Khuluk through Syiqaq
- III-2-3-5 Fasakh
- III-3 Conclusion

-----35

Chapter IV: PROCEDURES FOR DISSOLVING MARRIAGE IN KOTAGEDE

- IV-1 Procedures to Dissolve Marriage
- IV-2 BP4 (Body for Marriage Counselling and Divorce Settlements)
- IV-2-1 Kotagede BP4 and its Board Members
- IV-2-2 'Aisiyah and BP4
- IV-2-3 Counselling on the Dissolution of Marriage
- IV-3-1 KUA (Office of Religious Affairs)
- IV-3-2 KUA in Kotagede
- IV-4 PA (Islamic Religious Court)
- IV-5 Conclusion

-----56

Chapter V: AN ANALYSIS OF OFFICIAL RECORDS OF DISSOLUTION
OF MARRIAGE IN KOTAGEDE

-----86

- V-0 Introduction
- V-1 Divorce Registration Book (Buku Pendaftaran Talak)
- V-1-1 Form and Contents of the Divorce Registration Book
- V-1-2 An Analysis of the Divorce Registration Book
- V-1-2-1 The Petitioner
- V-1-2-2 The Settlement
- V-1-2-3 Reasons for Dissolving Marriage
- V-1-2-4 The Consummation
- V-1-2-5 Physical Condition of the Wife
- V-1-2-6 Possibility of the Revocation of Divorce
- V-2 Record of Decisions (Surat Keputusan)
- V-2-1 Form and Contents of the Record of Decisions
- V-2-2 An Analysis of the Record of Decisions
- V-2-2-1 The Plaintiff and her Statement
- V-2-2-2 The Defendant and his Statement
- V-2-2-3 The Decision

Chapter VI: DIVORCE COUNSELLINGS AT BP4

-----110

- VI-0 Introduction
- VI-1 The Nature of BP4 Counselling
- VI-2 Records of Counselling Sessions
- VI-3 An Analysis of Counselling Records
- VI-3-1 Divorce for Remarriage
- VI-3-2 Reasons for Divorce
- VI-3-3 Central Values: Happiness and Sincerity
- VI-3-3-1 The Case of Bambang and Yanti: A Summary
- VI-3-3-2 The Case of Bambang and Yanti: An Analysis
- VI-3-4 Marital Obligations and Rights
- VI-3-4-1 The Case of Tomo and Inem: A Summary
- VI-3-4-2 The Case of Tomo and Inem: An Analysis

Chapter VII: DISCUSSION

-----136

- VII-0 Introduction
- VII-1 Misunderstanding of Islamic Law
- VII-1-1 Conditions under Which the Dissolution of Marriage
Is Permitted
- VII-1-2 Right to Dissolve the Marriage
- VII-1-3 Ways of the Dissolution of Marriage
- VII-2 Misperception of the Reality
- VII-2-1 At Administrative Level
- VII-2-2 At Institutional Level
- VII-2-2 At Social Level
- VII-2-3 At Personal Level

Chapter VIII: CONCLUSION

-----159

APPENDIX

-----163

- A. Thesis Research Proposal: A Study on Javanese Divorce
- B. Naskah Penasehatan
- C. Buku Pendaftaran Talak
- D. Surat Keputusan

BIBLIOGRAPHY

-----171

GLOSSARY

-----181

LIST OF TABLES

Table	Page
II-1. Distribution of <u>Rukun Kampong</u> and <u>Kalurahan</u> in Kotagede	24
II-2. Birth Place of Residents in MPP Kotagede	26
II-3. Land Use in Kalurahan Jagalan	27
II-4. Land Use and Ownership in Kalurahan Baturetno	28
II-5. Occupational Composition of Household Heads	30
II-6. Religious Affiliation of Residents in MPP Kotagede in 1968 and 1977	32
III-1. Procedures to Dissolve the Marriage in Islamic Law	54
IV-1. The BP4 Members in MPP Kotagede	62
V-1. <u>Talak</u> by Year and KUA	88
V-2. <u>Talak</u> by Categories of Petitioner	90
V-3. The Party Who is Responsible for the <u>Talak</u>	91
V-4. <u>Talak</u> by the Payment of ' <u>Iwadi</u>	93
V-5. Cross-Tabulation Between the Responsible Party(A) and the Petitioner(B) of the Dissolution of Marriage	94
V-6. Divorce Reasons Documented in the <u>Divorce Registration Book</u>	99
V-7. The State of Consummation	101
V-8. <u>Talak</u> by the State of Physical Condition of the Wife	101
V-9. <u>Talak</u> by the Possibility of Revoking the Divorce	102
V-10. <u>Rapak</u> Frequency by Year	104
V-11. <u>Rapak</u> Frequency Compared with that of <u>Talak</u> by Year	105
V-12. Frequency of Kinds of Offences	107
V-13. <u>Rapak</u> by the Statement of the Defendant	108
VI-1. Cross-Tabulation Between the Petitioner of Divorce(A) and the Party Who is Going to Remarry(B)	114

LIST OF ILLUSTRATIONS

Map	Page
II-1. The Special Region of Yogyakarta	20
II-2. Kotagede	20
II-3. Kotagede Kota vs. Kotagede Desa	23

CHAPTER I

INTRODUCTION

The thesis of this study is that the dissolution of marriage among Javanese Muslims in the area I investigated is governed by Islam in a number of ways. First, Islam is the source of law which regulates divorce. Second, Islamic divorce law is administrated by the religious officialdom. Third, socially, Islamic teachings which provide the bases for divorce law are actualized by religious teachers and leaders. Fourth, the personal conduct of the divorcing parties accords with Islamic teachings.

The following study is based largely on data collected during my stay in the small town of Kotagede, Yogyakarta, (October 1970-April 1972) supplemented by library research at the Australian National University (January 1979-August 1980).

In this introduction I shall make preliminary remarks on my study in relation to (1) the circumstances of the fieldwork, (2) some developments in cognate thesis research, (3) the framework, and (4) the structure of the thesis. Though unorthodox, this rather personal and biographical tenor is warranted by its direct relevance to the framework (and content) of my study.

I-1 Circumstances of the Field Work

In October 1970 I arrived in the town of Kotagede, Yogyakarta, Central Java, Indonesia with my husband, Mitsuo, who was to undertake fieldwork for a Ph.D. in anthropology at Cornell University. Shortly before our departure for Java one of Mitsuo's advisors, Robert J. Smith, asked me if I would be continuing my own degree work in the future. If so, Professor Smith suggested that I plan to conduct my own field research in Java.

His suggestion surprised me. Though I was planning on resuming my studies as soon as the children were old enough, I was not a student at the time, and my original anthropological experience had not been on Java but on the Southwestern Islands of Japan. (I had written my B.A. thesis at Tokyo University on the social organization of Kikai, one of the Southwestern Islands.) I had come to the United States in order to work with (the late) Professor Douglas Haring of Syracuse University, one of the few specialists on that area. My hopes, at the time of my conversation with Professor Smith, were to return someday to the Southern Islands. And I had no intention whatsoever of pursuing a specialist interest in Java.

Professor Smith's advice was based on his appreciation of the financial prospect of American universities including Cornell University. He emphasized that the University budget was getting tighter every year. He warned that it might be very hard to obtain financial assistance from the University even if I was accepted to graduate school and he thought that I should make use of any

opportunity for fieldwork. His suggestion made me think seriously about the need for doing my own research in Java while I accompanied my husband there. But I was not certain yet what to study in the field at the time of our arrival in the town of Kotagede.

The particular situation in which I had found myself, as described above, limited the range of possible research topics and the choice of methods. I had to conduct my field research without having proper pre-field training. I had had no appropriate preparation through course work, language training, or library research. Participant observation was hardly possible because of my lack of relevant language skills. Communication among the local people was conducted almost entirely in Javanese, of which I understood only a little. My command of the national language, Bahasa Indonesia, which I had studied for a summer at Cornell, was adequate for minimal daily conversation but not much help in eliciting complicated responses from Kotagede people, especially from the aged and women.

Within these limitations, I searched for a suitable topic for my own field research for some time. Indeed, I almost gave up the idea of doing my own research because the above-mentioned difficulties seemed impossible to overcome. It seemed more reasonable that I should rather concentrate on assisting my husband. So, besides running the household, I gave him some technical assistance drawing maps, collecting and charting genealogical information, and performing preliminary analyses on household census data which we collected. I also assisted him in copying local

government statistics, statistics which included data on marriage, divorce, and reconciliation. These figures had been recorded in the local offices of the Department of Religion.

It was these statistics on marriage, divorce, and reconciliation, which caught my eye and began to reinterest me in doing my own research. The Kotagede divorce rates seemed conspicuously low compared to some of the rates known for other regions of Java. For example, compared to the divorce rate of 52 per cent reported by Hildred Geertz for 'Mojokuto' (a fictitious name) in 1954 (H. Geertz 1961:69), the Kotagede rate for 1971 was only 16 per cent.⁽¹⁾ I began to wonder why divorce should be so much less frequent here than elsewhere.

Kotagede was known as an old capital of the Mataram Kingdom, a local centre of commerce and industry, and a town where an Islamic movement (Muhammadiyah) was very active. These features of the town might have something to do with the low divorce rates there. Then, through other information I had collected, I learned that divorce was extremely infrequent among the descendants of one of the founders of the local branch of Muhammadiyah. Might these two pieces of information suggest that Islamic teaching was one of the factors which influenced the frequency of divorce?

With my inadequate command of the local language, however, it was impossible for me to explore this question. This would have required a study of the religious values held by the local people

(1) Both rates are calculated according to the standardized way of the Department of Region: $\frac{\text{number of divorces (talak)}}{(\text{number of marriages (nikah)} + \text{number of reconciliations (rujuk)})} \times 100$.

and my language skills were not up to handling such delicate matters as religion. Yet the question intrigued me. Consequently in order to develop a base from which to tackle the problem, I set out to collect local government figures on divorce. Although this required a competence in comprehensive and exhaustive data-gathering, it required only a working knowledge of Bahasa Indonesia. So I began to spend more and more time scouring government records for statistics on marriage and divorce, and to spend time copying official documents, recording counselling sessions, and to interview local officials and leaders.

I realized that divorces were recorded in two different offices, the Office of Religious Affairs and the Islamic Court. The Department of Religion administers both offices, but statistics on divorce compiled and published by the Department covered only those recorded in the Office of Religious Affairs. For example, the above-mentioned divorce rates of 16 per cent in MPP Kotagede and 52 per cent in 'Mojokuto' were calculated only on the basis of the records of the respective Offices of Religious Affairs and therefore did not represent the divorce rates comprehensively. Recognizing this systematic deficiency in the government statistics (as well as in scholarly work on the subject of divorce in Indonesia thus far published), I began to research the documents of the Islamic Court.

I also designed and, with the assistance of four local students, I conducted a small survey in Kotagede on marital history. The survey was designed to check how many couples had terminated their marriages within 5 and 10 years after marriage. I surveyed

all the couples who had registered their marriages in the Office of Religious Affairs of Kotagede in 1960 (165 couples) and 1965 (136 couples), following their marital histories up to 1970 with a schedule of questionnaires and personal interviews conducted by my assistants.

The kinds of data I thus collected through fieldwork are as follows:

- A. Annual government statistics of registered marriages and divorces at regional and local (Yogyakarta and Kotagede) level over the period of 1964-1971;
- B. Registrations for marriage, divorce, and reconciliation in Kotagede in 1960 and for the period of 1964-71;
- C. Observations and recordings of divorce counselling sessions given by Muslim women advisers at a marriage counselling office;
- D. Interviews with local officials of the Office of Religious Affairs and women religious leaders on marriage and divorce;
- E. Records of decisions by the Islamic Court of Yogyakarta concerning disputed marriages and divorces in Kotagede for the period of 1964-1971; and
- F. Survey of marital history.

I did a preliminary analysis of these official statistics while I was still in Kotagede (1972). One result of this analysis suggested a correlation between localities with certain social characteristics and the frequency of divorce. There seemed to be a tendency toward the more urban the locality, the less frequent the divorces; and, vice versa, the more rural a locality, the more frequent divorce seemed to be there. This correlation seemed discernible both at regional and local levels. In Kotagede the degree of urbanization also appeared to correlate positively with

the strength of the religious movement, Muhammadiyah. I thought that here I might have found a clue to the question of the influence of religious values on divorce. However for the next seven years I was unable to find enough time to pursue the subject.

In March 1979 I resumed my anthropological study at The Australian National University with the development of a research proposal.(2) In this I hypothesized that the frequency of divorce is negatively correlated with Islamization. I hoped to test the validity of my hypothesis through systematic statistical analyses of my field data. For the purpose of carrying out such analyses, I then learned elementary computer techniques, fed the records of marriage and divorce registrations into the computer, and started to analyze these records.

At the same time I invited comments on my research proposal from anthropologists outside my own department as well as from social scientists in other departments and institutions. Their comments exposed serious weaknesses in my conceptualization of key concepts, i.e. 'divorce rate' and 'Islamization', and in my entire frame of analysis.

(2) For my thesis research proposal presented to the Department of Prehistory and Anthropology, The Australian National University, in January 1979, see Appendix A.

I-2 Developments in Thesis Research

In the course of re-examining the framework for my thesis research, the comments of three professors and the experience of a particular conference were most crucial. The three professors are Professor J. A. Barnes, Professor J. A. Forge, and Professor A. H. Johns. The conference I attended was the international conference on Islam: "The Qur'an through fourteen centuries", held in Canberra, May 1980.

It was Professor Barnes (of Cambridge University) who enlightened me on the concept of the frequency of divorce. My data was already in the computer and I was endeavoring to find an appropriate way of measuring divorce rates in Kotagede. From his classic paper on "The Frequency of Divorce" (1967) I had already begun to appreciate various problems involved in measuring divorce rates and comparing them across communities.

I was fortunate in being able to have a meeting and personal consultation with Professor Barnes. One of the most important points which he emphasized was the fact that the sociological theory of positive correlation between the frequency of divorce and urbanization had derived from the socio-cultural background of modern Europe. Therefore, it would be problematic to borrow such a theory and apply it uncritically to Java. Is there any point in examining the supposed correlation between the frequency of divorce and urbanization and/or Islamization in Java? What does 'frequent divorce' mean to the people of Kotagede? Is it valid to calculate divorce rates without knowing the norms concerning divorce held by

the local people? These were some of the questions which I had to face.

My data collected in Kotagede lacked direct information on how divorce was viewed by local people. It was also impossible for me to gather more information on this particular aspect from Australia and in the time at my disposal. For a while I thought that I was trapped and would be unable to write any more of my thesis without undertaking further field research about these norms. Consequently I had to find another approach to my research.

While I was in Kotagede I had the repeated experience of local informants explaining norms regulating divorce to me by using direct quotations from the Qur'an. Through recollection of this experience, it occurred to me that I might be able to identify, to some degree, norms held by the people in Kotagede towards divorce through studying Islamic law. Reading through the Qur'an and gaining some understanding of Islamic notions about divorce contained there seemed to be the first step. Consequently, I read the Qur'an carefully and identified verses which seemed relevant to divorce.

Professor Forge of my department (Prehistory and Anthropology, Faculty of Arts) suggested that a study of Javanese norms through the examination of customary (adat) law would be needed as a parallel to a study of Islamic norms through Islamic law. In this way, I would be able to cover Javanese norms of divorce both from cultural and religious viewpoints. He also advised that I should be cautious in studying Islamic law since it had many schools. I

followed his advice and engaged in library research to study the relevant literature in English, Indonesian and Japanese.

My library research showed that as far as divorce is concerned no Javanese customs are at odds with Islamic law.(3) Many characteristics which had been referred to as adat law in the literature could in fact all be derived from Islamic law. This finding, however, made me uncomfortable. Among social scientists and historians specializing in Java, the notion of adat law as traditional law in contradistinction to Islamic law seems to be widespread and deeply rooted. It is even treated in some literature as an undoubted truth. I was puzzled by the implications of my research: all Javanese norms regulating divorce are incorporated into the category of Islamic religious norms.

Professor Forge then suggested to me that I should ask Professor Anthony Johns of A.N.U. to read an earlier version of Chapter III of this thesis on the Islamic prescription of divorce. Professor Johns kindly read the chapter, assured me of the basic soundness of my approach to Islamic law, and advised me to re-examine my field data in the light of that approach. His other comments on my work touched on problems concerning not only my thesis writing but also my role as a social scientist. He reminded me that my thesis would have no value at all if it were not based on first-hand field data, and that no knowledge obtained through books was meaningful if it was not understood in the light of social

(3) A large number of adat law studies by Dutch and Indonesian scholars are written in Dutch, a language I do not possess. An examination of Dutch sources by someone who knows the language is necessary to confirm the result of my library research.

realities.

Following Professor Johns' advice, I then proceeded to analyze the contents of the Divorce Registration Book of Kotagede in the light of my understanding of the notion of divorce in Islam. This analysis showed that the Islamic notion of divorce governs every aspect and the whole administrative process of the dissolution of marriage. I also recognized that the entire system of administration by which the problem of divorce was handled fell completely within the province of religious officials and informal religious leaders.

These findings encouraged me to advance my thesis research. Yet, I was still uncomfortable with my findings: my analysis of the dissolution of marriage would be too different from that presented by those who had previously studied Javanese divorce. I was anxious to find an answer to the question of why my research result differed from that of other researchers.

It was through my participation in the international conference on Islam, "The Qur'an through fourteen centuries" that I was able to come up with some answer to this question. I was confronted with the problem of approach to religious matters in scholarship. I found that two presentations at this conference were particularly influential to my thinking: one was the opening speech by Professor W. A. Graham of Harvard University and the other was the concluding address by the Honourable Hakim M. Said of Pakistan.

Professor Graham emphasized the need for 'humane scholarship' in studying the religions of others. I detected in his notion of 'humane scholarship' a serious warning to scholars, especially for anthropologists like myself, when studying a people with a religion different from that of the researcher. Am I treating my field data as mere impersonal records? Am I treating my research subjects as human beings? Is not Islamic teaching as valuable for the Muslims I study as Buddha's teaching is valuable for me as a Buddhist? Am I giving the same degree of respect to Islam that I give to my religion? Am I appreciating the value of Islamic teaching for all of mankind, i.e. not only for Muslims but for non-Muslims also?

Professor Graham's paper made me question my own assumptions and raised my conscientiousness as a human being and as an anthropologist. From this new perspective I re-examined my approach to the subject of divorce counselling sessions, a chapter of my thesis, which contained the records of actual individuals' thoughts and actions. I then found a surprising fact: not only the counsellors, who were Muslim women religious leaders, but also most of the clients, who were obviously not very educated or religiously sophisticated, spoke voluntarily and fluently in religious terms and tried to handle their marital problems according to Islamic teachings. This led me to feel the need for a new analytical framework to understand the dissolution of marriage among Javanese Muslims.

It was the address delivered by Hakim Said that inspired me more directly to think about the matter of a framework. He concluded his address as follows:

I am convinced that if followers of any religion ponder coolly over the teachings of their religions they will arrive at the conclusion that, in spite of acting rigidly upon the tenets of their own religion, they can find a large scope for cooperation and collaboration, mutual trust and friendship with followers of other religions and together we can build a tranquil and balanced society which the whole of the world needs badly today.

He was convinced that the followers of different religions could and should communicate with each other. If I am allowed to expand on his ideas, difference in religion does not hinder mutual understanding among the peoples of various religious traditions, for in ethical aspects different religions share a great degree of similarity.

This address of Hakim Said helped me recognize that the difference between the results of my research and that of other scholars derived from a difference in approach to Islamic law. I approached the study of Islamic law by focusing on its ethical aspects, whereas the others emphasized its legal aspects. This recognition of the difference in approach enabled me to construct a wider framework which could incorporate both the results of my study as well as that of others on the dissolution of marriage among Javanese Muslims.

I-3 The Framework

As stated at the beginning of this Introduction, the thesis of this study is that all essential aspects of the dissolution of marriage among Javanese Muslims are governed by Islam. In developing this thesis in the following pages, I employ a particular framework which I shall outline in this section.

In studying the manner in which Islam regulates Javanese divorce, I consider Islam at three conceptually different aspects, as this seems most appropriate to consistent comprehension of the relevant literature and my field data. They are syari'at, hukum, and fikh. All three of these already Indonesianized terms are often glossed identically as 'Islamic law' in Indonesian-English dictionaries. However, this gloss is neither satisfactory etymologically nor for everyday usage. As I shall show, an appreciation of significant differences among the three terms and a conceptualization of the relationships among them seem to lead to the construction of a necessary framework for the understanding of the relevance of Islam for the dissolution of marriage among Javanese Muslims.

The Indonesian term syari'at is derived from the Arabic sharī'a which means 'the road to the watering place; the clear path to be followed' (Shorter Encyclopaedia of Islam 1953:524). In religious contexts, syari'at means "The Way, ordained by God wherein man is to conduct his life in order to realize the Divine Will" (Rahman 1968:118). I understand this term in the sense of 'The Way to be followed'. The Way is revealed in the Qur'an and contained in the

Sunna (the records of the words and the deeds of the Prophet Muhammad). Syari'at is divine, and, therefore, rigid and immutable. It is also universal, eternal, and uniform for all human beings and societies. I understand and employ the term, syari'at, to refer to the fundamental religious, moral and ethical principles for human beings.

Hukum is derived from the Arabic hukm meaning 'a judgement or legal decision' (Shorter Encyclopaedia of Islam 1953:141). I understand this term to refer to 'the implementation or application of syari'at'. Historically, Muslim communities have often faced the problem of human conduct about which the Qur'an or the Sunna had no explicit references or made seemingly inconsistent statements. In such a situation, it has been the job of the ulama, Islamic scholars and teachers, to study the problem with reference to syari'at in order to reach a clear judgement (hukum) on whether the human conduct in question is obligatory, recommended, neutral, discouraged or forbidden from the viewpoint of the Divine Will. In deriving such a judgement, the ulama employ the criteria of analogical reasoning (qiyas) and consensus among them (ijma) as the surest methods of comprehending the Divine Will. Hukum, as I understand it, is thus a comprehensive compilation of such decisions and judgements by the ulama. The so-called Islamic law in the narrow sense refers to the body of such decisions and judgements.

Like syari'at, hukum is divine in the sense that "from the very beginning of Islamic history, law [my hukum] has been regarded as flowing from or being part of the concept Shari'a (the divinely

ordained pattern of human conduct)" (Rahman 1968:76). However, hukum is neither rigid nor immutable. Furthermore, it is not universal, eternal or uniform for all human beings or societies, since actual problems of human conduct vary in time and space. Accordingly, it is my understanding that hukum has been changing and will continue to change and that hukum is different and will be different from one Muslim society to another.

Fikh comes from an Arabic word (fikh) meaning 'intelligence, knowledge' (Shorter Encyclopedia of Islam 1953:102). I understand this term to mean 'the science of hukum'. For making decisions (hukum), the ulama need high intelligence and deep knowledge (fikh), which are tools necessary for selections and interpretations from among the comprehensive collection of the procedures for decisions developed and employed by the generations of Islamic scholars. In other words, fikh is the way to determine hukum. It helps the ulama to formulate, amend, expand, and evolve hukum. I understand that fikh is a highly technical tool for the Islamic scholars to deal with their decisions.

Thus, syari'at, hukum, and fikh are to be understood as being conceptually different yet mutually related: The Divine Will (syari'at) is made comprehensive by the high intelligence and deep knowledge (fikh) of the ulama and is presented to the believers as decisions (hukum). Such a way of understanding the relationship among syari'at, hukum, and fikh facilitates an integrated approach in studying Muslim societies. Thus far, the orthodox Islamic studies of the West (Orientalism) has mostly been concerned with

those aspects of Islam which I referred to as fikh, whereas historical and anthropological studies of Muslim societies by the Western scholars have paid primary attention to the aspects of hukum, or the institutionalization of the Islamic teaching in a certain space and time. In both cases, the understanding of syari'at has either been put on the periphery or else totally neglected. In my view, however, the understanding of syari'at is basic to the comprehension and appreciation of hukum and fikh. Once the relationship among syari'at, hukum, and fikh is understood in the above-described manner, the apparent contradiction in Islamic law, often illustrated in such paired terms as 'rigid' vs. 'flexible', 'immutable' vs. 'mutable', 'uniform' vs. 'diverse', 'divine determination' vs. 'human interpretation' dissolve.

The framework I have developed seems especially helpful for anthropological studies of Muslim societies as it enables us to grasp the eternal, unchanging principles of the Islamic teachings, syari'at, and the changing, diverse aspects of Islam, hukum, in one single scope. In this study, I have made a conscious and consistent effort to examine and understand field data on the working of hukum in local reality by reference to syari'at.

I-4 The Structure of the Thesis

The rest of this thesis consists of six chapters. In Chapter II, I present a brief sketch of Kotagede geographically and socially. In Chapter III, I deal with the norms for the dissolution of marriage among Javanese Muslims. This chapter, a result of my library research, examines the Islamic notion of the dissolution of marriage and the working of its regulations in theory. The following three chapters (Chapters IV, V, and VI) are the main body of the thesis: I delineate the reality of the dissolution of marriage in Kotagede, on the basis of my field data, obtained through unobtrusive methods and demonstrate how my concepts of syari'at, hukum, and fikh work in actual situations. Chapter VII discusses studies on Javanese divorce by other scholars and assesses my work in relation to theirs. A brief conclusion in Chapter VIII closes this thesis.

CHAPTER II

THE RESEARCH AREA

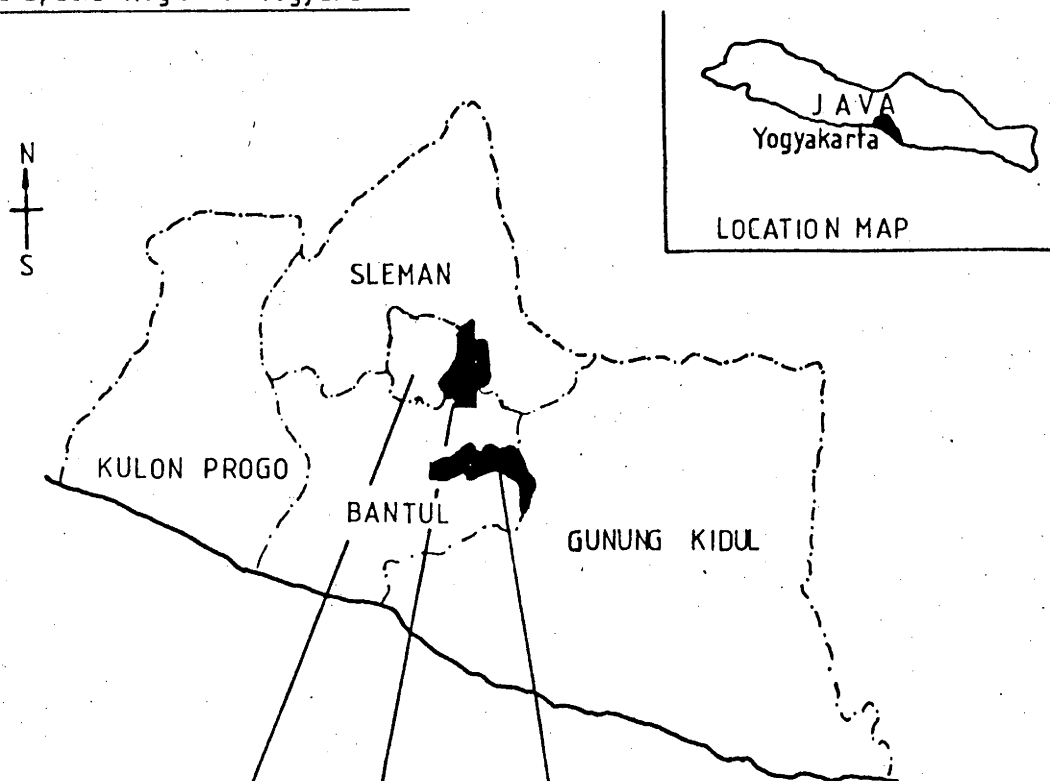
II-0 Introduction

The residents in the research area of this study are almost one hundred per cent Javanese and also almost entirely Muslim. Yet the area and its population contain some significant sociological differences. These differences have been useful for undertaking an empirical study on the dissolution of marriage among the population as we shall see below.

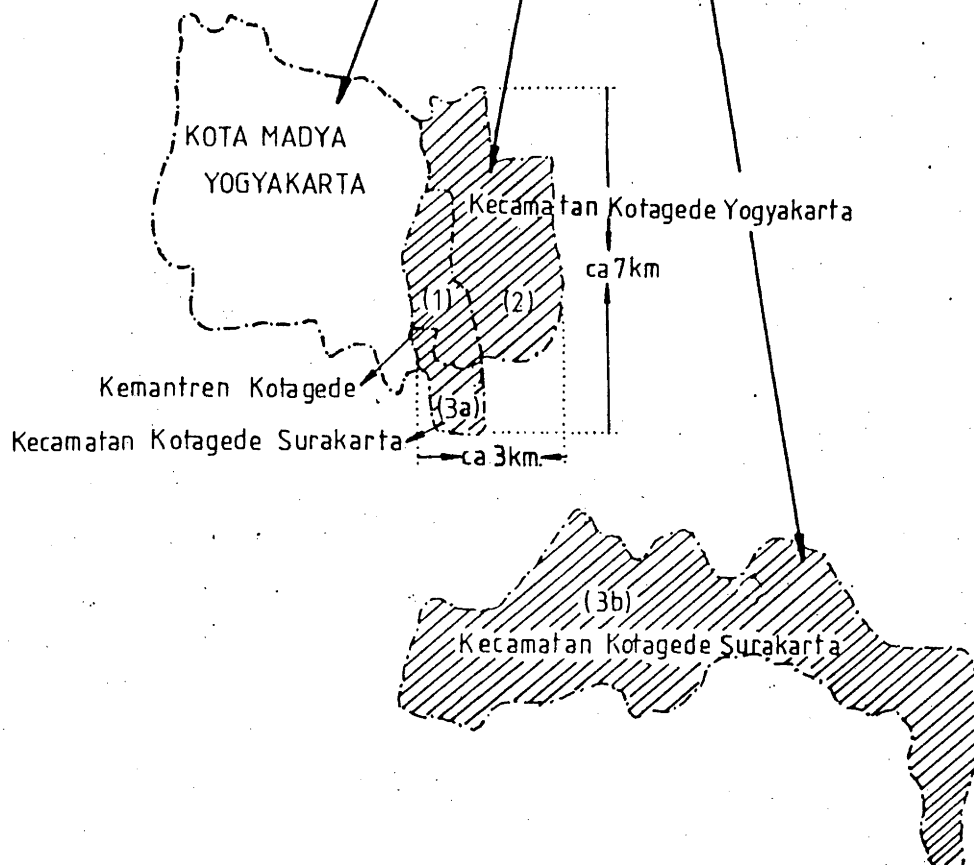
II-1 The Geographic Boundaries of the Research Area

A large portion of data for the research of this thesis was collected by an unobtrusive method, i.e. the use of official documents. These documents were copied at a number of government offices which administer the wide geographic area of Kotagede in The Special Region of Yogyakarta (Daerah Istimewa Yogyakarta) (see Map II-1 in the following page). In 1970-72 when the field research for this study was undertaken, there were altogether three territorial units at sub-district level known by the name of Kotagede which come under the general administration of the Region: they are (a) Kotagede Ward (Kemantren Kotagede) in the City of Yogyakarta (Kota Madya Yogyakarta) (Area 1 in Map II-2); (b) Sub-District of Kotagede Yogyakarta (Kecamatan Kotagede Yogyakarta) in the Regency of Bantul (Kabupaten Bantul) (Area 2 in Map II-2); and (c) Sub-District of Kotagede Surakarta also in the Regency of Bantul (Areas 3a and 3b in Map II-2).

Map II-1 The Special Region of Yogyakarta



Map II-2 Kotagede



The fact that there are three administrative sub-districts with the name of Kotagede in four locations has derived from history. In 1755 when the Mataram Kingdom was split into two courts, Yogyakarta and Surakarta, its territory and population were also divided into two parts. Naturally areas near Surakarta went to the Surakarta court while those near Yogyakarta to the Yogyakarta court, but two locations in the Yogyakarta territory, Imogiri and Kotagede, were exceptions because the royal ancestors of the Mataram dynasty were buried in these places. Neither court could recognize these two places, with the population there, as solely belonging to the other side. Therefore, the areas were split into two parts and the Surakarta court retained these small enclaves in the Yogyakarta territory. In 1957 these Surakarta enclaves were completely absorbed into The Special Region of Yogyakarta, only retaining the name of Surakarta in their administrative designations.

Territorial divisions in religious administration, under which the marriage, divorce, and reconciliation are handled, almost coincide with those of general administration with the exception of the Sub-District of Kotagede Surakarta which is sub-divided further into two parts (Areas 3a and 3b in Map II-2). As a result, for religious administration there are four, instead of three, territorial units bearing the name of Kotagede: they are (a) MPP Kotagede (the same as the area of Kotagede Ward in general administration, or Area 1 in Map II-2); (b) Kotagede I (the same as the area of Sub-District of Kotagede Yogyakarta, or Area 2 in Map II-2); (c) Kotagede II (the northern part of the Sub-District of Kotagede Surakarta, or Area 3a in Map II-2); and (d) Kotagede III

(the southern part of the Sub-District of Kotagede Surakarta, or Area 3b in Map II-2).

The field research for this study covered only three of those four territorial units in religious administration.(1) These three units are (a) MPP Kotagede, (b) Kotagede I, and (c) Kotagede II (Areas 1, 2, and 3a in Map II-2). When I refer to the research area of this study by the general name of Kotagede, the area referred to covers, therefore, those three units of Kotagede in religious administration as delineated above.

So far I have only identified three academic works bearing the place name of Kotagede (van Mook 1958, Tedjo 1970, and M. Nakamura 1976). In contrast to the geographic boundaries of my research area, the area covered in all of these works concerns only the central part of Kotagede, an area forming a tiny portion of Kotagede in my research. Accordingly, the social features of Kotagede discussed by these scholars do not apply to the general area of Kotagede as defined in the present study. They are only partially relevant.

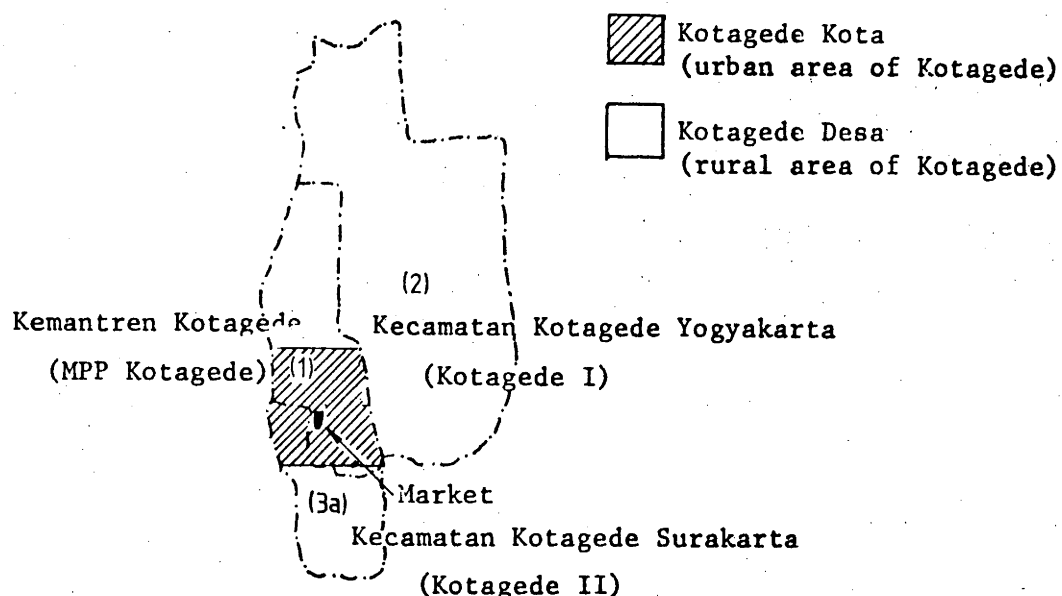
(1) There are two major reasons why I omitted Kotagede III from field research: firstly, socially and geographically this unit was apart from the other units of Kotagede; and secondly, I did not have the opportunity to get acquainted with any individuals from Kotagede III.

II-2 Kotagede

The geographic centre of Kotagede, i.e. its market, is located 5 kilometres southeast of the City of Yogyakarta, the capital of The Special Region of Yogyakarta. The general area of Kotagede spreads for about 3 kilometres from east to west and 7 kilometres from north to south lying on the edge of the plain where the slopes of Mt. Merapi (an active volcano 2911 metres above sea level) cease.

Sociologically, Kotagede comprises both urban and rural areas. The urban area occupies the central part (about one kilometre square) of Kotagede and, surrounding it, rural areas spread out. The boundaries between the urban and the rural areas are clearly observable. In fact, local people generally divide Kotagede into Kotagede Kota (kota = 'city') and Kotagede Desa (desa = 'village'). Kotagede Kota is the densely populated area where the majority of residents are engaged in commerce and handicrafts. Kotagede Desa consists of residential areas and farm lands where a large portion of residents are, to some degree, engaged in agriculture. Map II-3 below shows the location of Kotagede Kota and Kotagede Desa.

Map II-3 Kotagede Kota vs. Kotagede Desa



As Map II-3 indicates, sociological boundaries between urban and rural areas do not coincide with those of administration units. Administratively, only MPP Kotagede is urban, belonging to the City of Yogyakarta. Likewise, Kotagede I and Kotagede II are, administratively, rural belonging to the Bantul Regency. Sociologically, however, some portion of this Bantul territory is urban. Using sociological criteria alone, then, urban Kotagede consists of a portion of MPP Kotagede (4 of 10 rukun kampung) and a portion of Kotagede II (one entire kalurahan and a kedukuhan in another kalurahan).(2) The rest of Kotagede, i.e. six rukun kampung and four kalurahan, are rural.

The rural-urban distribution of these lowest units of administration are presented in Table II-1 below.

Table II-1 Distribution of Rukun Kampung and Kalurahan in Kotagede

	: Kotagede Kota	: Kotagede Desa
MPP Kotagede	: 1. R.K. Prenggan	: 1. R.K. Tegalendu
	: 2. R.K. Alun-Alun	: 2. R.K. Gedongan
	: 3. R.K. Purbayan	: 3. R.K. Pilahan
	: 4. R.K. Basen	: 4. R.K. Tinalan
		: 5. R.K. Rejowinangun
		: 6. R.K. Gedungkuning
Kotagede I	: -	: 1. Kalurahan Baturetno
		: 2. Kalurahan Banguntapan
Kotagede II	: 1. Kedukuhan Joyo-	: 1. Rest of Kalurahan
	: pranan in Kalurahan	: Singosaren
	: Singosaren	: 2. Kalurahan Mutihan
	: 2. Kalurahan Jagalan	:

(2) Rukun kampung (R.K.) is 'neighborhood association' or the lowest semi-official unit of urban administration. Kalurahan is 'village' or the lowest unit of rural administration. Kedukuhan is 'hamlet' or the subdivision of the administrative village.

This distribution indicates that the administrative designation of rukun kampong or kalurahan does not necessarily reflect the sociological character of a unit, whether it is urban or rural. For example, Kalurahan Jagalan in Kotagede II has almost no farm land and virtually all land is utilized as housing lots. Consequently, the population density of Jagalan is as high as that of the city of Yogyakarta. Moreover, its residents are not engaged in agriculture at all. Local people recognize Jagalan as urban Kotagede (Kotagede Kota). Yet it is administratively a village or kalurahan. The reverse case can be seen in several rukun kampong in MPP Kotagede which are administratively urban but sociologically rural. Thus, there is a disjunction between the administrative and sociological definitions of Kotagede. In this study, I mainly follow the sociological definition of an area, for it is more relevant to daily reality. In so doing I shall make a contrast between urban and rural Kotagede, or Kotagede Kota and Kotagede Desa.

II-2-1 Population

The population of Kotagede is approximately 35,000.(3) Among them about 15,000 people live in the urban area and the remaining 20,000 in the rural area. Population density in the urban area is about 11,000 per square kilometre, which is close to the average population density of the City of Yogyakarta (10,557 per square

(3) In more detail, 13,081 people live in MPP Kotagede (McDonald & Alip 1976:69), and 16,693 people live in Kotagede I (official document investigated by Yusron in 1979 for this study). The population of Kotagede II is problematic, for published census results only show figures for kecamatan. The population of Kecamatan Kotagede Surakarta (Kotagede II and Kotagede III) is 24,523 (McDonald & Alip 1976:73). I estimate about 5,200 people for Kotagede II.

kilometre in 1971 (McDonald & Alip 1976:69)). Kalurahan Jagalan, for example, has a population density of 10,760 per square kilometre. On the other hand, the population density in the rural area of Kalurahan Baturetno is 1,672 per square kilometre, which far exceeds the population densities in the other rural areas in The Special Region of Yogyakarta.(4)

The entire population of Kotagede is Indonesian in nationality (1968 Regional Census) and an overwhelming majority of them are Javanese. The statistics on birth place from MPP Kotagede as follows will provide circumstantial evidence for this:

Table II-2 Birth Place of Residents in MPP Kotagede

Residents		A	B	C	D	Total (%)
Male	N	5,817	370	36	1	6,224 (48.6)
	(%)	(93.5)	(5.9)	(0.6)	(0.0)	(100.0)
Female	N	6,208	339	27	0	6,574 (51.4)
	(%)	(94.4)	(5.2)	(0.4)	(0.0)	(100.0)
Total No.		12,025	709	63	1	12,792 (100.0)
		(%)	(94.0)	(5.5)	(0.5)	(100.0)

Source: Regional Census 1968

Notes:

- A = Born in Special Region of Yogyakarta
- B = Born in Java outside of Special Region of Yogyakarta
- C = Born in Indonesia outside Java
- D = Born in foreign country

(4) The population densities (population per km²) of the four rural regencies of The Special Region of Yogyakarta are as follows: Bantul 1,122; Seleman 1,023; Kulon Progo 657; and Gunung Kidul 418 (McDonald & Alip ibid.:73-82).

The residents in Kotagede are very conscious of the ethnic purity of the area and are proud of the fact that they are 'genuine Javanese' or asli Jawa.

II-2-2 Land Use

Land in urban Kotagede is utilized almost entirely as housing lots. For example, land use in Kalurahan Jagalan is as follows:

Table II-3 Land Use in Kalurahan Jagalan

(in hectares)		
Use	Area	(%)
Pekarangan(a)	23.3795	(89.9%)
Kuburan(b)	1.7550	(6.7%)
Tegal(c)	0.7350	(2.8%)
Sawah(d)	0.1510	(0.6%)
Total	26.0205	(100.0%)

(Source:Office of Kalurahan Jagalan 1971)

Notes:

- (a) Housing lot, residential area
- (b) Graveyard
- (c) Dry field, non-irrigated land
- (d) Wet rice field, irrigated land

As the Table II-3 shows, housing lots occupy almost all land except for the land for graveyards. Farm land (wet as well as dry land) occupies only 3.4 per cent of the total. In this kalurahan, graveyards occupy an extraordinarily large area due to the existence of the graveyard of the Mataram royal family. Land use patterns in other parts of urban Kotagede are similar to Jagalan except that they have less extensive graveyards.

In rural Kotagede the land is, naturally, utilized for agriculture. Table II-4 below shows land use and ownership in Kalurahan Baturetno of Kotagede I.

Table II-4 Land Use and Ownership in Kalurahan Baturetno

(in hectares)

Land Use Ownership	<u>Sawah</u> (a)	<u>Tegal</u> (b)	<u>Pekarangan</u> (c)	Total (%)
Rakyat(1)	224.4550	7.3000	70.2220	301.9770 (85.3%)
Lungguh(2)	31.4545	-	-	31.4545 (8.9%)
Pengarem-arem(3)	3.1765	0.1800	-	3.3565 (0.9%)
Kas Desa(4)	14.5490	2.2000	0.4230	17.1720 (4.9%)
Total (Percentage)	273.6350 (77.3%)	9.6800 (2.7%)	70.6450 (20.0%)	363.9600 (100.0%) (100.0%)

(Source:Office of Kalurahan Baturetno, 1971)

Notes:

(a) Wet rice field, irrigated land

(b) Dry field, non-irrigated land

(c) Housing lot, residential area

(1) Privately owned land

(2) Land given to the village officials during their service

(3) Land given to retired government officials as pension

(4) Village treasury land

As seen from this Table, firstly, about 77 per cent of the total land is used for wet rice fields (sawah) while dry lands or non-irrigated fields (tegal) is less than 3 per cent. This means that the main crop in this area is rice. According to the information from the village office, cultivated area by agricultural product is as follows: rice 205 hectares; peanuts 47 hectares; corn 15 hectares; sweet potato 11 hectares; and cassava 10 hectares. This 77 per cent figure for wet rice fields in Baturetno is extremely high compared to comparable areas in other regencies of

The Special Region of Yogyakarta.(5) Secondly, 20 per cent of the total farm land (sawah and tegal) is owned by the village administration in order to cover the expenses of its personnel and office expenditure.

(5) Kano(1980:8) presents the following figures of the proportion of wet rice field in the rural regencies of The Special Region of Yogyakarta: Bantul 38%; Seleman 54%; Kulon Progo 22%; and Gunung Kidul 5%.

II-2-3 Occupational Composition

The occupational composition of household heads in Kotagede is as follows:

Table II-5 Occupational Composition of Household Heads

Occupation	Urban Area(1)	Rural Area(2)
Tani(a)	0 (0.0%)	504 (46.2%)
Buruh Tani(b)	0 (0.0%)	180 (16.5%)
Buruh(c)	938 (37.9%)	0 (0.0%)
Bakul(d)	534 (21.5%)	0 (0.0%)
Tukang(e)	305 (12.3%)	161 (14.7%)
Pegawai/Pensiunan(f)	236 (9.5%)	157 (14.4%)
Pengusaha/Dagang/Toko(g)	184 (7.4%)	82 (7.5%)
Lain-lain(h)	86 (3.5%)	7 (0.6%)
Menganggur(i)	195 (7.9%)	0 (0.0%)
Total	2,478 (100.0%)	1,091 (100.0%)

Source: Survey of Household Heads conducted by M. Nakamura in 1972 and official documents of Kalurahan Baturetno in 1971.

Notes:

(1) Includes all areas categorized as Kotagede Kota except Kedukuhan Djojoprana of Kalurahan Singosaren

(2) Represented by Kalurahan Baturetno alone

(a) Farmer/peasant

(b) Farm laborer

(c) Unskilled laborer

(d) Peddler

(e) Skilled laborer

(f) Salaried employee of government or private office

(g) Entrepreneur/merchant/shop-owner

(h) Others

(i) Unemployed

The data for Table II-5 above are taken from the results of two different surveys. Thus, a precise comparison of occupational composition between urban and rural areas is difficult in view of the possible difference in the categorization of occupations. However, the Table provides a rough picture of the range of work in

which the people of Kotagede are engaged.

The first obvious feature seen from this Table is that no household heads in urban Kotagede are engaged in agriculture while almost 60 per cent of the total number of household heads work as buruh (unskilled labourers) and bakul (peddlers). The buruh is hired on a daily basis and his wage is very low, usually around 50-75 rupiah (equivalent of 1.5 to 2 kilograms of rice of average quality). The bakul (peddler) usually earns less than the buruh. Twelve per cent of the total household heads are tukang (skilled labourers) who are engaged in traditional handicrafts such as working silver, gold, or tin, or making batik. This concentration of traditional handicrafts in the town of Kotagede has made it nationally famous. The income of a tukang varies according to his skills and experience: it may reach 150 rupiah a day. The unskilled and the skilled labourers and peddlers are from the local economic viewpoint, perceived as belonging to the categories of miskin (poor) or cukupan (just enough). They form 72 per cent of the total number of household heads. The majority of those in the categories of 'Others'(h) and 'Unemployed'(i) seems likely also to fall in this general low to middle income group. Most of the salaried employees, including pensioners as well as those in the category of entrepreneurs, merchants, and shop-owners form the wealthy group which covers 17 per cent of the total number of household heads.

In rural Kotagede 63 per cent of the total household heads are engaged in agriculture. Tukang, 14.7 per cent of the total household heads, in rural Kotagede are rather different from tukang in urban Kotagede: one third of them are engaged in those traditional handicrafts already mentioned above, while the rest work in carpentry, stonemasonry, or repair work. Pegawai or salaried people, 14.4 per cent of the total household heads, are mainly government employees and pensioners. Only one out of ten pegawai is a private office worker. The percentage for entrepreneurs, merchants, and shop-owners is the same as that in urban Kotagede.

II-2-4 Religious Affiliation

The religious affiliation of the people in the general area of Kotagede is almost exclusively Islamic. However, there are a small number of Catholics and Protestants. Statistics on the religious affiliation of the population in MPP Kotagede are as follows:

Table II-6 Religious Affiliation of Residents in MPP Kotagede in 1968 and 1977

Year	Islam	Catholic	Protestant	Hindu	Others	Total
1968	12,302	224	196	2	66	12,790
(%)	(96.2%)	(1.8%)	(1.5%)	(0.02%)	(0.5%)	(100.02%)
1977	14,056	112	128	0	0	14,296
(%)	(98.3%)	(0.8%)	(0.9%)	(0.0%)	(0.0%)	(100%)

Source: Regional Census 1968 and Official Report from KUA MPP Kotagede January 1977 (Yusron 1977:9)

As Table II-6 above shows, the residents of MPP Kotagede are almost all Muslims, 96.2 per cent in 1968 and 98.3 per cent in 1977.(6) The religious affiliation of the residents of Kotagede I and Kotagede II, for which I failed to obtain official information, is, to the best of my knowledge, very similar to that of MPP Kotagede.

Kotagede has a branch of Muhammadiyah, a national reformist Islamic movement which has headquarters in the City of Yogyakarta. (See M. Nakamura 1976 for details of the movement in the town of Kotagede). The Kotagede Branch of the Muhammadiyah is one of the four strongest branches of this organization in the City of Yogyakarta. Kotagede is known nationally as a base of Muhammadiyah movement. In fact, however, only a small portion of the Kotagede population is actually Muhammadiyah. There are 630 Muhammadiyah members in urban Kotagede and 350 in rural Kotagede (M. Nakamura 1976:229). Muhammadiyah also has such auxiliary organizations as 'Aisyiyah (for adult women), Nasyiatul 'Aisyiyah (for young women), Pemuda Muhammadiyah (for young men), and Ikatan Pelajar Muhammadiyah (for high school students). Estimating the number of members in these auxiliary organizations in addition to that of Muhammadiyah proper (adult men), it is suggested by M. Nakamura that "at least 11.2 per cent of the entire Kotagede Kota adults are members of all Muhammadiyah organizations (Keluarga Besar Muhammadiyah). For Kotagede Desa the percentage drops to 2.3 per cent" (ibid.). Thus,

(6) The obvious decrease in numbers of non-Muslims invites explanation but I have no first-hand data to account for it.

a majority of the members of the Kotagede Branch of Muhammadiyah and its affiliated organizations live in urban Kotagede. The Muhammadiyah is less active in rural Kotagede.

II-3 Summary

The general sociological characteristics of the residents within the geographic boundaries of the research area for this study can be summarized as follows. Ethnically, the residents of Kotagede are almost all Javanese and an overwhelming majority of Kotagedeans were born in the Special Region of Yogyakarta. Religiously, the residents are almost all Muslims. There is a differentiation between zealous Muslims and less strict Muslims, and the latter, being numerically dominant, constitute the majority of the subjects for this study. In other social aspects, the residents in Kotagede are well differentiated. They live in both urban and rural areas, and they are engaged in a wide range of occupations with various income levels. Administratively, Kotagede is very complex, providing a variety of situations in religious administration dealing with the dissolution of marriage.

CHAPTER III

THE DISSOLUTION OF MARRIAGE IN ISLAMIC LAW

III-0 Introduction

It is essential to have a sound knowledge of Islamic law in order to understand the system for the dissolution of marriage among Javanese Muslims. The various norms regulating divorce all converge in Islamic law.

According to my observation in Kotagede, there are three sources from which local informants derive norms regulating the dissolution of marriage. These are (1) the Qur'an and/or the hadith (Sunnah) quoted directly as an authority for norm; (2) hukum Islam ('Islamic law') in general terms; and (3) adat or adat-istiadat (customs and traditions). It was also my field observation that a particular norm was often attributed to different sources by different informants.

Since, as mentioned in Chapter I, I did not have a satisfactory command of the local language (Javanese), I did not pursue in my fieldwork this problem of the multiplicity of the sources of norms governing the dissolution of marriage among Javanese Muslims. Through subsequent library research, however, I have recognized a solution to this problem. My present view is that, as far as the dissolution of marriage is concerned, all adat can be attributed to Islamic law. The multiplicity of normative sources observed in the field can be explained in terms of the difference of the kind and degree of knowledge about Islamic law of individual informants.

For example, a local informant told me that the dissolution of a marriage before its consummation was regarded as divorce according to local adat. The Divorce Registration Book of the Religious Affairs Offices (KUA) in Kotagede recorded a number of such divorces indicating the fact that this practice was widespread in Kotagede and that it is legitimate from the viewpoint of hukum Islam (Chapter V, pp. 100-101). Through library research, I have learned that this practice is also explicitly mentioned in the Qur'an (2:236, 237) as a lawful way of the dissolution of marriage. It can certainly be assumed that if the informant had known these particular Qur'anic verses, the practice might have been explained by him with reference to them. It might also have happened that an official of the local religious affairs office or a local ulama might have given me an explanation of the practice in terms of hukum Islam. However, the majority of local people would have answered simply that the practice of dissolving the marriage before consummation was a well-established local custom, or adat.

Furthermore, this Kotagede situation seems to have wider implications. For it cannot be denied that many customs referred to by jurists as adat, as distinct from Islamic law, do converge in Islamic law. Let me take the example of the divorce by mutual consent. Ter Haar, the noted Dutch specialist on the 'customary law' of Indonesia, states in his textbook for Indonesian law students that "divorce by mutual consent appears to be universally permitted by adat law" (1962:199). It may be true that this is a custom found widely in various parts of Indonesia. However, it seems inappropriate to infer that this custom is derived exclusively

from the supposedly uniform and universal adat law of Indonesia as distinct from Islamic law. For, as we shall see later, Islamic law also recognizes the dissolution of marriage by mutual consent.

A similar example can be observed in the separation before divorce. Ter Haar states that, according to adat law, "a lengthy period of separation precedes the divorce action" (ibid.:200). Ter Haar regards this as a custom, but it also could equally well have been derived from the Islamic law requiring the husband and the wife to refrain from sexual intercourse prior to divorce (see below pp. 46-47). To the best of my knowledge, then, the so-called adat with regard to the dissolution of marriage in Java all have a counterpart in Islamic law. In other words, in this area there is not observable any system of adat distinct from Islamic law.

Islamic law for Muslims is divine law which controls not only the religious lives of individual Muslims but also regulates their secular conduct in concrete terms. The sources of the law are the Qur'an, which are the very words of Allah, and the hadith, which are the records of the deeds and sayings of the Prophet Muhammad. In seeking an understanding of Islamic law I have employed the framework introduced in Chapter I (pp. 14-17), in which Islamic law is considered in three conceptually different aspects, i.e., syari'at, hukum, and fikh. Syari'at is 'The Way to be followed' and takes the form of ethical commands. Hukum is 'the implementation or application of syari'at' and takes the form of concrete regulations. Fikh is 'the science of hukum'.

I have studied syari'at through examination of the Qur'an and the hadith. I have consulted relevant verses in a number of English, Japanese, and Indonesian versions of the Qur'an and the Manual of Hadith by Maulana Muhammad Ali (1944). I have studied hukum through examination of several law books, of which Hukum Perkawinan Dalam Islam (Marriage Law in Islam) by Mahmud Junus (1956) was the most important.(1) Junus's book is regarded as an authoritative work on hukum Islam in the reformist Muslim circles of Indonesia today.(2) The book covers all the four schools of jurisprudence in Islamic law accepted by Indonesian Muslims, i.e., Syafi'i, Hanafi, Maliki, and Hanbali of the Sunni tradition. Fikh is not discussed in this chapter because it requires a highly technical knowledge of Islamic jurisprudence. In contrast, in this chapter an understanding of Islamic law at the level of syari'at is attempted. For, without appreciation of syari'at, a study of hukum or of actual Muslim behaviour would be one-sided. I shall, therefore, examine Islamic law on divorce with reference to syari'at and hukum.

(1) Mahmud Junus is an Indonesian ulama, former Professor and Rector of the Imam Bonjol State Institute of Islamic Religion (IAIN), Padang, West Sumatra.

(2) I was recommended to read this book by the late Professor Abdul Kahar Muzakir of Kotagede, former Vice-Rector of the Universitas Islam Indonesia, Yogyakarta and a national leader of the Muhammadiyah. The book was used as a textbook by the author when he lectured in the above-mentioned institute in Padang and another similar institute in Jakarta. It is one of the most widely used reference works on Islamic law of marriage by those who follow the Muhammadiyah and similar reformist ideas in religious administration and education of Indonesia today.

III-1 Marriage in Islamic Law

In Islam sexual desire is recognized as a natural tendency of the human being. In the Qur'an, Allah permits men and women to enjoy sexual intercourse, with certain limitations (2:223, 4:24-25, 23:5-6).(3) However, those who indulge in it beyond these limitations are transgressors:

Fortunate are the believers,
Those who their private parts do guard,
Except in regard to their spouses and what their right
hands possess; for they are not to be blamed.
But if any go beyond that in their desires - they are the
transgressor. (23:1, 5-7)

The above quotation indicates that men are allowed to have sexual relationships only with their wives or slave girls. Those who do not have wives or slave girls are enjoined to restrain their sexual desire until Allah enriches them so that they are able to afford to marry (24:33). The Prophet Muhammad says, according to a hadith, that "He who is able to marry should marry, for it keeps the eye cast down and keeps a man chaste" (Bukhari 30:10, quoted in Ali 1944:268). Ali comments that "celibate life is against the teaching of the Holy Qur'an" (Ali 1944:267).

(3) K.H. Ahmad, a Pakistani scholar who has written one of the most comprehensive books in English on Muslim law of divorce, comments on this matter as follows: "Human beings have to satisfy their natural cravings and passions. Both religion and morality demand that it should be done in a legitimate manner. It is obvious that the spouses should be allowed to derive full pleasure out of the sexual act but this is possible only when they are not only physically fit but also when the relations between husband and wife are cordial. If this is not the case and they are, on the other hand, on bad terms or are hostile to each other, they cannot be expected to be intimate with each other. If they continue to be intimate or if one of them forces the other to be intimate with him or her, such intimacy will amount even to less than mere animal lust" (1972:235).

Thus, Allah restricts the enjoyment of sexual intercourse to marriage and enjoins His believers to marry lawfully in order not to commit fornication nor take women as mistresses (2:235, 4:25, 5:5). Marriage is, therefore, considered as a duty which every Muslim must perform and is recognized as the basis of Islamic society.(5)

Lawful marriage in Islam means to make a marriage contract: the bridegroom confirms the marriage contract with the legal guardian (wali) of the bride and he undertakes to pay the nuptial gift (mahr or mas kawin) directly to the bride. The marriage contract must be confirmed in front of two witnesses. Thus, marriage in Islam is a contract made between the husband and the guardian of the wife.

The purposes of marriage are to produce legitimate children and to establish a harmonious and orderly household (16:72). Junus states:

The purpose of marriage is, following the command of Allah (menurut perintah Allah), to produce legitimate offspring in society (turunan yang sah dalam masyarakat) by establishing a harmonious and orderly household (rumah tangga yang damai dan teratur). (1956:1, my translation).

To attain this purpose, the husband and the wife must associate with each other in appropriate ways (menurut cara yang ma'ruf), that is, "to love each other, to be good and loyal to each other and help each other sincerely and honestly" (ibid.:93). The husband has the

(5) In addition to the wife, the slave woman was the lawful partner of sexual intercourse as indicated in the verse of the Qur'an quoted above (23:5). However, with the disappearance of the slavery from the most of the Muslim world, certainly from Java, the Qur'anic verses on the slaves are becoming irrelevant.

responsibility for providing daily necessities (nafkah) for his wife and children, that is, food, clothing, and residence, in accordance with the level of his capability (ibid.). Appropriate behaviour in married life, as described above, is considered as an obligation of both husband and wife; and failure to behave in such ways by either party may entitle the other party to request the dissolution of the marriage.

III-2 The Dissolution of Marriage in Islamic Law

As described in the above section, Muslims must marry 'lawfully', that is, must contract their marriage according to Islamic law. As a result, the dissolution of marriage is a dissolution of a legal contract; it entails legal procedures and sanctions. However, as has been mentioned previously, Islamic law takes the form of ethical commands indicating religiously sanctioned ways of human conduct. Therefore, every legal procedure has a religious aspect as well. This is a most important feature of Islamic law that the non-Muslim must keep in mind when discussing the dissolution of marriage. As we shall see later, any right in Islamic law cannot be invoked without consideration of the ethical requirements. What may appear to Western observers technically possible by legal means is not necessarily approved by the law or consistent with Islamic values.

For example, the right to proclaim the divorce is given only to the husband in Islamic law (see page 42 below), and no explicit injunction is found in the Qur'an against the arbitrary invoking of this right by the husband. However, the abuse of this right by the

husband is restrained by moral and ethical considerations inferred from the Qur'an and elaborated in reference to a number of relevant hadith.

III-2-1 The Concept of Divorce in Islamic Law

According to the Qur'an and the hadith, divorce is permitted but is disapproved of and discouraged by Allah. The Prophet Muhammad told Muslims that "with Allah, the most detestable of all things permitted is divorce" (Abu Dawud 13:3, quoted in Ali 1944:284). The Qur'an enjoins that every attempt should be made to maintain a marriage (4:35). Even when men are not satisfied with their wives, Allah enjoins Muslim men to have forbearance (4:19).

But if a husband and a wife cannot live happily together and if their married life is no longer enjoyable, Allah does not require either the husband or the wife to endure a miserable marriage. Allah advises that the appointment of one arbitrator from the husband's side and another from the wife's side be made to discuss the situation (4:35). It is desirable that the couple continue their married state but, if the negotiation for reconciliation is unsuccessful and if it is impossible to bring back them together, then divorce is permitted (4:128, 130).

III-2-2 The Rights to Dissolve Marriage

If the relationship between the husband and the wife is not conducive to the fulfillment of the purpose of marriage, Allah no longer requires either of them to persist in an unhappy marriage.

Allah gives both of them the right to divorce (4:128, 130, 2:227-229, Bukhari 68:12, quoted in Ali 1944:285). Junus states as follows: "Islam gives the husband the right (hak) of talak to divorce his wife, the wife the right of khuluk to divorce her husband, and to both husband and wife the right of fasakh".(5) Thus, both husband and wife have the right to divorce the other party in Islam.

However, in the exercise of these rights, i.e. hak talak, hak khuluk, or hak fasakh, there are several specific conditions to be observed (Junus ibid:113 & 133):

A. Hak Talak can be exercised by the husband:

1. if his wife commits adultery;
2. if his wife does not heed his advice to her to behave respectably;
3. if his wife often gets drunk or likes gambling;
4. if her behaviour disturbs the peace of household;
5. if there are any other conditions which make it impossible to maintain the household in peace and order.

B. Hak Khuluk can be exercised by the wife:

1. if she fears that she cannot follow Allah's commandments for the continuation of marriage;
2. if she fears that she cannot obey her husband because she has come to hate him;
3. if her husband commits adultery;

(5) The original passage reads as follows: "Islam memberikan hak talak kepada suami untuk menceraikan isterinya dan hak khuluk kepada isteri untuk menceraikan suaminya dan hak fasakh untuk kedua-dua laki-istri" (Junus 1956:110).

4. if her husband often gets drunk or likes gambling, or behaves very harshly;
5. if there are any other conditions which make it impossible to maintain the household in peace and order.

C. Hak Fasakh can be exercised by the husband or the wife:

1. if the husband/wife becomes insane (sakit gila);
2. if the husband/wife gets leprosy (sakit kusta);
3. if the husband/wife gets the disease of white scars of skin (sakit sopak);
4. if the husband/wife suffers a sickness which makes it impossible for them to gratify their sexual desire, such as impotence, or loss of penis, or closure of vagina (rataq);
5. if the husband is too poor to provide his wife with food, clothing and residence;
6. if the husband has been missing (hilang) for four years and nobody knows whether he is alive or dead.

Thus, both husband and wife have rights to dissolve their marriage and are entitled to exercise them when they are in a situation which justifies their use.

III-2-3 Procedures to Dissolve Marriage

As mentioned above, in Islam marriage is a contract. Therefore, in order to dissolve the marriage it is necessary to break the contract of marriage and, this legal action, although valid if performed in private, should properly be done in front of two witnesses. The Qur'an says, "[and] call as witnesses two persons of probity from amongst you, and set up the testimony for Allah" (65:2). The expression of 'your testimony' in this Qur'anic verse refers to the husband's statement of divorce. (See Ahmad 1972:33, Ibn Majah 10:5 quoted in Ali 1944:289)

Junus states that "the person who is legally entitled to proclaim divorce is the husband or his deputy: (a) who is adult (balig) (a juvenile may not proclaim divorce); (b) who is sane (berakal) (an insane man may not proclaim divorce); (c) under no compulsion (if the husband is forced to divorce his wife by a party without authority, the divorce is not legitimate)" (ibid.:113).

If all of the above four conditions are fulfilled, the husband or his deputy is eligible to proclaim divorce. If he is willing to proclaim the divorce, there is no need to submit the case to a religious judge (hakim). But if the husband is not available, eligible, or unwilling to proclaim divorce, then the case must be brought before a religious judge.

Islamic law recognizes four lawful ways for the dissolution of marriage. They are (1) the death of a marriage partner; (2) talak (including talik-talak and talak through syiqaq); (3) khuluk (including khuluk through syiqaq); and (4) fasakh. Since the first way (the death of a marriage partner) is clear and needs no explanation, I shall only discuss below the remaining three ways.

III-2-3-1 Talak

Talak is a divorce which is proclaimed by the husband in the form of a verbal or written statement: 'I divorce you' ('aku talak engkau' or 'aku ceraikan engkau', in Indonesian). Any similar expression may be used if the husband's intention to divorce his wife is clear.

The proclamation of divorce is an important legal procedure in actuating a divorce. Very detailed rules are set out in Islamic law as to when and how talak should and should not be proclaimed.

In Islamic law human conduct is classified into five ethical categories and the proclamation of talak is specified according to these categories. Junus explains them as follows (ibid.:112-113):

1. Obligatory (Wajib):

Proclaiming talak is obligatory when the arbitrators fail in their mission and there is no way other than divorce.

2. Recommended (Sunat):

Proclaiming talak is recommended [to a husband], when his wife does not uphold his name (tiada menjaga kehormatannya) and, even after having been given advice (telah diberi nasihat), she shows no concern (tiada diacuhkannya).

3. Neutral (Mubah):

Proclaiming talak is permitted when the husband feels there is compelling need [to do so], e.g. bad relationship with his wife (kurang baik pergaulan dengan isterinya).

4. Discouraged (Makruh):

Proclaiming talak is discouraged (makruh) when there is no specific reason for the husband to divorce his wife.

5. Forbidden (Haram):

Proclaiming talak is forbidden when the wife is in her menstruation period (dalam keadaan haid) or if they have had sexual intercourse since her last menstruation period.

In short, talak must be pronounced when the arbitrators (hakam) recommend to dissolve the marriage. It cannot be proclaimed by the husband when his wife is in menstruation or if they have had sexual

intercourse since her last menstruation. And talak should be pronounced only when there are justifiable reasons.

When the husband proclaims talak to his wife, he must fulfill certain obligations specified in the Qur'an (2:241, 65:6). According to Junus (ibid.:125), the husband must:

1. give an appropriate mut'ah (settlement) to his wife in the form of property as well as cash;
2. provide food, clothing and residence during the period of her iddah;(6)
3. pay or pay off the nuptial gift of whatever amount that is still owed to her; and
4. give allowances for the livelihood of and assume responsibility for the education of the children within the limit of the capacity of the husband until the children are grown up and become mentally mature and start making their own living.

As to the manner of proclaiming talak by the husband, Islamic law specifies the following conditions (Junus ibid.:111-117): "If a husband proclaims talak to his wife jokingly or if he pretends to proclaim talak to her, this kind of act is also considered legally as talak" (ibid.:111), and "Talak is legitimate with a verbal statement" (ibid.:115). Therefore, frivolous proclamation should not be made.

Frequency of the proclamation of talak is an important matter, both legally and religiously. Junus discusses the frequency as follows: "It is permitted to proclaim talak three times to the

(6) Iddah is a specific period during which a widow or a divorced woman may not remarry. If she is found pregnant during this period, the baby in womb is considered as a legitimate child of her ex-husband. The length of the iddah period is determined in the Qur'an: it varies, according to individual physical conditions, from three months (three menstrual courses) up to nine months.

wife; talak satu (one), talak dua (two), and talak tiga (three) . . . Proclaiming talak is better to be made once at a time" (ibid.:116). To proclaim each talak separately and with intervals is recommended, whereas to proclaim talak three times at once is discouraged in Islamic law.

In Islam there is an institution of rujuk for reconciliation between the divorced husband and wife. While the divorced wife is still in her iddah period, she and her ex-husband can be reconciled and live together again lawfully as husband and wife without making a new marriage contract. Rujuk is much easier than remarriage: there is no need to have a legal guardian for the wife; nor is there the need for the husband to give a nuptial gift; nor is there any need to contract marriage again. The husband only has to make a verbal statement of reconciliation, preferably in front of two witnesses (ibid.:114-115).

If the proclamation of talak has been pronounced for the first time or for the second time, the husband may be reconciled with his ex-wife if she is still in her iddah period or remarry her if her iddah period is already over. However, if he has proclaimed talak for the third time, it is no longer possible to seek a reconciliation and so he may not remarry her unless she first marries with another man and then gets divorced.

Just as efforts for reconciliation are obligatory for the parties concerned before their divorce is put into action, so also is it highly recommended for them to be reconciled and live together again as husband and wife even after divorce has been proclaimed

(2:228). If the husband proclaims talak three times at once, this act means that he gives up from the outset the right to be reconciled with (rujuk) or remarry his wife. He thus rejects all possibility of reconciliation and such an act is discouraged in Islamic law. Thus, the proclamation of talak is not only an important legal procedure to finalize divorce but it also indicates the extent to which the husband has followed the command of Allah in dissolving the marriage.

It should be noted here that all proclamations of talak are not necessarily the exercise by the husband of this right of talak. As we shall see later, talak can be proclaimed on many other occasions, including syiqaq, khuluk, and fasakh. Thus, it is wrong to assume that all the talak cases are the unilateral exercise of the right of talak by the husbands.

III-2-3-2 Talik-talak

Talik-talak is one particular type of talak, that is, talak under certain conditions. Talik in Arabic means 'condition or promise'. Talak comes into effect immediately after the husband has proclaimed talak. However, in the case of talik-talak, talak comes into effect not on the proclamation but at a time when an already specified condition is fulfilled. For example, if the husband says to his wife, "You will be divorced tomorrow", divorce shall take place on the morning of the next day (Ahmad 1972:80). "The condition may refer to the occurrence or non-occurrence of a certain specified future event or it may refer to a certain place or time"

(Ahmad ibid.:79). The time of proclaiming the specific conditions (talik-talak) may be on or after the contracting of the marriage.

Talik-talak seems to have been fully institutionalized in Muslim societies of the Indonesian archipelago for many centuries.(7) Today, talik-talak has been formulated by the Ministry of Religion into a uniform document of agreed conditions. In this form, the husband agrees to divorce his wife if he (1) leaves her for six months or longer consecutively, or (2) fails to give her proper maintenance for three months consecutively, or (3) abuses her physically, or (4) neglects her for six months consecutively. These are standard conditions, and the wife may add further conditions also. According to this agreement, if the wife notices any conduct of her husband which violates the agreed conditions and if she complains to a religious judge (hakim) with evidence supported by the testimony of two witnesses, then the religious judge pronounces that the proclamation of divorce has now come into effect and she is divorced.

Thus, talik-talak is a kind of talak which takes place upon the occurrence of three situations at the same time: (1) when the husband violates any of the conditions of the standardized 'talik-talak' agreement or any other conditions added to them; (2) when the wife disapproves of such conduct of her husband; and (3) when she submits her case to a religious judge (hakim) with

(7) Prins states that "[a]ccording to reliable Javanese tradition, the peculiar talik-institution [talik-talak] . . . originated in a regulation issued by a king of Mataram [Sultan Agung] in the 17th century" (1951:292).

sufficient evidence of the violation by her husband of the agreed condition(s).

III-2-3-3 Khuluk

Khuluk is a divorce which is initiated by the wife with the payment of 'iwadl' by her to the husband and which is proclaimed by him in the form of a verbal or written statement: 'I divorce (khuluk) you upon receiving the payment of 'iwadl' ('aku khuluk engkau dengan iwadl', in Indonesian). Khuluk means 'to release' in Arabic and 'iwadl' means 'substitute, compensation; consideration; equivalent' (Wehr 1966:657). In the statement of khuluk, the value of 'iwadl' is specified in cash or in kind. The husband can also proclaim in this situation 'I divorce you (talak) upon receiving the payment of 'iwadl' ('aku talak engkau dengan iwadl' in Indonesian) (Junus ibid.:131).

According to Junus, there is a difference of opinion among the four schools of Islamic jurisprudence as to the interpretation of khuluk and talak with 'iwadl'. The three schools of Sja'fi'i, Hanafi, and Maliki regard both khuluk and talak with 'iwadl' as a kind of talak, i.e. talak bain (irrevocable talak) after which the ex-husband and the ex-wife are not permitted to reconcile (rujuk). The Hanbali school, however, considers that khuluk and talak with 'iwadl' are different and that only talak with 'iwadl' is talak bain (ibid.:132).

In practice, according to my examination of the Divorce Registration Book (see Chapter V), Javanese Muslims seem to proclaim not khuluk but talak with 'iwadl'. The term khuluk does not appear at all in the terminology of the Department of Religion of the Indonesian Government, possibly to avoid differences in legal opinion outlined above.

III-2-3-4 Talak or Khuluk through Syiqaq

In Islam, as explained above, both husband and wife have the right to dissolve their marriage. However, it does not always happen that the husband and the wife reach a mutual agreement on this step. Either may use his or her right to divorce without obtaining the consent of the other party. If the divorce is contested, a resolution will be attempted by the parties through syiqaq or 'dispute [settlement]'. Junus states:

Whenever a dispute arises between the husband and the wife, the interested parties should submit this matter to hakim (religious judge). Hakim is to appoint two arbitrators (hakam); one person from the family of the wife and the other from the family of the husband. The duty of the two arbitrators is to bring peace between the disputing parties. If the two arbitrators are not successful in bringing about peace, they may bring a decision of divorce talak or khuluk. (ibid.:137).

The decision reached by the arbitrators must be accepted by the parties concerned (see p. 46 above). When the husband is recommended by the arbitrators' decision to proclaim talak, he must proclaim it to divorce his wife; when he is recommended to proclaim talak with 'iwadl', he must do so to release her.

III-2-3-5 Fasakh

Fasakh is a way of terminating a marriage by the authority of a religious judge. As mentioned before, the right to dissolve marriage by fasakh is given both to husband and wife. The husband or the wife, as a plaintiff, must submit his or her case to a religious judge with the evidence that the marital situation is not conducive to the fulfillment of the purpose of marriage due to a certain deficiency on the part of the marriage partner. As already mentioned before (see pp. 43-44 above), such deficiency could be a serious illness or injuries of either party which inhibit normal sexual life, the inability of the husband to support the household, or the disappearance of the husband for a long time. The evidence for such deficiency must be supported by medical certificates of two doctors or by the testimony of two witnesses.

According to the Sja'fi'i, Maliki and Hanbali schools, the husband has the right of fasakh and may terminate marriage by submitting his case to a religious judge. However, the Hanafi school forbids the husband to take this way, for a husband can dissolve a marriage by proclaiming talak and, thus, he does not need the intervention of a religious judge. Junus states: "[fasakh by the husband] will make the wife embarrassed by the presentation of evidence concerning her [physical conditions] to a religious judge. Therefore, if the husband finds it difficult to associate with his wife due to her sickness, it is better to take the way of talak, not the way of fasakh" (ibid.:135).

Table III-1, below, recapitulates the above-described procedures for the dissolution of marriage in Islamic law.

Table III-1 Procedures to Dissolve the Marriage in Islamic Law

Ways of Dissolution (Legal terminology in Indonesia)	: Intervention of : Religious Judge :	: Final Action : :
<u>Talak</u> (<u>Talak</u>)	: Without Intervention	: Marriage is dissolved
<u>Khuluk</u> (<u>Talak</u>)	:	: by proclamation of
		: divorce by husband
<u>Talak</u> through <u>Syiqaq</u> (<u>Syiqaq</u>)	: With Intervention	:
<u>Khuluk</u> through <u>Syiqaq</u> (<u>Syiqaq</u>)	:	:
<u>Talik-Talak</u> (<u>Talik-Talak</u>)	:	: (a)
	:	:
<u>Fasakh</u> (<u>Fasakh</u>)	:	: Marriage is terminated
	:	: by religious judge

(a) With recognition of religious judge.

III-3 Conclusion

Islam permits a marriage to be dissolved by the husband, or by the wife, or by the mutual consent of both parties if their relationship is no longer conducive to the fulfilment of the purpose of marriage, i.e., the lawful enjoyment of sexual life and the production of legitimate offspring. In general, divorce is discouraged but if the situation reaches the point where no way is found to remedy the relationship between the estranged husband and wife, then the dissolution of marriage is obligatory.

Rights to dissolve marriage are given to both husband and wife equally, except for the right to proclaim the divorce which is given only to the husband. In practice the husband and the wife are given equal access to the procedure enabling them to obtain divorce if either desires it.

Concerning legal matters such as rights and procedure it is essential to refer to Islamic law at the level of syari'at. As we have seen in the section on fasakh (p. 53), the right of fasakh does not necessarily mean that this right can be used unconditionally. A husband with the right to proclaim divorce (talak or khuluk) is given the chance of choosing the most appropriate way of dissolving the marriage according to the commandment of Allah. Many verses in the Qur'an stress the duty of the husband to treat wives with affection and kindness (2:228-9, 231; 4:19, 34, 128-9). Ahmad explains that "[i]f mutual love cannot work, the husband should release the wife from the bond of marriage. If, in spite of the wife's unhappiness, the husband refuses to give her a release, he shall be guilty of not complying with the injunctions of the Qur'an" (op. cit.:233).

CHAPTER IV

PROCEDURES FOR DISSOLVING MARRIAGE IN KOTAGEDE

In the preceding chapter I discussed the Islamic law of the dissolution of marriage. In this chapter I shall describe how Islamic law is institutionalized in administration.

Administratively, there are three organs which actually deal with the Muslim dissolution of marriage: (1) the Office of Religious Affairs (Kantor Urusan Agama or KUA), (2) the Islamic Religious Court (Pengadilan Agama or PA), and (3) the Body for Marriage Counselling and Divorce Settlements (Badan Penasihat Perkawinan dan Penyelesaian Perceraian or BP4). Hereafter I shall refer to these three organs only by their Indonesian abbreviations.

KUA is the office of the Department of Religion at the sub-district (kecamatan) level, the lowest administrative level of the Department, and is responsible for all religious affairs within the territory of a sub-district.(1) Where the population of a sub-district is predominantly Muslim, one of the major responsibilities of KUA includes the registration of marriages, divorces, and reconciliations among Muslims. PA is a special court in the Indonesian judicial system, overseen by the Ministry of Religion rather than the Ministry of Justice. PA rectifies errors committed or overlooked by KUA in its handling of matters relating

(1) Administrative levels in Java are as follows: province (propinsi) - regency/city (kabupaten/kota madya) - sub-district (kecamatan/kemantren) - village/neighborhood association - (kalurahan/rukun kampung). The use of the English term 'sub-district' for kecamatan/kemantren might give English readers a wrong impression: In the Dutch colonial period there was an administrative unit of district (kawedanan) in the administrative hierarchy. Though this 'district' (kewedanan) no longer exists, the term 'sub-district' as an equivalent of kecamatan/kemantren is still used.

to marriage. PA also takes decisions to dissolve those marriages where the husband does not or cannot proclaim talak or khuluk, and sees to the implementation of talik-talak. BP⁴ is a semi-official organization attached to KUA, whose major function is to give information and advice to Muslims who are planning to marry, divorce or be reconciled.

As government organs, KUA and PA appear to have clearly differentiated functions: one administrative and the other judicial. However, this is only an illusion of the modern names of the organs, the Office of Religious Affairs and the Islamic Religious Court. During the Dutch colonial period, all marital matters in Java involving Muslims, judicial as well as administrative, were handled by one single office, the Penghulon (see pp. 74-76). Although the Penghulon was split into two offices, KUA and PA after Independence in 1945, the administrative and judicial functions are not separable in the administration of Islamic law.

Administration and adjudgement are combined in the implementation of Islamic law. According to Islamic law, when the continuation of a marriage is threatened, every effort is to be made to reconcile the married couple. Not only must the parties themselves try to avoid a dissolution but also those people concerned with the marriage must work to bring about a reconciliation. Ideally, only when all efforts at reconciliation have failed, and when the case has been fully examined and found to satisfy religious and legal requirements, may Islamic law permit the

dissolution of the marriage. In approaching to this goal, an official of KUA or PA plays a number of roles such as counsellor, adviser, arbitrator, judge and administrator. Thus, there is no clearcut separation between administration and adjudgement for these officials.

KUA and PA are organs of the Ministry of Religion. Although the Ministry of Religion is also concerned with other religions (Protestant, Catholic, Hindu and Buddhist), the marital matters of Muslims only are handled by KUA and PA. People who profess other religions register their marriages and dissolutions at the civil registration office, which is an organ of the Ministry of Home Affairs. And when a dispute arises in non-Muslim marital relations, the case is submitted to a civil court under the Ministry of Justice.

In the handling of matters to do with marriage and its dissolution, there is a crucial difference between the Ministry of Religion and the other Ministries. The Ministry of Religion differs from the other Ministries in the qualifications of its personnel. To become a civil servant or a civil judge, it is necessary to be an Indonesian citizen and to have reached a level of education appropriate to the requirements of the position. To become an official in KUA (in the areas where Islam is predominant) and PA, however, in addition to the above qualifications, it is necessary to be Muslim and to have a considerable background of religious education. Thus, matters concerning the Muslim dissolution of marriage are entirely in the hands of Muslim religious officials,

who have both religious and secular educational qualifications. This is a crucial point, since Islamic law must be considered from both religious and legal points of view (see Chapter III).

IV-1 Procedures to dissolve marriage

During my research in 1971-2, it appeared that Muslims in Kotagede who wanted to dissolve their marriage first had to seek advice from counsellors of BP4. If BP4 counsellors judged that there were sufficient reasons for dissolving the marriage, the couple then either finalized the dissolution of marriage at KUA or PA.

Cases which were processed at KUA were those in which husbands were willing, or agreed through counselling at BP4, to proclaim the dissolution of marriage and where there were no disputes between the couple concerned. Cases which did not meet these conditions had to be processed at PA. In addition, PA handled talik-talak cases. Thus which organ is involved in the dissolution of marriage is not determined by the fact of who initiates it or of what the reasons are for divorce action. Rather, the presence or absence of dispute and the willingness of the husband to proclaim divorce determine the organ.

From my observations in Kotagede, the semi-official organ of BP4 plays a significant role in the dissolution of marriage. Therefore, I shall examine this organ first, describing the history of its national development, and then outlining the activities of regional BP4 in Yogyakarta.

IV-2 BP4 (Body for Marriage Counselling and Divorce Settlements)

Amongst His signs is that He hath created for you of your own species spouses that ye may dwell with them, and hath set love and mercy between you; surely in that are signs for a people who reflect. (30:21)

This Qur'anic verse is said to be the guiding principle of BP4. As the verse indicates, the aim of this organization is to enhance the value of marriage and help people to raise their families according to Islamic teachings. (see. Articles 1-3 of Anggaran Dasar dan Anggaran Rumah Tangga BP4 (Statutes and Rules of BP4), 1970).

According to the Statutes and Rules referred to above, BP4 was established on January 3rd 1960 by uniting several organizations with similar aims, including P5 in Jakarta, BP4 in Central and East Java, and BKRT in The Special Region of Yogyakarta.(2) It was to be guided by a central headquarters legally recognized by the Letter of Decision of the Minister of Religion, No.85 in 1961 (ibid.:6).

The Statutes and Rules of BP4 lists:

1. to give advice (nasihat) and information (penerangan) to those who are involved as well as to the general public, about matters of marriage (nikah), divorce (talak) and reconciliation (rujuk);
2. to try to decrease the marriage of minors (perkawinan dibawah umur);

(2) P5 is the abbreviation of Panitia Penasihat Perkawinan dan Penyelesaian Perceraian (Committee of Counsellors for Marriage and Divorce Settlement). BKRT seems to be the abbreviation of Badan Kesejahteraan Rumah Tanggah (Council for Family Welfare). See also Lev 1972:151-153, where a detailed history prior to the official establishment of BP4 in 1960 is given.

3. to prevent the abuse of the right of divorce (perceraian sewenang-wenang);
4. to give assistance to those who experience difficulties in marriage and for those seeking divorce to reach a just settlement according to Islamic law (hukum Islam);
5. to publish books and brochures and organize courses and workshops;
6. to cooperate with other organizations with similar purposes at home and abroad;
7. other activities which are regarded as useful.

(ibid.:8, Article 4., my translation):

In the city of Yogyakarta, the first BP4 was established in the sub-district of Wirobrajan on 1 February 1963. The second BP4 was founded in Kotagede in the following year (Record of Department of Religion, City of Yogyakarta). BP4 offices then began to be set up in other parts of the city, and by the time of my research in 1971, there was an office in each of the 14 sub-districts of the City of Yogyakarta. Officially each BP4 is under the supervision of the KUA of each sub-district, whose head occupies, ex officio, the position of the chairman of BP4.

Each BP4 office is staffed by a general chairman and, normally, two chairwomen, two secretaries, and two treasurers and sometimes several assistants. Except for the general chairman, who is the head of KUA, thus a government official (pegawai negeri), and is always a male, other BP4 officers are all women religious leaders in the sub-district and they are all volunteers.(3) The general

(3) Statutes and Rules, Article 3 (ibid.:18), mentions a government subsidy for BP4 from the national to village level. However, as far as I know, these women were not paid for their counselling work at the time of my research. The government subsidy must be used for other purposes.

chairman plays only a supervisory function whereas actual counselling is carried out by the two chairwomen.

IV-2-1 Kotagede BP4 and its board members

The BP4 in MPP Kotagede was officially formed on 17 July 1964. At the time of establishment, it consisted of seven members listed in Table IV-1:

Table IV-1 The BP4 Members in Mpp Kotagede(4)

Name	Position	Age	Education	Occupation
Bp. Hadi Nur	General Chairman	48	Ma'had Islamy*	Head of KUA
Ibu Hadi Nur	First Chairman	42	Mu'allimat**	Merchant
Ibu Mardisiswoyo	Second Chairman	50	Mu'allimat	Teacher
Ibu Mulyohardjono	Secretary	41	Mu'allimat	Entrepreneur
Ibu Chirzin	Secretary	42	Mu'allimat	Merchant
Ibu H. Djahid	Treasurer	50	Mu'allimat	Merchant(Shop)
Ibu H. Rofi'i	Treasurer	50	Mu'allimat	Merchant

* Ma'had Islamy=Junior High School for Religious Teacher Training

** Mu'allimat=Muhammadiyah's Girls Senior High School for Religious Teacher Training

Let me describe more fully these board members and the way they were selected. Bapak Hadi Nur was the head of KUA Kecamatan Kotagede at that time. Looking back on the establishment of BP4 in Kotagede he said:

(4) This table was compiled from two sources: one is an official record from the Department of Religion, City of Yogyakarta [unnamed] which gave information on name, position, age and address. I have removed addresses and added educational background and occupation from my own field data.

Bp. is an abbreviated form for Indonesian word Bapak, which is a term of respectful address for an older man. Ibu is a form of respectful address to an older woman.

The Department of Religion of the City of Yogyakarta organized an up-grading course for the ladies who were ready to become board members of BP4. KUA Kecamatan Kotagede was also asked to send representatives. At that time there was no women's [religious] organization in Kotagede, except 'Aisyiyah. Thus, several people were chosen from 'Aisyiyah: those who were capable and had spare time. (From the interview conducted by Yusron Asrofie(5). My translation)

Bapak Hadi Nur's statement makes the following points:

1. that these women members of BP4 in Kotagede were chosen from among the local members of 'Aisyiyah, a national women's Islamic organization;
2. that they were capable of carrying on the work of BP4. Their main work was counselling the people of Kotagede on marriage and its dissolution according to the Islamic teachings; and
3. that they had the spare time to do this work.

It is not clear however, whether Bapak Hadi Nur himself selected these women from 'Aisyiyah or whether 'Aisyiyah selected them as candidates. I suspect it was the latter. In any case, it is certain that these women were active members of the 'Aisyiyah at that time and they possessed the qualities and qualifications necessary for carrying out BP4 work.(6)

-
- (5) Yusron Asrofie is a young man of the town and a student of the State Institute of Islamic Religion, Yogyakarta. He interviewed Bapak Hadi Nur in the presence of Ibu Mardisiswoyo, a founding member of Kotagede BP4, in 1979 on my behalf.
 - (6) I have obtained the list of 'Aisyiyah officials of 1979. Fifteen years since the establishment of Kotagede BP4, almost all the initial officials of BP4 are still active in their original organization. For example, Ibu Mardisiswoyo is the adviser (Penasihat), the most honorable position for 'Aisyiyah members. She is also on the committee for the section of education. Ibu Hadi Nur is one of the three chairwomen and she is also on the committee for PKU (Pembinaan Kesejahteraan Umat or Development of Community Welfare). Ibu Chirzin is another chairwoman. (From Brosur Lebaran No.17 Tahun XVII pp. 61)

As Table IV-1 above shows, their educational levels are very high considering their age.(7) All of them graduated from Mu'allimat which is a private (Muhammadiyah) religious school at the secondary education level. As this suggests, they all come from economically well-established and religiously-oriented families. For example, Ibu Djahid, Treasurer, comes from an old, wealthy family of Kotagede known as Bani Mu'min.(8) And after marriage, they established good family reputations in religious circles as well as in their neighborhoods. Their husbands are also well-known and active in the religious circles of Kotagede. Ibu Chirzin's husband, Bapak Chirzin was the general chairman of the Kotagede Branch of the Muhammadiyah (see the following p. 65 for this and Aisyiyah). Bapak Hadi Nur, the husband of Ibu Hadi Nur, is the head of KUA of MPP Kotagede (see Table IV-1) and is also a member of the Muhammadiyah. The husbands of the other ladies also occupy positions of similar social standing. Thus these women are not only well-educated, but they also have been raised in a religious atmosphere and are practising their religion.

Bapak Hadi Nur said that 'those who have spare time' were selected. This statement does not imply that they are women of leisure. On the contrary, they are all very busy. They are all

(7) They were all educated during the colonial period when the majority of Indonesian girls were given little opportunity to go beyond the third year of village primary school (see Struers 1960:69-70). Nowadays there are a considerable number of young women in Kotagede who have graduated from, or are enrolled at, the tertiary education level.

(8) Bani, meaning 'descendants' in Arabic, is an extended family group found among devout Muslims in Java. Haji Mu'min, the founder of Bani Mu'min, was a rich textile and batik trader in the early decades of this century in Kotagede and was one of the financial sponsors of the local Muhammadiyah.

married and have children and grandchildren. All of them have their own businesses to attend to. For example, Ibu Hadi Nur sells batik cloth daily in the market of Kotagede. Ibu Mardisiswoyo is a teacher in a Muhammadiyah school. Ibu Mulyohardjono owns a gold-gilding factory. Ibu Djahid owns a general store in the centre of town in which she sells all kinds of daily necessities. However, these businesses are all economically well-established, and so they do not require these women to attend them from morning till night just for a living. Therefore they can and do give of their time for the welfare of the community through the organization of 'Aisyiyah. Their involvement in the organizational activities of 'Aisyiyah is crucial to an examination of BP4 in Kotagede.

IV-2-2 'Aisyiyah and BP4

'Aisyiyah is a women's division of the Muhammadiyah, an Islamic organization founded by Kyai Haji Ahmad Dahlan in Yogyakarta in 1912. 'Aisyiyah means 'followers of Aisyah', the favourite wife of Muhammad, an ideal of the Muslim womanhood.(9)

The Muhammadiyah aims at "establishing firmly and revering the Faith of Islam so as to create a Moslem society in the true sense of its meaning" (The Statutes of the Djamiat Muhammadiyah, English original 1958:5). According to the Muhammadiyah, the ideal Muslim society is a society in which people believe in, worship and obey

(9) There is another female division of the Muhammadiyah called Nasyiatul 'Aisyiyah, which is for young unmarried women.

Allah.

That men live in this world in societies is God's will. A society which aspires for welfare, tranquillity, peace, prosperity and happiness can only achieve its goal by basing its principles on justice, righteousness, fraternity and mutual assistance within the Laws of God, excluding the devil's influence and greed.(ibid.:3)

Based on these tenets, male and female members of the Muhammadiyah endeavour to achieve the following aims:

1. to promote moral enhancement and establish an Islamic mission;
2. to promote training and education;
3. to promote and encourage the existence of a society of mutual assistance;
4. to build and foster places of worship and foundations (waqafs);
5. to give training and guidance to women so they may be conscientious in their worship of God and in organizational management;
6. to train and educate the younger generation to become worthy Moslems;
7. to work towards the betterment of the standard of living in accordance with the Islamic teachings;
8. to strive with all wisdom for the enactment of the Islamic Laws in the society.(ibid.:5).

Since the objectives of 'Aisyiyah are to spread Islam especially among women, its aims are:

1. to build Musholla (prayer houses and mosques specially for women's use);
2. to spread instructions for women to cover their bodies, to wear head-scarves, to avoid free relationships [between sexes], and to comply with etiquette and customs based on Islam;
3. to give guidance on how to establish a happy family as ratified by Majlis Tarjih (Advisory Council of Islamic Law);

4. to publish a women's magazine, "Suara 'Aisyiyah", as the official voice of the organization;
5. to run a special educational system for women, including schools for midwives, and to take care of the education of small children (Bustanul Athfal or kindergarten);
6. to run courses named Jama'atul Umahat (Meetings of Islamic Community) in order to cultivate the feeling of responsibility among mothers for the education of their children;
7. to organize BP4. (From Musthafa & Chusnan 1977: 25-26. My summarized translation).

Thus the activities of 'Aisyiyah are broad, and aimed at assisting women to live according to Islamic teachings. Among the most essential activities of 'Aisyiyah is the 'education' of women in the widest sense of the term. 'Aisyiyah is engaged in formal education through schools; semi-formal education through courses, public lectures and meetings; and informal education through counselling.

Counselling given through BP4 is genuinely an important part of the educational activities of 'Aisyiyah. That is, even though organizationally BP4 is not a part of 'Aisyiyah, participation in the activities of BP4 is compatible with the 'Aisyiyah movement. Because of this, counsellors from 'Aisyiyah work energetically for BP4 even though they are unpaid. For them this counselling work is not forced upon them by the head of KUA but it is work which Allah enjoins them to do. As, 'establishing a happy family' is essential for all Muslims, so to give guidance for this purpose is a holy mission for members of 'Aisyiyah. The establishment of BP4 by the Ministry of Religion, thus, has given an institutional opportunity

to 'Aisyiyah to realize one of the most essential objectives of the organization.

As a result, it seems that activities of BP4 in Yogyakarta are directly related to the vigour of the 'Aisyiyah movement. This correspondence is well observed in Kotagede. The Muhammadiyah in Kotagede (including 'Aisyiyah) is one of the most active of the 14 branches of Muhammadiyah in the city of Yogyakarta. BP4 in Kotagede is equally active and is therefore highly regarded by the BP4 counsellors of other areas and by the officials of the Department of Religion, Yogyakarta.

IV-2-3 Counselling on the dissolution of marriage

Clients are usually counselled by the chairwomen of BP4. The time, place and method of counselling vary from one BP4 to another. Some BP4 set specific times and places for counselling, such as 'from 9 to 12 o'clock every Thursday morning at the office of BP4'; others do not set any particular time and their method of counselling is more informal.

BP4 in Kotagede follows this informal practice. Ibu Hadi Nur, one of the chairwomen of BP4, told me: "We have never set the date or the time of counselling. People usually come to us at night". Ibu Hadi Nur says that the people of Kotagede all know who the BP4 counsellors are and where they live. So, when a dispute arises or when a husband and a wife want to dissolve their marriage, one or both visit a counsellor and explain their problems. Counselling takes place mainly at the residences of Ibu Hadi Nur and Ibu

Mardisiswoyo. Officially BP4 of Kotagede has its signboard on the wall of the KUA Office of Kotagede but, as far as I know, the Office has never been used for divorce counselling sessions.

Counselling at BP4 in Kotagede seems to be very informal. I asked Ibu Hadi Nur to allow me to observe counselling sessions but she said this would not be possible since she could not know when her clients would be visiting her. Her answer was, of course, a polite excuse. I found later that the real reason for her rejection was that counselling must be kept strictly confidential according to an instruction issued by officials of BP4 in The Special Region of Yogyakarta (Daerah Istimewa Yogyakarta) (Instruction No.1 1971, Services for students doing research [on BP4]). According to this instruction counsellors for marriage, divorce and reconciliation (Nikah, Talak, dan Rujuk) are obliged to protect the confidentiality of the families concerned and can only provide information to researchers without mentioning personal names of clients. Furthermore counsellors may not allow the presence of outsiders when interviewing their clients.

Thus, I could not observe any counselling in Kotagede where I lived and did the main part of my research. However, it was fortunate for me that the counsellors of BP4 in a neighboring sub-district gave me permission to observe and even to record their counselling sessions with a taperecorder, on the condition that I did not release the names of clients. I shall describe and discuss these counselling sessions more fully in Chapter VI. Here I want to concentrate on the procedure for the dissolution of marriage and

BP4's place in it.

The usual procedure for counselling by BP4 counsellors would be as follows: In either formal or informal sessions, the counsellors of BP4 first listen to the statements of clients: usually a husband and a wife come together and first sit together in front of the counsellors (usually two). Then, depending on the situation, the counsellors may talk separately with the husband and the wife. Usually a counselling session lasts from thirty minutes to an hour and sometimes the couple is told to come back again, depending on the complexity of the case.

Cases brought to BP4 can be divided into three categories: (A) the husband and wife both want to dissolve the marriage; (B) the husband wants to divorce his wife, but she does not want to be divorced; and (C) the wife wants to dissolve the marriage, but her husband can not or does not want to proclaim talak (or khuluk).

In cases processed by BP4, each of the above categories can be further divided into two: cases approved by the counsellors and cases disapproved by the counsellors. This means that even with a case belonging to the A category, the counsellors of BP4 would examine carefully the statements of the husband and of the wife. In fact the counsellors only instruct the couple to go to KUA to finalize their divorce when they have come to the conclusion that there is no room for considering reconciliation.

One of the cases I observed at the BP4 office presents a good example for understanding how BP4 functions within the administrative system. This was a case belonging to A category: it was a divorce request initiated by the wife; there was no dispute over property or over settlement either from the husband or the wife; the husband was willing to proclaim talak; there had been no sexual intercourse between them after the wife's last menstruation; thus, there was no particular reason to prevent the dissolution of marriage from the legal viewpoint. However, the counsellors of the BP4 requested the couple to reconsider their divorce. I suspect the reason was that the counsellors found out through counselling that the husband still loved his wife. This meant that the counsellors, adhering to the Islamic injunction against easy divorce, considered that there was still a possibility for the couple to continue their marriage. As long as there is a possibility of building a happy family, divorce is not approved of by Allah (see p. 41 in Chapter III). Therefore, I think that the counsellors instructed the couple to consider reconciliation and told the husband to ask Allah to help him by reciting Al-Fatihah (The Exordium, the short and most popular opening chapter of the Qur'an) 40 times a night after the obligatory night prayer.

The way this case was treated is significant. The absence of approval by the BP4 counsellors meant that this couple could not go to KUA to complete their divorce proceedings. At the end of a counselling session, counsellors must fill out a form called Naskah Penasihat (Document of Counselling). This document contains detailed information on the couple concerned: name, address, birth

place, religion, occupation, monthly income, education, physical condition, the date and the place of their marriage, previous experience of divorce with the present spouse, the household condition (with parents or with in-laws), and marital history of the couple. In addition to this background information, statements are solicited from the husband and the wife giving the reasons why either or both of them want to dissolve their marriage. In the final section of this form, counsellors write their own impressions and evaluation of the case (see Appendix B for the format of Naskah Penasihat). This statement is regarded as a recommendation to KUA/PA for the handling of the case. Therefore, Naskah Penasihat is an important document in the administration of the dissolution of marriage. Unless a document is received, stating that the counsellors agree to the dissolution of marriage, KUA will not take further action.

In the above mentioned case which was not approved by the BP4 counsellors, they stated to the couple that: they would now record the date of the counselling but would not yet sign the Naskah Penasihat, indicating the case was not closed. If after about one week's reconsideration and efforts at reconciliation, the couple still wanted to dissolve their marriage they had to come back again and tell the counsellors. Then the counsellors would finish the Naskah Penasihat form and send it to KUA.

The lack of approval by BP4 counsellors does not mean that opportunity for divorce is completely denied. If the couple comes back again to the BP4, they certainly can go through the BP4 to KUA

to finalize their divorce. However the initial lack of approval by BP4 has some significance since it prevents KUA from taking immediate action in dissolving the marriage and some clients actually abandon their intention of proceeding. The above mentioned couple seems to have been an instance of this for, as far as I know, they did not come back to the BP4. I was unable to obtain any information on the number of cases in which couples actually abandoned their intention to dissolve their marriage after having counselling in Kotagede. However, Laporan BP4 (Reports of BP4), statistical reports issued from the Provincial Office of Religious Affairs, Special Region of Yogyakarta, indicate that 335 couples visited BP4 (14 BP4 of the City of Yogyakarta) in 1970, and that 275 (82%) couples out of this total of 335 actually dissolved their marriage at KUA and 2 (0.3%) at PA .(10) Apparently, 58 couples (17.3%) seemed to have changed their minds and continued their marriage after counselling.

IV-3-1 KUA (Office of Religious Affairs)

Upon receiving the Naskah Penasihat form KUA starts to process the divorce case as soon as the couple concerned asks to dissolve their marriage.

Before describing the functions of KUA, I shall discuss briefly the perception of KUA held by local people and provide some relevant information about the historical background of KUA.

(10) This number seems to exclude talik-talak cases, because in the same year there are 13 women of Kotagede who dissolved their marriage at PA in talik-talak.

Kotagedeans call the head of KUA 'Pak Naib' and his office Kenaiban (Naib's Office). This indicates that this official is not recognized by the local people as being the head of all religious affairs, but only of Islam. The kenaiban comes under the office of Penghulon mentioned above (see p. 57). It seems clear that when the Javanese religious bureaucracy was firmly established by the middle of the 19th century, the penghulu was in the top rank of religious officials, the naib was in the middle, and the modin or kaum in the lowest (village) rank.

Raffles described the religious bureaucracy of Java in the early 19th century as follows:

The judicial and executive powers are generally exercised by the same individual. The written law of the island [Java], according to which justice is administered and the courts are regulated, is that of the Koran, as modified by custom and usage (Raffles 1978:I:277).

He describes further the court and law officials:

The courts of justice are of two descriptions: those of the Panghulu [=Penghulu] or high priest, and those of the Jaksa. In the former the Mahometan law is more strictly followed; in the latter it is blended with the customs and usages of the country. The former take cognisance of capital offences, of suits of divorce, of contracts and inheritance; they are also, in some respects, courts of appeal from the authority of the Jaksa. The latter take cognisance of thefts, robberies, and all inferior offences . . . (ibid).

Penghulu is from Malay and means 'head man' (Wilkinson 1959:877); in Java, it refers specifically to the head of mosque officials (penghulu mesjid).

There is a government mosque at every level of administrative unit.(11) In Principalities, official mosques included mesjid kraton (court mosque), mesjid kabupaten (regency mosque), mesjid kawedanan (district mosque), and mesjid ngasistenan (sub-district mosque). The heads of these mosques were called penghulu, "but often this word is only used for the head priest of the whole regency [kabupaten], . . . [those] of the mosques in smaller places are considered his naibs or wakils (delegates or proxies)" ((Veth 1875 I:374) translated for me by Henny Fokker-Bakker).(12)

The fact that the head of KUA today is called 'Pak Naib' indicates that the head of a sub-district mosque does not acquire traditionally the full authority of a penghulu. For example, the authority of Kenaiban does not include the judicial power to dissolve a marriage on behalf of the husband. If a husband cannot or does not want to proclaim talak or khuluk, the case must be forwarded to a higher authority: traditionally to the Penghulon, and, at present, to PA.

(11) Raffles gives a picture of official mosques in Java: "In the larger villages, or chief towns of the subdivisions in which the Kapala chutag or division officer resides, a square place, corresponding with the alun alun in the capital, is reserved; and in like manner, the mosque is found to occupy one side and the dwelling of the chief another" (Raffles I:82-83).

(12) In Islam there is no priesthood. The term here must have meant 'the head of the regency mosque'.

IV-3-2 KUA in Kotagede

KUA in Kecamatan Kotagede at the time of my research consisted of a head officer and several officials under him. All officials are Muslims, since Islam is dominant in Kotagede: some of them are members of Muhammadiyah, some are members of Nahdlatul Ulama ('Renaissance of the Ulama', an organization of traditionalist ulama headquartered in East Java).(13)

Since the head of KUA, or traditionally Pak Naib, is the one who exercises the religious, judicial, and administrative powers in cases of the dissolution of marriage, it is interesting to know the family and social background of Bapak Hadi Nur, the head of KUA in Kotagede. He is a son of the former Pak Naib of Kotagede. He is one of the leaders of the Kotagede Branch of Muhammadiyah and he also is the Head of the Neighborhood Association of his residence. He finished Ma'had Islamy, a junior high school for religious teacher training which was founded by Kiyai Haji Amir who was a local leader of the Muhammadiyah. He can read and write Indonesian, Javanese - also on the traditional Javanese script, and Arabic.

Bapak Hadi Nur is one of the busiest people in the town. In addition to the duties of Pak Naib which I shall describe below, he is engaged in several other activities including the promotion of general religious consciousness (sponsoring pengajian or religious lectures), the promotion of harmony among religions (for example, attending Christmas services to give an address), and ideological

(13) The religion of the officials of KUA is usually correlated with with the religion which is dominant among the population under the office.

reeducation (giving pengajian once in every 35 days to ex-PKI (Communist Party of Indonesia) members). He attends a large number of social gatherings officially as well as privately: wedding ceremonies, circumcisions, funerals; public festive occasions; opening ceremonies for a new building, bridge, road, etc.

One of his most important activities is the regulation of marital matters. Here I shall confine myself to describing his functions in the dissolution of marriage. He is expected:

1. to obtain adequate information about the divorce case;
2. to examine the case according to Islamic law;
3. to give advice to the couple concerned where necessary;
4. to let the husband proclaim talak or khuluk;
5. to record and to register the divorce;
6. to issue Surat Talak (the Letter of Divorce) to the divorced wife.

When gathering information on a divorce case, the head of KUA has two services which can assist him: one is BP4 and the other is the kaum.⁽¹⁴⁾ The kaum was traditionally in the lowest rank of the religious bureaucracy. Today there is a kaum for every village/neighborhood association in city. His official title is Kepala Bagian Agama (Chief of Religious Section). In Kotagede there are 14 kaum all together, one in each Neighborhood Association. The kaum is elected by people in the Neighborhood Association and is not a salaried civil servant. One of the kaum's duties is 'to help the

(14) Kaum is sometimes called modin.

marriage registrar' at KUA (A Joint Communique announced by the Ministry of Home Affairs and the Ministry of Religion No.3/1947. Cf. Hazim 1977:165). The kaum is instructed to: "assist the marriage registrar [of KUA] examining the couple who are going to marry/divorce/reconcile with providing correct information on the matters which are needed by the marriage registrar according to his instructions" (ibid.:165; my translation). Thus, the kaum assists KUA in arranging for the preparation of necessary documents such as Surat Keterangan (the letter of information). The kaum also accompanies the couple to KUA to register the marriage/divorce/reconciliation and acts as a witness.

With the help of BP4 and the kaum, the head of KUA examines a request for divorce and decides according to Islamic law whether it is syah (legal) or not. If it is necessary to give advice, he also counsels the couples concerned. And if there is a petty dispute between a husband and wife, he also tries to arbitrate.

Before BP4 was established, the head of KUA was the official who gave advice to couples who wanted to dissolve a marriage. Since BP4 now officially takes care of this counselling, his duties are lighter. However, it is still his responsibility to decide whether a divorce case sent from BP4 with the evaluation that the marriage should be dissolved, is legal according to Islamic law. Thus, it is only after the head of KUA has given his approval that a case of dissolution of marriage is acceptable, the marriage can be dissolved religiously, legally and administratively.

First the husband must proclaim talak or talak with 'iwadl, according to the situation in which he and his wife are involved, and then he must swear the divorce to Allah in front of two witnesses. These witnesses are usually an officer of KUA and a kaum of the Rukun Kampung where the husband lives.(15) The divorce is recorded by a secretary of KUA, with the approval of the head of KUA, and is registered with a serial number according to the year. The registration book for the dissolution of marriage is called Buku Pendaftaran Talak (Divorce Registration Book). (An analysis of the contents of this book will be given in the next chapter.) The final step for the head of KUA in the dissolution of marriage is to issue Surat Talak (Letter of Divorce), which certifies that the divorced wife is no longer married and that she is eligible to remarry as soon as her iddah is over.

(15) A dissolution of marriage should be registered at the KUA where the husband concerned lives, and a marriage at the KUA where the bride lives (from my field note based on interviews with KUA and BP4 officials).

IV-4 PA (Islamic Religious Court)

The Islamic court system in Java consists of the Mahkamah Islam Tinggi (Islamic Supreme Court), the Jawatan Pengadilan Agama (Provincial Office of Religious Court), and regional Pengadilan Agama to which I refer in this thesis in the abbreviated form of PA. There is only one Mahkamah Islam Tinggi, which is located in Surabaya. This is the Supreme Court, to which people can appeal against decisions made by regional PA. There is a Jawatan Pengadilan Agama in each provincial capital which handles only administrative matters. No court sessions are conducted in this office but it coordinates the regional PA. The PA is a religious court and there is one in each regency (kabupaten) and in every city (kota madya). A resident of a regency or a city must bring his/her case to the regional PA.

In The Special Region of Yogyakarta, however, the system of religious courts is different from other provinces in Java. There is only one PA which is called usually PA Yogyakarta (officially PA di Daerah Istimewa Yogyakarta). This PA has branch offices in every regency (kabupaten). Bapak Abdul Madjid, who was a deputy chief religious judge of this PA, described the situation in Yogyakarta as follows:

There should be one PA in every regency (kabupaten), but in The Special Region of Yogyakarta, regency level PA still take the form of branch offices of PA Yogyakarta (Cabang Kantor Pengadilan Agama). So there are PA branches at Sleman, Bantul and Kulon Progo.(16)

(16) He named only 3 regencies out of 4 in The Special Region of Yogyakarta. However, since he said earlier that there is definitely one PA in each regency, I presume there is a PA branch in Gunung Kidul which he did not mention.

PA Yogyakarta is in a special position (tingkat istimewa), that is, this PA has judicial authority over all areas of The Special Region of Yogyakarta: when a person who lives in the regency of Sleman does not want to bring his/her case to PA in Sleman, he/she may come to PA Yogyakarta. But he/she may not visit PA in another regency. A person who lives in the City of Yogyakarta may not present a case to these branch offices of PA in any regency. (from my field note based on the interviews with Bapak Abdul Madjid).

Thus Kotagedeans, according to the system explained above, go to PA in Yogyakarta, which is not a PA at the city level since there is no city level PA in Yogyakarta. The special situation of PA in Yogyakarta seems to derive from the traditional Penghulon system. The present location of this PA (to the west of the alun-alun which is a big square open field in front of the palace and next to the big mosque) would indicate that this office used to be the Penghulon at the highest level of religious administration in the Yogyakarta sultanate.

According to Bapak Abdul Madjid, the procedure for dissolving marriage by PA is as follows:

A wife who wants to dissolve her marriage in PA first goes to the head of her Rukun Tetangga taking her marriage certificate (surat kawin) with her. (17) Secondly she goes to the head of her Rukun Kampung and thirdly visits the sub-district office. . . . the point is that we [officials of PA] know of her intention to get divorced in PA when she goes through the administration in the above-mentioned way, not through KUA. (ibid.)

Thus, it seems that bringing a case to PA requires completely different administrative channels. Bapak Abdul Madjid's statement 'not through KUA' must not be misunderstood. This does not mean that a wife who wants to dissolve her marriage can go to PA without

(17) Rukun Tetangga may be translated as 'neighbourhood unit'. This is a lower unit of Rukun Kampung, which is a neighbourhood association of urban administration.

having KUA's consultation. It means only that after being advised in the KUA office the wife goes to PA through the route of RT, RK, and sub-district office.

Difficulties in the proclamation of the dissolution of marriage are a common feature of cases brought to PA. As I have already stated in Chapter III (pp. 44-45), the proclamation of divorce is an essential legal procedure to finalize divorce and according to Islamic law the right to proclaim a divorce is entirely in the hands of the husband regardless of who initiates divorce. Therefore, when a wife intends to dissolve her marriage but her husband is unwilling or unable to proclaim divorce the only way that she can take is to present the case to a religious judge of PA through whom the marriage can be terminated.

It must be recognized that there is a different competency between the head of KUA and the religious judge in PA. The head of KUA has authority to give a religious sanction according to Islamic law to the couple concerned. In other words, he can say that a divorce is approved according to Islamic law so that the husband may proclaim divorce in front of two witnesses and his act is recorded. However, he also can say that the divorce is disapproved according to Islamic law so that the couple must reconsider it. Thus, he can stop the couple who wants to dissolve their marriage, but he cannot dissolve a marriage when the husband will not proclaim talak or talak with 'iwadl even if its dissolution is approved by Islamic teaching. Whereas the religious judge can terminate the marriage contract for a wife without having the proclamation of divorce by

the husband (fasakh).

The functions of the religious judge in PA are to a great extent the same as those of the head of KUA. When a judge receives a divorce request from a wife, his main task is to explain the Islamic teachings on divorce to her and to try to reconcile the couple. I shall quote here a description of this matter reported by Daniel Lev, who has observed many Islamic court sessions in Indonesia:

[after the examination on basic information] . . . For the rest, however, the examination is hardly straightforward. Rather it is mixed with a constant effort by most judges to warn the wife of the moral pitfalls of divorce or to conciliate the couple. If the husband is not in court, the wife - accompanied by her mother or sister or friends and the requisite witness - is often subjected to comments from the bench about the seriousness of her action, . . .

When both wife and husband are in court, many judges assume a mediating role as well. The examination proceedings are interspersed with inquiries by the chairman whether the wife and husband would like to rethink the issues between them, or whether the wife is now ready to obey her husband, and whether the husband is prepared to take better care of his wife and to fulfill his contractual and familial responsibilities. But judges differ on the extent to which they play the role of conciliator. For some it is as natural as one can imagine, the judge spending as much time to repair the marriage as he does ascertaining facts. Such judges are not at all reluctant to postpone a case in the hope that the wife who has demanded a divorce will reconsider the issue and return to her husband. (Lev 1972:125-126)

As seen in the above quotation, encouraging the couple concerned to continue their marriage is the most important function for the religious judge as well as for the head of KUA. Only when this effort has failed, will the religious judge take an action to dissolve the marriage for the plaintiff.

The ways of dissolution of marriage which are handled through PA are: (1) fasakh; (2) syiqaq; and (3) talik-talak. I have already described each of them in the previous chapter, (see pp. 48-9, pp. 51-2). All of these ways of the dissolution are called Rapak (originally meaning in Javanese 'ask the dissolution of marriage' (Poerwadarminta 1948:181)). Bapak Abdul Madjid clarifies this term: 'the dissolution of marriage which is authorized by PA after being examined in KUA'. The PA issues Surat Rapak (Divorce Certificate) to the divorced wife and she is referred to as janda rapak on official papers.

IV-5 Conclusion

Historically as well as currently, the marital affairs of Javanese Muslims have been the concern of religious officials who implement Islamic law. The religious bureaucracy in Java has developed completely separately from the general administration. In the religious bureaucracy there is no clear distinction between administration and adjudgement. All personnel concerned in marital affairs have to encourage their clients/petitioners/plaintiffs to live according to Islamic teachings. Thus, counsellors in BP4, the heads of KUA, and religious judges in PA are all involved firstly in nasihat or advice, secondly examination of the possibility of continuing marriage and, thirdly making an official recommendation/decision which will permit people to dissolve their marriage.

For an understanding of the contemporary situation of Javanese dissolution of marriage, these official procedures for divorce cannot be ignored. It is significant that every one who has been divorced must have had a counselling session based on Islamic teachings in one of these organs.

CHAPTER V
AN ANALYSIS OF OFFICIAL RECORDS
OF DISSOLUTION OF MARRIAGE IN KOTAGEDE

V-0 Introduction

In the previous chapter I have shown that marital affairs of Javanese Muslims have been, historically as well as currently, handled by religious officials. Their efforts towards the implementation and maintenance of Islamic law at the level of syari'at as well as of hukum are now widely and deeply influencing Javanese Muslims.

In this chapter, in order to delineate how Islamic law is implemented in local reality, I shall analyze the contents of the two government records kept by religious officials. These two records, if combined, cover all cases of dissolution of marriage. They are the Divorce Registration Book (Buku Pendaftaran Talak) of KUA (Office of Religious Affairs) and the Record of Decisions (Surat Keputusan) of PA (Religious Court).(1) These records contain rich information for demographic and sociological research.(2)

-
- (1) Indonesian Government statistics on divorce are based only on data from the local Divorce Registration Book, they do not include data from Record of Decisions.
- (2) Various kinds of statistical analysis on marriage and divorce are possible. For example, it is easy to produce frequency distributions and correlations between the following variables: ages at the time of marriage and of the dissolution of marriage; marital duration; frequency of marriage; number of children at the time of the dissolution of marriage; and occupation.

By examining divorce cases documented in the Divorce Registration Book in Kotagede I shall attempt at attaining the following aims: (1) to survey the kinds of dissolution of marriage subsumed under the category of talak; (2) to highlight the dangers of drawing conclusions about the nature of talak by examining Islamic law only at the level of hukum without considering it at the level of syari'at. and (3) to demonstrate how Islamic law is implemented in the dissolution of marriage.

The Record of Decisions (Surat Keputusan), mentioned above, documents all cases concerned with marital affairs handled in PA. But here I shall select for my examination only cases concerning the dissolution of marriage categorized as rapak. As it will become clearer in a later part of this chapter, the importance of rapak should not be overlooked. My examination of rapak is intended (1) to help researchers realize what kinds of dissolution of marriage are excluded from the official statistics of divorce; (2) to warn them not to neglect rapak by assuming that rapak cases are few; and (3) to suggest that the frequency of rapak varies widely from area to area.

V-1 Divorce Registration Book (Buku Pendaftaran Talak)

As described in Chapter II, Kotagede is divided into three administrative units, but it constitutes geographically and socially a single unit. Therefore, I shall combine data from three different KUA in three administrative units into one for my analysis of the Divorce Registration Book. The total number of registered divorce cases during the eight year period from 1964 to 1971 in the three KUA Offices of Kotagede, is 537: 173 in MPP Kotagede (KUA Kecamatan Kotagede, Kota Madya Yogyakarta), 297 in Kotagede I (KUA Kecamatan Kotagede Yogyakarta, Kabupaten Bantul), and 67 in Kotagede II (KUA Kecamatan Kotagede Surakarta, Kabupaten Bantul). Talak cases in Kotagede can be broken down by year and KUA as in Table V-1 below.(3)

Table V-1 Talak by Year and KUA

KUA	1964	1965	1966	1967	1968	1969	1970	1971	:Total
MPP Kotagede	23	21	26	19	20	21	26	17	: 173
Kotagede I	66	31	31	31	39	36	29	34	: 297
Kotagede II	11	14	7	12	4	9	7	3	: 67
Total	100	66	64	62	63	66	62	54	: 537

Source: Buku Pendaftaran Talak of KUA MPP Kotagede, Kotagede I and Kotagede II in 1964-1971.

V-1-1 Form and Contents of the Divorce Registration Book

The Divorce Registration Book records all the dissolutions of marriage finalized by KUA. Its form is nationally uniform and includes information on how a case of dissolution of marriage is

-
- (3) The year was chosen because data from all three KUA begins to be available from this time. For MPP Kotagede alone, relevant documents are available from the year 1922.

handled according to Islamic law. It also contains details of the personal background of the couple concerned. Items covered by the form are as follows: registration number; year, month and day of the registration according to the Gregorian as well as to the Muslim calendar; personal background of the couple concerned (name, father's name, age, occupation and address of the husband and the wife); frequency of divorce, revocable or irrevocable divorce; petitioner and reasons for divorce; duplication of official record of marriage/reconciliation (date, place, registration number, office, official's name and position at the time of registration); identification of two witnesses (name, age, occupation and address); conditions of waiting period (iddah); payment of a nuptial gift (mas-kawin); and number of dependent children. (see Appendix C for a reproduction of the original form).

V-1-2 An Analysis of the Divorce Registration Book

Analysis of the Divorce Registration Book reveals that talak (the divorce cases recorded here) consist of various types of the dissolution of marriage. As discussed in Chapter III (pp. 44-48), talak does not necessarily result from the use of hak talak (the right of the husband to divorce his wife). The husband may proclaim a talak at the request of the wife, or husband and wife may mutually agree to dissolve their marriage through the proclamation of a talak by the husband. Cases recorded in the Divorce Registration Book reflect very clearly this particular feature of talak in Islamic law.

V-1-2-1 The Petitioner

Islamic law provides rights to dissolve the marriage (hak talak, hak khuluk, and hak fasakh) to both husband and wife (see Chapter III, pp. 43-44). These rights are actually used very equally by Javanese Muslims. The party who has sought the dissolution of marriage (the petitioner) is documented clearly in the Divorce Registration Book. The entry concerned requires the couple to answer the question "Who wants to dissolve this marriage?" ("Siapa yang menghendaki perceraian ini?"). 'Menghendaki' means 'to wish for, want, desire, require, demand' (Echols 1974:143). Below is a result of an analysis of the entry:

Table V-2 Talak by Category of Petitioner

Category of Petitioner	N	(%)
Husband & Wife	176	(33%)
Husband	198	(37%)
Wife	157	(29%)
No information	6	(1%)
Total	537	(100%)

Source: Buku Pendaftaran Talak of KUA MPP Kotagede, Kotagede I and Kotagede II in 1964-1971.

Table V-2 indicates clearly that divorce is claimed by both husband and wife, by the husband alone or the wife alone. The ratio of the three categories of petitioner is almost equally one third for each. This implies that the husband and the wife claim divorce almost in equal frequency.

Through another analysis of the entry, 'Reasons for divorce', it is learned who is responsible for causing the dissolution of marriage from the viewpoint of the petitioner. In this entry, a very straightforward statement of the petitioner is documented. For example, 'The husband cannot provide living allowances' (Suami tidak dapat memberi nafkah). In this case, the husband's inability to provide living allowances has caused the wife to claim the dissolution of marriage, and the husband is, therefore, responsible for talak. The result of such an analysis as to who is responsible for causing the dissolution of marriage is as follows:

Table V-3 The Party Who is Responsible for Talak

The Party	N (%)
Husband	238 (45%)
Wife	200 (37%)
No clear description	99 (18%)
Total	537 (100%)

Source: Buku Pendaftaran Talak of KUA MPP Kotagede, Kotagede I and Kotagede II in 1964-1971.

The majority (438 cases or 82% of the total number) make very clear statements as to who is responsible for dissolving the marriage. This figure might surprise those studying Java, for the Javanese are said to try to avoid conflicts with other people including their own spouses. They rarely point out or directly criticize another's conduct. According to the Islamic teaching it is an obligation for husband and wife to try to maintain their marriage as long as possible (ideally until either of them dies). Therefore, when a couple comes to BP4 counsellors (or before the

establishment of BP4, to Pak Naib), the couple is questioned quite thoroughly as to why their marriage is no longer tolerable. This procedure for seeking any possibility of reconciliation reveals very clearly who is responsible for the dissolution of marriage.

Despite the explicit statement about who has caused the dissolution of marriage, no sense of accusation is involved. In Western society, the party who is responsible for the divorce or who is accused at a divorce court is usually expected to pay compensation to his/her spouse when their marriage is dissolved. Also the complainant/plaintiff is usually the petitioner for divorce.

However, the relationship among these three components (the party who is responsible for divorce, the party who is expected to pay settlement, and the party who demands divorce) in Islam differs from the Western counterpart. According to Islamic law a husband is allowed to use hak talak (the right to divorce his wife) under certain conditions (see Chapter III, p. 43). For example, if his wife does not heed his advice to behave respectably, he may exercise his right to divorce his wife and proclaim talak. When he has proclaimed talak to his wife, then he is automatically obligated to pay to his wife mut'ah (settlement). The rule is the same for the wife. If she fears that she cannot live with the husband because she hates him, she may exercise her right to demand her husband to divorce her (hak khuluk). When her husband has proclaimed talak with 'iwadl', she must pay settlement ('iwadl) to him.

V-1-2-2 The Settlement

The information as to who has paid or is expected to pay the settlement of 'iwadl or mut'ah on the dissolution of marriage is obtainable from the Divorce Registration Book. The entry concerned requires the couple to answer the question whether the husband has received 'iwadl or is obliged to pay mut'ah. The result of an analysis of the actual information in this entry shows that no wife has ever paid the settlement of 'iwadl at all in Kotagede. In other words, this fact means that all divorcing husbands have proclaimed not talak with 'iwadl but simply talak. The following Table V-4 will illustrate the above-mentioned point:

Table V-4 Talak by the Payment of 'Iwadl

<u>'Iwadl</u>	N	(%)
'Iwadl is not paid	385	(90%)
'Iwadl is paid	0	(0%)
No description	43	(10%)
Total	428*	(100%)

Source: Buku Pendaftaran Talak of KUA MPP Kotagede, Kotagede I and Kotagede II in 1964-1971.

* Because of the change of format the total number has been reduced from 537 to 428.

43 cases recorded in Table V-4 do not state whether 'iwadl has been paid or not. According to the hukum Islam, if 'iwadl has been paid by the wife to her husband, the divorce is designated 'irrevocable' (talak bain) (Junus 1956:132, Ahmed 1972:73). The reexamination of the 43 cases above shows that they are all recorded as 'revocable divorce' (talak rajai). This fact indicates definitely that these 43 cases also are not talak with 'iwadl which is irrevocable.

The results of these analyses shows clearly the above-mentioned particular feature of Islamic divorce. Table V-5 below gives a cross-tabulation of Table V-3 and Table V-4.

Table V-5 Cross-Tabulation Between the Responsible Party(A) and the Petitioner(B) of the Dissolution of Marriage

B \ A	Husband	Wife	No Description	Total
Husband & Wife :	74	50	52	: 176
Husband :	40	130	28	: 198
Wife :	124	20	13	: 157
No description :	0	0	6	: 6
Total :	238	200	99	: 537

Source: Buku Pendaftaran Talak of KUA MPP Kotagede, Kotagede I and Kotagede II in 1964-1971.

The 238 cases in which the husbands are responsible for the dissolution of marriage are broken down into three categories of the petitioner: 74 cases of the mutually consenting husband and wife; 40 cases of the husband; and 124 cases of the wife. In the same way, the 200 cases in which the wives are responsible for the dissolution of marriage are broken down into the same three categories: 50 cases of the mutually consenting husband and wife; 130 cases of the husband; and 20 cases of the wife. The 99 cases in which the responsible party is not clear are broken down into four categories: 52 cases of the mutually consenting husband and wife; 28 of the husband; 13 of the wife; and 6 cases where there is no information on the petitioner.

In other words, in all cases, whoever is responsible for the dissolution of marriage and whoever demands the divorce, it is the husband who is expected to pay settlement (mut'ah) (subsequently living allowances, nafkah, to his wife during her iddah).

From all of the cases which show various combinations of these three components, special attention must be paid to the 20 cases in which the wife is responsible for a dissolution of marriage, demands the divorce, and receives settlement and living allowances from her husband. This kind of dissolution of marriage is very hard for non-Muslims to understand. However, it is perfectly in accordance with Islamic law. For Islamic law says that the husband is obligated to pay mut'ah and nafkah whenever he proclaims talak regardless of the situation surrounding the proclamation.

V-1-2-3 Reasons for Dissolving Marriage

The Divorce Registration Book documents various reasons for dissolving marriage. Two special features emerge from these reasons: they are (1) acceptable according to Islamic law and (2) selected for ease of documentation. As described in the previous chapter, each divorce is examined and accepted as legal (syah) by religious officials/BP4 counsellors. Therefore, there is no recorded divorce reason which is not acceptable from the viewpoint of Islamic law. Furthermore, when a couple is interviewed by BP4 counsellors, several reasons for divorce are usually mentioned (see Chapter VI). From among these reasons, only one is selected for record in the Divorce Registration Book.

KUA sends a quarterly statistical report on the dissolution of marriage to the Department of Religion on the basis of information contained in the Divorce Registration Book. In this report, various divorce reasons are classified into eight standardized categories: (1) Ekonomis (economic); (2) Krisis moril (moral crisis); (3) Dimadu (sharing husband with another wife); (4) Meninggalkan kewajiban (neglecting marital obligations); (5) Biologis (biological); (6) Pihak 3 (third party); (7) Politik (political); and (8) Lain-lain (others.).

I shall first delineate these categories and then show the results of an analysis of reasons for divorce according to this categorization.

1. Ekonomis (economic) refers to the situation in which the husband is economically incapable of maintaining his wife and the family.
2. Krisis moril (moral crisis) refers to the situation in which the husband/wife is having a sexual relationship with someone who is not his/her spouse. Reasons such as 'moril' (moral), 'acklak' (character, morality), and 'serong' or 'sedeng' (adultery) are subsumed under this category. In some cases it is stated more explicitly that the husband/wife has a relationship with another woman/man.
3. Dimadu (sharing husband with another wife) refers to either of two situations: (a) the wife is actually sharing her husband with another wife (or wives) and she can no longer tolerate

this, or (b) the husband is going to marry another woman and the wife does not want to share him with this new co-wife-to-be.

4. Meninggalkan kewajiban (neglecting marital obligations) is the most general reason used in the report. According to Islamic law the major marital obligation for the husband is to take care of his wife and provide appropriate living necessities for her. The wife is obliged to look after the domestic comforts of her husband and make herself available to him. Thus, the marital obligations differ for the husband and the wife and are so general that a wide range of reasons may fall into this category.
5. Biologis (biological) refers to the situation in which the husband or the wife is physically incapable of maintaining a happy married life, i.e. sickness, impotence, or sterility.
6. Pihak 3 (third party) refers to the situation in which the third party, e.g., the parents of the wife or the husband, interfere with the marriage and demand its dissolution.
7. Politik (political) refers to a political conflict between the husband and the wife.

This categorization employed by the Department of Religion is consistent with the notion of the dissolution of marriage in Islamic law. It is significant that two categories, 'economic' and 'biological' are included. As already described in Chapter III, talak is permitted but is disapproved of and discouraged in Islamic

teachings. Muslims have a moral obligation to avoid causing talak. In contrast, fasakh is quite different from talak. Fasakh is caused by incidents beyond the control of human will and action. There is no moral obligation for Muslims to maintain their marriage if the conditions justifying fasakh have arisen. These conditions include biological and economic inabilities. Therefore, the fact that both 'biological' and 'economic' reasons are included in this categorization indicates that talak recorded in the Divorce Registration Book are not only those divorces which are discouraged in religious terms, but also those which are entirely justifiable from the viewpoint of Islamic law.

Table V-6 below is the frequency distribution of divorce reasons computed by myself following the official categorization of the Department of Religion.(4) The 359 cases shown in this Table are those which clearly belong to one of the official categories mentioned above. The cases which can be placed in more than one category and those impossible to be classified for other reasons are put into the category of 'unclassifiable'.

(4) The official reports I obtained only cover part of my research area and period.

Table V-6 Divorce Reasons Documented in the Divorce Registration Book

Divorce Reasons	N
Neglecting marital obligations	189
Sharing husband with another wife	103
Moral crisis	84
Economic	64
Biological	42
Third Party	1
Political	0
Unclassifiable	34
No Information	20
Total	537

Source: Buku Pendaftaran Talak of KUA MPP Kotagede, Kotagede I and Kotagede II in 1964-1971.

Of the 189 cases in the category of 'neglecting marital obligations', 94 cases are documented in identical or similar terms to the above, i.e. merely as 'neglecting marital obligations'. In other words, the specific nature of the neglected marital obligations is not mentioned. According to Islamic law neglect of marital obligations is a substantial reason for dissolving marriage. It seems that here an emphasis is placed not on 'which obligation is neglected' but on 'the conduct of neglecting' itself.

The 103 cases in the category of 'sharing husband with another wife' mostly contain statements like 'the wife does not want to share her husband' (tidak mau dimadu). Among them, 11 cases have a more blunt description: 'the husband is going to marry again'. The 84 cases in the category of 'moral crisis' can be broken down further as to which partner is at fault: the husband, 19 cases and the wife, 62 cases. 3 cases are unidentifiable as to who is to be blamed. As to the 64 cases included in the category of 'economic',

it should be noted that for all of them the husband is held responsible, for, in Islam, the economic responsibility rests solely upon the husband. Among the 42 cases subsumed under the category of 'biological', 23 cases were dissolved due to the lack of children; 12 cases for the expressed general reason of 'biological'; in 4 cases wives were mentally sick; in two cases the husband was accused of having taken too much medicine.

There is only one case listed under the category of 'third party'. This is a case in which the parents of the wife demanded the divorce because they did not want their daughter to share the husband with another wife. There is no case in the category of 'political'.

The 34 cases I have set aside as 'unclassifiable' list either more than one reason in the eight categories of reasons mentioned above, or have more specific reasons which cannot be classified in these categories.

V-1-2-4 The Consummation

The dissolution of marriage prior to consummation is lawful (Qur'an 2:236, 237). It is no moral offence for Muslims to do so. However, after consummation, it might be an offence depending on conditions and reasons for the dissolution of marriage. This significant difference is documented in the Divorce Registration Book.

Table V-7 The State of Consummation

State of Consummation	N
Consummated	383
Not consummated	44
No description	1
Total	428*

Source: Buku Pendaftaran Talak of KUA MPP Kotagede, Kotagede I and Kotagede II in 1964-1971.

* see footnote to Table V-4.

Table V-7 above shows that for every ten divorce cases there is more than one case in which the couple concerned has not consummated their marriage.

V-1-2-5 Physical Condition of the Wife

Islamic law forbids the husband to proclaim talak while his wife is menstruating (dalam keadaan haid) (see Chapter III, p. 45). Accordingly, the physical condition of the wife with regard to her reproductive functions is documented in the Divorce Registration Book as Table V-8 below shows.

Table V-8 Talak by the State of Physical Condition of the Wife

Descriptions	N
Wife is in her clean period	422
Wife is nursing her baby	3
Wife is pregnant	2
Wife is in her menstruation	1
Total	428*

Source: Buku Pendaftaran Talak of KUA MPP Kotagede, Kotagede I and Kotagede II in 1964-1971.

* see footnote to Table 4.

The one case in which the wife is in her menstruation needs an explanation why this case is not illegal. This case is one of the unconsummated marriages mentioned above. In a case of an unconsummated marriage the husband may proclaim talak regardless of the physical condition of his wife. In three cases the wife is nursing and in two cases the wife is pregnant. In the rest of 422 cases, the wife is in her 'clean' period.

V-1-2-6 Possibility of the Revocation of Divorce

In the Qur'an (2:228) it is strongly recommended to the husband that he revoke the divorce when his ex-wife is found to be pregnant. It is also highly recommended that the husband revoke the divorce whenever he feels it to be possible to reconcile with his divorced wife. Thus, whether the husband keeps the possibility of the revocation open or not at the time of proclaiming the dissolution of marriage is an important matter and is duly documented in the Divorce Registration Book as seen in Table V-9 below.

Table V-9 Talak by the Possibility of Revoking the Divorce

Categories	N
Revocable	379
Irrevocable	45
No description	4
Total	428*

Source: Buku Pendaftaran Talak of KUA MPP Kotagede, Kotagede I and Kotagede II in 1964-1971.

* see footnote to Table V-4.

Table V-9 shows that there are 379 revocable divorces (talak rajai) and 45 irrevocable divorces (talak bain). A further analysis of the

45 irrevocable cases reveals that they consist of one case of talak bain kubro (irrevocable and not-remarriageable), seven cases of talak bain syugro (irrevocable, but remarriageable), and 37 cases which are not immediately identifiable as either kubro or syugro. Irrevocable divorces may happen in any of three situations: (1) the husband has proclaimed the third talak (not remarriageable); (2) the wife has paid 'iwadl (settlement); and (3) the unconsummated marriage is dissolved. The Divorce Registration Book records the number of talak proclaimed: 395 cases for the first talak, 32 for the second; and 1 for the third. It is observed from Table V-4 above that there are no cases in which the wife paid the settlement of 'iwadl, and from Table V-7 that there are 44 cases in which the marriage was not consummated. Thus, by the examination of these other components of divorce we find that in these 45 cases of irrevocable divorce there is one case of talak bain kubro (irrevocable and not remarriageable) and forty four cases of talak bain syugro (irrevocable but remarriageable).

V-2 Record of Decisions (Surat Keputusan)

As described in the previous chapter, the rapak cases brought to PA (Pengadilan Agama, Islamic Religious Court) have a special feature, that is, the husband does not want to or cannot proclaim the divorce. Since the husband is given the right to proclaim divorce and the proclamation of divorce is an essential legal procedure to finalize the divorce, the wife brings the case to PA when she wants to dissolve her marriage but her husband does not do so. Therefore, the plaintiff is normally the wife.(5) My data is confined to cases in which the plaintiff was residing in MPP Kotagede, the City of Yogyakarta because I did not have access to the documents in the PA of Kabupaten Bantul under which Kotagede I and Kotagede II were subsumed. The total number of cases from 1963 to 1971 in which the plaintiffs are residents of MPP Kotagede amounts to 67.(6) The total number can be broken down by year as follows:

Table V-10 Rapak Frequency by Year

Year	1963	1964	1965	1966	1967	1968	1969	1970	1971	Total
Frequency	9	1	8	6	7	4	13	13	6	67

Source:Surat Keputusan of PA Yogyakarta in 1963-1971.

-
- (5) The plaintiff does not necessarily have to be the wife. A third party, such as the parents of the wife, can request that PA dissolve their daughter's marriage.
- (6) The reason for starting from 1963 is that I could only obtain data beginning from this year.

Table V-11 below shows the importance of studying rapak in terms of the absolute and relatively high frequency compared to talak.

Table V-11 Rapak Frequency Compared with that of Talak by Year

	1963	1964	1965	1966	1967	1968	1969	1970	1971	mean/yr
Rapak	9	1	8	6	7	4	13	13	6	7.4
Talak	ND	23	21	26	19	20	21	26	17	21.6

Source: Surat Keputusan of PA Yogyakarta in 1963-1971.

Source: Buku Pendaftaran Talak of KUA MPP Kotagede,

This table indicates that, roughly, there is one rapak for every three talak.

Rapak is important not only in view of its frequent occurrence but also for the understanding of how Islamic law is implemented. The high frequency of the use of PA (Islamic Religious Court) suggests that this institution is well rooted among the local people.

V-2-1 Form and Contents of the Record of Decisions

The Record of Decisions documents all cases brought to PA. The form is nationally uniform and includes information on how a case of the dissolution of marriage is handled according to Islamic jurisprudence (fiqh). In contrast to the Divorce Registration Book discussed above, the Record of Decisions of PA specifically mentions sources in the fiqh to which a reference was made when a decision was taken. It also contains the personal background of the couple concerned and statements made by the plaintiff (wife), the defendant (husband), and two witnesses.

V-2-2 An Analysis of the Record of Decision

An analysis of the Record of Decision reveals that divorce cases here include all the kinds of dissolution of marriage recognized in Islamic law i.e. fasakh, talak through syiqaq, talak with 'iwadl through syiqaq, and talik-talak. All these are called rapak administratively. Rapak is a Javanese word meaning 'ask^{to} the dissolution of marriage' (Poerwadarminta 1948:181).

V-2-2-1 The Plaintiff and her Statement

In all rapak cases the plaintiff is the wife. In a large majority of the cases, the wife/plaintiff states as follows: (1) her husband had agreed to talik-talak conditions at the time of marriage but after that he violated them; (2) therefore she requests that the religious judge (hakim) examine the case and determine whether she has legitimate ground for divorce. 64 cases, or 95.5 per cent of the total number of 67 cases, belong to this pattern. The remaining 3 cases are requests made by the wives without reference to talik-talak.

As mentioned above, in almost all cases the reason for the wife's request for divorce is that the husband has broken the conditions of talik-talak. The stated offences of the husband are several. Table V-12 below is a frequency distribution according to the kinds of offences.

Table V-12 Frequency of Kinds of Offences

Kinds	N
1 : Desertion, no <u>nafkah</u> , and neglect	55
2 : Desertion, no <u>nafkah</u> , no sexual intercourse, and neglect	7
3 : Desertion, no <u>nafkah</u> , violence, and neglect	2
4 : No <u>nafkah</u> , neglect, and <u>dimadu</u>	1
5 : No <u>nafkah</u> , and neglect	1
6 : Violence (Physical abuse)	1
Total	67

Source: Surat Keputusan of PA Yogyakarta in 1963-1971.

This table indicates that the main offences are 'desertion' (the husband has gone away and has not come back for a certain period), 'no nafkah' (no living allowances are given to the wife), and the wife being completely neglected by the husband.

V-2-2-2 The Defendant and his Statement

In all rapak cases the defendant is the husband. The presence or absence of the defendant and his statement are recorded in the Record of Decisions by employing such technical terms as follows:

(1) Ghoib: The defendant/husband has not appeared before the court because of his absence at his address and because his whereabouts are not known. Instead, two witnesses are present before the court and testify on behalf of the plaintiff/wife. There is no statement by the defendant (husband).

(2) Ta'azuz: The defendant has been summoned to the court, but has not complied. However, he has stated in writing that he shall follow the court's decision. There is no other statement by the defendant (husband).

(3) Ikrar: The defendant has appeared before the court and acknowledged the statement of the plaintiff (wife).

(4) (No special term): The defendant has appeared before the court and his statement is documented in detail.

Table V-13 Rapak by the Statement of the Defendant

Descriptions	N
<u>Ghoib</u>	31
<u>Ta'azuz</u>	14
<u>Ikrar</u>	13
No special term	9
Total	67

Source: Surat Keputusan of PA Yogyakarta in 1963-1971.

In all the 31 cases of Ghoib each of the two witnesses testified that the plaintiff's statement was true and all the marriages were dissolved by the court. In the 14 cases of Ta'azuz, the plaintiff made an oath that she was not making a false accusation and was able to prove her statement by evidence: all the cases resulted in divorce by the court. In the 13 cases of Ikrar the defendant straightforwardly acknowledged the accusation of the plaintiff and proclaimed talak in front of the religious judge. In the remaining 9 cases, six cases ended with talak proclaimed by the husband who after court examination accepted the accusation made by the plaintiff, and three cases were transferred to syiqaq (see p. 52).

V-2-2-3 The Decision

The Record of Decisions documents which Islamic law book (kitab) is referred to in making the decision on each case. For an analysis of this legal basis of the decisions, special knowledge of Islamic jurisprudence (fiqh) is required. I do not have it. Therefore, I have not attempted an analysis of that aspect but have confined myself to an analysis of the results of the decision.(7)

The results indicate that the majority of plaintiffs (wives) have obtained irrevocable divorces (talak bain) with the payment of a very nominal amount of money ('iwadl) to their husband (49 cases or 74% of the total cases of 67).(8) In 16 cases, the plaintiffs have obtained revocable divorce (talak rajai). One plaintiff has been given fasakh. The remaining one case is still pending.

(7) The study of this aspect seems to have great value. All together seven law books are referred to in the Record of Decisions. They are: (1) Sjarqowi'allatachris; (2) Al-Muhazzab; (3) Al-Munghni-ninajah; (4) Bughjatul masjtarsidin; (5) Fatchul wahab; (6) Chulasatuttirjaaq; (7) Al Anwar.

(8) The amount is fixed at 2.5 Rupiahs.

CHAPTER VI

THE DIVORCE COUNSELLINGS AT BP4

VI-0 Introduction

In the previous chapter I analyzed the contents of the two official records in order to delineate how Islamic law is implemented. These records are useful material for us to observe the results of the implementation of Islamic law at the level of hukum.

In this chapter I shall analyze the contents of the counselling sessions of BP4 (Body for Marriage Counselling and Divorce Settlements) in order to look into the significance of Islamic law at the level of syari'at for Javanese divorce.

This chapter consists of three sections: (1) the nature of BP4 counselling sessions; (2) background information on the record of counselling sessions used in this chapter; and (3) the results of an analysis of the record.

VI-1 The Nature of BP4 Counselling

The counselling given by BP4 counsellors has two features: (1) contents of counselling sessions are religious and ethical, rather than pragmatic, and (2) the relationship between the clients and the counsellors is personal.

The counselling is religious, for the aim of BP4 is to help fellow Muslims create happy marriages and raise their families according to Islamic teachings. The counsellors are chosen from the local community as persons qualified to give religious advice to their clients. The first task of the counsellors in counselling is to ascertain whether there is any possibility that the clients can continue the present marriage and to make it happy again. If there is no possibility of this, their next task is to help each of the clients to have a better and happier life in the future.

The counselling is personal. The clients talk frankly with the counsellors about details of their lives. The counsellors are local female religious leaders, living in the same community in which their clients also live, themselves working and earning their livelihood from various resources there (see Chapter IV pp. 61-64). When the clients explain details of their situations such as the location of their house, their job, their neighbours, or the head of their neighbourhood association, the counsellors are probably already familiar with them.

Thus, the nature of the BP4 counselling is quite different from that of marriage and divorce counselling in Western societies where divorce often seems to be regarded as a matter of social pathology or as a personal tragedy. Marriage and divorce counsellors in Western societies are usually qualified as experts in clinical psychology, social work or legal rights. In contrast, the counsellors of BP4 in Java have no such expertise: they are simply those local women who are respected by their neighbours for their

religious commitment and worldly wisdom.

VI-2 Record of Counselling Sessions

I have in my possession a record of eight counselling sessions conducted by two counsellors of one of the sub-district offices of BP4 in the City of Yogyakarta during the period June to October 1971.(1) A friend of mine and I were allowed by the counsellors to record these counselling sessions on cassette on the condition that the record should be used only for research purposes and that identities of the counsellors and clients should be concealed in publication.(2) We watched and listened to the sessions from a room adjoining the counselling room, in which the cassette recorder was handled by the counsellors themselves. All the eight cases recorded were divorce counselling sessions. The conversations were carried out in Javanese.(3)

The salient characteristics of the sample of clients in the eight counselling sessions which emerge from their own statements are as follows:

-
- (1) This is not a BP4 office of Kotagede where the major portion of my research was conducted. See Chapter IV p.69 for the explanation of the reasons why this BP4 office, not that in Kotagede, was chosen for the analysis in this chapter.
 - (2) My research partner was Mr. Yoshitaka Masuko, a reporter from a leading newspaper in Japan, The Asahi, who was sent to Yogyakarta in order to study the Indonesian language at Gadjah Mada University.
 - (3) The cassette tapes were transcribed and translated into Indonesian by Muhadjir Darwin, who was a student of the Gadjah Mada University from the town of Kotagede. In this chapter I use mainly the Indonesian version because of my limited Javanese. The Javanese transcription is used only for the purpose of checking key terms.

Their occupations include three agricultural labourers (buruh tani; 2 husbands and 1 wife), four daily workers (buruh harian; 2 husbands and 2 wives), ^{one} hospital seamstress, one farmer (tani; 1 husband), one small businessman (pengusaha kecil; 1 husband) and one school teacher (guru sekolah; 1 husband). One wife is not working and stays home. No information is available on the occupation of the rest: one husband and three wives. They all seemed to have some primary school education; there is one exceptional case in which the husband has a university degree. Thus, the sixteen clients are mostly from the lower strata of the local society with a few 'middle class' individuals.

The range of ages is from 16 years to the early 30s according to their own statements. The range of marital duration is between 9 months and 6 years, with a mean of 4.3 years. With regard to the party who initiated divorce, the husband and the wife appear to have done so equally often.

These characteristics are very similar to the findings about the social background and divorce situations of those individuals who appeared in the Divorce Registration Book in Kotagede, which were analyzed in the previous chapter.

VI-3 An Analysis of Counselling Records

An analysis of counselling records reveals four features:

- (1) the dissolution of an existing marriage is made frequently in anticipation of another marriage with a new marriage partner;
- (2) the common reason for divorce is 'unhappiness' in the present

marriage; (3) there are two central values dominant in the conversations between the counsellors and the clients, that is 'happiness' and 'sincerity'; and (4) marital obligations and the rights to divorce are related in a complex way.

VI-3-1 Divorce for Remarriage

The anticipation of remarriage at the time of the dissolution of marriage seems to be a feature of the divorce cases under study. In seven out of the total of eight cases, either the husband or the wife is going to marry another marriage partner. Only in one case was neither of the couple planning to marry again at the time of divorce.

Table VI-1 Cross-Tabulation Between the Petitioner of Divorce
(A) and the Party Who is Going to Remarry (B)

: B \ A :	: Husband : Wife : Husband & Wife :			: Total :	
	:	:	:	:	:
:Husband	:	1	:	1	:
:Wife	:	1	:	3	:
:Total	:	2	:	4	:
	:		:	1	:
	:		:	7	:

Source:Record of BP4 counselling sessions.

It should be noticed that the frequency of the wife remarrying is higher than that of the husband. It is especially remarkable that in three cases the wife is at the same time the petitioner and the remarrying party.

This feature of 'divorce for remarriage' is not only statistically obvious as indicated above but can also be observed in the conversations between the counsellors and the clients (see p. 120).

VI-3-2 Reason for Divorce

The common reason for divorce is 'unhappiness' in the present marriage. Without any exception the petitioners of divorce state that they are no longer happy with their present spouse. They express themselves in such statements as: saya sudah tidak senang dengan suami saya (literally, 'I am no longer happy with my husband'). Individual expression may vary from case to case but the gist remains same.

The task of the counsellors of BP4 is help their clients to recover happiness in marriage. They try to find out what has made the clients unhappy. It seems a standard procedure that the counsellors first check whether the husband and the wife were happy at the time of marriage or not. If the answer is 'yes', then they proceed as follows: "So you were happy when you got married, but now you are not happy. What has happened? What has made you unhappy?" Causes which have made the clients unhappy are stated to the counsellors by either partner, usually by the petitioner of divorce. These causes are specifications of the common reason for divorce: 'unhappiness'. These specific reasons seem to correspond to the reasons for divorce which were already described in the analysis of the Divorce Registration Book (see Chapter V pp. 95-100).

VI-3-3 Central Values: Happiness and Sincerity

An analysis of the divorce counselling sessions reveals that there are two central values which dominate the conversations between the counsellors and the clients. They are 'happiness' (kepenak in Javanese, and bahagia or kesenangan in Indonesian) and 'sincerity' (ikhlas in Javanese as well as in Indonesian), and these two values are closely related.

According to Islamic law, marriage should be based on happiness, and people, men and women equally, have a right to seek their own happiness in marriage. In other words, it is not worth continuing a marriage if there is no happiness between the husband and the wife.

If the present marriage is unhappy, it is recommended to both the husband and the wife to restore their happiness in the present marriage if possible, and, if not, in a new married life with a new partner.

According to Islamic law when there is no possibility of restoring happiness in the present marriage, the husband is obliged to divorce his wife reputably (dengan baik, literally, 'with good manner') (Qur'an 2:231). When the husband is going to be happy in marrying a new partner, he must consider his divorced wife, giving her something to cheer her up (mut'ah) and encouraging her to find another man as soon as possible to enter a happy marriage life. When the wife is going to be happy in marrying a new partner, the husband must not disturb her happiness. He must not resent her new

marriage (Qur'an 2:232). These are religious obligations required of the husband at divorce.

These obligations are enjoined by Allah seemingly in return for being given 'happiness'. The husband must fulfil these obligations and the husband's conduct in this process seems to constitute evidence of the fact that he is sincere to Allah. Sincerity in this context means two things: firstly, to obey Allah's command absolutely (religious), and secondly, to be sincere in wishing the happiness of the divorced partner (interpersonal). When the husband has such sincerity, religious and interpersonal, Allah rewards him by a good marriage partner who comforts him and with whom he is happy.

In this way the two values of 'happiness' and 'sincerity' are closely related to each other. Below I shall illustrate how they arise in actual conversations between the counsellors and the clients by analyzing in detail one of the counselling cases.

VI-3-3-1 The Case of Bambang and Yanti: A Summary

This is a case which was counselled on July 7 1971 at the BP4 office of our study. All personal names and place names are fictitious. The clients' situation is as follows:

Bambang (husband) and Yanti (wife) fell in love and got married (berumah tangga, literally 'to have a house') five and a half years ago. Soon they had a baby daughter. After having their baby, they registered their marriage at KUA (nikah, kawin secara syah) about three and a half years ago. Their married life was happy and peaceful (rumah tangga bahagia dan tenteram).

Bambang works as a farmhand (buruh tani). The rice field he works is large enough (lumayan) to maintain his livelihood. Yanti follows Bambang to the rice field where he works and helps him. If there is no need to help, she stays at home.

They have their own house. Bambang has rented a room to his intimate friend, Haryono, who is working in a factory nearby. Haryono is divorced and has two children who are already independent and living separately.

A year ago Bambang found that Haryono and Yanti were sleeping together. Bambang tried to stop his wife's sexual relationships with Haryono. However, he failed to persuade her. He found that Haryono and Yanti were not only having an affair but that they loved each other. Haryono wanted to marry Yanti if Bambang divorced her.

Bambang made up his mind to divorce Yanti.

VI-3-3-2 The Case of Bambang and Yanti: An Analysis

Let me follow the course of the counselling session firstly by focusing on the conversations between the counsellors and Bambang, the petitioner of divorce. The counselling with Yanti will be treated later. To the question why he wants to dissolve the marriage with Yanti, Bambang answers as follows:

Well, I might say that I do not want to divorce my wife for the reason that she has committed adultery. Already for one year she has been unfaithful! I am no longer strong in my heart. If I could still reform my wife, I would do so. But if I couldn't reform her anymore, what should I do? Already for one year, my wife has been having sexual relation with my own friend. I feel that we will be in trouble (ramai) soon and I will no longer have a peaceful mind (tenteram hati). I shall divorce my wife now because I can't stand it any more (sebab saya tidak kuat hati saya, literally 'because I am no longer strong in my heart').

A remarkable fact in the above statement is that Bambang's direct reason for divorce is not because of his wife's adultery but because of his own state of mind: he feels helpless to improve the present situation and he no longer has a peaceful mind.

Throughout the entire counselling session Bambang states repeatedly that he is no longer strong in his heart and is afraid of getting in trouble as well as of losing control of his mind in the immediate future. Bambang also states that he is not happy anymore in the present marriage because he has already been many times wounded in his heart.

Bambang never blames the conduct of his wife, Yanti, nor that of his friend, Haryono, who have both caused his unhappiness. The counsellors actually suggest to Bambang that they are willing to advise Haryono to give up Yanti and find another woman in her place if he wants such an action. To this suggestion Bambang responds as follows:

Yes, certainly you [the counsellors] are right [in suggesting that Haryono should find a wife among other women, not Yanti]. But the reality is that he has already slept with Yanti. He works nearby. He has often slept with my wife. He has fallen in love with her. He is having sexual relations only with her. If I hand over Yanti to Haryono, he wants to marry her.

Bambang emphasizes the fact that Haryono is serious about this affair, and so is Yanti. Bambang makes the following statement on this point:

If one of the parties [Yanti or Haryono] was not happy to have such an affair, it could not happen. With me, Haryono has long been a good friend. Indeed, he is a good friend of mine, Ma'am. If I quarrel with him and divorce my wife accordingly, I will never be happy.

The friendship between Bambang and Haryono seems so firm that Bambang sincerely believes that Haryono's affair with Yanti is genuine. He states:

What I can do now is to divorce Yanti. I am already willing to do so because she is going to marry Haryono if I divorce her. I feel already thankful to my friend Haryono for marrying her.

Thus Bambang himself mentions that he is thankful Haryono is marrying Yanti. He seems to wish sincerely for Yanti's happiness and to believe positively in her future happiness with Haryono.

However, having heard this statement the counsellors show their anxiety about Yanti's future marriage, for Haryono has already divorced his wife before and divorce might become his habit. If so, Yanti may be divorced again by Haryono. Thus, the dissolution of the present marriage may not bring Yanti happiness in spite of Bambang's wish. On this point, Bambang states that he has made careful arrangements to deal with that possibility:

I have already made him [Haryono] promise not to repeat divorce. I made him promise in front of Pak RK (neighbourhood association head), as witness; therefore, if something wrong happens, I can send him to Pak RK. They will discuss first what is wrong [before Haryono does any harm to Yanti].

In addition to this practical precaution, he says that he is praying to God as follows:

Also I pray day and night so that they [Haryono and Yanti] can continue to live together until they become grandparents. I pray so that they don't repeat breaking up and marrying. For it is not good. I pray to God that she will be in a good situation forever and that, if it is possible, she is happier with her new husband Haryono who is my 'brother'.(4)

Thus Bambang pays a great deal of attention to Yanti's present and future happiness, practically as well as spiritually.

Bambang's attitude and conduct can be better understood if we take into account the religious value of sincerity mentioned above (pp. 116-7). In return for his sincerity in wishing the happiness of Yanti in her new marriage, Bambang hopes that Allah may grant his request as well:

(4) In the original text the word 'dik' is used for this. Dik is an address to a younger sibling, or a younger friend of ego.

I am ready to divorce my wife sincerely (sudah saya ikhlaskan, literally 'already I am sincere'). Then, if possible after I have divorced my wife, may I hope that I am also given a better marriage partner [by Allah] than the one I have now.

In summary, Bambang obeys the requirement of Islamic law: he is going to divorce his wife reputably and shows no sign of resenting his wife's new marriage. He not only fulfils these religious obligations but also considers his wife's future happiness and has taken practical precautions to prevent her from ending up in a divorce situation again.

Yanti, in contrast to Bambang, has kept quiet all through the counselling session although she has been sitting there next to him all the time. When the major part of the conversation with Bambang is over, the counsellors turn to Yanti and ask her three questions as follows:

- (1) at the time of marriage was she really happy with Bambang?
- (2) does she truly want to marry Haryono? and
- (3) is she sure that Haryono will marry her?

To each of these questions she answers affirmatively.

It should be noticed that the counsellors do not ask Yanti why she commits adultery or blame her conduct. Instead, the counsellors are concerned about her future marriage. The counsellors ask Yanti such questions as "is he [Haryono] really willing to marry you?", "has he already declared himself?", and "do you already have his promise to marry you?". They warn Yanti that if she did not have a firm promise and she couldn't marry Haryono, she might be disappointed in future.

These concerns of the counsellors correspond with those of Bambang: the possibility of Yanti marrying Haryono and of this new marriage ending again with divorce. Yanti herself is quite confident that she is going to marry Haryono and they can live happily. She seems to have a firm promise from Haryono.

Apparently because of Yanti's firm determination to marry Haryono, the counsellors recognize that the present marriage has no chance to continue and that it is better for both partners to dissolve it. They state as follows:

We hear enough now to understand your situation, my children.(5) It seems to be like this: the main point is, if you, Bambang, could reform your wife you would do so. However, you seem definitely not to be able to persuade your wife and change her, just like you cannot change time. Now we also consider that your marriage must be dissolved.

There is nothing we can do now for what has happened in the past. Truly divorce is not permitted by Allah unless there are some definite reasons for doing so. But, it is understandable to dissolve marriage if one's wife commits adultery. Therefore, your divorce is to be regarded as reasonable conduct.

The counsellors' statement above indicates that, even though divorce is generally disapproved of and is discouraged religiously, Bambang's conduct in divorcing Yanti and his manner of divorce is permissible in terms of Islamic law. For, firstly, Bambang has made efforts to stop Yanti's relationship with Haryono in order to save the present marriage but has had no success. Secondly, Bambang has a justifiable reason to divorce his wife, i.e. her adultery.

(5) In the original text the word 'nak' is used for this. Nak, shortened from anak, means 'child' or 'children'. Nak is also a term of address to a person of the generation of ego's children. In this context the term nak is, of course, used in the latter meaning.

Following this general statement, the counsellors give petua (religious advice) to Bambang and Yanti, urging them to reflect on their past marriage, recognize their own shortcomings, and improve in the future:

[to Bambang]

This marriage can be dissolved, but you must be cautious. Because there is something wrong with you. For, why has it come to the point where a man has been left by the adultery of his wife? It means that he has not been cautious and there must be some causes [for her adultery].

It is best that he creates his own happiness (membuat kesenangan). He should not endure it until his emotion is so much disturbed. But very often the true cause is not felt by himself. If I were the wife, it would be impossible for me to be happy with another man when a good and wise household head influenced me and treated me with right conduct. If I am wrong, please forgive me. What I want to say is that there is a female whose behaviour is ugly and there also is a male who is not cautious enough. Therefore, even if you consider that you have acted wisely, it is better now to think that you have acted stupidly. You can improve yourself so that you as a household leader can be happy (bahagia) in this world and the world hereafter.

[to Yanti]

You, Yanti. You are now going to get divorced because you have been having an affair with your husband's friend already for one year. How has it come to this kind of situation? What were the causes? What were the causes which made you unhappy [with Bambang]? I am not satisfied with your saying that you like Haryono. What else? If there is anything, say it, even if you think it is unimportant. What is it that Bambang said which made you unhappy? When Bambang invited you to go out with him, you didn't want to go out? There must have been some causes which made you unhappy with Bambang. Think.

The main point to Bambang made by the counsellors in petua above is that his own happiness is most important. If he had been happy himself, treated his wife rightly and made her happy

accordingly, then Yanti would never have committed adultery nor would she have been happy with Haryono. He is advised to reflect upon his own conduct and to improve himself so that he will be happy in this world and in the world hereafter.

Yanti is asked to think over her married life with Bambang to find out what was the fundamental cause of her unhappiness. The counsellors are anxious lest she may be trapped in the same kind of situation with her new husband if she gets married again. The counsellors advise Yanti as to her future marriage as follows:

When you get married with your new husband, your understanding of marriage must be altered. You must not behave yourself just like this time. Your conduct has not been good at all. To leave a husband to marry another man is very dangerous. Therefore, when you are already married with your new husband, you must be cautious and faithful.

Thus through the whole counselling session the main criterion is 'happiness': happiness of the husband and of the wife, happiness in the present marriage as well as in future marriages, and happiness in this world as well as in the world hereafter.

VI-3-4 Marital Obligations and Rights

As described in Chapter III, marital obligations and rights are closely related in Islamic teachings. The failure to fulfil marital obligations by a husband or by a wife may give the right to dissolve the marriage to the partner. It also happens that a husband who has not fulfilled his marital obligations, such as the maintenance of his wife, cannot divorce her unilaterally: he must pay up the whole amount of maintenance for the period he has neglected in order to be

able to divorce her.

It has been conventionally assumed by Western scholars that the Muslim husband can divorce his wife at his convenience (Prins 1951:290, H.Geertz 1961:71, Lev 1972:145). However, he may do so only when his own conduct is justifiable according to Islamic law. Below, by examining another counselling case in detail, I shall illustrate how marital obligations and rights to dissolve marriage are mutually related and how they are mentioned in actual conversations between the counsellors and the clients.

VI-3-4-1 The Case of Tomo and Inem: A Summary

This is a case which was counselled on July 27 1971 at the BP4 office of our study. As in the previous case, all personal names and place names are fictitious. A summary of the clients' situation is as follows:

The marriage of Tomo (husband) and Inem (wife) was arranged by their parents. Inem agreed to marry Tomo under a condition: Tomo and Inem would live together with her uncle after marriage, because she could not leave him behind [for unstated reasons]. Tomo accepted this condition and they got married six years ago.

After marriage, however, Tomo did not keep his promise and stayed on in his sister's house for the reason that he had to look after her. According to him, she was busy expecting a baby and her husband was not taking care of her.

One year after their marriage, Tomo requested consent from Inem to get married with another wife, Rati. Inem gave her consent to Tomo but, in return, asked him to dissolve their marriage. He married Rati but had not taken any action to dissolve his marriage with Inem up to now.

Tomo is a daily worker (buruh harian). He used to work in the weighing section [of a factory]. Now he is not working because the factory has been closed down. His

living is supported by Rati (his young wife) who is working in a tea factory.

Inem is a seamstress in a hospital. For the last five years since Tomo has married Rati, Inem has not received any money from Tomo for her living. She has not spent any time together with him, either.

VI-3-4-2 The Case of Tomo and Inem: An Analysis

Tomo (husband) is the petitioner in this divorce case. He presents a number of reasons for divorce and explains his marital situation to the counsellors.

Tomo starts his statement as follows:

First, I have refused to go along with Inem and to live with her and her uncle. Second, according to my situation as a married man, I waited for one or two years for her to come to live with me. Even after three years she did not come. I waited and waited. When it became no longer certain that she would come to me, I started to look for another marriage partner.

The counsellors interrupt Tomo here. What he intended to mean by his statement seems to be as follows: (1) He has done nothing wrong because he has been waiting for so long for Inem to come to live with him (as we shall see later, the fact is that he did not even wait for one year); and (2) he is not to be blamed because he has sought another wife (Rati) since Inem has not fulfilled her obligations as a wife.

If Tomo's statement is true and if Inem has neglected her marital obligations arbitrarily, Tomo will consequently obtain the right to divorce his wife without offending Islamic teachings. This is the point which Tomo seems to have tried to get accepted by the

counsellors. He emphasizes that his conduct was rightful.

However, from the viewpoint of the counsellors, Tomo's rationalization is not acceptable. The counsellors give Tomo a lengthy lecture on the basic norms of marriage in Islamic teachings and then come to the points that Tomo tried to make:

You had already promised previously that you would go along with your wife [Inem, who is living with her uncle] but you have broken this promise. Inem wanted to have a household with you on the condition that you go and live with her. It meant that you established a household with her on this condition. In fact, you two already agreed [on the condition] to each other so that the marriage took place. Although [you have said that] you waited for her for two, three years, the situation was the other way around. It would have been proper if you have gone and lived with her, but you didn't do so. On the contrary, you were just hoping she would come to you. That was wrong.

As described in Chapter III (see p. 40) marriage is a contract. Therefore, if a husband makes a marriage contract on certain conditions, he must fulfil them in order for the marriage to continue. He cannot insist that his bride should behave as his wife unless he keeps his promises to her.

Hearing the above lecture, Tomo seems to have realized that he cannot blame Inem for the fact that she has not come to live together with him. He then shifts his defence and explains why he has been unable to follow Inem. He states:

To tell the truth, in relation to this matter, on my side, I have an elder sister who was terribly busy [and I had to help her]. I thought that Inem would wait for me and I could come to live with her as soon as my sister was released from her involvements. She was expecting a baby and because of that she was busy. But she was going to be free sooner or later.

What Tomo suggests here is that he was responsible for his sister in the same way as Inem was responsible for her uncle. This responsibility has made it impossible for him to carry out his promise to Inem.

In response to this statement of Tomo, the counsellors lecture him again on the responsibility of a married man and on what should have been done at the time of their marriage.

What you have said now is not essential. It cannot be a reason for divorce that a husband, a married man, gives priority to his sister. Your story has shocked me. How one can behave like that! For six years!

Haven't you thought well beforehand? [When a couple marry], they talk to each other thoroughly and then decide to marry. That is the way it should be. Why do you think a woman exists for a man and a man exists for a woman? You should have talked [with Inem] many years ago. You should have said to your sister that you were no longer taking care of her even though she was going to have a baby. [If you've done so], your reasons for divorce should have been different from what you have said now.

It doesn't make sense that your sister who was expecting a baby has caused the divorce. Inem shouldn't be divorced for the reasons that you have stated. If I agree with you, I will no longer be trusted by people!

The counsellors' lecture above clearly points out that Tomo's conduct in marrying Inem was wrong from the beginning, for he had not been prepared to carry out his promises. The blame is to be placed on him, but not on Inem. Therefore he cannot divorce her for the reasons that Inem has not fulfilled wife's obligations as he has stated.

Tomo then states another reason for divorce as follows:

As a matter of fact that was the first reason and there is another reason. To tell the truth, I have now two wives: one is this one (Inem) and the other is my young wife (isteri muda).

The counsellors interrupt him again and ask him whether Inem is his young wife (isteri muda) or old wife (isteri tua). Tomo answers that Inem is his old wife. The counsellors tell him that it is not reasonable that Inem, his old wife, is the one to be expelled. If it is too much for him to have two wives, he shouldn't have married another wife. It was Tomo who wanted to marry Rati and also it was he who did so. It is not Inem's responsibility that he now has two wives. So, why is it that Inem is the one who is going to be repudiated by Tomo?

Thus, Tomo's second reason is also disapproved by the counsellors. Tomo then presents a third reason for divorcing Inem as follows:

I am stating the truth now. In my opinion, the third reason is that we have been married for six years but we don't care for each other. On the contrary, as for me, even though she stands next me now, I don't think of her. Moreover, she has heard that I have another wife. To tell the truth, if I had cared for Inem, I would definitely have been rather hesitant to marry Rati. But since I didn't care about her, I don't remember anything.

The third reason that Tomo has presented makes the counsellors even more suspicious of his sayings and his conduct. Soon the counsellors find out the truth through the mouth of Inem, as follows: (1) Tomo married with Rati within one year after Inem got married; (2) After the marriage with another wife (Rati), Tomo has

not visited Inem even once; and (3) Tomo has not given any maintenance to Inem for the last five years. Tomo does not dispute Inem's statements.

Thus the fact is that Tomo has already broken two promises and deserted Inem. It is he, not Inem, who has neglected marital obligations. Especially he is to be blamed because he has not fulfilled one of the most fundamental marital obligations for a husband, i.e. maintenance to his wife. He is told that he must fulfil this now, retroactively. The counsellors request him to pay her a whole amount of maintenance for the last five years (Rp 60,000 in total according to the calculation by the counsellors) before he is able to talk about this divorce. The counsellors instruct him as follows:

[At the time of your marriage with Inem], you had promised that you would live together with her and her uncle. You had agreed to do so. But what you have done is not only breaching your promise, but also you have run away from her and married another wife.

It was not a faithful conduct to look for another wife [in your condition]. You shouldn't have married another wife before divorcing Inem.

You have an obligation to support Inem's life. Even though you have not slept with her for long, you must support her. You must give her now the full amount of maintenance for the last five years.

The payment of maintenance to one's wife is one of the most fundamental obligations assigned to the Muslim husband in Islamic teachings. Tomo has not fulfilled this obligation for the last five years. What Tomo should have done is to divorce Inem following her request at the time when he got her consent to marry Rati. But, in

reality, he married Rati without divorcing Inem. The counsellors' point is that this conduct of his is wrong. Since he didn't divorce Inem, he still has an obligation to support her regardless of their marital relationship at present.

Tomo raises an objection to giving Inem maintenance for the past five years retroactively. He states as follows:

According to my view, before she and I got married, I don't remember the amount but I certainly bought her many things. But now how dare she expect to receive her maintenance. I haven't seen her for five years. It is her fault that she did not receive anything from me.

Tomo seems to be trying to justify himself. His statement implies that he could have paid her the maintenance if she had been with him. However, the fact to the contrary is revealed through further questioning by the counsellors. The counsellors ask about his occupation and working place. It emerges that Tomo is now unemployed: he lost his job at a factory due to its closure. Since then he has not been seriously attempting to find any other work. He is now completely dependent on the income of his second wife, Rati.

As soon as the counsellors find out the two facts that (1) no payment of maintenance to Inem has been made for the last five years, and (2) there is nothing to be blamed on the side of Inem, the tide seems to turn definitely against Tomo. Tomo has no right to divorce Inem unilaterally in this situation.

The counsellors then shift the questioning from Tomo to Inem and tell her that they will help her according to what she wants to be done. This means that if Inem wants to continue this marriage, she can do so. If she does want to dissolve it, she can do so as well. The counsellors first check with Inem about the possibility of continuing this marriage on the condition that they advise Tomo to improve himself. Inem answers 'no'. She states:

I have already been very much annoyed by him. As a matter of fact, it wasn't even one year before he married with another wife. . . . [to answer the counsellors' question whether she really gave her consent to Tomo to marry with another wife] Yes, I agreed. But after he got my consent to marry another wife, he has not spoken a word to me ever once. There has been no relationship between us up to now.

Hearing this statement by Inem, the counsellors tell her:

It is like this: probably you (Inem) would prefer to get divorced rather than to live together with this man (Tomo). Right? But I don't intend to force you to divorce. We (counsellors) don't want to force you. For that is a matter of the basic rights of every human being.

The counsellors seem to have realized that Inem's desire for divorce is justifiable according to Islamic law. It seems she never has been and never will be happy with Tomo who is an irresponsible husband in many respects. However, happiness or unhappiness is totally dependent on the individual's perception. It is not possible for a third party to judge whether she is happy or not in her marriage. Therefore the counsellors try to make Inem recognize that the one who must decide either to dissolve or to continue the marriage is she herself, no one else.

The actual outcome of this counselling session is that the divorce is approved by the counsellors on the ground that the wife (Inem) wanted to dissolve marriage. Inem desires divorce. She tells the counsellors that Rp 60,000 (the amount of maintenance for the last five years which Tomo is ordered to pay by the counsellors) can be nullified if Tomo divorces her immediately.

Thus Tomo eventually divorces Inem according to her demand, but not according to his own desire. The counsellors tell him: "This divorce should not be coming from the husband's side because, if so, Allah will be angry with you (Tomo)".

As has been indicated above, the case of Tomo and Inem is an illustration of the fact that marital obligations and the right to divorce a spouse are closely related. When either party of a married couple fails to fulfil his or her marital obligations, the other party obtains the right to dissolve their marriage (see Chapter III, p. 44).

However, this principle does not work mechanically. In its implementation, careful consideration must be made with regard to the specificity of an actual situation. A case of neglect of marital obligations must be thoroughly examined with regard to the causes of the case. Circumstances, motivations, and the sequence of events leading to such a situation must be accounted for accurately. Only after such a careful examination is the individual's behaviour judged according to Islamic law.

In the case of Tomo and Inem, if mere facts were considered, both should be blamed because both have failed to perform marital obligations: Inem has neglected the obligation of giving domestic comfort to her husband, while Tomo has failed to support his wife's living. However, as stated above, the counsellors' judgement is that Tomo is the party to blame, but not Inem. Inem's reason for her neglect of marital obligations is acceptable according to Islamic law while Tomo's reason is not. Thus, Inem's failure to perform her marital obligations has not given Tomo the right to divorce her. In contrast, Tomo's failure has given Inem the right to dissolve her marriage with him.

CHAPTER VII

DISCUSSION

VII-0 Introduction

In previous chapters I have described how the dissolution of marriage among Kotagede Muslims is governed by Islam and how the local reality of their divorce behaviour is understandable according to Islamic law. The major finding of my field research is that Islam regulates personal and social behaviour as well as the administrative and legal aspects of the dissolution of marriage.

This finding, however, differs radically from views held by a number of social scientists who have studied Javanese divorce: they start from the assumption that most Javanese are not 'real' Muslims and that consequently Islam has little relevance to their divorce behaviour. In place of Islam, attempts have been made to explain the Javanese divorce behaviour in terms of Javanese culture (or sub-cultures). However, such a cultural analysis has encountered a series of difficulties in providing a comprehensive and logically consistent explanation of divorce behaviour among Javanese Muslims.

In this chapter, I shall discuss some of the problems derived from these difficulties. First, I shall examine how Islamic law (syari'at and hukum) has been misunderstood in some studies dealing with Javanese divorce and then delineate how this misunderstanding has induced misperceptions of the reality.

VII-1 Misunderstanding of Islamic Law

A number of social scientists seem to have experienced difficulties in understanding the working of Islamic law (syari'at and hukum) on divorce among Javanese Muslims. At least, the following three areas have been problematic: (1) conditions under which the dissolution of marriage is permitted; (2) the right to dissolve the marriage; and (3) ways of dissolving marriage. Below I shall discuss each of these points.

VII-1-1 Conditions Under Which the Dissolution of Marriage Is Permitted

One important problem to be clarified is the conditions under which the dissolution of marriage is permitted according to the Islamic law (syari'at and hukum). It has been commonly believed that Islamic law allows the husband to dissolve the marriage without any restrictions. For example, Prins, who was a Dutch colonial administrator and the last professor of adat law in the Batavia Law School, states: "The Muslim religious law has given the husband his well-known special privileges, i.e. he can repudiate his wife whenever he likes and she has to go" (1951:291). Hildred Geertz also states in a similar vein, "With or without the wife's consent, the husband is granted a divorce simply on request" (1961:71).

However, my examination of Islamic law books written by Muslim scholars does not reveal any instances in which divorce is approved without justifiable conditions. As I have described in Chapter III, Allah enjoins Muslims to make every attempt to maintain a marriage (4:35). Only when these efforts, not only by the parties themselves

but also of other people concerned with the divorce, to maintain the marriage have failed, is the dissolution of marriage permitted. Furthermore, hukum has a number of specific regulations about how a divorce action must be conducted (see Chapter III). Also it is important to realize, though it is often overlooked, the fact that Islamic law requires two witnesses to dissolve a marriage, which certainly constitutes a restrictive condition on divorce. Thus, Islamic law approves the dissolution of marriage only upon specific conditions. The Western social scientist's view that the Muslim husband may and can repudiate his wife unconditionally, that is, arbitrarily and absolutely, is incorrect.

VII-1-2 Right to Dissolve the Marriage

Another important problem to be discussed is the right to dissolve the marriage. A common view among Western social scientists is that Islamic law gives the right to divorce only to the husband whereas the wife has no such right. For example, Lev, who studied the Indonesian Islamic courts, states: "Basically the problem is that the right of divorce rests entirely with men.

. . . Conceptually, wives have no right to divorce at all" (1972:147).

However, when we study any commentary written by Muslim scholars on the Islamic law of divorce, not only the Indonesian textbook which I referred to in Chapter III but also those from other Muslim countries, it is clear that women do have the right to dissolve the marriage. For example, Ahmad, a jurist in Pakistan, states:

Under the provisions of Muslim law, the right to the dissolution of marriage does not rest with the husband alone, but the wife has also been given this right, though it is not as absolute as that of the husband. She can herself terminate her marriage under certain conditions or get it dissolved through a qadi if there are genuine grounds for such a step. But, generally speaking, the right of the wife is not coextensive with that of the husband. The difference lies in the fact that whereas the husband can himself divorce his wife, the wife can, except under special circumstances or conditions, obtain the dissolution of her marriage only through the intervention of a qadi or an Arbitrator. (Ahmad 1972:13-14)

In the statement above, there are at least two points relevant to my discussion: (1) the wife as well as the husband has the right to dissolve marriage, and (2) the right of the wife is not coextensive with that of the husband.

It seems to me important that the right to dissolve marriage in Islam be divided conceptually into two kinds: (1) the right to demand the dissolution of marriage, and (2) the right to proclaim the dissolution of marriage. What Ahmad meant by "not coextensive" refers, in my terms, to the fact that the husband has both these rights, the right to demand and the right to proclaim the dissolution of marriage, whereas the wife has only one right, i.e., that to demand the dissolution of marriage. Some Western social scientists seem to have come to a mistaken conclusion that, because Muslim women have no right to proclaim divorce, they have no right to demand divorce at all.

VII-1-3 Ways of Dissolving Marriage

Another important problem to be discussed is the Islamic concept of the dissolution of marriage. There are four main concepts concerning Javanese divorce often mentioned in Western social science literature, i.e. talak, khuluk, fasakh, and talik-talak. These terms seem to be treated as different kinds of divorce. For example, khuluk is explained as a type of divorce "when the husband is induced to renounce his wife upon her request and receipt of a payment from her" (Ter Haar 1962:201). It seems that when a divorce fits the above definition, it falls automatically into the category of khuluk. A similar kind of reasoning seems to be operating with the distinctions drawn between talak, fasakh, and talik-talak.

However, when the meaning and usage of these terms in Islamic law are carefully examined, it becomes clear that they do not refer to the kinds but to the ways of dissolving marriage. For example, khuluk is referred to in the law textbook by Junus as follows: "A wife may demand a divorce from her husband by the way (dengan jalan) of khuluk when there are significant reasons to do so" (Junus 1956:131 [my translation]). The Pakistani jurist Ahmad also states: "It [khuluk] is one of the ways of the dissolution of marriage and has been well recognized and followed from the early period of Islam" (Ahmad 1972:219). Junus gives a further explanation of khuluk: "khuluk is a divorce settled between the husband and the wife by the payment of 'iwadl from the wife's side and it may be proclaimed either talak or khuluk" (1956:131).

As mentioned above, in Islamic law the right to proclaim the dissolution of marriage rests entirely in the hands of the husband. If a wife uses her right to demand divorce and offers to pay 'iwadl' to her husband, he may receive the payment and proclaim the dissolution of marriage by using the term 'talak'. In this case this divorce will be categorized as a talak (repudiation of a wife by the husband). However, if he uses the term 'khuluk' for the proclamation of the dissolution of marriage, then the same divorce action can be categorized as a khuluk (a divorce by the wife's demand with the payment of 'iwadl').

I believe that this very common error of equating the definition of each term with only one category of divorce has been critical. As will be seen in the next section, this error has induced a distortion in the perception of the reality.

VII-2 Misperception of the Reality

In anthropology, four works which, in part, treat Javanese divorce have been published in English to date: Preliminary Description of the Javanese Kinship System by Koentjaraningrat (1957); The Javanese Family by Hildred Geertz (1961); "A Cross-Cultural Study of Divorce with Special Reference to a Javanese Village", an M.A. thesis by Pandam Guritno (1964); and Javanese Villagers by Robert Jay (1969). In political science, Daniel Lev's work, Islamic Courts in Indonesia (1972) contains a detailed ethnography of divorce handled in religious courts. In demography, since Masri Singarimbun and Manning published "Marriage and Divorce in Mojolama" (1974), a number of similar studies based upon survey

research have appeared (see Bibliography).

After examining these contemporary works on divorce conducted by a number of scholars in various social science disciplines, it seems clear that the work by Hildred Geertz (1961) stands apart from the rest. It was the first anthropological inquiry into divorce in the field and has had the most profound influence on the scholars in other social science disciplines. Almost without exception these scholars refer to her work as a point of departure. Since the work of Hildred Geertz occupies such a prominent position in the study of Javanese divorce, I shall focus my discussion on her work and examine her ethnography in detail. I shall discuss her ethnography of Javanese divorce at the administrative, institutional, social and personal levels. By focusing on the work of Hildred Geertz I do not mean to single her out for criticism; the misconceptions I find in her treatment of Javanese divorce are to be found also in the work of other social scientists who deal with the subject.

VII-2-1 At Administrative Level

The system of administration for the dissolution of marriage(1) can scarcely be understood without some understanding of Islamic law, especially at the level of syari'at, for the system is constructed upon Islamic teaching and it operates according to the Islamic law. As we have seen above (Chapter IV), there are three kinds of administrative organs which deal with the dissolution of marriage in Java today: Kantor Urusan Agama (KUA, or Office of Religious Affairs), Pengadilan Agama (PA, or Islamic Religious Court), and Badan Penasihat Perkawinan dan Penyelesaian Perceraian (BP4, or Body for Marriage Counselling and Divorce Settlements). These three organs seem to be perceived by most Western social scientists as separate systems, office, court, and counselling body respectively, as their names in English translation indicate. However, these English names are rather inadequate glosses of the Indonesian terms and it is difficult to grasp the real significance of these organs and the interrelationships among them through such English terms. Even though KUA, PA, and BP4 may appear to be separate and mutually unrelated, they are, in fact, integral parts of the system of administration of Islamic law in Java today.

Concerning the role of religious officials, Hildred Geertz has made the following general statement which has often been quoted as a piece of standard description for Javanese divorce:

(1) The term 'administration' used here differs from the Western convention of distinguishing it from the legislature and judicature but rather follows the Islamic conceptualization. Therefore, by this term all the organs in charge of handling the dissolution of marriage according to Islamic law are covered.

It is easy to get divorce in Java. Husband and wife usually notify the village religious official (the modin), who helps with weddings and divorces and conducts funerals. He then accompanies them to the Subdistrict Religious Official (the naib [the head of KUA]), who actually performs the marriages and divorces and keeps the records. With or without the wife's consent, the husband is granted a divorce simply on request, and the major function of the official is to record it and to supervise and enforce the support of the wife and children. (ibid.:71)

The statement quoted above contains two problems: one is the competence of KUA and the other is its function. Let me discuss these points one by one.

In relation to the competence of KUA, Hildred Geertz has stated that "the husband is granted a divorce simply on request". She does not say explicitly who grants a divorce to the husband. According to the context, it sounds as if KUA granted a divorce to the husband on his request, which is, as we shall see below, misinformation. However, the more important problem here is not 'who grants a divorce' but the idea itself of 'granting a divorce'. In Islam, the concept of 'granting a divorce' in the sense equivalent to English usage simply does not exist. Marriage is a contract in Islam. Therefore, divorce is either the dissolution or the nullification of a marriage contract by the parties concerned, i.e. the husband and/or the wife. This is very different from the concept of 'granting a divorce'. Moreover, KUA officials do not have the authority to dissolve or to nullify a marriage. Therefore, Hildred Geertz's description is misleading both about the Islamic concept of divorce and the competence of KUA in the administration of divorce.

As to the function of KUA, Hildred Geertz has stated that the naib (the head of KUA) "performs the marriages and divorces and keeps the records" (ibid.). She also has stated that "the major function of the official is to record it [divorce]" (ibid.). It is not clear what is meant by the expression, "the naib performs divorces". It seems, however, that her perception of the role of the naib is that he officiates at the divorce and records it. This understanding of the role of the naib is, in fact, extremely narrow. The general role of the naib, as a religious official, is to guide people to follow Islamic teaching and its law. The first task of the naib in handling divorce is to give nasihat (advice) to the concerned parties to encourage them to rethink their intention of dissolving their marriage.(2) If he concludes that divorce is the only way for the parties concerned to be happy, his second task is to examine whether the intended dissolution of marriage can be approved legally (syah) according to Islamic law. His third task is, then, to see that the dissolution of marriage is carried out according to Islamic law.(3) His final task is to record the divorce and to issue a divorce certificate (surat talak) to the wife.

-
- (2) Officially speaking, this role was already handed over to BP4 at the time of my research in Kotagede (see Chapter IV). However, since Hildred Geertz conducted her research before BP4 was established nationally, this advisory role may have still been performed by the naib. See also Lev p. 146, for nasihat.
- (3) In the naib's execution of the Islamic law the modin has a particularly significant role: (1) as informant, for he is the one who knows the personal details of the concerned party, and (2) as witness, since Islamic law requires two witnesses when the divorce is proclaimed by the husband. Hildred Geertz has overlooked the significance of the modin's role. She gives us an impression that the modin is simply an escort for the party or someone comparable to a bridesmaid or best man at a wedding.

Thus, the general role of the naib or the officials of KUA is to guide the couple to follow Islamic teaching and its law. The recording of the divorce is only a minor part of the general role.

Furthermore, Hildred Geertz has also been confused about PA as the quotation below indicates:

If he [the husband] refuses [wife's request for divorce] and she remains resolute in her desire to divorce, it is more difficult, but not impossible, for the wife, by legal action, to force him to divorce her. At the time of marriage the husband makes a statement that he will grant her a divorce if he does not fulfill certain stipulated requirements, and she must prove that he has not fulfilled them. . . . The district religious officer [KUA] cannot handle these cases (called taklek); they must be sent to the next higher level, the religious court (pengadilan agama). (*ibid.*:72)

Here the problem concerns the nature, structure, function, competence, and accessibility of PA.

The above-quoted statement by Hildred Geertz seems to indicate a confusion on the nature of the two organs responsible for the Islamic administration of divorce, KUA and PA. She has apparently thought that to take a divorce case to PA is a legal action while to take it to KUA is not. However, from the viewpoint of Islamic law, both procedures are equally legal, i.e. actions in accordance with the requirements of the Islamic law. This confusion has induced a further error: PA is perceived as a 'law court' while KUA is perceived as a 'registration office'. However, in fact, the difference in the nature of KUA and PA does not rest on whether one or the other deals with 'legal action'. As stated above, in Islam only the husband has the right to proclaim the dissolution of marriage and the wife does not have this right. This feature of

Islamic law influences the system for the administration of the dissolution of marriage. If the husband proclaims the dissolution of marriage and if the act is acceptable as legally valid (syah), then the divorce will be handled at KUA. If the husband cannot or does not want to proclaim the dissolution of marriage but if there are legally acceptable reasons for the dissolution of marriage, then the case will be presented to PA. Thus, KUA and PA are both integral parts of the general system of the administration of Islamic law.

As to the structure of Islamic administrative system concerning divorce, Hildred Geertz has stated that "they [divorce cases called taklek] must be sent to the next higher level, the religious court [PA]" (ibid.). She has obviously thought that PA is the next higher level of administration above KUA. However, PA is not part of an administrative hierarchy which includes KUA. Certainly, both KUA and PA belong to the Ministry of Religion. However, they are organs belonging to two mutually independent administrative hierarchies (see Chapter IV). The same statement sounds as though KUA sent some of the divorce cases to PA while it handled the rest itself. However, in reality, KUA does not send any cases to PA. Cases submitted to PA must go through an entirely different channel, that is, through the general administration (see Chapter IV). A wife who takes her divorce case to PA is required to present documents prepared by the head (lurah) of the local government in whose territory she resides. Thus, the head of KUA is not involved in the divorce procedure through PA.

On the function of PA, Hildred Geertz has stated that the wife can force her husband to divorce her by legal action (ibid.). In other words, she implies that PA's function is to help the wife to force her husband to divorce her. However, as we have seen above (p. 82), the primary function of PA is to persuade the wife to reconsider her intention of dissolving the marriage. Lev's illustration of this conciliatory function of PA, already quoted on page 82, should be recalled with regard to this point. Lev has given us a vivid picture of how the religious judges behave in the divorce court: they put a great deal of effort into attempting to prevent a divorce from taking place. It might be difficult for those who are only familiar with the Western notion of the role of the judge in a divorce court to appreciate this conciliatory role of the judge as an essential part of the function of an Islamic court in Java.

On the judicial competence of PA the presentation made by Hildred Geertz leaves much to be desired. She has stated that the wife, by legal action, "force[s] him [the husband] to divorce her" (ibid.). The religious judge of PA, however, does not force the husband to divorce his wife, nor has he such authority. In cases where there is a dispute between the husband and the wife, the judge of PA appoints two arbitrators (hakam): one person from the family of the wife and the other from the family of the husband (see Chapter III). These arbitrators try to bring peace between the couple and encourage them to continue their marriage. However, if their attempts at reconciliation fail, the arbitrators may decide to recommend that the marriage be dissolved. They then report to the

judge of PA, who conveys their recommendation to the husband. The husband is obliged to follow the recommendation made by the arbitrators. Thus, the judge of PA himself does not make the decision whether the marriage should be dissolved or not.

The judge of PA makes a decision to nullify or terminate the marriage only if the husband cannot proclaim the divorce (due to his physical absence, illness, or some other reasons). As we have seen in Chapter V, many wives come to PA to request the dissolution of their marriage because of their husbands' incapability of proclaiming divorce: almost half of the cases we examined were those in which the divorce request was made by the wife due to the fact that the whereabouts of her husband had been unknown for a considerable length of time.

Concerning the competence of KUA and PA, there are still a couple of minor but not insignificant problems in the statement of Hildred Geertz. She has stated that "[KUA] cannot handle these cases (called taklek); they must be sent to [PA]" (ibid.). Firstly, a difficulty in this statement is the use of the term, 'taklek' by which the institution of talik-talak seems to be referred to. (see Chapter III on this institution). However, according to the Javanese informants, talik-talak is usually not shortened as taklek. Taklek, or ta'lik in the original Arabic, means 'pending or hanging', and taklek in Javanese means 'promise'. In actual usage, taklek is usually combined with talak as talik-talak to mean 'conditional divorce'. Secondly, if what Hildred Geertz is referring to by 'taklek' is talik-talak, then her

statement that KUA is incapable of handling talik-talak sounds strange, for such cases do not present a problem of competence but of procedure. If a careful examination of the talik-talak form available at KUA had been made, it must have been obvious that among the requirements which enable a wife to dissolve the marriage in this way (see Chapter III pp. 49-51) is the condition that the wife must submit the case to a religious judge of PA. This indicates that, in Javanese religious administration, there can be no talik-talak divorce if the wife does not take the case to PA. Furthermore, the above-quoted statement suggests that the divorce cases handled by PA were only talik-talak cases. PA, in fact, deals with a wide variety of divorces, including talak, talik-talak, fasakh, and syiqaq (cf. Lev ibid.:154), but this fact seems to have been overlooked.

Finally, there is a problem concerning the accessibility of PA. According to Hildred Geertz, divorce through PA is "more difficult, but not impossible" (ibid.). This statement suggests it is very difficult for the ordinary Javanese to have access to PA and make use of it for divorce. This picture might have been appropriate for PA in 'Mojokuto', but it seems difficult to generalize for Java. Lev, who has observed a number of PA in various parts of Java, states as follows:

[U]sually the people in court, mainly women, are obviously from the villages or urban lower classes. For most of them the Islamic court is seldom overwhelming. In appearance and procedure pengadilan agama are low key, more or less informal, and, if not altogether comfortable, at least not prepossessing (Lev ibid.:123).

My observation of PA in Yogyakarta as to its accessibility would

confirm Lev's view. PA seems, indeed, an institution of the wives of the lower classes. It seems wrong to assume that PA is a Javanese equivalent of Western 'divorce court' which costs money and trouble, and is, therefore, somewhat inaccessible to the poor and uneducated lower classes.

VII-2-2 At Institutional Level

The dissolution of marriage as a social institution among the Javanese Muslims is based on Islamic law.(4) As stated above, in Islam the husband has the right to demand as well as to proclaim the dissolution of marriage while the wife has only the right to demand it but not the right to proclaim it. Consequently, two types of divorce procedures operate: one is talak, the dissolution of marriage when the husband proclaims the divorce, and the other is rapak, the dissolution of marriage when the husband cannot or does not want to proclaim it but the wife demands it. As we have seen above, these two types of divorce procedures are well institutionalized in the religious administration: talak is dealt with in KUA and rapak in PA. Talak and rapak parallel each other as social institutions for the dissolution of marriage and are equally important in the implementation of Islamic law.

This system, however, seems to have been misperceived by many Western social scientists. Firstly, they seem to believe that talak is the only institution of divorce among Javanese Muslims and that divorce cases termed talak comprise all the dissolutions of marriage practiced in Java. For example, Hildred Geertz states that "[T]he

(4) 'Institution' in the anthropological usage of the term.

divorce action is called talak" (ibid.:72). On the basis of this perception she presents government statistics of talak as if the number of cases presented there were exhaustive and comprehensive enumeration of all dissolutions of marriage (ibid.:69). In fact, the government statistics referred to by her are Statistik N.T.R. (Statistics for marriage (Nikah), divorce (Talak), and reconciliation (Rujuk)) which do not include the dissolution of marriage through PA (rapak). Therefore, these statistics provide the results of the operation of only one of the two institutions for the dissolution of marriage.

This misperception seems to be related to the use of an inappropriate term for the general notion of the dissolution of marriage. Hildred Geertz has stated that divorce action is called talak. However, the general term for divorce in Indonesian is not talak but cerai (bercerai in the verbal form and perceraian in the nominal form). Talak is a technical term for a particular divorce action in which the husband proclaims the dissolution of marriage and, in Java, is contrasted to rapak .

Furthermore, the nature of those divorce cases presented in government statistics as talak has also been misperceived by Western social scientists. They seem to have assumed that all talak cases involve the repudiation of the wife by the husband on his own demand. However, as described in Chapter V, talak cases include many different kinds of divorce: e.g., divorce by mutual consent between the husband and the wife, by the demand of the husband or by that of the wife; divorce caused by the misconduct of the husband

or by that of the wife; divorce caused by the sickness of the husband or that of the wife; divorce caused by the incapability of the husband to maintain his family. Talak as a technical term in the actual administration of the dissolution of marriage has, thus, a much wider meaning than its Western dictionary definition (repudiation of the wife by the husband).

It should also be noted that there is no mention in the work of Hildred Geertz, or in that of other contemporary social scientists, of the divorce by mutual consent or the divorce demanded by the wife with the payment of 'iwadl' to her husband. Yet these kinds of divorce are historically reported (cf. Raffles ([1817] 1978:329) and Ter Haar ([1939] 1962:199)) and are certainly practised today (see Chapter V). This narrow perception of talak seems to have prevented investigation of what kinds of divorce are actually referred to as talak in local reality.

VII-2-3 At Social Level

According to Hildred Geertz, Javanese attitudes towards divorce are associated with the religious orientations which characterize three different socio-cultural groupings in Javanese society:

The numerically largest group, those peasants and lower class town dwellers who emphasize the animistic elements in Javanese religion, and who tend to a sort of individualistic ethic, the abangan, see divorce entirely situationally - as neither good nor bad in itself, and regard it as a better solution to a conflict than the ever-present danger of sickness which is seen as a consequence of internal turmoil.

Another group, the santri, which includes peasants and lower- and middle-class town dwellers who emphasize orthodox Islamic teachings, consider divorce morally wrong.

A third group, the prijaji townsmen, especially those in the government bureaucracy, who see themselves as members of an aristocracy and emphasize the Hindu-Buddhist aspects of Javanese religion, . . . [consider it] a matter of shame and withdrawal of social esteem to be divorced, . . . (ibid.:137-139).

The animistic abangan see divorce situationally whereas the orthodox Islamic santri regard divorce as morally wrong. This abangan-santri contrast seems overly simplistic. In reality, the distinction is always blurred. Hildred Geertz states that only the abangan judge the morality of divorce situationally. However, the santri can also share this view, as the following quotation from Junus indicates:

It sometimes happens that a husband and wife fail in their efforts to form an harmonious and orderly household because the two differ in character and desire, or differ in the goal of life and ideals so that there almost constantly occur quarrels or disagreements between them. Although the two have already spent much effort in order to be able to live together harmoniously and peacefully, they have not succeeded. Because of this, there is no remedy other than separation (perceraian) so that the two should not live in a home full of fires of disagreements, hostilities and sufferings." (Junus 1956:110, my translation)

Hildred Geertz thinks that the abangan regard divorce "as a better solution to a conflict than the ever-present danger of sickness which is seen as a consequence of internal turmoil" (op. cit.). Junus argues that if there is no remedy other than divorce, marriage should be dissolved because the husband and wife "should not live in a home full of fires of disagreements, hostilities, and

sufferings" (ibid.). These two statements are the same in gist. Junus argues that, if a couple cannot maintain a harmonious and orderly household, the couple should dissolve their marriage; Hildred Geertz reports that the abangan believe, if such a situation arises, it is better to dissolve their marriage. Thus, it is clear that the way the abangan regard divorce is consistent with the view held by santri "who emphasize orthodox Islamic teachings" (op. cit.).

It should be clear, then, that Hildred Geertz's notion that santri consider divorce as morally wrong is one-sided. There may be a situation in which the dissolution of marriage is considered as morally wrong but there may be other situations in which divorce is considered necessary or even obligatory (see Chapter III, p. 46). Divorce is not a sin in Islam. When there is a justifiable reason to dissolve a marriage and when the correct procedures are followed, there is no violation of Islamic morality. In other words, it seems pointless to make a categorical distinction between the abangan and the santri as far as their attitudes toward divorce are concerned.

The third grouping, priyayi, in Hildred Geertz's statement is problematical. According to some scholars, such as Koentjaraningrat (1960), the priyayi is actually a status or occupational grouping which has nothing to do with religious tradition. He argues convincingly that there are both santri and abangan orientations in the priyayi. But even if the priyayi have, as Geertz asserts, a Hindu-Buddhist orientation, it is not certain that this necessarily leads to a view of divorce as a matter of shame. Certainly one can

observe an accentuated feeling of shame concerning divorce among the priyayi by comparison with the commoners (wong cilik). One of my informants, who is a direct descendant of the Yogyakarta court and whose husband was a Bupati (Regent) in Central Java, told me that the priyayi consider divorce as shameful conduct. However, this fact seems to be largely related to certain social factors, such as the need for solidarity among priyayi as a social group through the network of marital alliance, rather than to any particular religious traditions.

VII-2-4 At Personal Level

Misunderstanding of the husband's right in Islam to dissolve marriage has led some Western social scientists to a misperception of Javanese women's personal attitudes and behaviour towards divorce. It is certain that Javanese wives do sometimes take the initiative in dissolving marriage. This observed fact, however, contradicts the assumption that a wife has no right to divorce in Islamic law. Hence, a number of plausible explanations have been developed to solve this apparent contradiction. Taking the work of Hildred Geertz as an example of this social science approach, we find the statement:

Most Javanese are [also] unaware of the fact that Islamic law, if strictly interpreted, tends to make extremely difficult a woman's divorcing her husband. They are aware that it is actually the man who obtains the divorce, but most women are sufficiently adept at persuading their husbands to divorce them if they are tired of the marriage - most often by simply leaving him (ibid.:72).

Here Hildred Geertz has obviously thought that strict observance of Islamic law makes "extremely difficult a woman's divorcing her husband" (ibid). However, on the contrary, when Islamic law is strictly followed, it becomes easier for women to divorce their husbands, provided they have justifiable reasons to do so, than when Islamic law is superficially followed (see Chapter VI, the case of Tomo and Inem). Hildred Geertz's view seems to have been derived from a mistaken assumption that Muslim women have no right to initiate divorce. In fact, as we have seen above, they do have such a right and they frequently exercise it.

Later Hildred Geertz has stated that "[Javanese] are aware that it is actually the man who obtains the divorce" (ibid.). If her statement is to mean that the person who obtains divorce is the one who initiates the divorce, then this person can be in reality either the husband or the wife, not the husband alone. If 'obtaining divorce' means 'receiving a divorce certificate', then the statement must be completely reversed. The divorce certificate is issued by an administrative body not to the husband but to the wife (surat talak from KUA or surat rapak from PA). In this case, it is actually the wife who obtains the divorce, not the husband. No matter how the statement by Hildred Geertz is to be paraphrased, it is difficult to conclude that Javanese women perceive that "it is actually the man who obtains the divorce" (ibid.).

Hildred Geertz has also stated that "most women are sufficiently adept at persuading their husbands to divorce them" (ibid.). In other words, the Javanese woman, if necessary, compels

her husband to repudiate her by deliberately making him miserable. Her field data, however, does not seem to be consistent with her statement. There are seven divorce cases reported in her ethnography (ibid.:139-141). There is not a single case among them which shows that the wife has persuaded her husband to divorce her. Usually, as we have observed above, Javanese women do not need to take such a round-about way to get divorced; they demand divorce quite openly and straightforwardly (see Chapter V).

CHAPTER VIII

CONCLUSION

The finding of this thesis research is that all aspects concerning the dissolution of marriage among Javanese Muslims, i.e. the way of thinking and behaviour of individuals, the nature of social institutions and the operation of the administrative system, are consistent with the formulations of Islamic law accessible to me and there is a case for seeing them as part of an Islamic system. This finding is admittedly controversial. Nevertheless, the internal coherence of the analysis of data presented above, which has been achieved by employing Islamic law as the point of reference, can be appreciated without prejudice.

To date many Western social scientists seem to have believed that an overwhelming majority of Javanese Muslims are 'nominal Muslims'. A classical statement to the effect was made by Raffles almost two centuries ago. According to him, "[Islam] seems only to have penetrated the surface, and to have taken but little root in the heart of Javans" (1978 [1817] I:4). Later, Snouck Hurgronje developed the notion of adat law, arguing that Indonesian indigenous legal systems have only absorbed selected elements of Islamic law. More recently, Clifford Geertz asserted that the Javanese people follow three religious traditions, namely indigenous animism, Hindu-Buddhism, and Islam, and this is reflected in the formation of three social categories, i.e. abangan, priyayi, and santri.

This academic popularization has become enshrined in a tradition of Western social scientists who have studied Javanese divorce. They seem to have considered, therefore, that there is no need to study Islamic law for the purpose of studying Javanese divorce, since the numerically largest group of Javanese is 'abangan' who are presumably indifferent to Islam. As a result, most of the empirical research undertaken to date has paid no attention to Islamic law. This has resulted in a series of misunderstandings of the reality concerning the dissolution of marriage among Javanese Muslims, as discussed in the preceding chapter.

There seem to be two reasons why they have labelled the Javanese 'nominal' Muslims even though the Javanese profess Islam to be their religion. The first reason is their misconception of Islamic law and the second their externalist approach to the study of religion.

The fundamental misconception of Islamic law has derived from the fact that the difference between Islamic law at the level of syari'at and that of hukum is not adequately appreciated. Hukum implemented in Java can, in a number of ways, be different from the hukum of Saudi Arabia. However, Western social scientists who have studied Indonesian Muslims to date have regarded hukum in the Near East as the authentic Islamic law and used it as the standard for evaluating the authenticity of Islam in Indonesia. This approach must be discarded. As W. Cantwell Smith has stated,

There has in the past been too great a readiness to equate the Islamic world with the Near East. This equation is already several centuries out-of-date, and may perhaps become even less tenable in the future. (1957:293)

This point, however, has not been heeded by those who have studied Javanese Muslims. Whether Islam has "taken little root in the heart of Javans" (Raffles) must be discussed in reference to Islamic law at the level of syari'at, but not in reference to hukum of the Near East.

By criticising the 'externalist approach' to the study of religion I refer to the fact that many social scientists place too much emphasis on observable behaviour and neglect the aspect of unobservable internal faith or motivation of individuals. An ethical saying recorded in Kotagede is pertinent to this point: "Faithful Muslims ought not to show off how pious they are to other people by saying such things as 'I am tired because I woke up early this morning to perform an extra morning prayer', because Allah knows everything" (from a religious lecture, pengajian, delivered by the President of the Muhammadiyah, Bapak Fakhruddin, 28 November 1971). In this context religiosity of Muslims cannot and should not be studied through an external^{ist} approach. It would be meaningless for Western observers to question individual Muslims how often they perform daily prayers or how often they recite Qur'anic verses in a day without understanding what is also being developed in the personal faith of the individual.

What I have learned through this thesis research has been an appreciation of the nature of religious faith in the daily life of individuals. The clients of BP4 I have studied, who are mostly

so-called abangan, are sincerely seeking the most righteous way to behave as Muslims. The BP4 counsellors who are local female religious leaders, on their part, endeavour to give the most appropriate petua (religious advice) according to the situations in which their individual clients find themselves. An analysis of these counselling sessions has convinced me that the practice of regarding the Javanese as nominal Muslims is inappropriate and that any study of Javanese social behaviour must be based on an ethical approach to the religious basis for their behaviour. Islamic law as a whole can be regarded as an ever-evolving system of ethical guidelines developing in direct response to the daily experiences of the Muslims. I have only studied a certain aspect of Muslim behaviour (divorce) in a certain place (Kotagede) at a certain time (1970-1972). Although aware of the danger of generalization, I feel that the approach I have adopted in this study can offer useful guidelines for future research in this field.

APPENDIX A

January 1979

THESIS RESEARCH PROPOSAL A STUDY ON JAVANESE DIVORCE

Hisako Nakamura

In 1970-72, I accompanied my husband, Mitsuo Nakamura, to Java for his Ph.D. dissertation research in anthropology. During our two year stay in Kotagede, Yogyakarta City, Special Region of Yogyakarta, through my association with numerous local women I became attracted to the position of Javanese women in the community as well as in the domestic situation. In particular, my attention was drawn to the subject of divorce and I collected some official statistics and firsthand information on this topic. I now plan to work on this data to produce a master's thesis in anthropology.

I. Field Site

The principal field site for my research was Kecamatan Kotagede in Kota Madya Yogyakarta. I also collected data from the Special Region of Yogyakarta in general and from two sub-districts (locally called Kotagede I and II) in Bantul Regency.

II. Data Collected

My data collected on divorce is as follows:

1. Official annual statistics of registered marriages and divorces at regional and local (Yogyakarta and Kotagede) level over the period of 1964-71;
2. Records of marriage and divorce registrations in the three administrative units (Kecamatan) of Kotagede in 1960 and 1964-71;
3. Records of decisions by the Islamic Court of Yogyakarta concerning disputed marriages and divorces in Kotagede from 1964 to 1971;
4. 1971 national census data on household composition in Kotagede;
5. Records of my observations and recordings of divorce counsellings given by Muslim women advisers at a marriage counselling office;
6. Results of my own survey on the marital history of 300 couples who married in the years 1960 and 1965 in Kotagede;

7. Records of interviews with local officials of the Office of Religious Affairs and Muslim women leaders on marriage and divorce; and
8. Information on the marital history of the members of two kindred groups (bani) in Kotagede.

III. Research Problems

I have already done a preliminary analysis of my data while in the field, and the results of this analysis suggest the following tendencies and problems:

1. In the town of Kotagede there seems to be a tendency for divorces to be less frequent when the residents of a neighborhood unit (kampung) are more heavily Islamized or, in other words, more santri where a less orthodox-Islamic (i.e. abangan) neighborhood seems to have a higher frequency of divorce. Official statistics at the regional level shows this tendency even more clearly. These findings contradict the widely held view that Islamic law and morality facilitates easy and frequent divorce.
2. Parallel to the above mentioned tendency is the fact that the more urban a kampung is, the less frequent is divorce: and vice versa; the more rural a kampung is, the more frequently divorce occurs there. This also contradicts the commonly held sociological view that an urban way of life is characterized by the disintegration of primary interpersonal ties, including marriage, and by the process of individualization, for which frequent divorce is presumably an index.
3. From a chronological perspective, the divorce rate in Kotagede has been steadily decreasing in recent years, as well as in the Special Region of Yogyakarta as a whole. This seems a reversal of general trends observed in most Western and other industrialized countries where divorce rates are constantly increasing. If it can be assumed that the degree of modernization in Indonesia has been progressing in recent years, it seems that there is an inverse correlation between the degree of modernization and the frequency of divorce in Central Java.

IV. Research Procedures

For my thesis research I intend to study the tendencies and problems mentioned in Section III above on the basis of more systematic statistical analysis of my data. The first task is to calculate the divorce rate for each kampung on the basis of official marriage/divorce registrations. The next step is to develop empirical criteria for assessing the degree of Islamization and urbanization. Then these criteria will be used to measure and compare all kampung in Kotagede in terms of the degree of Islamization and urbanization. After these two steps, the third

step will be to examine the correlation between the frequency of divorce and the degree of Islamization and urbanization in Kotagede. If any or all of the tendencies mentioned in Section III is/are supported by more systematic statistical analysis, then the final task in my research will be to produce a satisfactory theoretical explanation for these tendencies on the basis of my qualitative data and of the ethnographies by other anthropologists who have worked in Central Java.

In my thesis, I am presenting a case study of a society where the autonomy and self-supporting ability of women are traditionally high. My hypothesis is that patterns of social change, including change in the institution of divorce, in this kind of society might be quite different from those known in western and industrialized countries. My study of divorce in Kotagede is expected to contribute to our knowledge of comparative social change and the position of women in a society of this type.

V. Time Table

Finally, the time schedule for my thesis research will be as follows: I intend to complete my thesis research in one year (twelve months): two months for studying relevant literature; six month for analyzing field data; and four months for writing-up the thesis.

APPENDIX B

NASKAH PENASEHAT

RAHASIA

MODEL 1

B. P. 4

Ketjamatan :

Naskah Penaschatan

Tanggal :

Diperiksa oleh :

Masalah No. / 19

Tentang :

Suami/Tjalon suami

Isteri/Tjalon isteri

- | | | | |
|--|---|-------|-------|
| 1. Nama | : | ..... | ..... |
| 2. Alamat | : | ..... | ..... |
| 3. Tempat dan tanggal lahir | : | ..... | ..... |
| 4. Agama | : | ..... | ..... |
| 5. Pekerdjaan | : | ..... | ..... |
| 6. Penghasilan sebulan | : | ..... | ..... |
| 7. Pendidikan | : | ..... | ..... |
| 8. Keadaan kesehatan | : | ..... | ..... |
| 9. Tempat dan tanggal menikah | : | ..... | ..... |
| 10. Pernahkah bertjerai dengan suami/isteri ini | : | ..... | ..... |
| 11. Suasana rumah tangga (serumah dengan mertua/ipar dll.) | : | ..... | ..... |
| 12. Riwayat hidup perkawinan | : | ..... | ..... |

Keterangan

Pihak suami/tjalon suami

Pihak isteri tjalon isteri

Kesan yang penting dan pertimbangan penasihatPenjelesaian :Penasihat

APPENDIX C

BUKU PENDAFTARAN TALAK

BUKU PENDAF

Buku ini

I. Tanggal, bulan dan tahun waktu men- tjatat.	
II. Tanggal, bulan dan tahun waktu talak diutjapkan. (Hidjrah dan Maschi).	
III. Jang menalak (mentjerai): 1. nama lengkap dan aliasnja _____ 2. bin _____ 3. tanggal lahir (umur) _____ 4. pekerdjaan _____ 5. tempat tinggal _____ 6. tanda-tanda istimewa _____	
IV. Jang ditalak (dijerai): 1. nama lengkap dan aliasnja _____ 2. binti _____ 3. tanggal lahir (umur) _____ 4. pekerdjaan _____ 5. tempat tinggal _____ 6. tanda-tanda istimewa _____	
V. Talak jang didjatuhkan: 1. talak jang keberapakah ini? 2. berapa talak jang pernah didjatuhkan 3. berapa talak jang didjatuhkan seka- rang _____ 4. memakai 'iwadl atau tidak, kalau memakai 'iwadl. berupa apa dan berapa _____ 5. qobladduchul atau ba'dadduchul 6. talak ini talak radja'i, bain shughra atau bain kubra _____	
VI. Sebab-sebabnja pertjerain: 1. siapa jang menghendaki pertjerain ini _____ 2. apa sebab-sebabnja jang pokok _____	
VII. Nikah atau rudjuknja dahulu: 1. dimana _____ 2. tanggal berapa _____ 3. tanggal dan nomor surat _____	
VIII. Djika isteri tidak datang waktu talak ini diberitalukan, disbutkan alamatnja.	
IX. Djika jang menalak itu anggota ang- katan perang, dan kepadanya ditentu- kan minta idzin, disbutkan Komandan jang memberikan surat idzin, tanggal dan nomor suratnja.	
X. Pegawai Pentjat Nikah jang mentjatat dan atau menerima pemberitahuan: 1. tempat kedudukan _____ 2. nama _____ 3. pangkat _____	

TARAN TALAK

Model B1:
Folio Nomor: *98/123456*

XI. Jika pemberitahuan itu disampaikan kepada P3. NTR: 1. nama _____ 2. tempat tinggal _____ 3. surat keputusannya _____	_____ _____ _____
XII. Saksi jang pertama: 1. nama lengkap dan aliasnya _____ 2. umur ; 3. pekerjaan _____ 4. tempat tinggal _____	_____ _____ ; _____ _____
XIII. Saksi jang kedua: 1. nama lengkap dan aliasnya _____ 2. umur ; 3. pekerjaan _____ 4. tempat tinggal _____	_____ _____ ; _____ _____
XIV. Jika pentjataan ini berdasarkan keputusan Pengadilan Negeri disebutkan Pengadilan jang memutuskan, serta tanggal dan nomor surat putusan.	_____ _____ _____
XV. 'Idahnja: 1. waktu talak didjatuhkan, sedang dalam apa siisteri? (sutji, heidi atau hamil) _____ 2. apa 'iddahnja? _____	_____ _____ _____
XVI. Sudah atau belum dibayar maskawin-nya?	_____ _____
XVII. Jika mempunyai anak jang belum dewasa disebutkan berapa banjaknja.	_____ _____

Tanda tangan:

1. Jang menalak:	2. Jang ditalak: (kalau datang)	3. Saksi pertama:	4. Saksi kedua:	5. Pegawai Pentjat Nikah atau P3. NTR:
_____	_____	_____	_____	_____

Kerja talak itu ditertibkan kepada P3 NTR:

Tanda tangan
Pegawai Pentjat Nikah:

Tatatan lain lain:

APPENDIX D
SURAT KEPUTUSAN

Perintah 1. 1. 1

SURAT KEPUTUSAN

No. /19.....

Pengadilan Agama di.....telah mendjatuhkan keputusan atas perkara (perselisihan suami-isteri) antara :

..... bin,umur kira-kira....tahun,pekerdjaan
.....tinggal diKelurahan
Ketjamatan,Kabupaten
selandjutnja disebut "Penggugat" ;
Berlawanan dengan :
..... binti,umur kira-kira....tahun,pekerdjaan
.....tinggal diKelurahan
Ketjamatan,Kabupaten
selandjutnja disebut "Tergugat" ;

Tuntutan penggugat, pengakuan tergugat dan keterangan saksi-saksi dengan singkat adalah sebagai berikut :

1. Penggugat :

2. Tergugat :

3. Saksi-saksi :

Pengadilan Agama di,setelah mendengar uraian penggugat, tergugat dan saksi-saksi serta keterangan lainnja;

M E N I M B A N G :

- a. bahwa perkara ini termasuk dalam lapang tugas pekerdjaan Pengadilan Agama;
- b. bahwa penggugat adalah/bukan isteri sah dari tergugat menurut surat nikah di Kantor Urusan Agama Ketjamatan Kabupaten ...
..... tanggal..... No.
- c. bahwa tuntutan penggugat yang dikuatkan dengan keterangan saksi-saksi dan sumpah penggugat (janinul istidzhar) telah mentjukupi sjarat-sjarat dakwaan, oleh sebab itu gugatan tersebut dapat diterima ;

Pejabatan :

Bukan salinan resmi Surat Keputusan.
Chusus untuk riset oleh Mitsuo Nakamura.

- 2 -

M E N G I N G A T :

1. Peraturan tentang Pengadilan Agama di Djawa-Madura Staatsblad 1882 No. 152
jang telah diubah dan ditambah dengan staatsblad 1937 No.116 dan No.610;
2. Dalil dari kitab , jang berbunji :
artinja :

3.

M E M U T U S K A N :

1.

2. Penggugat diperintahkan untuk membayar ongkos perkara sebanjak Rp.
(.....)
Demikianlah keputusan Pengadilan Agama di
pada tanggalbertepatan dengan tanggalH.

Ketua :
.....(.....)

Anggauta :
1.(.....)
2.(.....)

Panitera :
.....(.....)

Keterangan :

1. Salinan surat Keputusan ini telah diterima oleh penggugat pada tanggal
2. Salinan surat Keputusan ini telah diterima oleh tergugat pada tanggal
3. Waktu untuk banding (appel) selesai tanggal
4. Keputusan ini dimintakan bandingan pada tanggal
5. Keputusan bandingan didjatuhkan oleh Mahkamah Islam Tinggi tanggal
6. Surat tanda djanda dikeluarkan oleh Ketua Pengadilan Agama di
tanggal

BIBLIOGRAPHY

Ackerman, Charles

- 1963 'Affiliations: Structural Determinants of Differential Divorce Rates'. American Journal of Sociology, vol. 69, no. 1, pp. 13-20.

Ardener, Edwin

- 1962 Divorce and Fertility: An African Study (Nigerian Social and Economic Studies 3). London: Oxford University Press.

Ahmed, K.N.

- 1972 The Muslim Law of Divore. Islamabad, Pakistan: Islamic Research Institute.

Ali Maulana Muhammad

- 1944 A Manual of Hadith. Lahore, Pakistan: The Ahmadiyya Anjuman Ishaat Islam.

Ball, John

- 1979 The Evolution of Dualism in the Law of the Netherlands East Indies: 1602-1848: A Study of European Self-Interest and Indifference to the Indigenous Legal Order. Ph.D. Dissertation, University of Sydney.

Barnes, John Arundel

- 1951 Marriage in a Changing Society. London: Oxford University Press.

- 1967 'The Frequency of Divorce'. In A.L.Epstein (ed.), The Craft of Social Anthropology, pp. 47-99. London: Tavistock (Social Science Paperback).

Biro Pusat Statistik

- 1974 Statistik Indonesia. Statistical Pocketbook Indonesia 1972/1973. Jakarta: Biro Pusat Statistik.

Boserup, Ester

- 1970 Women's Role in Economic Development. London: George Allen & Unwin.

Chapon, Diana

- 1976 Divorce and Fertility: A Study in Rural Java. Yogyakarta: Population Institute, Gadjah Mada University.

Chung, Betty Jamie

- [1977] The Status of Women and Fertility in Southeast and East Asia: A Bibliography. Singapore: Institute of Southeast Asian Studies.

Cohen, Ronald

- 1971 Dominance and Defiance: A Study of Marital Instability in an Islamic African Society (Anthropological Studies Number 6). Washington: American Anthropological Association.

Coulson, N.J.

1964 A History of Islamic Law. Edinburgh: Edinburgh University Press.

1969 Conflicts and Tensions in Islamic Jurisprudence. Chicago: University of Chicago Press.

1971 Succession in the Muslim Family. Cambridge: Cambridge University Press.

Dhammapada.

Muller, F. Max (ed. & tr.)

1965 The Dhammapada: A Collection of Verses, being one of the Canonical Books of the Buddhists. (Sacred Books of the East vol. 10. Unesco Collection of Representative Works. India). Dehli: Mitilal Banarsidass.

Tomomatsu, Entei (comp. & tr.) 友松 圓諦 編着

1964 ダンマパダ(法句經) (Dhammapada). Tokyo: Shinriundohonbu.

Deliar Noer

1978 Administration of Islam in Indonesia. (Cornell Modern Indonesia Project, Southeast Asia Program, Monograph Series Publication no. 58). Ithaca, N.Y.: Cornell University.

Department of Information, Republic of Indonesia

[1975] The Indonesian Marriage Law. Jakarta: Percetakan Negara RI.

Departemen Dalam Negeri, Republik Indonesia

1976 Penentuan Lokasi Daerah Miskin: Daerah Istimewa Jogjakarta (Publikasi no. 58). [Jakarta]: Direktorat Jenderal Ag_raria Departmen Dalam Negeri.

Djamiat Muhammadiyah

1958 Statues of the Djamiat Muhammadiyah (1st English ed.). Jakarta: Faida.

Djamour, Judith

1959 Malay Kinship and Marriage in Singapore (London School of Economics Monographs on Social Anthropology). London: Athlone.

1966 The Muslim Mat_rimonial Court in Singapore (London School of Economics Monographs on Social Anthropology). London: Athlone.

Epstein, A.L.

1954 Judicial Process: A Study in African Customary Law (Rhodes-Livingston Papers no. 23). Manchester: Manchester University Press.

Evans-Pritchard, E.E.

1953 'Bridewealth and the Stability of Marriage'. Man, vol. 53, no. 122, pp. 80.

Fang, Liaw Yogk

1976 Undang-Undang Melaka: The Laws of Melaka (Koninklijk Instituut Voor Taal-, Land- en Volkenkunde, Bibliotheca Indonesica vol. 13). The Hague: Martinus Nijhoff.

Fyzee, Asaf A.A.

1974 Outline of Muhammadan Law (4th edn). Delhi: Oxford University Press.

Geertz, Hildred

1961 The Javanese Family: A Study of Kinship and Socialization. [New York]: The Free Press of Glencoe.

Geertz, Clifford

1960 The Religion of Java. New York: The Free Press of Glencoe.

1965 The Social History of an Indonesian Town. Cambridge, Mass.: M.I.T. Press.

Gibb, H.A.R & J.H. Kramers (eds.)

1953 Shorter Encyclopaedia of Islam. Ithaca, N.Y.: Cornell University Press.

Gluckman, Max

1950 'Kinship and Marriage among the Lozi of Northern Rhodesia and Zulu of Natal'. In Radcliffe-Brown (ed.), African Systems of Kinship and Marriage, pp. 166-206. London: Oxford University Press.

1953 'Bridewealth and the Stability of Marriage'. Man, vol. 53, no. 223, pp. 141-143.

1954 'Bridewealth and the Stability of Marriage'. Man, vol. 54, no. 96, p. 76.

Hasan Ahmad

1970 The Early Development of Islamic Jurisprudence. Islamabad, Pakistan: Islamic Research Institute.

Hasbullah Bakry

1970 Pengaturan Undang2 Perkawinan Ummat Islam. Djakarta: Bulan Bintang.

Hooker, M.B.

1978 Adat Law in Modern Indonesia. Kuala Lumpur: Oxford University Press.

Howell, Julia Day

1976 'Javanese Religious Orientations in the Residency of Surakarta'. In Carol A Smith (ed.), Regional Analysis (vol. 2), pp. 229-254. New York: Academic Press.

Hull, Valerie J.

1975 Fertility, Socioeconomic Status and Position of Women in a Javanese Village. Ph.D. Dissertation, The Australian National University, Canberra.

1976a Women in Java's Rural Middle Class: Progress or Regress? (Paper prepared for the fourth World Congress for Rural Sociology, August 9-13, 1976 Torun, Poland). Yogyakarta: Populaton Institute, Gadjah Mada University.

1976b The Positive Relation Between Economic Class and Family Size in Java. Yogyakarta: Population Institute, Gadjah Mada University.

Hull, Terence and Valerie H.

1979 The Relation of Economic Class and Fertility. Yogyakarta: Population Institute, Gadjah Mada University.

Hurgronje, C. Snouck

1970 [1931] Mekka in the Latter Part of the 19th Century: Daily Life, Customs, and Learning. The Moslims of the East-Indian-Archipelago. Translated by J.H. Monahan. Leiden: E.J. Brill.

Hursh-Cesar, Gerald & Prodipto Roy (eds.)

1976 Third World Survey: Survey Research in Developing Nations. Delhi: The MacMillan Co. of India, Ltd.

Jay, Robert R.

1969 Javanese Villagers: Social Relations in Rural Modjokuto. Cambridge, Mass.: M.I.T. Press.

Johns, Anthony H.

1979 Cultural Options and the Role of Tradition; A Collection of Essays on Modern Indonesian and Malaysian Literature. Canberra: The Australian National University Press.

1966 'From Buddhism to Islam: An Interpretation of the Javanese Literature of the Transition'. Comparative Studies in Society and History. vol. 9, pp. 40-50.

Jones, Gavin W.

1980 Three Decades of Change: Malay Marriage and Divorce in Peninsular Malaysia (Paper read at a seminar of the Department of Demography, Research School of Social Sciences, The Australian National University).

Kano, Hiroyoshi 加納啓良

1979 パグウラン 東部ジャワ農村の富と貧困

(Pagelaran: The Wealth and Poverty in an East Javanese Village.) Tokyo: Ajia Keizai Kenkyusho (Institute of Developing Economies).

Kartini

- 1964 Letters of a Javanese Princess. New York: Norton.

Kasto

- 1976 Pertambahan Penduduk Kotamadya Yogyakarta. Yogyakarta: Lembaga Kependudukan Universitas Gadjah Mada.

Katakura, Motoko 片倉 素子

- 1968 コーランに現われた家族共同体 — 結婚に關する章句を中心に —
('The Disintegration of the Matrilineal Family in Arabia reflected in the Qur'an'). Shukyo Kenkyu (Journal of Religious Studies) vol. 42-2, no. 197, pp. 1-24.

Katz, June & Ronald

- 1978 'Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited'. American Journal of Comparative Law, vol. 26, no. 2 (Spring), pp. 309-320.

Koentjaraningrat

- 1957 A Preliminary Description of the Javanese Kinship System. (Yale University Southeast Asia Studies Cultural Report Series no. 4.). New Haven, Conn.: Yale University.

1975 Anthropology in Indonesia, A Bibliographical Review (Koninklijk Instituut Voor Taal-, Land- en Volkenkunde Bibliographical Series 8.). 's-Gravenhage: Martinus Nijhoff.

Koentjaraningrat (ed.)

- 1967 Villages in Indonesia. Ithaca, N.Y.: Cornell University Press.

Leach, E.R.

- 1953 'Bridewealth and the Stability of Marriage'. Man, vol. 53, no. 279, pp. 179-180.

1954 'Bridewealth and the Stability of Marriage'. Man, vol. 54, no. 153, pp. 99-100.

Lev, Daniel S.

- 1972 Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions. Berkeley: University of California Press.

Ling, Tai Ching

- 1975 'A Sociological Analysis of Divorce in Singapore'. Southeast Asian Journal of Social Science, vol. 3, no. 1, pp. 61-84.

Maher, Vanessa

- 1974 Women and Poverty in Morocco: Their Changing Relation to the Process of Social Stratification in the Middle Atlas. London: Cambridge University Press.

Mawardi

- 1975 Hukum Perkawinan Dalam Islam. Yogyakarta: Bagian Penerbitan, Fakultas Ekonomi, Universitas Gadjah Mada.

McDonald, Peter F. & Alip Sontosudarmo

- 1976 Response to Population Pressure: The Case of the Special Region of Yogyakarta. Yogyakarta: Gadjah Mada University Press.

McDonald, Peter & Edeng H. Abdurahman

- 1975 Marriage and Divorce in West Java: An Example of the Effective Use of Marital Histories. (A version of this paper was read in Indonesian at the Kongres Pertama Ikatan Peminat dan Ahli Demografi Indonesia).

Masri Singarimbun & Chris Manning

- 1974 'Marriage and Divorce in Mojolama'. Indonesia, vol. 17, (April), pp. 67-82.

Mohanani, T.P.

- 1962 'When Married Couples Part'. American Sociological Review, vol. 27, pp. 625-633.

Mook, H.J. van

- 1958 'Kuta Gede'. In W.F. Wertheim (ed.), The Indonesian Town: Studies in Urban Sociology, pp. 275-331. The Hague: W.van Hoeve.

Morgan, K.W. (ed.)

- 1958 Islam, the Straight Path. New York: Ronald Press.

Muhammad Hazim Abdullah Umar

- 1977 Kedudukan dan Peranan 'Kaum Rois' di Masyarakat Kecamatan Pleret Kabupaten Bantul. Skripsi Sarjana Ilmu Ushuluddin (Perbandingan Agama). Fakultas Ushuluddin, Institut Agama Islam Negeri - Sunan Kalijaga, Yogyakarta.

Musthafa Kamal Pasha & Chusnan Jusuf

- 1977 Muhammadiyah Sebagai Gerakan Islam. Yogyakarta: Pimpinan Pusat Muhammadiyah Majelis Pustaka.

Nakamura, Mitsuo

- 1976 The Crescent Arises Over the Banyan Tree: A Study of the Muhammadiyah Movement in a Central Javanese Town. Ph.D. Dissertation, Cornell University, Ithaca, N.Y..

Nasaruddin Latief

- 1968 Ilmu Perkawinan. Djakarta: Penerbit Widjaya.

Nashrudin Thaha

- 1967 Pedoman Perkawinan Islam. Djakarta: Penerbit Bulan Bintang.

Nicolas P. Agnides

n.d. The Background Introduction to Mohammedan Law. Solo: Ab. Sitti Sjamsijah.

Pandam Guritno Siswoharsojo

1959 'Beberapa Data Megenai Perkawinan di Desa Marangan, Djawa Tengah' (Some Data on Marriage in Marangan, Central Java). Sociografi Indonesia, vol. 1, pp. 59-74.

1964 A Cross-Cultural Study of Divorce with Special Reference to a Javanese Village in Jogjakarta, Indonesia. M.A. Thesis, Cornell University, Ithaca, N.Y.

Papanek, Hanna

1975 Marriage, Divorce and Marriage Law Reform in Indonesia (Paper read at the Conference on Women in Contemporary Muslim Societies, Center for the Study of World Religions, Harvard University, April). (mimeo)

Papanek, Hanna et al.

1974 Changes in the Status of Women and their Significance in the Process of Social Change: Indonesian Case Studies (Paper read at the Sixth International Conference on Asian History, Panel VIII, no. 5. International Association of Historians of Asia (I.A.H.A.), Yogyakarta, August 26-30).

Pigeaud, Th.

1967 Literature of Java. 3 vols. The Hague: Martinus Nijhoff.

Poerwopranoto

1953 Pembimbing Pamong (Pegawai) Desa. Semarang: Astanabuku Abede.

Poewadarminta, W.J.S.

1948 Baoesastra Djawi-Indonesia. Djakarta: Bale Poestaka.

Prins, Jan

1951 'Adatlaw and Muslim Religious Law in Modern Indonesia'. Die Welt des Islams, (n.s.), pp. 283-300.

Qur'an, The

Arberry, Arthur J.

1955 The Koran Interpreted. London: George Allen & Unwin.

Bell, Richard

1937 The Qur'an. Translated, with a Critical Re-arrangement of the Surahs. 2 vols. Edinburgh: T & T. Clark.

Dawood, N.J

1978 The Koran. Harmondsworth: Penguin Books.

Izutsu, Toshihiko 井筒俊彦記

1970 コーラン (The Qur'an). 3 vols. Tokyo: Iwanami Shoten.

- Jassin, H.B.
1978 Al-Quranu'l-Karim - Bacaan Mulia. Jakarta: Djambatan.
- Yusuf Ali
[1938] The Holy Qur-an. Text, Translation & Commentary. 3 vols. Lahore, Pakistan: Shaikh Muhammad Ashraf Kashmiri Bazar.
- Rahman, Fazlur
1968 Islam. Anchor Books. Doubleday & Company, Inc., Garden City, New York.
- Raffles, Thomas Stanford
1978 [1817] The History of Java. (2 vols). Kuala Lumpur: Oxford University Press.
- Rashid, Syed Khalid
1980 Certain Quranic Concepts that Mould Sharia (Paper read at the international conference on Islam, 'The Qur'an through fourteen centuries', held at The Australian National University, Canberra). 8 pp.
- Said, Mohammed
1980 Address of Hakim Muhammad Said at the concluding session of the international conference on Islam, 'The Qur'an through fourteen centuries', held at The Australian National University, Canberra. 7 pp.
- Schacht, Joseph
1964 An Introduction to Islamic Law. Oxford: Clarendon Press.
- Schiller, Barbara Martin
1978 Women, Work and Status in Rural Java. M.A. Thesis. Ohio University.
- Schneider, David M.
1953 'A Note on Bridewealth and the Stability of Marriage'. Man, vol. 53, no. 75, pp. 55-57.
- Selosoemardjan
1962 Social Changes in Jogjakarta. Ithaca, N.Y.: Cornell University Press.
- Smith, W. Cantwell
1957 Islam in Modern History. New York: The New American Library, Inc..
- Smith, W. Robertson
1903 Kinship and Marriage in Early Arabia. Boston, Mass.: Beacon Press.

Soetarsih Moeliakoesoema

1976 Berbagai Aspek Perbedaan Pola Perkawinan di Indonesia Dewasa Ini (Survey Fertilitas Mortalitas Indonesia 1973, Monograf Seri no. 2). Jakarta: Lembaga Demografi, Fakultas Ekonomi, Universitas Indonesia.

Stoler, Ann

1976 'Class Structure and Female Autonomy in Rural Java'. In B.B. Hering (ed.), Indonesian Women, Some Past and Current Perspective, pp. 124-150.

Stuers, Cora Vreede-De

1960 The Indonesian Women: Struggles and Achievements. The Hague: Mouton.

Sudargo Gautama & Robert N. Hornick

1978 An Introduction to Indonesian Law: Unity in Diversity. Bandung: Alumni Press.

Tan, Mely G.

1971 The Social and Cultural Context of Family Planning in Indonesia. Djakarta: LEKNAS-LIPI.

Tanabe, Shigeko 田邊繁子

1964 フヌ法典の家族法
(Family Law of Manu)
Tokyo: Nippon Hyoronsha.

Tedjo Soesilo

1970 Perkembangan Perusahaan Perak di Kotagede. Skripsi Sarjana Ilmu Sejarah, Universitas Gadjah Mada.

Ter Haar, B.

1962 Adat Law in Indonesia. Djakarta: Bhratara.

Tsubouchi, Yoshihiro 坪内良博

1969 双系的親族構造をもつマレー系諸民族の離婚について
('Marital Stability Among the Bilateral Peoples of Malaysia and Indonesia'). Tonan Ajia Kenkyu, vol.6, no. 4, pp. 41-69.

Tsubouchi, Yoshihiro & Reiko 坪内良博・玲子

1970 離婚 - 比較社会学的研究 - (Divorce: A Comparative Study).
Tonan Ajia Kenkyusosho 4. Tokyo: Sobunsha.

Veth, P.J.

1875 Java, Geographisch, Ethnologisch, Historisch (3 vols.).
Haarlem: De Erven F. Bohn.

Webb, Eugene J. et al.

1966 Unobtrusive Measures: Nonreactive Research in the Social Sciences. Chicago: Rand McNally.

Yasmine S. Al Hadar

1977 Perkawinan dan Perceraian di Indonesia: Sebuah Studi Antar Kebudayaan (Survey Fertilitas Mortalitas Indonesia 1973, Monograf Seri no. 4). Jakarta: Lembaga Demografi, Fakultas Ekonomi, Universitas Indonesia.

Yulfita Rahadjo

1977 Impact of socio-economic change on fertility behavior: Two studies of women in urban Java (term paper, The Australian National University). 29 pp.

GLOSSARY

Notes: Those words in square brackets [] are transliterations according to the Shorter Encyclopaedia of Islam. Those words in parentheses () are alternative spellings in Indonesian.

<u>abangan</u>	Javanese Muslims rather lax in orthodox Islamic beliefs and rituals.
<u>adat</u> [ʿāda, ādat]	custom, practice, tradition. The application of the word is extended to all that a community or an individual has become accustomed to.
<u>adat-istiadat</u>	customs and traditions.
<u>bakul</u>	peddler.
<u>BP4</u>	Indonesian abbreviation for <u>Badan Penasihat Perkawinan dan Penyelesaian Perceraian</u> (The Body for Marriage Counselling and Divorce Settlements).
<u>buruh</u>	unskilled labourer.
<u>buruh tani</u>	farm labourer or agricultural labourer.
<u>dagang</u>	merchant, trader.
<u>fasakh</u> [faskh]	a way of terminating a marriage by the authority of religious judge. (fasach, pasah).
<u>fikh</u> [fiḵh]	the science of law. (fiqh).
<u>hadith</u> [ḥadīth]	records of the deeds and sayings of the Prophet Muhammad.
<u>hakim</u>	religious judge of Islamic court.
<u>hakam</u>	arbitrator.
<u>hukum</u> [ḥukm]	judgement or legal decision, the implementation or application of <u>syari'at</u> .
<u>iddah</u> [ʿidda]	a specific period during which a widow or a divorced woman may not remarry. The period varies according to the individual's physical conditions, from three months up to nine months. (idah).
<u>ijima</u> [idjmāʿ]	consensus among Islamic scholars and teachers.

<u>iwadl</u> [^c iwad]	substitute, compensation, consideration, which is given from the wife to her husband in order to dissolve the marriage. (iwad).
<u>kabupaten</u>	regency.
<u>kalurahan</u>	village or the lowest unit of rural administration. (kelurahan).
<u>kas desa</u>	village treasury.
<u>kaum</u>	a functionary in charge of religious affairs at the lowest level of general administration (village or neighborhood association). <u>kaum</u> is sometimes called <u>modin</u> .
<u>kecamatan</u>	sub-district.
<u>kedukuhan</u>	hamlet or the subdivision of the administrative village.
<u>kemantren</u>	sub-district (in the City of Yogyakarta).
<u>kenaiban</u>	traditional term for the officie of religious affairs at sub-district level, same as KUA.
<u>kota madya</u>	city, municipality.
<u>khuluk</u> [^c khul]	a way of dissolving a marriage by payment of iwadl. (chul, chuluk).
<u>KUA</u>	Indonesian abbriviation for Kantor <u>U</u> rusan <u>A</u> gama (The Office of Religious Affairs) at sub-district level.
<u>kuburan</u>	graveyard.
<u>lungguh</u>	land given to village officials during their service.
<u>mahr</u> [mahr]	the money or article which is given to the bride from the bridegroom when the contract of marriage is made and which becomes the property of the wife.
<u>modin</u>	see <u>kaum</u> .
<u>mutah</u> [mut ^c a]	the money given to the divorced wife from her husband in order to cheer her up. Indonesian gloss, <u>uang hadiyah</u> , is sometimes used for <u>mahr</u> .
<u>nafkah</u>	maintenance, daily necessities provided by the husband to the wife, namely, food, clothing and residence. (nafaqah).

<u>naib</u>	the head of the office of religious affairs at sub-district level.
<u>nasihat</u>	advice.
<u>nikah</u>	Muslim marriage.
<u>PA</u>	Indonesian abbreviation for <u>Pengadilan Agama</u> (The Religious Court).
<u>pegawai</u>	salaried employee of government or private office.
<u>pekarangan</u>	housing lot, yard in house compound.
<u>pengajian</u>	religious lecture.
<u>pengare-are-are</u>	land given to retired government officials as pension.
<u>Penguhulon</u>	office of <u>penguhulu</u> . See below.
<u>penguhulu</u>	head of religious bureaucracy at regency level.
<u>pengusaha</u>	entrepreneur.
<u>priyayi</u>	members of traditional aristocracy-bureaucracy.
<u>qiyas</u>	analogical reasoning.
<u>rapak</u>	an administrative term for the divorce which is handled in the Islamic Religious Court.
<u>rujuk</u> [ruju ^c]	reconciliation. (rudjuk, rujuq).
<u>rukun kampung</u> (RK)	neighborhood association, or the lowest semi-official unit of urban administration.
<u>rupiah</u>	Indonesian monetary unit worth approximately 0.25 cents (1970).
<u>santri</u>	pious Muslim; student of Islamic boarding school.
<u>sawah</u>	wet rice field, irrigated land.
<u>surat rapak</u>	certificate for divorce issued from the Islamic Religious Court.
<u>surat talak</u>	certificate for divorce issued from the Office of Religious Affairs.

syari'at [sharī'a, shar^c] The Way to be followed for Muslims, which is revealed in the Quran and contained in the Sunna. (sjariah).

syiqaq [shikāk] literally means dispute settlement. a way to dissolve a marriage when a dispute arises between the husband and the wife. The interested parties submit the case to a religious court and the court is to appoint two arbitrators who are expected to make a right settlement. (sjiqaq).

talak [ṭalāk] divorce, a way of dissolving a marriage by the husband's proclaiming divorce. (talaq).

talak bain irrevocable divorce.

talak bain kubro irrevocable and not remarriageable divorce.

talak bain syugro irrevocable but remarriageable divorce.

talak rajai revocable divorce. (talak radji).

talik-talak conditional divorce. (ta'likuttolah).

[ṭa'lik al ṭalāk]
tani farmer/peasant.

tegal dry farm land.

tukang craftsman, artisan.

ulama [ʿulamāʾ] Islamic scholars and teachers.