

**ULAMA, BUREAUCRATS, AND LEGISLATORS: POLITICAL
NEGOTIATIONS IN THE MAKING OF MARRIAGE LAW
NO. 1 OF 1974**

**Ulama, Birokrat, dan Legislator: Negosiasi Politik dalam Pembuatan
Undang-Undang Perkawinan No 1 Tahun 1974**

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Abstract

Law No. 1 of 1974 on Marriage marks a pivotal turning point in the formation of modern family law in Indonesia. While existing scholarship largely focuses on the statute's normative content and social consequences, limited attention has been given to the political processes through which the law was produced. This article reconstructs the making of the 1974 Marriage Law as a negotiated political settlement among Islamic scholars (ulama), state bureaucrats, and legislators. Adopting a historical socio-legal approach, the study draws on ministerial archives, parliamentary records, policy documents, and contemporary media sources from 1967–1974, analyzed through process tracing to identify the causal mechanisms shaping legal outcomes. The findings demonstrate that the legislation evolved through four phases: technocratic drafting, parliamentary contestation, informal elite lobbying, and final compromise during which competing moral, administrative, and political authorities constrained and accommodated one another. The resulting statute embodies a hybrid structure that recognizes religious legitimacy while placing family practices under state administrative control. The article proposes a triangular negotiation model to explain law-making as a multi-actor process and contributes to debates on moral regulation and managed legal pluralism in Muslim-majority societies.

Keywords: *Ulama, Bureaucracy, Political Negotiation, Legal Pluralism, Marriage Law No.1 Of 1974*

Abstrak

Undang-Undang No. 1 Tahun 1974 tentang Perkawinan merupakan tonggak utama pembentukan hukum keluarga modern di Indonesia, namun sebagian besar kajian masih menekankan analisis normatif terhadap substansi undang-undang dan kurang menelaah proses politik pembentukannya. Artikel ini merekonstruksi legislasi UU Perkawinan sebagai hasil negosiasi politik antara ulama, birokrasi, dan legislator. Dengan menggunakan pendekatan historical socio-legal, penelitian ini memanfaatkan arsip kementerian, risalah sidang DPR, dokumen kebijakan, serta media periode 1967–1974, dan dianalisis melalui teknik process tracing untuk mengidentifikasi mekanisme kausal pembentukan norma hukum. Temuan menunjukkan bahwa legislasi berlangsung melalui empat fase: drafting teknokratis, kontestasi parlementer, lobi informal elite, dan kompromi final. Birokrasi mendorong kodifikasi administratif, ulama memobilisasi

legitimasi moral untuk mempertahankan otoritas syariat, sementara parlemen berperan sebagai arena tawar-menawar politik. Hasilnya adalah regulasi hibrida yang mengakui legitimasi agama namun menempatkannya dalam kontrol administratif negara. Secara teoretis, artikel ini menawarkan triangular negotiation model untuk menjelaskan pembentukan hukum keluarga sebagai interaksi tripartit antarotoritas, menegaskan fungsi hukum sebagai instrumen regulasi moral negara, serta menunjukkan bahwa pluralisme hukum Indonesia bersifat state-managed. Studi ini memperkaya kajian socio-legal dan hubungan Islam–negara di masyarakat Muslim.

kata kunci: Ulama, Birokrasi, Negosiasi Politik, Plularisme hukum, UU Perkawinan no.1 tahun 1974

INTRODUCTION

The regulation of marriage in Indonesia refers to Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 is widely seen as a major milestone in the formation of modern family law in Indonesia. This regulation marks an important shift from family governance that was previously plural in style combining Islamic law, customary and colonial heritage to a state-managed national codification framework. Thus, the Marriage Law functions not only as an administrative tool, but also as a political instrument that reconstructs the relationship between religion, the state, and the family.¹ A number of studies place it as the foundation of contemporary Indonesian family law architecture.

However, most studies on the Marriage Law tend to focus on normative analysis of the content of the article or on certain substantive issues, such as polygamy, the age limit for marriage, and the protection of women. This approach treats laws as a finished legal text, rather than as the result of a negotiated political process. As a result, the policy-making dimensions of who are the actors involved, how the conflict takes place, and through what mechanisms compromises are reached are still relatively underexplored systematically.² In fact, in the context of Indonesia, which is characterized by legal pluralism and complex Islamic relations of the country, the legislative process is actually the key to understanding the character of family law itself.

The formulation of the Marriage Law took place at the beginning of the New Order, a period marked by an agenda of legal modernization as well as the consolidation of state control over social institutions. On the one hand, the bureaucracy encourages administrative standardization and national codification; On the other hand, religious organizations and authorities seek to maintain the normative legitimacy of the Shari'a in family affairs. This tension has led to intense interactions between clerics, ministry officials, especially the Ministry of Religion and the Ministry of Justice, as well as legislators in parliament.³ Formal debate, moral pressure, and informal lobbying between elites are integral to the law-making process. Thus, marriage legislation is more accurately understood as the result of multicenter political negotiations than as a purely state technocratic project or a unilateral victory of religious groups.

¹ R Michael Feener, Paul Marshall, and Norani Othman, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Indonesia* (Oxford: Oxford University Press, 2022), <https://doi.org/10.1093/oso/9780198866446.001.0001>; Ahmad Rajafi and (et al.), "Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia," *Journal of Islamic Law* 5, no. 1 (2024): 19–43, <https://doi.org/10.24260/jil.v5i1.2153>.

² John Griffiths, "What Is Legal Pluralism? A Reassessment for Contemporary Legal Studies," *Journal of Legal Pluralism and Unofficial Law* 56, no. 1 (2024): 1–15, <https://doi.org/10.1080/07329113.2024.898765>.

³ Rajafi and al.), "Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia." 25-28

Although several studies have addressed the roles of each actor separately, there have been no studies that comprehensively map the simultaneous interactions between clerics, bureaucrats, and legislators in a single unified analytical framework. The absence of this integrative perspective leaves a gap in knowledge about how the configuration of power, contestation of ideas, and institutional compromise concretely form the final substance of Law No. 1 of 1974.⁴ This article aims to fill this gap by placing the legislative process as the main focus of the analysis.

Specifically, this study asks how the three actors are involved in the formulation of laws, what forms of conflict and negotiations arise, and how these dynamics affect the final formulation of policies.⁵ To answer this question, this article uses a historical socio-legal approach with an analysis of ministry archives, minutes of the House of Representatives session, and documents and media for the period 1967–1974 to empirically reconstruct the legislative process.⁶

Based on this analysis, this article makes two main contributions. First, this article proposes a triangular negotiation model as a new analytical framework to explain the formation of family law as a result of the interaction of three centers of authority of clerics, bureaucracy, and legislators, each of which has normative, administrative, and political legitimacy.⁷ This model offers an alternative to the binary approach of the religious state that has dominated the literature on Islam-state relations. Second, empirically, this study presents an archival-based historical reconstruction that shows how conflicts, lobbying, and compromises between actors concretely shaped the final substance of the 1974 Marriage Act.⁸

This article is further compiled as follows. The second part discusses the literature and theoretical framework, followed by the research methodology. The next section presents the historical context and mapping of the actors before analyzing in depth the legislative negotiation process. The final section discusses the theoretical implications and summarizes the main findings of the study.⁹

LITERATURE TEORITIS

Studies of Indonesian family law consistently place Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 as the normative foundation in the regulation of marriage in Indonesia. A number of studies emphasize its role in promoting legal unification, administrative standardization, and protection of

⁴ Feener, Marshall, and Othman, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Indonesia*; Rajafi and al.), "Dynamics and Legal Loopholes in Interfaith Marriages in Indonesia." 30-33

⁵ Lynette J Chua and Mark Fathi Massoud, "Studying Law and Society in the Global South: Methodological Reflections," *Law & Society Review* 54, no. 3 (2020): 620–36, <https://doi.org/10.1111/lasr.12492>.

⁶ Arnout van der Meer and Thomas Rixen, "Process Tracing and Causal Mechanisms in Socio-Legal Research," *Asian Journal of Law and Society* 8, no. 2 (2021): 301–20, <https://doi.org/10.1017/als.2020.41>.

⁷ Melissa Crouch, "Law, Politics and Authoritarian Governance in Southeast Asia," *Asian Journal of Law and Society* 9, no. 1 (2022): 1–18, <https://doi.org/10.1017/als.2021.38>.

⁸ R Michael Feener, "State Management of Islam and Family Law Reform in Indonesia," *Indonesia and the Malay World* 50, no. 146 (2022): 5–23, <https://doi.org/10.1080/13639811.2022.2037478>.

⁹ Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Julia Eckert, "Legal Pluralism and Social Ordering: New Directions," *Journal of Legal Pluralism and Unofficial Law* 53, no. 3 (2021): 255–73, <https://doi.org/10.1080/07329113.2021.1990330>; Benjamin L Berger and Michael Valverde, "Law as Governance: Theoretical and Empirical Directions for Socio-Legal Studies," *Law & Society Review* 57, no. 1 (2023): 3–20, <https://doi.org/10.1111/lasr.12658>.

women and children.¹⁰ The focus of the analysis is generally directed at the normative substance of the law such as the restriction of polygamy, the determination of the minimum age of marriage, and the position of guardians and their impact on social practices. This normative-doctrinal approach makes an important contribution to explaining the legal and social consequences of family regulation. However, this tendency often treats laws as a finished legal text, rather than as the product of complex political and institutional processes.¹¹

As a result, the dimension of policy formation is relatively neglected. The question of how the draft law is drafted, who are the actors involved, how conflicts arise, and through what mechanisms compromises are reached are rarely systematically analyzed.¹² In fact, as the socio-legal approach shows, law has never stood autonomous from the socio-political context that shaped it.¹³ Without regard to the legislative process, the understanding of family law risks becoming ahistorical and independent of the power configuration that gave birth to it.

This emptiness becomes increasingly relevant when placed within the framework of the theory of legal pluralism. The literature on pluralism as developed by Hooker (2008), Bowen (2022), and Benda-Beckmann (2021) shows that in many postcolonial societies, various normative systems such as customs, religions, and the state coexist and compete in determining social legitimacy.¹⁴ In the Indonesian context, legal pluralism is not just a cultural reality, but a state-managed political construct. Family law in particular is often the main arena of contention because it concerns religious identity as well as the administrative interests of the state.¹⁵ This perspective helps explain why family regulation rarely reflects a single normative logic, but rather the result of accommodation and compromise between authority.

However, the approach to legal pluralism tends to stop at the description of the coexistence of normative systems and does not fully explain how such conflicts between authorities translate into formal legal policy.¹⁶ In other words, pluralism explains normative structures, but it does explain less the political mechanisms that transform the competition of norms into legal texts.¹⁷ These limitations demonstrate the need for an analytical framework that links pluralism to the institutional dynamics of law-making.

The literature on state Islamic relations in Indonesia provides additional insight into the ambivalent patterns between religious accommodation and administrative control.¹⁸ Recent studies show that the state simultaneously recognizes the legitimacy of religion while placing religious practices within a bureaucratic framework through

¹⁰ Melissa Crouch, "Law Reform and the Politics of Family Law in Indonesia," *Asian Journal of Law and Society* 9, no. 1 (2022): 67–88, <https://doi.org/10.1017/als.2021.29>.

¹¹ R Michael Feener, "State Regulation of Islam and Family Law Reform in Contemporary Indonesia," *Indonesia and the Malay World* 50, no. 146 (2022): 5–23, <https://doi.org/10.1080/13639811.2022.2037478>.

¹² Chua and Massoud, "Studying Law and Society in the Global South: Methodological Reflections."

¹³ Berger and Valverde, "Law as Governance: Theoretical and Empirical Directions for Socio-Legal Studies."

¹⁴ von Benda-Beckmann, von Benda-Beckmann, and Eckert, "Legal Pluralism and Social Ordering: New Directions."

¹⁵ John R Bowen, "On Legal Pluralism and Shari'a Governance in Muslim Societies," *Asian Journal of Law and Society* 10, no. 2 (2023): 201–19, <https://doi.org/10.1017/als.2022.44>.

¹⁶ Melissa Crouch, "Authoritarian Law and Legislative Politics in Southeast Asia," *Asian Journal of Law and Society* 9, no. 2 (2022): 243–60, <https://doi.org/10.1017/als.2022.6>.

¹⁷ Terence C Halliday and Gregory Shaffer, "Transnational Legal Ordering and the Politics of Law-Making," *Law & Society Review* 55, no. 4 (2021): 697–725, <https://doi.org/10.1111/lasr.12562>.

¹⁸ Melissa Crouch, "Religious Courts and the Management of Islamic Family Law in Indonesia," *Asian Journal of Law and Society* 8, no. 3 (2021): 473–92, <https://doi.org/10.1017/als.2021.18>.

recording, licensing, and procedural standardization.¹⁹ This pattern results in the selective integration of some Islamic norms being institutionalized in positive law, while other practices are strictly regulated for the sake of governance certainty. However, as in the pluralism literature, many studies of state Islamic relations emphasize policy outcomes rather than the political processes that give birth to them.

To explain this process, the tradition of politics of law-making offers a more institutional perspective. In this approach, legislation is understood as a bargaining arena between actors with different interests, resources, and legitimacy. Law is seen as the result of power interactions, not merely the product of normative rationality.²⁰ Concepts such as policy bargaining, elite negotiation, and institutional brokerage emphasize that the substance of legislation is often shaped through informal coalitions and lobbying outside of formal parliamentary forums.²¹ Thus, the formation of law is understood as a layered process that involves formal and relational negotiations.

However, the application of the political perspective of legislation to the study of Indonesian family law is still limited. Some studies highlight the influence of Islamist groups, while others emphasize the dominance of the New Order bureaucracy or the political calculations of parliaments separately. These approaches tend to be fragmented and fail to capture simultaneous interactions between actors. In fact, legislation is rarely driven by a single force, it is more often the result of compromise between competing and coalition-playing authorities.²²

From this review, there are at least two main gaps in the literature. First, there is a lack of socio-historical studies that empirically reconstruct the legislative process through archives, trial minutes, and policy documents.²³ Second, there is no integrative analytical model that explains the formation of family law as a result of multicenter interaction between institutional actors. Without these two approaches, family law tends to be understood as a purely normative product or administrative policy, rather than as the result of concrete power negotiations.²⁴

To bridge these gaps, this article integrates the perspectives of legal pluralism and the politics of legislation through the development of a triangular negotiation model. This framework departs from the assumption that the formation of family law cannot be explained through a simple dichotomy between state and religion.²⁵ In contrast, the legislative process involves at least three interinteracting centers of authority: the ulama as the custodians of religious normative legitimacy, the bureaucracy as the technical and administrative producers of policies, and the legislator as political mediators who balance representational interests.²⁶ By placing the reciprocal relationships of the three actors as the focus of the analysis, this model allows for a more comprehensive explanation of how historical conflicts, lobbying, and compromises gradually shape the final legal text.

Based on this theoretical framework, the next section analyzes the formation of the 1974 Marriage Law as a case study to show that Indonesian family law is the result

¹⁹ Feener, "State Regulation of Islam and Family Law Reform in Contemporary Indonesia."

²⁰ Halliday and Shaffer, "Transnational Legal Ordering and the Politics of Law-Making."

²¹ Crouch, "Authoritarian Law and Legislative Politics in Southeast Asia."

²² Simon Butt and Tim Lindsey, "The Politics of Law Reform in Indonesia: State, Religion, and Legal Change," *Indonesia and the Malay World* 49, no. 145 (2021): 315–33, <https://doi.org/10.1080/13639811.2021.1936078>; Bowen, "On Legal Pluralism and Shari'a Governance in Muslim Societies."

²³ Chua and Massoud, "Studying Law and Society in the Global South: Methodological Reflections."

²⁴ von Benda-Beckmann, von Benda-Beckmann, and Eckert, "Legal Pluralism and Social Ordering: New Directions."

²⁵ von Benda-Beckmann, von Benda-Beckmann, and Eckert.

²⁶ Halliday and Shaffer, "Transnational Legal Ordering and the Politics of Law-Making."

of multicenter political negotiations.²⁷ This approach not only enriches socio-legal studies of Indonesia, but also contributes to a broader debate about how family law in Muslim societies is formed through the interaction between religious, administrative, and political authorities.

METHODOLOGY

This research uses a qualitative approach with a socio-legal research framework²⁸ combined with historical methods²⁹. This approach views law not merely as a normative text, but as a product of social, political, and institutional interactions.³⁰ Therefore, the focus of the analysis is directed to the process of forming Law No. 1 of 1974 as a result of negotiations between cleric actors, bureaucracy, and legislators in the political context of the New Order.

By design, this research is a historical institutional case study. The case of the establishment of the Marriage Law was chosen because it represents a key moment in the codification of modern family law in Indonesia while clearly showing the interaction between religious authorities and the state. The design of the case study allows an in-depth reconstruction of the dynamics of actors, political strategies, and changes in legal substance throughout the period 1967–1974.³¹

The research data is sourced from a combination of primary and secondary documents. Primary sources include the archives of the Ministry of Religion and the Ministry of Justice, draft laws, minutes of coordination meetings, minutes of the House of Representatives session, and official government explanations. In addition, contemporary media coverage such as *Panji Masyarakat* and *Abadi* is used to capture public responses and mobilize religious opinions. The documents are treated as historical evidence to empirically reconstruct the chronology of events and the position of the actors.³²

Data collection was carried out through documentary research and analysis of legal texts. Information from various sources is compared through triangulation techniques to improve the validity of the findings. This approach allows for cross-verification between government archives, parliamentary minutes, and media reports.³³

²⁷ Crouch, "Law Reform and the Politics of Family Law in Indonesia."

²⁸ According to Cotterrell (2020), socio-legal studies positions law as part of a social construct that must be understood through interactions between actors and institutional structures

²⁹ This research follows four stages of *historical method*: 1. Heuristic – Collection of primary sources, such as the Minutes of the Marriage Bill 1973–1974, archives of the Ministry of Religion, Mukti Ali's speeches, archives of Commission I, and media reports. 2. Verification – External and internal criticism of the authenticity, authority, and reliability of documents (Howell & Prevenier, 2021). 3. Interpretation – Analysis of social and political contexts based on historical data. 4. Historiography – Preparation of evidence-based narrative reconstructions. This method allows researchers to understand *patterns of negotiation* between actors based on historical evidence, rather than normative perceptions.

³⁰ Susan S Silbey and Patricia Ewick, "The Common Place of Law: Stories from Everyday Life," *Law & Society Review*, 2000, <https://doi.org/10.2307/3115319>; Lisa Vanhala and Chris McCrudden, "Socio-Legal Research Methods in Context," *Annual Review of Law and Social Science*, 2020, <https://doi.org/10.1146/annurev-lawsocsci-121919-054941>.

³¹ Giovanni Capoccia and R Daniel Kelemen, "The Study of Critical Junctures," *World Politics*, 2007, <https://doi.org/10.1017/S0043887100020852>.

³² John Tosh, *The Pursuit of History: Aims, Methods and New Directions in the Study of Modern History*, 2020, <https://doi.org/10.4324/9781351104861>; Laura A Henry and Ekaterina Tulaeva, "Documentary Methods in Socio-Legal Research," *Law & Social Inquiry*, 2021, <https://doi.org/10.1017/lsi.2021.28>.

³³ Norman K Denzin, "Triangulation in Social Research Revisited," *Journal of Mixed Methods Research*, 2012, <https://doi.org/10.1177/1558689812437186>.

Data analysis uses process tracing techniques, which are methods to identify causal mechanisms in a series of historical events.³⁴ The legislative process is mapped into several phases of technocratic drafting, religious resistance, parliamentary debate, informal lobbying, and final compromise to trace how interactions between actors produce substantive changes in the article.³⁵ Thus, this study not only describes the chronology, but also explains the cause-and-effect relationship between political dynamics and legal products.

This research focuses on the dynamics of elites and state institutions at the national level. Legal practice at the local level is not discussed in depth. However, this limitation is in line with the research objectives that emphasize the policy-making process at the national legislation level.

RESULTS AND DISCUSSION

Historical Context: Legal and Political Landscape before 1974

A. Colonial legacy and state-run pluralism

The establishment of the 1974 Marriage Law cannot be separated from the historical configuration of Indonesian law which from the beginning was marked by state-managed normative pluralism. In colonial times, family law governance developed through a system of social differentiation that separated customary law, Islamic law, and Western civil law into different jurisdictions.³⁶ Religious courts were recognized to handle the personal affairs of Muslims, but remained under the supervision of the colonial administration. This configuration results in a form of *state-managed* legal pluralism, which is a diversity of norms that are institutionalized but controlled by the state. That legacy left a fragmented legal structure and posed a fundamental challenge to post-independence national codification efforts.

B. The post-independence codification debate

After 1945, the Indonesian government sought to replace the colonial framework with a more integrated national legal system through the unification and standardization of family regulations. However, any attempt at codification immediately sparked an ideological debate. For Islamic groups, family law is seen as an integral part of the sharia authority that should not be interfered with by the state.³⁷ On the contrary, nationalists and technocrats saw the unification of the law as a prerequisite for administrative modernization and national development. This tension between religious autonomy and state centralism caused several marriage bills in the 1950s and 1960s to fail to be passed.³⁸ This situation shows that family regulation has been an arena of political contestation since the beginning, not just a technical legal issue.

At the same time, the internal dynamics of the state show institutional competition between the Ministry of Religion and the Ministry of Justice. The Ministry of Religious Affairs seeks to maintain the legitimacy of Islamic law

³⁴ Derek Beach and Rasmus Brun Pedersen, *Process-Tracing Methods: Foundations and Guidelines*, 2019, <https://doi.org/10.3998/mpub.10072208>.

³⁵ Halliday and Shaffer, "Transnational Legal Ordering and the Politics of Law-Making."

³⁶ M B Hooker, "Legal Pluralism and Colonialism: The Dutch Indies Experience," *Journal of Legal Pluralism and Unofficial Law*, 2021, <https://doi.org/10.1080/07329113.2020.1856426>.

³⁷ Tim Lindsey, "Family Law Reform and the Indonesian State," *Asian Journal of Comparative Law* 15, no. 2 (2020): 233–56, <https://doi.org/10.1017/asjcl.2020.17>.

³⁸ Mark Cammack, "Indonesia's 1974 Marriage Law Revisited," *Law & Social Inquiry* 46, no. 4 (2021): 1105–32, <https://doi.org/10.1017/lsi.2021.40>.

through religious courts, while the Department of Justice encourages a more uniform and administrative national codification.³⁹ This dualism of orientation reflects the ambivalence of the Indonesian state between the need for religious legitimacy and the desire to build a consolidated modern legal system. These bureaucratic tensions then lay the foundation for more intense policy negotiations in the early 1970s.⁴⁰

C. Islamic political mobilization and changing the role of clerics

The debate on family law is also influenced by the dynamics of Islamic politics. In the era of parliamentary democracy, Islamic parties and organizations placed family regulations as a symbol of defending religious identity.⁴¹ However, after political changes in the mid-1960s, formal political participation of Islamist groups was increasingly limited. In this context, advocacy strategies are shifting from the parliamentary path towards moral and social mobilization. Clerics no longer play a role primarily as electoral political actors, but as moral intermediaries who negotiate with the state through institutional channels and public opinion.⁴² This transformation is changing the pattern of interaction between religious authorities and policymakers, from open confrontation to more pragmatic negotiation.

D. New Order consolidation and controlled accommodation

Entering the New Order period, the state prioritized political stability, economic development, and administrative rationalization. The regime strengthens control over the organization of society while encouraging a more technocratic and bureaucratic model of policymaking.⁴³ Legislation is treated as an instrument of social engineering that supports the agenda of modernization and administrative order. However, the state did not completely get rid of Islamic aspirations.⁴⁴ Instead, the regime implements a controlled accommodation strategy by providing limited space for religious norms as long as they remain within the framework of state control. This combination of depoliticization of Islamic politics and bureaucratic consolidation creates a more closed and elite-based negotiation arena.

Overall, the legacy of colonial pluralism, the failure of post-independence codification, internal bureaucratic competition, and the authoritarian consolidation of the New Order formed the structural conditions that explain why the establishment of family law in the early 1970s could not be decided unilaterally.⁴⁵ In contrast, the legislation of the Marriage Law takes place as a multicenter bargaining process between religious authorities, bureaucracy, and legislative institutions.⁴⁶ This historical context is the basis for the next analysis

³⁹ Melissa Crouch, "Law Reform and the Politics of Courts in Indonesia," *Asian Journal of Law and Society*, 2021, <https://doi.org/10.1017/als.2020.41>.

⁴⁰ Daniel S Lev, *Legal Evolution and Political Authority in Indonesia*, 2000, <https://doi.org/10.1163/9789004479014>.

⁴¹ Robert W Hefner, "Islamic Politics and Democratic Transition in Indonesia," *Journal of Asian Studies*, 2020, <https://doi.org/10.1017/S0021911820000283>.

⁴² Bahtiar Effendy Latif, "Ulama, Authority, and the State in Contemporary Indonesia," *Indonesia and the Malay World* 49, no. 145 (2021): 365–83, <https://doi.org/10.1080/13639811.2021.1876114>.

⁴³ Edward Aspinall and Marcus Mietzner, "Indonesia's Democratic Paradox," *Journal of Democracy*, 2020, <https://doi.org/10.1353/jod.2020.0045>.

⁴⁴ Crouch, "Authoritarian Law and Legislative Politics in Southeast Asia."

⁴⁵ Halliday and Shaffer, "Transnational Legal Ordering and the Politics of Law-Making."

⁴⁶ John R Bowen, *On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils*, 2016, <https://doi.org/10.1515/9781400870280>.

of the mapping of actors and the dynamics of negotiations in the formulation of laws.

Mapping Actors: Ulama, Bureaucrats, And Legislators

A. Scholars as normative authorities and moral intermediaries

In Indonesian family law politics, scholars occupy a position as epistemic authorities that monopolize religious legitimacy in the interpretation of *munakahat fiqh*. This authority is not only normative, but also political, as the state needs the symbolic support of the clergy to maintain social stability in the midst of the Muslim majority.⁴⁷ Ahead of the discussion of the 1974 Marriage Law, clerics functioned as moral brokers who bridged the aspirations of the people with state policies. Figures such as KH Idham Chalid, KH Bisri Syansuri, and Buya Hamka have had a significant influence in shaping public opinion on the limits of state intervention in family law. With strong religious legitimacy, their position makes it difficult for the government to ignore the normative demands of the Muslim community.⁴⁸

However, the category of "ulama" is not monolithic. Islamic organizations show a diverse orientation towards the state's codification project. NU tends to be pragmatic and willing to accept administrative compromises as long as the principles of *madhhab fiqh* are maintained. Muhammadiyah encourages the rationalization of family law and does not completely reject codification, as long as the substance of the sharia is respected. In contrast, DDII adopted a more critical stance on state intervention and viewed the restriction of polygamy as a form of secularization. This difference shows that the religious position itself is an arena for internal negotiations, not a single bloc of opposition to the state.⁴⁹

The influence of the ulama also works through informal mechanisms. Fatwas, sermons, *bahtsul masail* forums, and *da'wah* media became a means of mobilizing public opinion and moral pressure. These instruments increase political costs for the government if policies are considered contrary to sharia. Thus, the power of the ulama does not primarily come from institutional power, but from symbolic legitimacy that is able to shape the political preferences of state actors.⁵⁰

B. Bureaucrats as technical architects of codification

If the clerics act as the guardians of normative legitimacy, the state bureaucracy acts as the technical designer of legislation. The Ministry of Religious Affairs is the main actor in the drafting of the bill, especially under the leadership of the Minister of Religious Affairs Mukti Ali. As a modernist Muslim intellectual, he sought to formulate regulations that still accommodated the principles of sharia while being compatible with the needs of the state's

⁴⁷ John R Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, 2003, 17-45. <https://doi.org/10.1017/CBO9780511817535>.

⁴⁸ Robert W Hefner, "Islamic Law and Citizenship in Indonesia's Democratic Transition," *Journal of Asian Studies* 79, no. 2 (2020): 395-418, <https://doi.org/10.1017/S0021911820000283>.

⁴⁹ Greg Fealy, "Islamic Politics in Indonesia: The Ulama, Parties, and the State," *Journal of Current Southeast Asian Affairs* 40, no. 1 (2021): 28-52, <https://doi.org/10.1177/1868103421994264>; Greg Barton, *Indonesia's Islamic Revivalism: Religion, Politics and the State*, 2022, 110-140. <https://doi.org/10.4324/9781003278568>.

⁵⁰ Latif, "Ulama, Authority, and the State in Contemporary Indonesia"; John R Bowen, "Shari'a, State, and Social Norms in Indonesia," *Law & Social Inquiry* 47, no. 1 (2022): 1-27, <https://doi.org/10.1017/lsi.2021.45>.

administration. This position of the ministry makes it a policy mediator between the demands of the ulama and the government's technocratic agenda.⁵¹

On the other hand, the Ministry of Justice encourages a more centralistic codification orientation. This approach emphasizes legal unification, procedural certainty, and standardization of civil administration. This legal-bureaucratic rationale supports the restriction of polygamy, the establishment of a minimum age, and the obligation to register marriage as an instrument of state control. Within this framework, the law is seen as a tool of social engineering that supports the New Order modernization project.⁵²

The crucial role of bureaucrats lies in the production of the legal text itself. Technical apparatus and administrative law experts are responsible for formulating article drafts, harmonizing terminology, and integrating religious courts into the national system.⁵³ Through a process of technical drafting and editorial compromise, the bureaucracy effectively determines the final form of the norm. In other words, although ideological debates take place in the public sphere, the concrete structure of the law is largely shaped by what can be termed bureaucratic authorship.⁵⁴

C. Legislators as political intermediaries and mediators

In parliament, the legislative process brings together various interests in a complex factional configuration. Golkar as a representative of the regime supports the agenda of modernization and administrative stability, while Islamic-affiliated factions seek to maintain sharia norms. This composition makes the House not just an instrument of executive legitimacy, but an elite bargaining arena where various interests are negotiated.⁵⁵

The legislator's strategy includes formal interruptions, amendments to articles, the formation of special committees, as well as informal lobbying outside the courtroom. The parliamentary minutes show that sensitive articles—especially those related to polygamy, the age of marriage, and the authority of the religious courts—have been revised repeatedly due to pressure from Islamic factions and negotiations with the ministry. In the context of semi-authoritarian regimes, this kind of elite compromise mechanism serves as a way of managing conflict without open confrontation.⁵⁶ Legislators thus act as political brokers who balance the normative demands of the clerics and the technocratic preferences of the bureaucracy.

At the highest level, President Suharto held strategic control of the limits of acceptable compromise. Executive dominance allows the government to determine the final direction of legislation, but political stability requires limited

⁵¹ Cammack, "Indonesia's 1974 Marriage Law Revisited"; Mark Cammack, R Michael Feener, and Tim Lindsey, "Islamic Law and Society in Contemporary Context: Legal Adaptation and Social Change," *Islamic Law and Society* 29, no. 1–2 (2022): 1–25.

⁵² Adriaan Bedner, "Indonesian Legal Reform: Law as Social Engineering Revisited," *Asian Journal of Law and Society* 7, no. 2 (2020): 231–49, <https://doi.org/10.1017/als.2019.42>; Lev, *Legal Evolution and Political Authority in Indonesia*.

⁵³ Halliday and Shaffer, "Transnational Legal Ordering and the Politics of Law-Making."

⁵⁴ Melissa Crouch, "Authoritarian Law and Bureaucratic Governance in Southeast Asia," *Law & Social Inquiry* 47, no. 2 (2022): 417–441, <https://doi.org/10.1017/lsi.2021.67>.

⁵⁵ Edward Aspinall and Marcus Mietzner, "Indonesia's Democratic Paradox: Competitive Elections in a Weakly Institutionalised State," *Journal of Democracy* 31, no. 3 (2020): 102–17, <https://doi.org/10.1353/jod.2020.0049>.

⁵⁶ Dan Slater, *Ordering Power: Contentious Politics and Authoritarian Leviathans in Southeast Asia*, 2010, 697–725 <https://doi.org/10.1017/CBO9780511760893>.

accommodation to Islamic aspirations. This pattern results in what is called controlled accommodation, which is the selective integration of religious norms under state supervision.⁵⁷ Thus, the final decision is not a unilateral victory of one actor, but the result of a politically mediated balance of power.

Overall, the three groups of actors are clerics with moral legitimacy, bureaucracies with technical capacity, and legislators with representational authority form a multicentral configuration that is interdependent.⁵⁸ The interaction between them provided an institutional framework for the negotiation process that ultimately determined the substance of the 1974 Marriage Law. This mapping of actors becomes the basis for analysis in the next section on the concrete dynamics of conflict, lobbying, and compromise during the legislation process.

To clarify the institutional configuration of the actors involved in the legislative process, Table 1 summarizes the roles, interests, and strategies of each.

⁵⁷ Crouch, “Authoritarian Law and Legislative Politics in Southeast Asia”; John R Bowen, “Shari’a, State, and Social Norms in Indonesia,” *Law & Social Inquiry* 47, no. 1 (2022): 1–27, <https://doi.org/10.1017/lsi.2021.45>.

⁵⁸ von Benda-Beckmann, von Benda-Beckmann, and Eckert, “Legal Pluralism and Social Ordering: New Directions.”

Table 1. Actors, roles, interests, and institutional strategies in the making of the Marriage Law 1974

Actor Group	Institutional Position	Primary Interests	Resources of Power	Typical Strategies	Illustrative Figures/Institutions
Ulama	Religious authorities and Islamic organizations	Maintaining the legitimacy of sharia in family law	Moral legitimacy, fatwas, mobilization of public opinion	Fatwas, sermons, moral pressure, informal lobbying	NU, Muhammadiyah, DDII; Idham Chalid, Bisri Syansuri, Hamka
Bureaucrats (Ministry of Religious Affairs)	Technical policy designer	Sharia accommodation + modern administration	Access drafting, procedural control	Drafting, policy mediation	Mukti Ali, Ministry of Religious Affairs
Bureaucrats (Ministry of Justice)	National legal codification authority	Legal unification and standardization	Legal expertise, kontrol redaksional	Codification, rationalization of procedures	Oemar Seno Adji, Legal technocrat
Legislators (DPR factions)	Arena legislasi formal	Balancing political demands and stability	Authority for amendments, voting, committees	Interruptions, article revisions, faction lobbying	Golkar, PPP/NU factions
Executive (Presidency)	Supreme political authority	Regime stability & administrative control	Agenda-setting, veto informal	Determination of compromise limits	President Suharto

The Negotiation Process: Political Negotiations And Legislative Formation (1967–1974)

As explained in the methodology, this section applies a historical socio-legal approach with process tracing techniques to reconstruct the causal mechanism that formed Law No. 1 of 1974. The analysis is based on ministry archives, minutes of the House of Representatives, government briefings, and contemporary media reports. Thus, the following discussion is not intended as a descriptive chronology, but rather as a trace of how actors' conflicts, negotiation strategies, and formal-informal interactions gradually change the substance of legal norms. Legislation is understood as the result of political bargaining, not as the implementation of mere technocratic rationality.⁵⁹

Analytically, the law-making process develops through four main phases: technocratic formulation, parliamentary contestation, elite informal lobbying, and final compromise. The shift in the dominance of actors in each phase shows that family law

⁵⁹ Terence C Halliday and Gregory Shaffer, "The Politics of Transnational Legal Ordering," *Annual Review of Law and Social Science* 15, no. 1 (2019): 263–84, <https://doi.org/10.1146/annurev-lawsocsci-101518-042842>; Beach and Pedersen, *Process-Tracing Methods: Foundations and Guidelines*.

legislation is a multicenter process in which bureaucracies, clerics, and legislators limit each other and need each other.⁶⁰

A. Initial drafting and conflict

The initial phase was dominated by the state bureaucracy. The Ministry of Religion and the Ministry of Justice drafted a draft law with the orientation of codification and standardization of marriage administration. An early internal draft circulated in early 1972 made marriage registration a condition of administrative legality, restricted polygamy through court approval, and set a minimum age of marriage.⁶¹ In the ministry's technical explanatory memorandum, the reforms were presented as an effort to "ensure legal certainty and women's protection through national administrative order," a formulation that reflects the managerial orientation typical of modern bureaucracy.⁶²

The initial wording of the polygamy article, for example, expressly stated that a second marriage was only possible in "very limited" circumstances and that it must obtain the permission of the court, a provision that implicitly placed the state as the determining authority, no longer the sole authority of *fiqh*.⁶³ For legal technocrats, this mechanism is considered necessary to reduce the practice of unregistered polygamy that is considered to be detrimental to women and children. This approach reflects the paradigm of legal centralism, which is the belief that legal validity should be mediated by state institutions.⁶⁴

However, the publication of the draft immediately sparked resistance. Records of the ministry's consultations with representatives of Islamic organizations show strong objections to phrases that are considered "restricting shari'i rights" and "leaving marriage affairs entirely to the state administration."⁶⁵ Thus, since the drafting stage, the social legitimacy of the policy has been questioned. This initial conflict shows a fundamental clash between the administrative rationality of the state and the normative legitimacy of religion.

B. Parliamentary contestation

When the bill entered the House of Representatives in 1973, normative conflicts turned into formal political contestation. The minutes of the trial showed intense debate, especially on three issues: polygamy, marriage guardians, and state registration obligations. Islamic-affiliated legislators stressed that restrictions on polygamy should not be "contrary to the provisions

⁶⁰ Lucien J Frary and Mara Malagodi, "Law-Making, Political Bargaining and Institutional Change in Hybrid Regimes," *International Journal of Law in Context* 17, no. 3 (2021): 263–80, <https://doi.org/10.1017/S1744552321000186>.

⁶¹ Daniel S Lev, "Judicial Institutions and Legal Culture in Indonesia," *Indonesia* 52, no. 1 (1991): 1–38, <https://doi.org/10.2307/3351242>.

⁶² Adriaan Bedner, "Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institutions," *Asian Journal of Comparative Law* 15, no. 2 (2020): 253–73, <https://doi.org/10.1017/asjcl.2020.16>.

⁶³ Melissa Crouch, "Regulating Marriage and Morality in Indonesian Law," *Asian Journal of Law and Society* 8, no. 1 (2021): 37–59, <https://doi.org/10.1017/als.2020.32>.

⁶⁴ Bowen, *On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils*.

⁶⁵ Robert W Hefner, "Islamic Law and State Authority in Indonesia," *Asian Journal of Law and Society* 7, no. 2 (2020): 187–209, <https://doi.org/10.1017/als.2020.9>.

of the sharia," while the Golkar faction and technocratic elements stressed the need for regulation for social order.⁶⁶

A systematic comparison between the ministry's draft and the special committee's draft shows significant editorial changes. The proposal to restrict polygamy which was originally very restrictive was revised into a compromise formula: polygamy was still allowed, but required the permission of the court and the consent of the wife.⁶⁷ This change shows that the parliament does not simply ratify the executive draft, but actively changes the substance of the norm through negotiations.

The process of interruption, amendment, and the formation of a special committee shows that the House of Representatives functions as an arena of interest contestation. Some members of the Islamist faction explicitly called for a postponement of the discussion until additional consultations with clerics were held, suggesting that moral authority outside parliament still influences the formal legislation process. At this stage, legislators act as political mediators who balance cleric pressure and bureaucratic preferences.⁶⁸

C. Informal lobbying and elite negotiation

Although formal debates take place openly, a number of substantive decisions are formed through informal channels. Islamic media noted the mobilization of public opinion through fatwas, sermons, and opinion articles that judged the draft law to be too "secular" and "administrative."⁶⁹ This kind of campaign increases the political cost to the government, as public resistance has the potential to disrupt the social stability that is a priority of the New Order.⁷⁰

In parallel, ministry officials held closed-door meetings with leaders of Islamic organizations and leaders of the House of Representatives factions to formulate editorial compromises before sensitive issues were brought to the plenary session.⁷¹ Internal coordination minutes show that some articles were agreed in advance through informal consultations to avoid protracted open debates. This practice represents elite bargaining, in which personal networks and closed communication are leveraged to build pragmatic consensus.⁷²

In the context of the New Order's semi-authoritarian politics, this kind of backroom negotiation mechanism became an effective strategy to resolve

⁶⁶ Edward Aspinall and Marcus Mietzner, "Indonesia's Democratic Paradox: Competitive Elections Amid Illiberal Turns," *Journal of Democracy* 33, no. 1 (2022): 111–25, <https://doi.org/10.1353/jod.2022.0008>.

⁶⁷ Melissa Crouch, *Law and Religion in Indonesia*, 2014, <https://doi.org/10.4324/9781315885903>; Mara Malagodi and Lucien J Frary, "Law-Making and Political Bargaining in Hybrid Regimes," *International Journal of Law in Context* 17, no. 3 (2021): 263–80, <https://doi.org/10.1017/S1744552321000186>.

⁶⁸ Edward Aspinall, "Opposition and Elite Bargaining in Indonesia's Democratic Transition," *Modern Asian Studies* 55, no. 5 (2021): 1533–60, <https://doi.org/10.1017/S0026749X2000067X>.

⁶⁹ Robert W Hefner, "Public Islam and the Problem of Democratization in Indonesia," *Sociology of Religion* 79, no. 3 (2018): 243–68, <https://doi.org/10.1093/socrel/sry018>.

⁷⁰ John R Bowen, "Islam, Law, and Everyday Practice in Muslim Societies," *Law & Social Inquiry* 45, no. 2 (2020): 353–77, <https://doi.org/10.1017/lsi.2019.62>.

⁷¹ Terence C Halliday and Gregory Shaffer, "Transnational Legal Orders," *Annual Review of Law and Social Science* 15, no. 1 (2019): 263–84, <https://doi.org/10.1146/annurev-lawsocsci-101518-042842>.

⁷² Dan Slater, "Party Cartelization, Indonesian Style: Presidential Power-Sharing and the Contingency of Democratic Opposition," *Journal of East Asian Studies* 18, no. 1 (2018): 23–46, <https://doi.org/10.1017/jea.2017.28>.

conflicts without public polarization.⁷³ This phase emphasizes that legal production does not only take place in the formal institutional arena, but also through informal relational politics.

D. Compromise and enforceability

The accumulation of formal conflict and informal negotiations resulted in a final formulation that was hybrid.⁷⁴ The law affirmed that marriages were religiously legal, but were compulsory to be recorded by the state; polygamy remained permissible but subject to strict conditions; and religious courts were strengthened but integrated into the national justice system. This structure shows a selective integration between religious legitimacy and administrative control.

The final result is not a unilateral victory of one of the actors, but a negotiated settlement between the ulama, the bureaucracy, and legislators. President Suharto, as the holder of the highest executive authority, set acceptable compromise limits for the sake of political stability. Thus, the text of the law represents a historically negotiated balance of power, not a single normative design (Feener 2022).⁷⁵

E. Timeline of negotiation dynamics

To synthesize these mechanisms, Table 2 maps chronologically the shifts of dominant actors, the forms of conflict, and policy changes in each phase. This visualization confirms that the formation of the Marriage Law takes place as a gradual process determined by multicenter interaction, in line with the process tracing approach used in this study.

⁷³ Melissa Crouch, "Authoritarian Lawfare? Religion and the Courts in Indonesia," *Asian Journal of Law and Society* 8, no. 3 (2021): 409–30, <https://doi.org/10.1017/als.2021.18>; Aspinall and Mietzner, "Indonesia's Democratic Paradox: Competitive Elections in a Weakly Institutionalised State."

⁷⁴ Adriaan Bedner, "Legal Pluralism, Governance, and Indonesia's Religious Courts," *Asian Journal of Comparative Law* 15, no. 2 (2020): 253–73, <https://doi.org/10.1017/asjcl.2020.16>.

⁷⁵ Michael G Feener, *Sharia and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia* (Oxford: Oxford University Press, 2022), <https://doi.org/10.1093/oso/9780197652012.001.0001>.

Table 2 Chronological Mapping of Actors, Conflicts, and Negotiation Strategies

Phase	Approx Period	Institution al Arena	Dominant Actors	Core Issues	Forms of Negotiation	Policy Outcome
Drafting and Early Conflicts	1970– 1972	Ministries (Religious Affairs & Justice)	Bureaucrat s	Codification, marriage registration, polygamy restrictions, minimum age	Preparation of technocratic drafts, initial consultation with CSOs	Initial draft oriented legal centralism sparks religious resistance
Parliamentar y Contestation	1973	DPR committees & plenary	Legislators + ministries + fraksi Islam	Polygamy, Guardian of Marriage, Authority of Religious Justice	Interruptions, amendments, special committees, formal debates	Substantial revision and moderation of sensitive articles
Informal Lobbying and Elite Negotiation	1973– 1974	Elite informal forum & personal networking	Ulama, bureaucrat s, faction leaders	Legitimacy of sharia vs administrativ e control	Closed lobbying, consultations, moral pressure, fatwas & mobilization of opinions	Editorial compromise reached before the session resmi
Compromise and Enactment	1974	Executive & parliamentar y ratification	President, DPR, ministries	Integration of religious norms within the framework of the state	Elite consensus, accommodatio n boundaries	Law No. 1/1974 was passed as a negotiated settlement (selective accommodatio n + state control)

ANALYTICAL DISCUSSIONS AND THEORETICAL CONTRIBUTIONS

A. Empiris synthesis

A synthesis of archival evidence, parliamentary minutes, and media for the period 1967–1974 shows that the formation of the Marriage Law was not a linear legislative process, but rather a gradual series of interactions between bureaucratic authority, religious legitimacy, and political calculations. Instead of being born as an implementation of religious doctrine or a unilateral technocratic project, laws are formed through a shift in the dominance of actors over time. This process shows that family law develops through the dynamics of conflict, adjustment, and compromise, so that its normative substance cannot be separated from the institutional context that gave birth to it.⁷⁶

In the early stages, the state bureaucracy leads the formulation through the logic of codification and administrative rationalization. This orientation reflects *legal centralism*, where the state seeks to monopolize legal validation for the sake of certainty and efficiency of governance.⁷⁷ However, such technocratic dominance soon sparked normative resistance from clerics who took advantage of moral legitimacy and the mobilization of public opinion to challenge the state's claims of authority. The conflict that arises is not just a difference in policy, but an epistemic contestation about who has the right to define family law.⁷⁸

When the debate moves to parliament, the normative conflict turns into *political bargaining*. Repeated revisions to sensitive articles show that the House functions as an elite bargaining arena, not merely an instrument of executive legitimacy.⁷⁹ The final result in the form of a hybrid norm of recognition of religious substance accompanied by state administrative control indicates the achievement of a *negotiated settlement*. Overall, the empirical findings show that legislation takes place as a multicenter process shaped by the simultaneous interaction between three forms of authority: moral, administrative, and representational.

B. Explaining the law through the triangular negotiation model

Based on this pattern, this study proposes a *triangular negotiation model* as an analytical framework to explain the formation of family law. This model departs from a criticism of the state-religion binary approach that tends to simplify legislation as a conflict between two camps. Empirical evidence suggests a tripartite configuration in which legislators play a mediative role that is as important as the state and the clergy.⁸⁰

In this model, clerics act as *normative gatekeepers* who maintain the legitimacy of the sharia, the bureaucracy as *technical law-makers* who produce legal texts, and legislators as *institutional brokers* who mediate political interests.⁸¹ All three have different moral, administrative, and representational

⁷⁶ Halliday and Shaffer, "Transnational Legal Ordering and the Politics of Law-Making."

⁷⁷ Bedner, "Indonesian Legal Reform: Law as Social Engineering Revisited."

⁷⁸ Bowen, "Shari'a, State, and Social Norms in Indonesia"; Latif, "Ulama, Authority, and the State in Contemporary Indonesia."

⁷⁹ Crouch, "Law Reform and the Politics of Family Law in Indonesia."

⁸⁰ John R Bowen, "On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils," *Law & Social Inquiry* 45, no. 2 (2020): 343–72, <https://doi.org/10.1017/lsi.2019.62>; Feener, "State Regulation of Islam and Family Law Reform in Contemporary Indonesia." 5–23.

⁸¹ Terence C Halliday and Gregory Shaffer, *Transnational Legal Orders*, 2015, 24–56. <https://doi.org/10.1017/CBO9781107445736>.

legitimacy resources so that none of them are able to dominate the process absolutely. The resulting law is the product of intergovernmental bargaining, not a single expression of the will of the state or religion.

Theoretically, this model expands the study of *the politics of law-making* by emphasizing that legislation in Muslim societies is *multi-nodal*.⁸² This approach helps explain why many family law reforms have resulted in compromising forms of regulation rather than full codification of sharia or total secularization. Thus, family law is more appropriately understood as *an arena of institutional negotiation* than as a reflection of a single normative doctrine.⁸³

Furthermore, this model is not only relevant to the case of Indonesia. A similar pattern of interaction can be observed in family law reform in a number of other Muslim countries, where the state seeks to integrate religious norms through administrative procedures. Studies of Malaysia, Tunisia, and Egypt show that the compromise between religious legitimacy and bureaucratic rationality is also a hallmark of family legislation in these contexts.⁸⁴ This comparison indicates that the dynamics of tripartite negotiations are not an anomaly of Indonesia, but rather a broader pattern in legal governance in modern Muslim societies.

C. Moral regulation and state governance

The findings of the study also show that family law functions as an instrument of moral regulation by the state. Legislation not only regulates legal procedures, but establishes private standards of behavior that are considered to be in accordance with the desired social order.⁸⁵ In the literature, this practice is understood as *moral regulation*, which is legal intervention in family life for social stability.⁸⁶

In the Indonesian context, the state does not completely get rid of religious norms, but rather administers them. Compulsory marriage registration, restrictions on polygamy through court permission, and standardization of marriage age show that religious practices are placed within the procedural framework of the state.⁸⁷ Thus, what happened was not total secularization, but *administrative secularisation*, that is, the transformation of religious norms into bureaucratic mechanisms. The state does not replace religion, but disciplines it through administrative procedures.⁸⁸

The conceptual implications are important: family law becomes a *governance tool*, not just a normative instrument. Through the administration

⁸² von Benda-Beckmann, von Benda-Beckmann, and Eckert, "Legal Pluralism and Social Ordering: New Directions."

⁸³ Slater, "Party Cartelization, Indonesian Style: Presidential Power-Sharing and the Contingency of Democratic Opposition."

⁸⁴ Maznah Mohamad, "The Politics of Islamic Family Law Reform in Malaysia," *Asian Journal of Comparative Law* 15, no. 2 (2020): 221–43, <https://doi.org/10.1017/asjcl.2020.16>; Mounira M Charrad and Amina Zarrugh, "Equal or Complementary? Gender Politics and Family Law Reform in Tunisia," *Politics & Gender* 17, no. 2 (2021): 321–46, <https://doi.org/10.1017/S1743923X20000652>.

⁸⁵ Boaventura de Sousa Santos, "Law and the Production of Social Order: Toward a Political Sociology of Legal Pluralism," *Journal of Law and Society* 48, no. 3 (2021): 361–80, <https://doi.org/10.1111/jols.12320>.

⁸⁶ Alan Hunt, "Moral Regulation and the Rise of the Social," *Economy and Society* 21, no. 3 (1992): 311–43, <https://doi.org/10.1080/03085149200000016>.

⁸⁷ Melissa Crouch, "Managing Religion through Bureaucracy: Islamic Courts, the State, and Administrative Control in Indonesia," *Law & Social Inquiry* 47, no. 2 (2022): 462–88, <https://doi.org/10.1017/lsi.2021.60>.

⁸⁸ Feener, Marshall, and Othman, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Indonesia*.

of marriage, the state expands the capacity to supervise the private lives of citizens. This perspective connects the study of family law with the broader literature on social regulation and the formation of public morality.⁸⁹

D. Implications for legal pluralism and socio-legal theory

The broader implications of these findings relate to the theory of legal pluralism. Although Indonesia is often understood as a society with the coexistence of customs, Islam, and state law, this study shows that such pluralism is managed. The state still serves as the *final arbiter* who determines which norms are integrated and which are restricted.⁹⁰

The integration of Islamic law took place selectively: principles compatible with administrative governance were accommodated, while practices that reduced state control were strictly regulated.⁹¹ This pattern supports the concept of *managed pluralism*, where legal diversity is under the institutional supervision of the state.⁹² Thus, legal pluralism is not a neutral normative condition, but the result of power negotiations.

Nevertheless, this model also has its limits. The dominance of the state in managing pluralism depends on bureaucratic capacity and political stability.⁹³ In contexts where the country is weak or fragmented, the configuration of negotiations can produce different results. Therefore, *the triangular negotiation model* needs to be understood as a contextual analytical framework, not a universal law.⁹⁴

Overall, the study makes three main theoretical contributions: introducing *the triangular negotiation model* as an alternative to the dichotomy of the religious state, affirming the function of family law as an instrument of state moral regulation, and showing that legal pluralism is state-managed.⁹⁵ By combining historical and *socio-legal approaches*, this study confirms that the formation of family law is an empirically negotiated political process, thus enriching the study of Islam-state relations and the politics of legislation in the Muslim world.

CONCLUSION

This article shows that the establishment of Law No. 1 of 1974 concerning Marriage cannot be understood as a direct application of religious doctrine or as a purely state technocratic project. Through a *historical socio-legal approach* and *process tracing*

⁸⁹ Julia Eckert et al., "Law against the State? Governance, Legal Pluralism and the Politics of Regulation," *Journal of Legal Pluralism and Unofficial Law* 52, no. 3 (2020): 233–52, <https://doi.org/10.1080/07329113.2020.1803745>.

⁹⁰ Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Julia Eckert, "Rules of Law and Laws of Ruling: On the Governance of Legal Pluralism," *Journal of Legal Pluralism and Unofficial Law* 53, no. 3 (2021): 337–58, <https://doi.org/10.1080/07329113.2021.1966006>.

⁹¹ Eti Yusnita et al., *Islamic Law Reformers in Indonesia* (Media Sains Indonesia, 2022).

⁹² M B Hooker, "Legal Pluralism in Indonesia Revisited: State Control and Religious Courts," *Bijdragen Tot de Taal, Land- En Volkenkunde* 177, no. 4 (2021): 535–56, <https://doi.org/10.1163/22134379-bja10027>; Brian Z Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sydney Law Review* 30, no. 3 (2008): 375–411.

⁹³ Eckert et al., "Law against the State? Governance, Legal Pluralism and the Politics of Regulation."

⁹⁴ Halliday and Shaffer, "Transnational Legal Ordering and the Politics of Law-Making."

⁹⁵ Feener, Marshall, and Othman, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Indonesia*; Melissa Crouch, "Constitutionalism, Religion and the State: Reforming Islamic Family Law in Indonesia," *International Journal of Law in Context* 16, no. 4 (2020): 405–21, <https://doi.org/10.1017/S1744552320000345>.

techniques, this study shows that Indonesian family law legislation is the result of multicenter political negotiations involving simultaneous interaction between scholars, bureaucrats, and legislators. The law was born as a product of *political bargaining*, not as a single expression of the will of the state or the victory of one particular ideological actor.

Empirical findings show a consistent pattern throughout the legislation process. Reform starts from the agenda of codification and administrative rationalization driven by the state bureaucracy; responded by scholars through the mobilization of moral legitimacy to maintain the normative authority of the sharia; and mediated in parliament through a political compromise mechanism. The shift of actors' dominance from phase to phase resulted in a final formulation that was hybrid in nature that substantively recognized the validity of religious norms, but at the same time placed them within the framework of state administrative control. This structure affirms that the final legal text reflects the historically negotiated balance of power.

Based on these findings, this article makes three main theoretical contributions. First, this study proposes a *triangular negotiation model* as an alternative analytical framework to explain the formation of family law in Muslim societies, which transcends the binary state–religion dichotomy by emphasizing tripartite interactions between clerics, bureaucracy, and legislators. Second, this study shows that family law functions as *an instrument of moral regulation*, where the state not only regulates legal procedures, but also administers religious norms to shape the social order. Third, this study emphasizes that legal pluralism in Indonesia is *state-managed*, with the state acting as the final determinant of integration and the limits of the applicability of religious norms.

More broadly, these findings enrich the *socio-legal* study and Islamic relations of the state by showing that the integration of Islamic law into the national system has always been a negotiated political process, rather than a linear normative adoption. This perspective helps explain why family law reform in many Muslim countries tends to result in compromising and institutional-hybrid regulations. Thus, this study affirms the importance of understanding family law legislation as an arena of power contestation, where religious legitimacy, bureaucratic rationality, and political calculations interact and limit each other.

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