

THE REPUBLIC OF INDONESIA
THE COMPILATION OF ISLAMIC LAWS

No.1 of 1991

BOOK I
MARRIAGE LAW

CHAPTER I
GENERAL CONDITIONS

Article 1.

The Definitions

- a. *Peminangan* (proposal) is an effort toward a realization of a marriage between a man and a woman.
 - b. *Wali hakim* is a person who gives the marriage appointed by the Minister of Religious Affairs or other official appointed by him, who has the right and authorized to act as a *wali nikah*;
 - c. *Akad Nikah* is a series of *ijab* (words of delivery) pronounced by the *wali* and *kabul* (words of acceptance) pronounced by the groom or his representative on the presence of two witnesses;
 - d. *Mahar* is a gift from the groom to the bride in the form of goods, money or service which do not contradict to Islamic law;
 - e. *Taklik-talak* is a kind of promise read by the groom after an aqad nikah and printed in the Marriage Document. It is a kind of promise guaranteed to a certain condition that might happen in the future;
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- f. Properties in the marriage or *syirkah* are possessions which are obtained either individually or by both spouse during the marriage life and hence it is called as joint possessions no matter whose name the registration is on behalf;
 - g. Children care or *hadhonah* are activities of nursing, looking after, educating offspring until the age of adolescence or able to self sustain;
 - h. *Perwalian* is a mandate or an authority given to a certain person to exercise a legal action as a representative for the interest of and on behalf of an orphan or alive parents who are not capable to perform a legal action;
 - i. *Khuluk* is a divorce from the demand of the wife side by submitting ransom or *iwadl* to and agreed by the husband;
 - j. *Mut'ah* is a gift from an ex-husband for a wife who has been divorced in a form of goods or money, etc.

CHAPTER II PRINCIPLES OF MARRIAGE

Article 2.

Marriage in Islamic law is a *nikah*, namely the very strong contract (aqad) or *mitsaaqoon gholiidhan* to obey Allah's command and to do it means an *ibadah* (worship).

Article 3.

Marriage has a goal in realizing A family life which is *sakinah* (serenity) mawaddah (prosperous) and *rahmah* (blessed).

Article 4.

Marriage is legal when it is done based on the Islamic Law under Article 2 Verse 1 Law no. 1 of 1974 re Marriage.

Article 5.

(1) To make a marriage orderly, in Islamic society every marriage must be registered.

(2) Registration of marriage as stated in point (1), is done by the Pegawai Pencatat Nikah (Marriage Registrar Official) as it is regulated in Law No. 22 of the year 1946 jo Law no. 32 of the year 1954.

Article 6.

(1) To meet the requirement in article 5 every marriage should be carried out in the presence or under supervision of the 'Marriage Registrar Official'.

(2) Marriage done without the presence or not supervised by the official is considered invalid.

Article 7.

(1) A marriage can only be proved by an existence of 'marriage document' made by the Pegawai Pencatat Nikah.

(2) In a case where a marriage cannot be proved by marriage document, the '*itsbat of the nikah*' (a substitute document of marriage) can be claimed to the *Pengadilan Agama* (Islamic Court).

(3) The '*Itsbat Nikah*' which can be claimed to the Islamic Court is restricted to the case of;

- a. a marital status for the purpose of divorce;
- b. lost of the Marriage Document;
- c. an ambiguity upon the validation of one of the conditions in the marriage;
- d. a marriage done before the issuance of Law no. 1 of 1994 and;
- e. a marriage done by those who are not in problem according to Law No. 1 of 1994.

(4) Those who have the right to claim the '*Itsbat Nikah*' are among others; husband or wife, their offspring, the '*wali nikah*' and other parties who have the interest in the marriage concerned.

Article 8.

The breakdown of a marriage other than of death reason, can only be proved by a divorce document issued by the Islamic Court in the form of divorce verdict, *ikrar talak* (statement of divorce from a husband), *khuluk*, and the verdict of the *taklik talak*.

Article 9.

(1) If evidence as mentioned in article 8 is not available due to the loss or other reasons, a copy can be obtained from the Islamic Court.

(2) In the case that an evidence as mentioned in point (1) is not available, a request for it can be put forward to the Islamic Court.

Article 10.

Reconciliation can only be proved by a quotation of the Reconciliation Registration Book issued by the '*Marriage Registrar Official*'.

CHAPTER III THE PROPOSAL

Article 11.

A Proposal can be directly done by a person who intends to have a spouse, or by a trustworthy mediator.

Article 12.

(1) Proposal can be forwarded to a single woman/bachelor or to a widow who has completed her '*iddah*' (a period of 40 days absence of her husband).

(2) A woman who has been divorced and still in the period of '*iddah raji'ah*', is absolutely forbidden to be proposed.

(3) A woman is not allowed to be proposed while she is still under a proposal of another man and the woman has not uttered her decision on the first man's proposal.

(4) A proposal of a man is broken off due to a statement of breaking off from the man, or the man with no reason avoids the proposed woman.

Article 13.

(1) A proposal has no consequences in law. Each party has the rights to break off the proposal.

(2) A freedom to break off a proposal ought to be done in a proper way in accordance with the Islamic teaching and the local tradition/norms, so that a mutual respect and social harmony can be maintained.

**CHAPTER IV
CONDITIONS AND REQUIREMENTS OF MARRIAGE**

**Part One
Conditions**

Article 14.

To conduct a marriage there must be:

- a. A bride
- b. A groom
- c. 'the wali nikah'
- d. 2 (two) witnesses and
- e. Ijab and Kabul (a delivery and acceptance)

**Part Two
The Bride and The Groom**

Article 15.

(1) For the sake of the prosperity of a family a household, a marriage can only be done by the bride and the groom who have come to the age as determined in Article 7 of Law No. 1, 1974 i.e. the groom is not less than 19 years old and the bride is not less than 16 years of age.

(2) A groom who is under 21 years of age should ask a permit as it is regulated in article 6 point (2), (3), (4) and (5) Law No. 1, 1974.

Article 16.

(1) A Marriage is based on the agreement of both parties (the bride and the groom).

(2) Agreement of the bride can be manifested in a distinct and clear statement either written, orally or by gestures; or it can also be in silence as far as there is no clear refusal.

Article 17.

(1) Before the wedding ceremony the Marriage Registrar Official is to ask the approval of both the bride and the groom in the presence of two witnesses.

(2) In a case that one party has an objection, the marriage cannot be proceeded.

(3) For the deaf or mute bride and groom an approval can be expressed in eligible gestures or writing.

Article 18.

Both the bride and the groom are not in constraints as regulated in Chapter VI.

Part Three
The 'Wali Nikah'

Article 19.

The 'Wali Nikah' in a marriage is a condition to be fulfilled by the bride who will act to give the marriage.

Article 20.

(1) The one who perform the function as the Wali Nikah is a man who is qualified according to Islamic Law, namely a Moslem, mentally healthy and grown up.

(2) The Wali Nikah can be;

- a. *Wali Nasab* (the one who has a blood relationship with the bride)
- b. *Wali Hakim* (person other than the above qualification).

Article 21.

(1) The Wali Nasab can be classified into four classes which are orderly arranged according to the status. One class is over the other depends on how close is his relationship with the bride;

- Firstly : a group of vertical family line, namely; father, grandfather from father's side, etc.
- Secondly : a group of blood brothers, or half brothers from the line of the father and their male offspring.
- Thirdly : a group of uncles, i.e. blood brothers from father, or half brothers from father's line and their male offspring.
- Fourth : blood brothers of grandfather and his half brothers from his father's line and their male offspring.

(2) If within one group there are more than one persons who deserve the right to be the 'wali', the priority should be given to the one whose relationship in the family tree is the closest to the bride.

(3) Blood brothers deserve the right to be the 'wali nikah' more than half brothers from father.

(4) If within one group there are persons who are of the same level of degree in relationship either blood brothers or half brothers, priorities should be given to the elderly one or the one who is more qualified in the requirement of being the wali.

Article 22.

Should the most deserve 'wali nikah' is not qualified to become the 'wali' or because he is deaf or mute or aging, the right to be the 'wali' descend to the one whose turn is next to him.

Article 23.

(1) The 'Wali Hakim' can only take over the position of the 'wali nikah' if the 'wali nasab' is not available or it is impossible to present him or whose address is unknown or disappeared or "*adlal*" or reluctant.

(2) In the case of the 'wali adlal' or reluctant the 'wali hakim' can only perform his task as the 'wali-hakim' upon the verdict of the Islamic Court concerning the matter.

Part Four
The Witness of the Nikah

Article 24.

- (1) Witness in a marriage is a condition to fulfil in of the 'Aqad Nikah'
- (2) A marriage is to be witnessed by at least two witnesses

Article 25.

Those who deserve to be the witnesses in the 'Aqad Nikah' are Moslems, impartial, mature, mentally healthy, not deaf or mute.

Article 26.

The witness must be in the place of the ceremony and directly witness the 'aqad nikah' and put their signatures on the marriage document at the time and the place where the 'aqad nikah' happens.

Part Five
The 'Aqad Nikah'

Article 27.

The 'Ijab and Kabul' between the 'wali' and the groom must be distinct, orderly and uninterrupted, nor a pause.

Article 28.

'Aqad Nikah' can be performed personally by the Wali Nikah, or the Wali Nikah may delegate to other personnel.

Article 29.

- (1) The one who deserves to utter the 'kabul' (acceptance) is the groom in person.
- (2) In certain cases the utterance of the 'kabul' can be represented by other person provided that the groom gives a mandate which stated very clearly that the person perform the task merely for the groom.
- (3) In the case that the bride or 'wali' has the objection upon the representation of the 'kabul' by the groom the marriage cannot be proceeded.

**CHAPTER V
THE MAHAR (THE GIVING)**

Article 30.

A groom must pay a 'mahar' to the bride in which the amount, the form, and the kind is to be agreed by both parties.

Article 31.

The agreement of the 'mahar' is to be based on the simplicity and availability which is recommended in the teaching of Islam.

Article 32.

'Mahar' is submitted directly to the bride and from then on it becomes her personal possession.

Article 33.

- (1) The delivery/submission of the 'mahar' is not to be delayed.
- (2) Upon the agreement of the bride, the delivery of the 'mahar' can be delayed wholly or partly. The delayed 'mahar' is a debt of the groom.

Article 34.

- (1) An obligation of 'mahar' delivery is not a condition of a marriage.
- (2) An absence of mentioning the type and the amount of the 'mahar' during the Aqad Nikah does not have the effect of the failure of a marriage. Neither does in the case of the delay of the mahar invalidates the marriage.

Article 35.

- (1) A husband who divorces the wife before sexual intercourse is deemed to pay half price of the agreed mahar.
- (2) If a husband dies before the first sexual intercourse the whole mahar becomes the full possession of his wife.
- (3) If a divorce happens before the first sexual intercourse yet the amount has not been decided, the husband is to pay 'mahar mitsil'.

Article 36.

If the 'mahar' is lost before it is submitted, it can be substituted by other kinds of goods in which the type and the form is similar or by other things having the same values or by money of the same amount as the price of the lost 'mahar'.

Article 37.

Should there be a dispute upon the type and the value of the agreed 'mahar', it can be settled through the Islamic Court.

Article 38.

(1) If the submitted 'mahar' is defected or insufficient, but the bride insist on accepting it without any condition, the submission of the 'mahar' is considered as valid.

(2) If the bride refuse the 'mahar' due to the defect, the groom should change it with the not defective one. As long as the substitute has not been submitted, the 'mahar' is considered as a debt.

**CHAPTER VI
PROHIBITION IN MARRIAGE**

Article 39.

A man is prohibited to marry a woman due to the followings:

1. A blood family relationship.
 - a. with a woman who gives a birth to him or her mother or her offspring;
 - b. with a woman who is from the same father or the same mother;
 - c. with a niece (brother's or sister's daughter)
2. In-law families.
 - a. with the wife's mother or ex-wife's mother;
 - b. with a woman who used to be his father's wife;
 - c. a daughter from his wife or ex-wife, provided that his ex wife was divorced before sexual intercourse;
 - d. a woman who used to be his offspring's/children's wife.
3. Breast-fed relationship.
 - a. with a woman who used to breast feed him and all her up-line offspring;
 - b. with a fellow breast-fed and all her down-line offspring;
 - c. a sister of a fellow breast-fed and her nieces;
 - d. an aunt of the fellow breast-fed and her great aunt;
 - e. a woman that used to be breast-fed by his wife and all her offspring.

Article 40.

A Moslem man is prohibited to marry a woman in the following situations:

- a. the woman is still married with another man;
- b. a woman who is still in the period of 'iddah' with another man;
- c. a non-moslem woman.

Article 41.

(1) A man is prohibited to marry a woman who has a blood relationship or breastfed with his wife:

- a. blood relationship of the same father or the same mother and their offspring;
- b. her aunt or her niece.

(2) Prohibition as mentioned in point (1) is valid though the wives have been divorced by 'talak raj'i' but still in the period of 'iddah'.

Article 42.

A man is prohibited to marry a woman while he still has four wives, and all four of them are still legally married or still in the period of 'iddah upon the talak raj'i', or one of them is still in the status of married while the other is still in the period of 'iddah upon the talak raj'i'.

Article 43.

- (1) A man is prohibited to marry a woman in the following conditions:
- a. he has divorced her with three times 'talaks';
 - b. his ex-wife who has been 'given the 'li'an'.
- (2) The prohibition as noted in point (1) letter 'a' void, if the mentioned ex-wife had married other man and then divorced after sexual intercourse and completed her 'iddah' period.

Article 44.

A moslem woman is prohibited to marry a non-moslem man.

**CHAPTER VII
AGREEMENT IN MARRIAGE**

Article 45.

- Both the bride and the groom have the right to establish an agreement in the form of:
1. 'Taklik talak' (reasoning for divorce)
 2. Other agreement not contradicting to Islamic teachings.

Article 46.

- (1) The content of the 'TAKLIK TALAK' is not to contradict with Islamic Laws.
- (2) If a certain situation as mentioned in the 'taklik talak' comes to exist, the talak (divorce) will not automatically come to effect. To conform the 'talak' a wife ought to claim it to an Islamic court.
- (3) The agreement of 'taklik talak' is not an obligatory in a marriage, however, once a 'taklik talak' is agreed it cannot be withdrawn.

Article 47.

- (1) During or before the wedding both the bride and the groom may fix a written agreement which is validated by the Marriage Registrar Official upon the status of ownership of wealth during the marriage life.
- (2) The agreement as in point (1) may comprise the mixing of personal properties and the separation of the individual income/earning so long as it does not contradict to Islamic Laws.
- (3) Beside the above regulations, point (1) and (2) there is a possibility that the agreement allows an authorization of each party to agree on mortgage guaranteed for the private possession or joint possession or 'syirkah'.

Article 48.

(1) Should there be an agreement upon the separation of the 'syirkah' possession, it does not by any means putting aside the obligation of a husband to fulfill the living allowance for the household.

(2) If the agreement made does not meet the requirement as in point (1) it is considered that there is a separation of the joint possession and the husband is responsible to fulfill the household needs.

Article 49.

(1) The mixing of private possession may comprise any types of wealth, either their property prior to the marriage or the property each individual obtains during the marriage life.

(2) With no intention of reducing the agreement as in point (1) a kind of agreement where the mixing of private property can be limited to possession brought before the marriage, thus the mixing does not cover the personal income during the marriage life or vice versa.

Article 50.

(1) A marriage agreement concerning the property binds all parties as well as the third party start from the day of the wedding in front of the Marriage Registrar official.

(2) An agreement concerning the property can be broken off by the agreement of both parties and to be reported officially to the office where the marriage is registered.

(3) From the day of the withdrawal the agreement is effective to the married couple, however for the third party the withdrawal become effective after the married couple announced publicly through the local mass media.

(4) If within the period of 6 (six) months no announcement is made by the married couple, the withdrawal of the agreement is void and no commitment of the third party.

(5) The withdrawal concerning the property should not inflict a loss which was formerly made with the third party.

Article 51.

The breach of the agreement descent the right of the wife to ask the cancellation of the *nikah* or make use of it to sue the divorce to the Islamic Court.

Article 52.

At the time a man is having a wedding with the second, the third or the fourth wife, agreement may be made upon the residential, the turning and the household allowances for the wife he is going to marry.

**CHAPTER VIII
MARRIAGE DURING THE PREGNANCY**

Article 53.

(1) A woman who is pregnant from the premarital sex, may legalize her marriage with a man who caused her so.

(2) The marriage with the pregnant woman as stated in point (1) can be immediately carried out without waiting for the baby to come.

(3) Organizing a marriage for a pregnant woman means that there will not need to be re-wedding ceremony after the child is born.

Article 54.

(1) Someone who is in the 'ihram' condition he/she is not allowed to carry out a wedding neither can be a 'wali nikah'.

(2) A marriage of someone who is in the 'ihram' condition or the 'wali nikah' who is in 'ihram' condition is not valid.

**CHAPTER IX
THE POLYGAMY**

Article 55.

(1) Polygamy is limited up to four wives at the same time.

(2) The main requirement of a man to marry more than one women is the ability to be justice to his wives and children.

(3) If the person concern is not able to fulfill the requirements as in point (2) polygamy is strictly forbidden for him.

Article 56.

(1) A man who wants to marry more than one woman must ask a permission to an Islamic Court.

(2) A proposal of a permit as stated in point (1) is to follow the procedure as regulated in Chapter VIII Government Regulation No. 9 of the year 1975.

(3) A marriage with the second, the third and the fourth wife without a permit from the Islamic Court is considered as illegal.

Article 57.

The Islamic Court can only issue a permit to someone to do the polygamy in the following cases:

- a. the wife cannot perform her duty/function as a wife,
- b. the wife suffers from the physical malfunction or any incurable illness.
- c. the wife fails to do the reproduction.

Article 58.

(1) In addition to the main requirement as stated in article 55 point (2), in order to get a permit from the Islamic Court, other requirements are also stated in article 5 Law No. 1 of the year of 1974, namely:

- a. there is an approval of the wife;
- b. there is an assurance of the husband that he is really capable of providing allowances for the wives and their children.

(2) Without decreasing the degree of the requirement in article 41 point 'b', the government regulation No. 9 of the year 1975, the approval of the wife or wives can be in the form of written statements, nevertheless the written statements should be confirmed with oral statements of the wives in an Islamic Court session.

(3) The approval as stated in point (1) letter 'a' is not a necessity for a husband in the case that the approval seem to be likely improbable from the wife or wives and cannot be a party in the agreement or the absence of the news of the wife or wives for at least 2 years or other consideration that needs to be taken by the Judge.

Article 59.

In the case that a wife is reluctant to give a permit, and the proposal to have a polygamy based on the reason regulated in article 55 point (2) and 57, an Islamic Law may issue a permit after scrutinizing and hearing the wife concerned in an Islamic Court session, and for this verdict a wife or a husband may propose an appeal to higher level of Islamic Court.

**CHAPTER X
CANCELLATION OF A MARRIAGE**

Article 60.

(1) Prevention of a marriage is aimed at preventing a marriage which is prohibited by Islamic Law and Regulation concerning Law.

(2) Prevention of a marriage can be applied in the case that a bride or the groom does not meet the qualification of a marriage as allowed in accordance with the Islamic Law or regulation concerning Law.

Article 61.

Being in different belief is not a legal reason to prevent a marriage, except if the difference is on the religion or 'ikhtilaafu al dien'.

Article 62.

(1) The ones who have the rights to prevent a marriage are those who are in vertical line in the family tree, brothers and sisters, the wali nikah and the 'wali pengampu' (a person who acts as the wali of the bride) from either party of the couple.

(2) A father who never fulfills his obligations to the family does not loss his right to prevent a marriage that will be done by another 'wali'.

Article 63.

Prevention of a marriage can be exercised by a husband or a wife who is still married to the husband or the wife who is getting married.

Article 64.

The official who is appointed to supervise the marriage is obliged to cancel the marriage should the conditions and requirements are not fulfilled.

Article 65.

(1) Cancellation of a marriage can be requested to an Islamic Court within the jurisdiction territory where the marriage will be conducted by notifying the Marriage Registrar Official.

(2) The bride and the groom ought to be notified on the cancellation of the marriage, as pointed out in point (1) by the Marriage Registrar Official.

Article 66.

A marriage cannot proceed unless the cancellation is withdrawn.

Article 67.

The cancellation of a marriage can be invalidated by the withdrawal of the cancellation request to the Islamic Court by the one who requests or by the verdict of the Islamic Court.

Article 68.

A Marriage Registrar Official is not allowed to conduct or assist a marriage if he knows that there is a violation of conditions of Article 7 point (1), Article 8, Article 9, Article 10 or Article 12, Law No. 1 of the year 1974 though there is no cancellation request.

Article 69.

(1) If the Marriage Registrar Official considers that there is a prohibition on the marriage according to the conditions in Law No. 1 of 1974 he will refuse to conduct the marriage.

(2) In the case of refusal, the request of either party will be replied in written upon the refusal provided with the reasons by the Marriage Registrar Official.

(3) Both parties of the couple whose marriage is denied/turned down may appeal to the Islamic Court within the jurisprudence of the Marriage Registrar Official, by submitting the letter of refusal.

(4) The Islamic Court will examine the case in a brief session and announce the verdict whether or not the marriage may proceed.

(5) The verdict is ineffective if the constraints affecting the refusal are eliminated and the both parties may renew the marriage proposal.

CHAPTER XI
THE ANNULMENT OF A MARRIAGE

Article 70.

Marriage is invalid in the case that:

- a. a husband conducting a marriage while he has no right to do the aqad nikah because he still has four wives even though one of the wives is still in the period of 'iddah talak raj'i';
- b. a husband to marry his ex wife who has been 'given the 'li'an'.
- c. a husband to marry his wife who has been divorce with three times 'talaks', provided that she married to another man and divorced after sexual intercourse with that man and she has completed her period of 'iddah';
- d. a marriage happens between members of the same family or having blood relationship, in-law family, a fellow breast-fed up to a certain degree which forbids the marriage according to Article 8 of the Law No. 1 of 1974, namely:
 1. blood family relationship in vertical line of family tree either up or down.
 2. blood family relationship in horizontal line of family tree, i.e. brother or sister, with a brother/sister of parents and brothers/sisters of grand parents.
 3. in-law family such as; parents in law, step children, children-in-law, step mother or step father.
 4. breast fed relationship, i.e. woman who breast fed him, children of the same breast fed woman, aunt or uncle of the same breast fed.
- e. the woman who is the blood sister of his wife or aunt or niece of his wife or wives.

Article 71.

A marriage can be invalidated if:

- a. a husband is doing the polygamy without the permission of the Islamic Court;
- b. the woman he married is still in the status of married with another man who is 'mafqud'
- c. the woman he married is still in the period of 'iddah' from her previous husband;
- d. the marriage is done by the couple who are under the age as regulated in Article 7 Law No. 1 of 1974;
- e. the marriage is done without a 'wali' or the illegal 'wali';
- f. the marriage is done under pressure.

Article 72.

(1) A husband or a wife may appeal for the cancellation of the marriage if the marriage is done under the threat which is against the law.

(2) A husband or a wife may appeal for the cancellation of the marriage if there is a deceit or misjudgment upon the husband or the wife.

(3) If the threat is gone, or the one who misjudges realizes the fact within 6 months and they still in the marriage, while they do not exercise their rights to appeal for the cancellation, their rights are void.

Article 73.

Those who deserve to request for the marriage cancellation are:

- a. Members of the family tree in vertical line either upward or downward from the husband or the wife;
- b. the husband or the wife;
- c. The official who is authorized to supervise the wedding/marriage under the law;
- d. The concerned parties who notice the defect in the conditions or requirements in marriage according to Islamic law and the Regulations on law as mention in article 67.

Article 74.

(1) The request for marriage cancellation can be forwarded to the Islamic Court where the marriage couple live or the place where the marriage is going to be done.

(2) The annulment of a marriage becomes effective on the date when the verdict of the Islamic Law is sanctioned and valid from the date of the marriage.

Article 75.

The decision of the marriage cancellation does not effect back dated on:

- a. broken off marriage due to the fact that one of the couple is converted to other religion;
- b. the offspring born from the marriage.
- c. the third party so long as they have the rights with good intention, before the verdict of the marriage cancellation is to be sanctioned.

Article 76.

The marriage cancellation shall not have any effect on the legal status between the children and the parents.

**CHAPTER XII
THE RIGHTS AND RESPONSIBILITIES OF
HUSBAND AND WIFE**

Part One

General

Article 77.

(1) Husband and wife bear the noble responsibility to maintain the household which is 'sakinah, mawaddah and rahmah', which serves to be the basis of the social structure.

(2) Between the husband and wife are to love each other, mutually respect, loyal and help each other materially and spiritually.

(3) Husband and wife bear the responsibility of looking after their children, i.e. physically, spiritually mentally/intelligence and their religion education.

(4) Husband and wife are to uphold their integrity.

(5) In the case that the husband or the wife neglects the responsibility each party may sue to the Islamic Court.

Article 78.

- (1) Husband and wife should have a permanent residence.
- (2) The residence as mentioned at point (1) is determined by the couple concerned.

Part Two
Position of Husband and Wife

Article 79.

- (1) Husband is the head of the family and wife is the housewife.
- (2) The right and status of the wife is equal to the right and status of the husband in the family affairs and so is their role in the community.
- (3) Both party have the rights to exercise legal acts.

Part Three
The Responsibility of the Husband

Article 80.

- (1) A husband is the leader to his wife and the whole family, nevertheless the important matters about family affairs are to be decided together.
- (2) A husband must patronize the wife and fulfill the whole needs of the household according to his capability.
- (3) A husband must educate his wife on the religion and give her chances to get knowledge and skills that enables her to dedicate to the religion, country and the nation.
- (4) Within his capability in earning, the husband are obliged to provide:
 - a. basic needs, 'kiswah' and shelter for the wife;
 - b. household needs, health care and maintenance for wife and children;
 - c. education funds for the children.
- (5) The obligation of a husband to his wife as stated in point (4) letters 'a' and 'b' is effective upon the completeness of 'tamkin' from the wife.
- (6) A wife may relieve the husband from the obligation stated in point (4) letters 'a' and 'b'.
- (7) The obligation of the husband as stated in point (5) void in the condition that the wife is 'nusyuz'.

Part Four
Residential

Article 81.

- (1) A husband is obliged to provide shelter for his wife and children or his ex-wife who is still in the period of 'iddah'.
- (2) The shelter is to be a proper place for the wife within the period of marriage, or 'iddah' of divorce, or 'iddah' of death.
- (3) Shelter is provided in order to guarantee the safety of the wife and children from the external threats, thus they feel safe and sound. A shelter is also to be functioned as a place to store the wealth/property, as a place where they can put and organize the household equipment.

(4) A husband is obliged to provide shelter for his family in accordance with his capability and to be appropriate with the surrounding in terms of either the household equipment or other supporting equipment.

Part Five
Obligation of a Husband With More Than One Wives

Article 82.

(1) A husband who married to more than one wives is obliged to provide shelter and living cost to each wife equally in accordance with the size of the family of each wife provided that there is an agreement prior to the marriage.

(2) In the case that the wives are willing or have no objection, a husband may place them in one house.

Part Six
The Obligation of the Wife

Article 83.

(1) The primary obligation of a wife is to dedicate physically and spiritually to the husband in as much The Islamic Law allows.

(2) A wife organize and manage the daily activities of the household with her best ability.

Article 84.

(1) A wife can be considered as 'nusyuz' upon the negligence of the obligation as stated in article 83 point (1) provided there is a legal reason.

(2) Upon the 'nusyuz' wife, the obligation of the husband to the wife as stated in Article 80 point (4) letters 'a' and 'b' is void except on the interests of the children.

(3) The obligation of the husband as stated in point (2) above become effective again as the wife is no longer 'nusyuz'.

(4) The decision whether or not a wife is 'nusyuz' must be proved with legal evidences.

CHAPTER XIII
PROPERTY IN MARRIAGE

Article 85.

The existence of the joint property does not by any mean reject the possibility of the individual property for the husband or the wife.

Article 86.

(1) Principally there is no mixture of the husband's possession and the wife's possession due to the marriage.

(2) The property of the wife will always be the possession of the wife and she hold the total control over it, and so will the property of the husband in which he hold the total control over his possession.

Article 87.

(1) The property of each party obtained before the marriage and the property that they gain after the marriage from the gift or inheritance is fully under the ownership of each individual provided that both party decide other in the marriage.

(2) A husband or a wife has the full rights upon their individual property for the legal action that they intend to do concerning their property, namely 'hibah', gift, charity and others.

Article 88.

Should there be a dispute between the husband and the wife upon the joint property, the case is to be settled through the Islamic Court.

Article 89.

A husband is responsible to protect the joint property, the property of his wife as well as his own property.

Article 90.

The wife also bears the responsibility to protect the joint property or her husband property in her own supervision.

Article 91.

(1) The joint-property as mentioned in article 85 may take the form of tangible or non tangible assets.

(2) The tangible joint-property may comprise the fixed assets, mobile assets and securities.

(3) The intangible joint-property may take the form of rights as well as responsibilities.

(4) The joint-property may be offered as collateral article by either party under the agreement of the respective spouse.

Article 92.

Provided with agreement of either party, one is not allowed by any means to sell or transfer the ownership of the joint-property.

Article 93.

(1) Any consequences upon the debt of the husband or the wife shall be liable to each assets respectively.

(2) Any consequence upon the debt for the household's expenditure shall be liable to the joint-property.

(3) In the case where the joint-property is not sufficient to pay the debt, the responsibility goes to the husband assets.

(4) In the case that the husband's asset is not sufficient, the responsibility goes the wife's asset.

Article 94.

(1) The joint property of a marriage of a husband who has more than one wife shall be treated separately and independently.

(2) The ownership of a joint-property of the marriage of a husband who married more than one wife as referred to point (1) is counted in commenting on the day of the second, the third or the fourth 'aqad' (wedding).

Article 95.

(1) Without abridging the regulation of Article 24 point (2) letter 'c' Government Regulation No. 9 of 1975 and article 136 point (2), a husband or a wife may request the Islamic Court to condemn the joint property in the absence of divorce request, if either of the party endangers the joint property, such as gambling, drunk, prodigal and the like.

(2) Within the status of condemnation the joint property may be sold for the needs of the family with the permission of the Islamic Court.

Article 96.

(1) If either party passes away, half the joint property belongs to the survived spouse.

(2) The division of the joint property for the missing husband or wife is to be postpone until there is a definite news on the death of the husband or the wife or the death is legally acknowledge based on the verdict of the Islamic Court.

Article 97.

The divorce and divorcee have equally half of the joint property except there is a certain agreement in the marriage.

**CHAPTER XIV
CHILDREN CARE**

Article 98.

(1) The are to age limit for a child to be able to self sustain is 21 provided that the child is mentally retarded or physically handicapped or not yet married.

(2) The parents represent the child mentioned at point (1) for every legal act inside or outside the court.

(3) The Islamic Court may appoint a close relative to do the task in the case that the parents are incapable.

Article 99.

The legal children are:

- a. Those who are born from the legal marriage;
- b. The legal external insemination from the sperm and ovum of the husband and the wife who are legally married and born by the wife.

Article 100.

The child who is born from the extra marital couple shall only have a family relationship with the mother and her family.

Article 101.

A husband who denies the legality of a child while the wife does not object to his denial may confirm his denial with 'li'an'.

Article 102.

(1) A husband who wants to deny a child born by his wife, may put the lawsuit to the Islamic Court within 180 days from the birth of the child or 360 days after the marriage broken off or as soon as the husband knows that his wife deliver a baby and at the place where he might be able to put the lawsuit to the Islamic Court.

(2) The denial proposed exceeding the above mentioned time is unacceptable.

Article 103.

(1) The history of a child can only be proved by birth certificate or other evidence.

(2) In the case of the absence of the birth certificate or other evidence as stated in point (1) The Islamic Court can issue the decree of the history of a child after the careful examination based on the proof evidences.

(3) Based on the decree of the Islamic Court as stated in point (2) the Birth Registration Office within the jurisdiction of the Islamic Court concern can issue a birth certificate for the mentioned child.

Article 104.

(1) All cost spent for breast feeding shall be the responsibility of the father. If the father dies the cost is to be taken over by the person who is in charge of giving the living cost to the father or the foster parent.

(2) Breast feeding may last up to the maximum of 2 years, and can be stop within the period of less than 2 years by agreement of the father and mother.

Article 105.

Should a divorce happen:

- a. Children under 12 years old (before mumayyiz) is to be the right of the mother;
- b. Children after the 'mumayyiz age' may decide whether he will be under the care of the mother or the father.
- c. The cost of bringing up the children will be the responsibility of the father.

Article 106.

(1) Parents have the responsibility of taking care and develop the property of the children who are under adolescence or under care, and cannot in any way transfer or pawn it except for the emergency situation that the children are in badly needs or a fact that they cannot avoid in so doing.

(2) Parents are responsible for the loss caused by the negligence of the obligation as stated in point (1).

CHAPTER XV PERWALIAN (GUARDIANSHIP)

Article 107.

- (1) Guardianship is only for person under 21 years old or not yet married.
- (2) Guardianship comprises protection on personnel as well as their property.
- (3) In the case that a guardian is incapable or neglect his guardianship obligation, the Islamic Court may appoint one of the relatives to act as a guardian on the request of the relative mentioned.
- (4) Guardian should be as good as possible taken from the child's family or other person who is adult, mentally healthy, justice, honest and having a good conduct, or a legal board.

Article 108.

Parents can make a testimony to someone or a legal board upon the authorization to do the guardianship on the person and property of their children when they die.

Article 109.

The Islamic court may revoke the right of guardianship of someone or a legal board and gives it to other person upon the request of the relatives in the case that the guardian is a drunk, gambler, wasteful, mad or neglect or misuses the right and authority as the guardian for the sake of the prosperity of the children concerned.

Article 110.

- (1) The guardian is obliged to manage the person and the property of the children under his custody at his best ability and is obliged to give guidance on religion, education and other skills for the future of the children under his care/guardianship.
- (2) The guardian is prohibited to pawn, burden and flight the property of the children under his guardianship, provided that his action will give the benefit to the person under his guardianship or if it is considered as a fact which is unavoidable.
- (3) The guardian is responsible for the property of the person under his guardianship, and repay the loss caused by the negligence or the misuse.
- (4) Without lessening the regulation as stated in article 54 point (4) Law No. 1 of 1974, the responsibility of the guardian as stated in point (3) should be proved by a balance statement audited once a year.

Article 111.

- (1) The guardian must deliver the whole property of the person under his guardianship after the person concerned has come to the age of 21 or married.
- (2) Upon the ending of the guardianship the Islamic Court is authorized to settle the dispute between the guardian and the person under his guardianship upon the property that he delivered.

Article 112.

The guardian may use the property of the person under his guardianship as far as it is needed by him of some proper amount or 'bil ma'rif should the guardian is destitute.

**CHAPTER XVI
DISSOLUTION OR BROKEN OFF A MARRIAGE**

**Part One
General**

Article 113.

A marriage can be broken off for the reasons of:

- a. death
- b. divorce, and
- c. the judgement of the court of law.

Article 114.

The broken off marriage due to a divorce may happen because of the 'talak' or a divorce lawsuit.

Article 115.

A divorce can only be done in a trial of an Islamic Court after the Court failed to settle the dispute of the couple.

Article 116.

A divorce may take place from the reason(s);

- a. either one of the party committed adultery or drunkard, drug addicted, gambler and the like that are unrecoverable;
- b. either one of the party leaves for the period of 2 (two) years in succession with no valid permission of the other party or other things beyond his ability;
- c. either one of the party is imprisoned for 5 (five) years or other severer prison after the marriage;
- d. either one of the party does a cruelty or heavy ill treatment which endangers the other party;
- e. either one of the party suffer from an illness that unable him or her to perform his/her duty as a husband or a wife;
- f. between the husband and the wife there are endless quarreling which cannot guarantee for the achievement of the harmonious life as a family;
- g. a husband violates the 'taklik talak';
- h. religious conversion that causes the disharmony of the family life.

Article 117.

'Talak' is a promise of a husband in an Islamic Court trial which causes one of the reasons of the breaking off a marriage, in a manner as stated in article 129, 130 and 131.

Article 118.

'Talak Raj'i' is the first or the second divorce statement in which a husband has the right for a reconciliation within the period of 'iddah' of his wife.

Article 119.

(1) The 'Talak Ba'in Sughraa' is a sort of 'talak' that cannot be reconciled but can be remarried by the husband even though the wife is still in the period of 'iddah'.

(2) The 'Talak Ba'in Sughraa' as stated in point (1) is:

- a. talak that happens before intercourse;
- b. talak with redeem or 'khuluk';
- c. talak sanctioned by the Islamic Court.

Article 120.

'Talak Ba'in Kubraa' is a sort of 'talak' that happens for the third time. This kind of 'talak' can neither be reconciled nor re-married, except in a condition that the ex-wife married to someone else and divorced after the sex intercourse and completed her period of 'iddah'.

Article 121.

'Talak sunny' is a permissible talak, namely 'talak' that is given to the wife who is still in the 'non-period' condition.

Article 122.

'Talak Bid'i' is not a permissible one, namely 'talak' that is given to the wife who is still in the period, or the wife might be in a non-period but an intercourse has been done within this time.

Article 123.

A divorce is effective from the time that the divorce is announced in a court trial.

Article 124.

'Khuluk' must be based on the reason of divorce corresponds to the rules as stated in Article 116.

Article 125.

'Li'an' causes the broken off of a marriage between a husband and a wife forever.

Article 126.

'Li'an' happens when a husband accuses a wife of doing an adultery and or denying a child in a pregnancy or that was born by his wife, while the wife refuses the accusation and or the denial mentioned.

Article 127.

The procedure of 'li'an' is arranged as follows:

- a. a husband pronounces an oath repeated four times on the accusation of adultery or the denial of the child, followed by the fifth oath with the phrase "a curse of Allah will be on me if the accusation or the denial is of a lie".
- b. the wife rejects the accusation and or the denial with four times pronouncing oath with phrase "the accusation and or the denial is not true" followed by the fifth phrase "the curse of Allah will be on me if the accusation and or the denial is true".
- c. the procedure on letter 'a' and 'b' above is an integrated procedure and inseparable;
- d. if the procedure in letter 'a' is not followed with the one on letter 'b', the 'li'an' is considered as invalid.

Article 128.

"li'an" is only valid if it is done in an Islamic Court trial.

**Part Two
The Procedure of Divorce**

Article 129.

A husband who intends to divorce his wife shall propose either orally or written to the Islamic Court on the Jurisdiction territory of his wife together with reasons for it and request for a trial for the purpose.

Article 130.

The Islamic Court may accept or refuse the proposal, and for the sentence an appeal can be forwarded to the Higher Courts.

Article 131.

(1) The Islamic Court concerned will have a study on the proposal as stated in Article 129 and within 30 days at the latest it will invite the couple to ask for a clarification on everything in relation to their proposal.

(2) After the Islamic Court fails to advise them and there are ample evidences for a 'talak', besides, the possibility for the concerned husband and wife to live a harmonious life is impossible, the Islamic Court releases its decision to allow the husband to declare the 'talak'.

(3) Upon the acceptance of the fix legal decision the husband may declare his 'talak' in a session of the Islamic Court on the presence of his wife or her mandate/lawyer.

(4) If within the period of 6 (six) months commented from the day of issuance of his permission to declare the 'talak' and he does not do it his right to divorce his wife is invalid and he is still in the status of legally married.

(5) Upon witnessing the trial on 'talak', the Islamic Court issues the a letter of confirmation about the happening of 'talak' in four copies as an evidence for the ex-husband and ex-wife. The first page of the letter is sent to the Marriage Registrar Official where the husband and the wife domicile for the purpose of registration, the second and the third page go to the husband and the wife concerned and the fourth page is filed by the Islamic Court.

Article 132.

(1) Divorce claim is proposed by the wife or her mandatory to the Islamic Court within the jurisdiction of her domicile provided that the wife left the domicile without permission of the husband.

(2) In the case the husband lives in a foreign country, the head of the Islamic Court notify the claim through the embassy of Indonesia or consulate of Indonesia.

Article 133.

(1) A divorce claim that caused by the reason stated in article 116 letter 'b', may be proposed after a period of 2 (two) years from the time the accused left home.

(2) The claim can be accepted if the accused accepts it and shows an attitude that negate the possibility of going back home.

Article 134.

The divorce claim due to the reasons stated in article 116 letter 'P' can be accepted when the Islamic Court is well informed about the reasons or the source of the dispute or quarrel and after hearing sessions with the relatives or close contact with people around the husband and the wife concerned.

Article 135.

For the case of divorce due to imprisonment of the husband for 5 (five) years or more severe sentence as stated in article 116 letter 'c', a wife may use a copy of the verdict of the court which conducted the trial of her husband's case enclosed with the letter of statement of the court saying that the verdict has a fix legal firmness.

Article 136.

(1) During the process of divorce upon the request of the husband or wife and based on the consideration of the safety of either of them the Islamic Court may allow them not to live in the same house.

(2) During the process of divorce upon the request of either party, the Islamic Court may:

- a. decide the living cost that should be undertaken by the husband;
- b. take some necessary actions to secure or guarantee the joint property of the husband and the wife or the property of the husband or the property of the wife.

Article 137.

A divorce lawsuit becomes void if either party dies before the verdict of the Islamic Court concerning the matter.

Article 138.

(1) In any session of the Islamic Court dealing with the divorce lawsuit, either the husband or the wife or their mandatory will be invited to attend the session.

(2) Letter of summon to attend the session as stated in point (1) is carried out by the official assigned by the Head of The Islamic Court.

(3) The summon is to be accepted in person. If the person concerned is not available, the summon may be addressed through the head of the village or the official of the same level.

(4) The summon as stated in point (1) is to be delivered in a proper manner and is to be accepted by the person or their mandatory at least 3 (three) days before the court session.

(5) The summon to the accused is enclosed with the copy of the lawsuit document.

Article 139.

(1) Should the place of domicile of the accused cannot be traced, or the accused has no permanent place, the summon is done by means of posting the divorce lawsuit on the announcement board of the Islamic Court and announce it in one or several newspaper or other kinds of mass media as advised by the Islamic Court.

(2) The announcement through a newspaper(s) or other mass media as stated in point (1) is to be done 2 (two) times within the period of one month from the first announcement.

(3) The tolerable period between the last announcement as stated in point (2) and the court session is at least 3 (three) months.

(4) Had the summon as stated in point (2) been done and the accused or the mandatory does not show, the lawsuit is accepted without the presence of the accused, provided that the lawsuit has no right or has no reason.

Article 140.

In the case that the accused is in the condition as stated in article 132 point (2), the summon is proceed through the Indonesian Embassy or Consulate.

Article 141.

(1) The scrutiny of the lawsuit document is to be done by the Judge at least 30 (thirty) days upon the acceptance of the divorce lawsuit.

(2) In determining the court session on the divorce case the court should consider the time of the dispatch of the summon and the acceptance from either party or their mandate.

(3) Should the accused in a condition as stated in article 116 letter 'b', the court session on divorce lawsuit is determined at least 6 (six) days commenting from the date of the acceptance of the divorce lawsuit by the Islamic Court Administration.

Article 142.

(1) In a court trial of divorce, both the husband and the wife should come in person or represented by the designated person to represent them.

(2) In the case that the husband and the wife send their representatives, the Judge may request the husband and the wife to come by themselves should a certain condition requires so.

Article 143.

(1) During the period of scrutiny or case examination on divorce the Judge seek the possibility of reconciling the disputed parties.

(2) Before the court comes to a final decision efforts in reconciliation should be sought in any chance during the sessions.

Article 144.

Should a reconciliation comes to exist, there would be no new divorce suit based on the reasoning used before the reconciliation which are known by the wife by the time the reconciliation happened.

Article 145.

If reconciliation is not achieved, the court session on divorce should be organized in a closed court session.

Article 146.

(1) The sentence of the divorce trial is declared in an open court session.
(2) A divorce is considered as valid with its effects from the day of the sentence of the Islamic Court and has a fix legal firmness.

Article 147.

(1) Following the sentence of the court, the clerk of the Islamic Court is to pass a copy of the sentence to the husband and the wife or their representatives and at the same time withdrawing the Enclosure of the Marriage Document from both parties.

(2) The clerk of the Islamic Court is obliged to send a copy of the sentence of the Islamic Court which has fix legal firmness with no seal to the Marriage Registrar Official in the same jurisdictive territory with the wife for the purpose of registration.

(3) The clerk of the Islamic Court send letter of notification to the husband and the wife or their representatives that the sentence as stated in point (1) has already been legally fixed and they may use it as an evidence of the divorce document.

(4) The clerk of the Islamic Court will make a note on the space provided in the Marriage Document saying that they have divorced. The note also includes the date, the place, the number and the date of the letter of decision and the signature of the clerk.

(5) In the case that the Marriage Registrar Official whose jurisdiction territory covers the domicile of the wife differs from the Marriage Registrar Official where they got married one copy of the Islamic Court sentence as mentioned in point (2) is sent to the Marriage Registrar Official where the marriage is done, and if the marriage is done in a foreign country the copy is sent to the Marriage Registrar Official in Jakarta.

(6) Failure of sending the copy as stated in point (1) is to be the responsibility of the clerk, should the matter causes the loss of the ex-husband and the ex-wife.

Article 148.

(1) A wife who sues the divorce by 'khuluk', shall propose the suit to the Islamic Court whose territory covers the place of her domicile.

(2) The Islamic Court within at least 1 (one) month will invite the wife and the husband to have explanations on the matter.

(3) During the hearing session the Islamic Court will explain the negative effects of the 'khuluk', and should give the advice.

(4) When both parties agree on the amount of the 'iwadl' or the redeem, the Islamic Court will issue a decree for the husband to declare the 'talak' in front of the Islamic Court session. For the decree there will be no appeal to the higher level courts.

(5) The follow up steps is to be undertaken as regulated in article 131 point (5).

(6) In the case that there is no agreement on the amount of the 'iwadl' or redeem, the Islamic Court will examine and decide it as in an ordinary case.

CHAPTER XVII THE CONSEQUENCES OF A BROKEN OFF MARRIAGE

Part One The Consequences of 'Talak'

Article 149.

If a marriage is broken due to 'talak', the ex-husband is obliged to:

- a. submit a proper amount of 'mut'ah' to his ex-wife either in a form of goods or money, except the divorce takes place before an intercourse.
- b. provide a living cost, 'maskan' and 'kiswah' to his ex-wife during the period of 'iddah', except when the wife is divorced by 'talak ba'in' or 'nusyuz' and not in the pregnancy;
- c. pay off the whole credited 'mahar', or in half if the divorce happens before the intercourse.
- d. provide the 'hadhanah' allowances for his children who are under 21 years old.

Article 150.

The ex-husband has the right to do the reconciliation with his wife within the period of 'iddah'.

Article 151.

The ex-wife, within the period of 'iddah', is obliged to take care of herself in terms of not accepting a proposal or getting married to another man.

Article 152.

The ex-wife has the right of having the 'iddah' allowance from her husband provided that she was 'nusyuz'.

Part Two The Waiting Period

Article 153.

(1) For a woman who breaks her marriage there must be a waiting time or 'iddah' period, except when she has not done an intercourse and the broken off marriage is not due to the death of the husband.

(2) The waiting period of the woman is regulated as follows:

- a. If the marriage is off due to the death of the husband, even before an intercourse, the waiting time is determined as 130 (one hundred thirty) days;

- b. If the marriage is broken off due to the divorce, the waiting time for those who are still in the 'period' is determined as long as three times cycles with at least 90 (ninety) days;
 - c. If a marriage is broken off due to the divorce, while the wife is still in pregnancy, the waiting time for her is up to the delivery;
 - d. If a marriage is broken off due to the death, while the wife is still in pregnancy, the waiting time for her is up to the delivery;
- (3) No waiting time is imposed for the divorce husband and wife before they have intercourse.

(4) For the marriage that is broken off due to the divorce, the waiting time commences from the date of the legal validation of the Islamic Court sentence, while for the broken off marriage due to the death the waiting time commences from the date of the death of the husband.

(5) The waiting time for the wife who once had a period but then absence from the cycle during the 'iddah' due to breast feeding, her iddah period is to be three time cycles.

(6) In the condition as stated in point (5) but not in breast feeding period, the iddah is one year, however if, within the one year period she has the cycle, her iddah is three times cycles.

Article 154.

If a wife is given the talak raj'i, and within the period of iddah as stated in point (2) letter b, point (5) and point (6) article 153, her ex-husband died, her iddah period becomes four months and 10 days commencing from the date of the ex-husband's death.

Article 155.

For the woman whose marriage is broken off due to 'khuluk', 'fasakh' and 'li'an', the 'iddah talak' can be applied.

Part Three The Consequences of Divorce

Article 156.

The consequences of a broken off marriage due to divorce are:

- a. children who are not 'mummayiz' (grown up) has the right to have the 'hadhanah' (education) from the mother, provided that the mother died, her right falls to:
 - 1. women in vertical up the line from the mother;
 - 2. the father;
 - 3. women in vertical up the line from the father;
 - 4. sisters from the aforementioned children;
 - 5. women of the same blood of the horizontal line of the mother;
 - 6. women of the same blood of the horizontal line of the father.
- b. the grown up children have the right to choose whether they have the 'hadhanah' from the father or the mother.
- c. if the bearer of the 'hadhanah' right cannot guarantee the safety of the children either physically or spiritually, although materially or financially is adequate, the Islamic Court upon the request of the relatives of the children may transfer the right of the 'hadhanah' to other relative who also bears the right of 'hadhanah';

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- d. the whole cost of the 'hadhanah' and living cost of the children are the responsibility of the father within his capability, at least up to the time when the children grown up and able to manage themselves (i.e. 21 years old).
 - e. should there be a dispute on the 'hadhanah' and the living cost of the children, the Islamic Court issues the decision based on the ones in letters (a), (b), (c) and (d);
 - f. the court may also, by considering the ability of the father, to decide the amount of funds needed for the maintenance and education of the children who do not live with him.

Article 157.

The joint property may be distributed in accordance with the regulations as stated in article 96, 97.

**Part Four
The Mut'ah**

Article 158.

Mut'ah is 'obligatory' for the ex-husband with the conditions as follows:

- a. the 'mahar' has not been determined for the wife after intercourse happens.
- b. the divorce is initiated by the husband.

Article 159.

Mut'ah is a 'sunnat' (not obligatory but suggested strongly) given by the ex-husband with no conditions as stated in article 158.

Article 160.

The amount of 'mut'ah' should be proper and based on the capability of the husband.

**Part Five
The Consequences of Khuluk**

Article 161.

Divorce by means of 'khuluk' will reduce the number of talak and cannot be reconciled.

**Part Six
The Consequences of 'Li'an'**

Article 162.

In the divorce case of 'li'an' the marriage is broken off forever and the child in the pregnancy belongs to the offspring of the mother, while the husband is free from the obligation of giving the living cost.

CHAPTER XVIII RECONCILIATION

Part One General

Article 163.

(1) An ex-husband may reconcile his ex-wife who is still in the period of 'iddah'.

(2) Reconciliation may be done in the cases that:

- a. the marriage which is broken off due to talak, except that the talaks have been given three times or the talak happens before intercourse;
- b. the marriage is broken off due to the sentence of the Islamic Court with reason or reasons apart from adultery and khuluk.

Article 164.

A woman in the period of 'iddah talak raj'i' has the right of objection to the reconciliation request of her ex-husband in the testimony of the Marriage Registrar Official witnessed by two persons.

Article 165.

Reconciliation arranged without the agreement of the ex-wife, can be declared as invalid by the decision of the Islamic Court.

Article 166.

Reconciliation must be proved by a quotation from the Reconciliation Registration Book and if the evidence is lost or damaged so that it can no longer be used, the duplicate can be requested from the institution that first issued the document.

Part Two The Procedure of Reconciliation

Article 167.

(1) A husband who intends to reconcile his wife should come together with her to the Marriage Registrar Official or Assistant of Marriage Registrar Official whose territory covers the place of the domicile of the husband and the wife and bring along the document stating about their divorce with other pertinent documents.

(2) Reconciliation is to be done with the agreement of the wife under the testimony of the Marriage Registrar Official or an Assistant of the Marriage Registrar Official.

(3) The Marriage Registrar Official or the Assistant Marriage Registrar Official will study and examine the case whether the husband who wants to reconcile is really reliable or meet the criteria of reconciliation according to 'munakahat' law, or whether the reconciliation is done within the period of iddah talak raj'i, or whether the woman who he is going to reconcile is really his own ex-wife.

(4) The next step is the husband declares the reconciliation statement and each of the party together with the witnesses sign the Reconciliation Registration Book.

(5) Upon the completeness of the signatures, the Marriage Registrar Official or the Assistant to it gives advices to the newly reconciled husband and wife on their obligation related to the reconciliation.

Article 168.

(1) In the case that the reconciliation is done before the Assistant Marriage Registrar Official the reconciliation quotation is made double to be filled in and signed by each of the party together with the witnesses. One copy goes to the Marriage Registrar Official whose territory covers his area, provided with the pertinent documents in order to book in the Reconciliation Registration Book while the other copy is filed.

(2) The delivery of the first page of the reconciliation quotation by the assistant of Marriage Registrar Official is to be done at least 15 (fifteen) days after the reconciliation happens.

(3) If the first page of the reconciliation quotation is lost, the Assistant will make a copy from the second page enclosed with the report on the cause of the lost.

Article 169.

(1) The Marriage Registrar Official makes a statement on the event of reconciliation and send it to the Islamic Court where the talak of the reconciled couple was once declared, and to each of the husband and wife will be given a Quotation of Reconciliation Registration Book based on the example determined by the Minister of Religious Affairs.

(2) The husband and wife or their mandatory go to the Islamic Court where they once declared the talak, and bringing along the quotation of the Reconciliation Registration Book in order to get their Quotation of Marriage Certificates after notes were written in the provided space in the certificate saying that they have truly reconciled.

(3) The notes mentioned in point (2) consists of the place where the reconciliation happened, the date when the reconciliation statement is declared, the number and the date of the Quotation of the Reconciliation Registration Book and the signature of the Clerk of the Islamic Court.

CHAPTER XIX MOURNING PERIOD

Article 170.

(1) A wife whose husband died is obliged to undertake the mourning during the period of iddah as a token of condolence besides preventing her from any gossips.

(2) A husband whose wife died is to perform a mourning properly in accordance with the norms.

**BOOK TWO
INHERITANCE LAW**

**CHAPTER I
GENERAL RULES**

Article 171.

The Definitions

- a. Hukum Kewarisan (The inheritance law) is a law that regulates the transfer of ownership from a heir (tirkah), and decides who are the lineal heirs and the amount of each for them.
- b. Pewaris is a person, who at the time he/she died or declared as died according to Islamic Law, inherits some wealth to the lineal heirs.
- c. Ahli waris (The heir) is a person who has blood relationship or marriage relationship with the deceased person, moslem, and has no legal problem to become a heir(s).
- d. Harta peninggalan (The left property) is wealth that once belonged to the deceased person either in the form of property on his/her possession or on his right.
- e. Harta waris (The Inheritance) is a self property added with part of the joint property after being deducted for the expense of the late during his/her illness until died, burial costs (tajhiz) debt repayment and gift to some relatives.
- f. Wasiat (The will) is a giving of a good from the 'pewaris' to other person or an institution which is effective from the time the 'pewaris' died.
- g. Hibah is a thing given voluntarily and at no cost to other person who is still alive for his/her possession.
- h. Anak angkat (adopted child) is a child whose living costs, education costs, etc., is taken over from the real parents to his/her foster parents based on the sentence from the Court.
- i. Baitual Maal is a Religious Treasury House.

**CHAPTER II
THE HEIR**

Article 172.

A heir is considered as a moslem from his/her Identification Card or his/her confession, the deed or the testimony, while for a newly born baby or before adolescence follows the religion of the father or the surrounding relatives.

Article 173.

A person is rejected to be the heir upon receiving the verdict of a court, with a fix legal firmness, that he/she was found guilty of:

- a. murder or trying to murder or torturing the 'pewaris'
- b. guilty of framing the 'pewaris' on doing a crime which can be sentenced for five years imprisonment or more severe punishment.

Article 174.

(1) Classification on heirs is as follows:

- a. According to blood relationship:
 - the male group; father, sons, brothers, uncles and grandfathers.
 - the female group; mother, daughters, sisters and grandmothers.
- b. According to marriage relationship:
 - widow or widower

(2) Should all the people mentioned in point (1) still alive, the inheritance can only go to; sons and daughters, father, mother, the widow(s) the widowers.

Article 175.

(1) The obligation of the heirs to the 'pewaris' are:

- a. to take care everything in relation with the funeral until the burial is accomplished.
- b. to pay the debt of the deceased such as the medical treatment, caring during the illness period and also collecting the debt of the deceased person.
- c. to settle the will of the 'pewaris'.
- d. to distribute the inheritance of the 'pewaris' to the lineal heirs.

(2) The responsibility of the heirs for the debt of the 'pewaris' is only limited to the amount or the value of the left property/wealth.

**CHAPTER III
THE PORTION OF THE INHERITANCE**

Article 176.

A daughter, if she is the only one, will get half of the portion, if two or more altogether they will get two third, and if there is also a son, the portion of the son is twice the size as of the daughter's.

Article 177.

A father will get one third if the 'pewaris' has no offspring, should there be ones, father will get one sixth of the portion.

Article 178.

(1) The mother will get one sixth if there is offspring or two brothers/sisters or more. If there are neither children nor brothers/sisters, she will get the third of the portion.

(2) The mother will get the third portion of the remaining wealth after it was deducted by the widow or widower if she is with the father.

Article 179.

A widower will get half portion, if the 'pewaris' has no offspring, should there be ones the widower will get a quarter portion.

Article 180.

A widow will get a quarter portion, if the 'pewaris' has no offspring, should there be ones the widow will get one eighth portion.

Article 181.

If someone dies leaving neither offspring nor a father, the brothers and sisters of the same mother will get one sixth of the portion. If they are two or more, altogether will get one third.

Article 182.

If someone dies leaving neither children nor a father while he/she has one blood sister or from the same father, she will get half portion. If the mentioned sister has one or more sisters they will altogether get two third of the portion.

If the mentioned sister has one blood brother or more or brother of the same father, the portion of those brothers is double as the sisters.

Article 183.

The heirs may make a certain agreement on the distribution of the inheritance, after each of them knows their real portions.

Article 184.

For the heir who is not yet grown up or not capable of exercising his/her right and responsibility, a 'wali' is to be appointed for him/her by the decision of the Judge based on the proposal of the relatives.

Article 185.

(1) For the heir who dies prior to the 'pewaris', his/her right can be transferred to his/her children except those mentioned in article 173.

(2) The portion of the substitute heir cannot be bigger than that of the substituted.

Article 186.

Children from extra marital relationship will only have inheritance relationship with the mother or family from the mother side.

Article 187.

(1) If a 'pewaris' leaves the property, he/she during his/her life, or the heirs may assign some persons as the board of executor of the distribution with the following tasks:

- a. make an inventory list of the wealth both the moveable or the non moveable which then legalized by the heirs, the value of the wealth can also be converted into the money, should it be considered necessary.
- b. calculate the expenditure spent for the need of the pewaris in accordance with the article 175 point (1) sub a, b, and c.

(2) The remaining part of the wealth as mentioned above is a property that must be distributed to the lineal heirs.

Article 188.

The heirs either in group or individually may request one to another to execute the distribution of the wealth. Should there be one of the heirs disagree with the request, he/she may appeal to the Islamic Court to do the distribution.

Article 189.

(1) If the property to be distributed is in the form of a farm which is less than 2 hectares in size, it is suggested not to be sliced into pieces, but cultivated for the benefit of all the heirs.

(2) Should the regulation as in point (1) is not possible due to the needs of a certain member of the heir of money, the portion that belongs to the person concerned may be purchased by the other member in accordance with the size of the portion.

Article 190.

For the pewaris who has more than one wives, each of them will have the share of the 'gono-gini' property (the joint property) with their husband. While the whole portion of the pewaris will be the right of his heirs.

Article 191.

Should the pewaris leaves no heir at all or the existence and the place of the heirs are unknown, the wealth based on the decision of the Islamic Court will be donated to the Baitul Maal for the interests of Islam and public welfare.

**CHAPTER IV
'AUL' AND 'RAD'**

Article 192.

If, during the distribution of the inheritance, there is among the heirs 'dzawil furud' and shows that the nominator is greater than the denominator, the denominator should be increased in accordance with the nominator, afterward the wealth is to be distributed by means of 'aul' according to the nominator figure.

Article 193.

If, during the distribution of the inheritance, there is among the heirs 'dzawil furud' and shows that the nominator is smaller than the denominator, while the heirs are 'asabah', the distribution is to be done by means of 'rad' namely in accordance with portion of each heir while the remaining inheritance will be distributed evenly among them.

**CHAPTER V
THE WILL**

Article 194.

(1) A person with a minimum age of 21, mentally healthy and not under pressure may bequeath part of his/her property to other person or institution.

- (2) The property which is bequeathed must be his/her legitimate property.
- (3) Ownership of the wealth as stated in point (1) can only be transferred after the person who bequeath dies.

Article 195.

- (1) The will can be declared orally before two witnesses, or written in the presence of two witnesses, or in the present of a Notary.
- (2) The property that can be bequeathed is of maximum one third of the inheritance provided that the whole members of the heirs agree.
- (3) The will that addressed to the heir is only valid if the whole member of the heirs agree.
- (4) Statement of agreement stated in point (2) and (3) this chapter is to be made orally before two witnesses or written in the presence of two witnesses or a Notary.

Article 196.

In the will either oral or written there must be explicitly stated to whom or which institution the bequeathed property is to be given.

Article 197.

- (1) The will becomes invalid if the person nominated for the will based on the sentence of a court that has a fix legal firmness, is imprison due to:
 - a. found guilty of murdering or trying to murder or torturing the person who bequeaths.
 - b. found guilty of framing the person who bequeaths that he/she has committed a crime which can be threatened with five year imprisonment or more severe sentence.
 - c. found guilty of doing violence or threatening the person who bequeaths to make or withdraw or change the will for the interest of the nominee concerned.
 - d. found guilty of hiding or destroying or forging the will of the person who bequeaths.
- (2) The will is void if the person who is nominated to receive the will:
 - a. does not know the existence of the will until the time he/she dies before the person who bequeaths dies.
 - b. know that there is a will but he/she refuses to accept.
 - c. know that there is a will but never say whether or not he/she accept the will until the time he/she dies.
- (3) the will become void if the property bequeathed is gone or damaged.

Article 198.

The will which is a product of a certain thing or the benefit of a certain thing must be stated with the certain duration of time.

Article 199.

- (1) The 'pewasiat' (the person who bequeaths) may withdraw the will so long as the acceptor of the will has never stated his/her agreement or has stated his/her agreement but then withdraw the statement.

(2) The withdrawal of a will may be done either orally witnessed by two persons or written in the presence of two witnesses or based on the Notary Act if the will had been announced orally.

(3) If the will is made written, it can only be withdrawn also in written in the presence of two witnesses or based on the Notary Act.

(4) If the will is made based on the Notary Act, it can only be withdrawn based on the Notary Act.

Article 200.

The objects of the will which are in the form of non-moveable property, if due to one or more reasons decreases in the value or damage before the 'pewasiat' (person who bequeaths) dies the nominated acceptor of the will only receives the remaining property.

Article 201.

Should the will exceed the amount of one third of the whole inheritance, while there is an objection from a member of the heirs, the execution of the will can only be done up to the amount of one third of the whole inheritance.

Article 202.

If the will is targeted to various noble activities, while the amount of the wealth stated in the will is not sufficient, the heirs may decide which of the activity is to be given the priority.

Article 203.

(1) If the will is in the closed envelope, it should be properly kept at the Notary who made the will or at other places included the documents related to it.

(2) If the will is withdrawn in accordance with the article 199 the withdrawn will is to be returned to the 'pewasiat'.

Article 204.

(1) If the 'pewasiat' dies, the will which is in the envelope and stored in the Notary Office will be opened by the Notary before the heirs and witnessed by two persons, and the Notary will make an official report on the opening of the will.

(2) If the will which is in the envelope stored at a place other than in Notary Office the one who kept the will must submit it to the local Notary or Regional Office of Religious Affairs then the Notary or the Religious Affairs Office will open it as it is stated in article (1) of this chapter.

(3) When the content of the will is clearly understood The Notary or The Religious Affairs Office will hand over the will to the heirs for the follow up actions.

Article 205.

During the war, members of the troop or those who belong to the member of the troop and happen to be in the arena of a battle or in the place which is surrounded by

enemies, are allowed to make a will in front of his commander in the presence of two witnesses.

Article 206.

Those who are in the voyage may make a will in front of the ship captain or other high rank official, and if the officials are not available it can be made in front of the secondary official in the presence of two witnesses.

Article 207.

The will cannot in anyway be projected to the person who does the medical care or a person who give a religious guidance to the 'pewasiat' during the illness period until he/she dies, except if it is clearly stated as a thanksgiving.

Article 208.

The will is void for the Notary and the witnesses who make it.

Article 209.

(1) The left-property of the adopted child is divided based on articles 176 up to 193 above, while for the adopting parent who receives no will may be given the 'wasiat wajibah' (compulsory will) as much as one third of the inheritance of the adopted child.

(2) For the adopted child who receives no will may be given a 'compulsory will' as much as one third of the adopting parents' inheritance.

**CHAPTER VI
THE HIBAH
(PRESENT)**

Article 210.

(1) A grown up person with a minimum age of 21 years old, mentally healthy, not in under pressure may 'present' as much as one third of his wealth to other person or institution in the presence of two witnesses.

(2) The property which is presented must be his/her own real possession.

Article 211.

The 'hibah' from a parent to his/her offspring may be considered as inheritance.

Article 212.

'Hibah' cannot be withdrawn, except the one from the parent to the children.

Article 213.

'Hibah' which is given at the time the presenter is dying or close to the death must be given the approval of the heirs.

Article 214.

Any Indonesian citizens who are in a foreign country can make a declaration of 'hibah' in front of the Consulate or Indonesian Ambassador in the respective country in which the content do not contradict to the conditions on this articles.

**BOOK III
THE LAW OF 'WAKAF'
(PROPERTY DONATED FOR RELIGIOUS OR COMMUNITY USE)**

**CHAPTER I
GENERAL CONDITION**

Article 215.

The Definitions

- (1) '*Wakaf*' is a legal action of a person or a group of people or an institution which spare some of their property and institutionalize forever for the purpose of ritual or other community use in accordance with the Islamic teaching.
- (2) '*Wakif*' is the person or group of people or institution who donate the property of their possession.
- (3) '*Ikrar*' is a declaration of the wakif to donate the property in their possession.
- (4) The '*benda wakaf*' (the material of the donation) can be anything either moveable or non-moveable which are durable and not of the single-use and bear a value according to Islamic teaching.
- (5) '*Nadzir*' is a group of people or a legal board who are trusted to take care or maintain the management of the donated property.
- (6) '*Pejabat Pembuat Akta Ikrar Wakaf*' (PPAIW) is a government official who is appointed based on the valid regulation and is obliged to accept the declaration of the 'Wakif' and then hand it over to the 'Nadzir', also to carry out a supervision to preserve the donated property.
- (7) The '*Pejabat Pembuat Akta Ikrar Wakaf*' as stated in point (6) is appointed and resigned by the Minister of Religious Affairs.

**CHAPTER II
FUNCTION, ELEMENTS AND CONDITIONS OF WAKAF**

**Part One
The Function of 'Wakaf'**

Article 216.

The function of the 'wakaf' is to eternalized the benefit of the 'wakaf' material in accordance with the purpose of the 'wakaf'.

Part Two
The Elements and the Conditions of 'Wakaf'

Article 217.

(1) Indonesian Legal Boards and person or people who have been grown up, mentally healthy and have no legal constrain to exercise a legal action, with his own willingness may donate a property of their own by observing the existing laws and regulations.

(2) In the case of the Legal Institutions, the person who act for and on behalf of his name is the valid care taker according to the existing law.

(3) The material of the 'wakaf' as stated in article 215 point (4) must be of property which is free from any levy, constrain, condemnation and dispute.

Article 218.

(1) Any party who donate the property for 'wakaf' must declare his will clearly and distinctly to the 'Nadzir' in the presence of the PPAIW as stated in article 215 point (6), who then notes down in the form of 'Ikrar Wakaf' witnessed at least by two persons.

(2) In a particular condition, the diversion of the regulation as stated in point (1) may be done after a consultation with and approved by the Minister of Religious Affairs.

Article 219.

(1) 'Nadzir' as stated in article 215 point (4) consists of individual who meets the following criteria:

- a. Indonesian citizen,
- b. Moslem;
- c. Adult;
- d. Physically and mentally healthy;
- e. Not under the care of somebody;
- f. Domicile in the district/borough where the 'wakaf' material located;

(2) If it takes the form of Legal Institution the 'Nadzir' must meet the following criteria:

- a. An Indonesian Legal board and operating in Indonesia,
- b. It must have a branch in the district/borough where the 'wakaf' material located.

(3) 'Nadzir' as stated in point (1) and (2) must be registered in The Borough Office of Religious Affairs after having recommendation from the 'Camat' (Head of borough) and the Borough Ulemas Council to have the approval.

(4) Before performing his job the 'Nadzir' must pronounce an oath in front of the Borough Office of Religious Affairs witnessed by two persons in the following oath:

"By the name of Allah I swear that to be a Nadzir directly or indirectly by name or whatever reasons will not give or promise or present anything to anybody"

"I swear that I to do or not to do something in my position will not ever accept directly or indirectly from anybody a promise or any gift"

"I swear that I will always consistently respect highly the job and the responsibility which sticks to my position as a Nadzir in taking care of the 'wakaf property' in accordance with its aim and goal"

(5) The number of 'Nadzir' allowed for one unit wakaf property, as stated in article 215 point (5) is of minimum 3 persons and of maximum 10 persons who are appointed by the Borough Office of Religious Affairs in consultancy with the Borough Council of Ulemas.

Part Three
The Rights and Responsibility of ‘Nadzir’

Article 220.

(1) ‘Nadzir’ is obliged to take care and be responsible for the wakaf property and its benefit or profit, and the organization of the property in accordance with its aim as mentioned in the regulation issued by the Minister of Religious Affairs.

(2) ‘Nadzir’ is obliged to write periodical reports concerning everything under his responsibility as stated in point (1) to the Head of Borough Office of Religious Affairs with copies sent to the Borough Council of Ulemas and the head of Borough.

(3) The procedure in writing reports stated in point (2) is to be carried out in accordance with the regulations of the Minister of Religious Affairs.

Article 221.

(1) A ‘Nadzir’ is dismissed by the Head of Borough Office of Religious Affairs for the following reasons:

- a. dies;
- b. his own initiative to resign;
- c. not capable in continuing his job as a ‘nadzir’;
- d. committed a crime that sends him to prison.

(2) Should there be a vacant ‘nadzir’ position as stated in point (1), the successor is to be appointed by the head of Borough Office of Religious Affairs based on the recommendation from the Council of Ulemas in that borough.

(3) A dismissed ‘nadzir’, as stated in point (1) letter a, will not automatically be replaced by any of his heirs.

Article 222.

The ‘Nadzir’ deserves the right to earn some amount of income and facilities of which the amount and the kinds are determined based on the properness as recommended by the Council of Ulemas and the Borough Office of Religious Affairs.

CHAPTER III
THE PROCEDURE OF ‘WAKAF’
AND THE REGISTRATION OF THE WAKAF MATERIALS

Part One
The Procedure of Wakaf

Article 223.

(1) The party/person who intends to donate the *wakaf* may declare the ‘ikrar wakaf’ before the Pejabat Pembuat Akta Ikrar Wakaf (PPAIW) to pronounce the *wakaf*.

(2) The content and the style of wakaf is regulated by the Minister of Religious Affairs.

(3) The event of Ikrar as well as the construction of Ikrar Wakaf Act, will only be considered valid if witnessed by at least two (2) witnesses.

(4) During the event of Ikrar as stated in point (1) the party/person who donate the wakaf is to hand to the Officials as mentioned in article 215 point (6) the following documents:

- a. certificate of ownership of the property or other relevant document;
- b. if the material donated is the non-moveable thing, a document from the Head of Village, legalized by the Head of Borough to confirm the ownership of the mentioned non-moveable property.
- c. the written documents which accompanying the non-moveable property mentioned.

Part Two The Registration of the Wakaf Material

Article 224.

After the Ikrar Wakaf Act is done by observing the procedure stated in article 223 point (3) and (4), the Head of Borough Office of Religious Affairs on behalf of the respective 'Nadzir' is obliged to propose the Head of Borough to register the mentioned wakaf material in order to secure the wholeness and the continuance.

CHAPTER IV THE CHANGES, THE SETTLEMENT AND THE SUPERVISION OF THE WAKAF MATERIAL

Part One The Changes of The Wakaf Material

Article 225.

(1) Principally, the property that has been donated as wakaf cannot in anyway be changed or be used for other purposes than the one stated in the ikrar wakaf.

(2) The diversion of the regulation as stated in point (1) can only be done in a certain condition after being agreed with the written agreement from the Head of Borough Office of Religious Affairs based on the recommendation of the Council of Ulemas and the Head of Borough where the donated property located with the following reasons:

- a. no more relevant with the aim and purpose of wakaf as declared by the 'wakif';
- b. public utilities.

Part Two The Settlement of Disputes of Wakaf Material

Article 226.

The settlement of the disputes concerning the wakaf materials and Nadzir will be sued to the local Islamic Court according to the existing rules and regulations.

Part Three
The Supervision

Article 227.

The supervision of tasks and the responsibility of the Nadzir is to be done collectively by the Head of the Borough Office of Religious Affairs, Council of Ulemas and the Islamic Court whose territory covers the place the wakaf property.

CHAPTER V
TRANSITIONAL RULES

Article 228.

The donation of wakaf property as well as the administration that happened before the issuance of this Law, is to be reported and registered to the Borough Officer of Religious Affairs in order to adopt this rules.

The Closing Rules

Article 229.

The Judge who trials the cases which are proposed to him is obliged to pay a serious attention to existing norm and legal values observed in the community so that the sentence will be just and fair.

EXPLANATION ON
COMPILATION BOOK OF ISLAMIC LAW
GENERAL EXPLANATIONS

1. For the country and the people of Indonesia that based on the philosophy of 'Pancasila' and the Constitution of 1945, a national legal system is a 'conditio sine quanon' (a prime necessity) to guarantee the religious life that based on the belief in one God which at the same time as a realization of the consciousness of the people and the nation of Indonesian about law.
2. Based on the Law number 14 of the year 1970 re Broad Regulations of the Judicial Authorization, 'jo' Law Number 14 of the year 1985 re the Supreme Court, The Religious Court is of the same status as other Courts namely as a State Court.
3. The Material law which is applied so far in the Religious Court is Islamic Laws which basically comprise the areas of Marriage law, Inheritance law, and the 'wakaf' (donation) law. Based on the circulation letter of the Religious Court Bureau dated 18 February 1958, Number B/I/735 the material law that serves to be the guidelines for the above legal areas refer to the 13 books which all are based on the religious school of Syafi'ie.
4. By putting the Law number 1 of the year 1974 on the Marriage into effect, and the Government Regulation number 28 of 1977 on the Donation of the Owned Property, the need of law in the society became more developed, thus the aforementioned books need to be enlarged either by adding books from other schools of Islamic religion, widening the interpretation of the stipulations in the books comparing with the

Jurisprudence of the Islamic Court, thoughts of the Ulemas or comparing with those in other countries.

5. The aforementioned Material Law needs to be compiled and put into a Judicial documentation or a Compilation Book of Islamic Law, thus it could serve to be a guideline for Judges within the Religious Court Institutions as an applied law in settling cases put forward to them.

EXPLANATIONS FROM ARTICLE BY ARTICLE

Article 1 to 6.

Sufficiently clear.

Article 7.

This article comes into effect from the date of the sanction of the Law of Religious Court.

Article 8 to 18.

Sufficiently clear.

Article 19.

One that can be a wali is of the blood related family and authorized wali (Wali Hakim), the wali for an adopted child is to be the real father.

Article 20 to 71.

Sufficiently clear.

Article 72.

What it means by deception here is if the husband claimed himself as a bachelor during the wedding but then found out that he had been married to other woman, so that a polygamy occurred without a permit from the Court. Also deception in the self-identity.

Article 73 to 86.

Sufficiently clear.

Article 87.

Condition in this article comes into effect from the date of sanction of the Law of Religious Court.

Article 88 to 93.

Sufficiently clear.

Article 94.

Condition in this article comes into effect from the date of sanction of the Law of Religious Court.

Article 95 to 97.

Sufficiently clear.

Article 98.

Condition in this article comes into effect from the date of sanction of the Law of Religious Court.

Article 99 to 102.

Sufficiently clear.

Article 103.

Condition in this article comes into effect from the date of sanction of the Law of Religious Court.

Article 104 to 106.

Sufficiently clear.

Article 107.

Condition in this article comes into effect from the date of sanction of the Law of Religious Court.

Article 108 to 118.

Sufficiently clear.

Article 119.

Every 'talak' that sentenced by the Religious Court is 'talak ba'in sughra'.

Article 120 to 128.

Sufficiently clear.

Article 129.

Condition in this article comes into effect from the date of sanction of the Law of Religious Court.

Article 130.

Sufficiently clear.

Article 131.

Condition in this article comes into effect from the date of sanction of the Law of Religious Court.

Article 132.

Condition in this article comes into effect from the date of sanction of the Law of Religious Court.

Article 133 to 147.

Sufficiently clear.

Article 148.

Condition in this article comes into effect from the date of sanction of the Law of Religious Court.

Article 149 to 185.

What it means by a child who was born from outside marriage is a child who was born not from the legal marriage or as a result of extra marital relationship.

Article 187 to 228.

Sufficiently clear.

Article 229.

Condition in this article is valid for Book I, Book II, and Book III.