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ISLAMIC MARRIAGE MORALITY IN INDONESIA  
IN THE LIGHT OF PRESENT CATHOLIC TEACHING

By

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Dissertatio

ad lauream in Theologia consequendam  
re morali specialiter exculpta



## P R E F A C E

It is an ecclesio-pastoral concern that lies behind the selection of the title of this work: Islamic marriage morality in Indonesia in the light of present Catholic teaching. I wish thereby to emphasize the need of mutual understanding between Islam and the Catholic Church in my beloved country.

My gratitude is primarily to the Congregation of the Missionaries of the Holy Family, which gave me the opportunity to pursue my studies in Rome.

It is then a pleasant duty to express my thanks to Fr. John O'Riordan and Fr. Sean Cannon, who helped and encouraged me in this work with their competent assistance and very good suggestions.

I also thank Mons. Charles Burns who took responsibility for correct English. Without being sure of his always generous assistance, I probably would not have decided to do the original writing in English, since it is not my mother tongue.

Aloysius Purwa Hadiwardoyo

Collegio Olandese

Rome, February 1982.

PERPUSTAKAAN  
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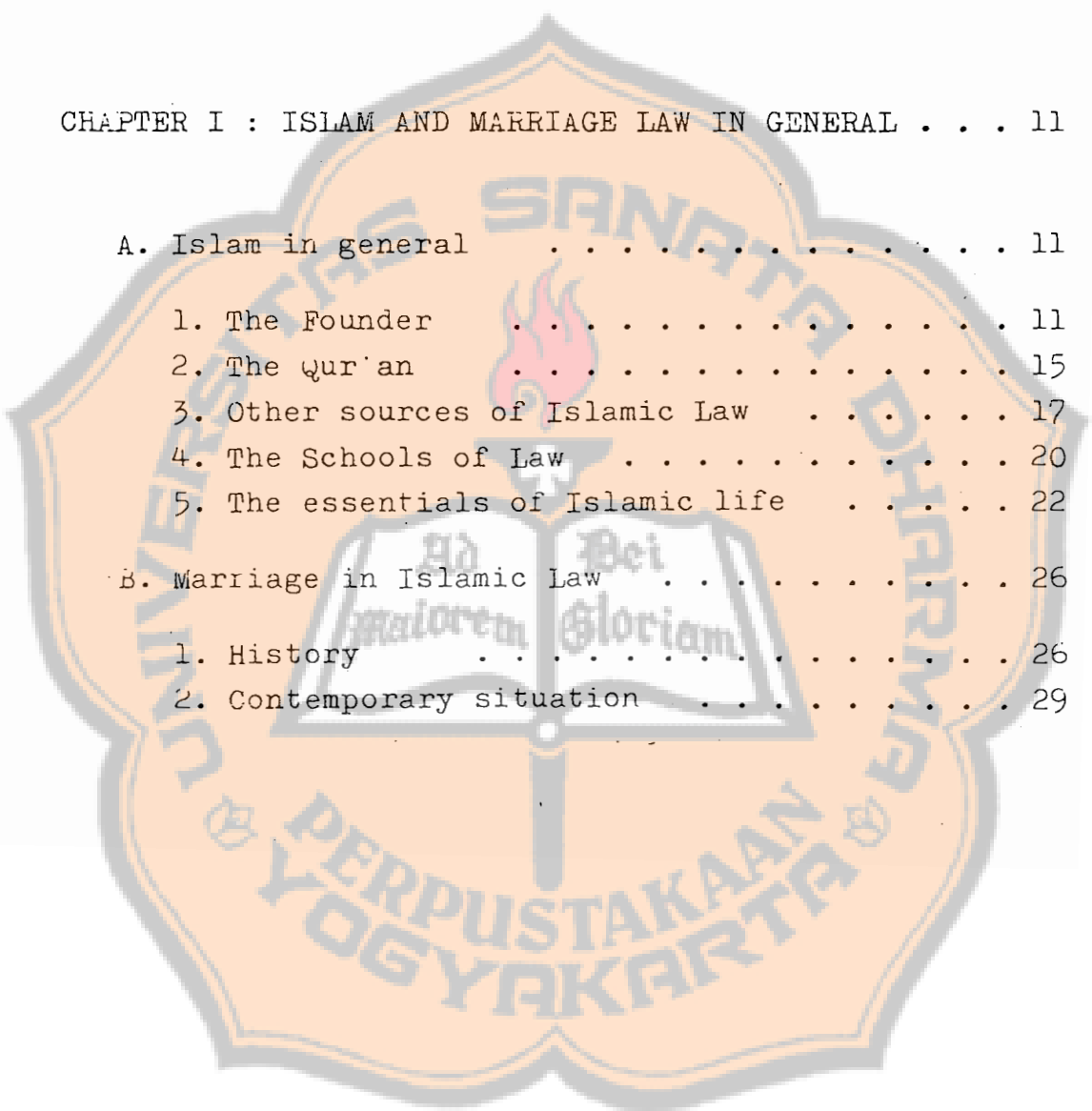
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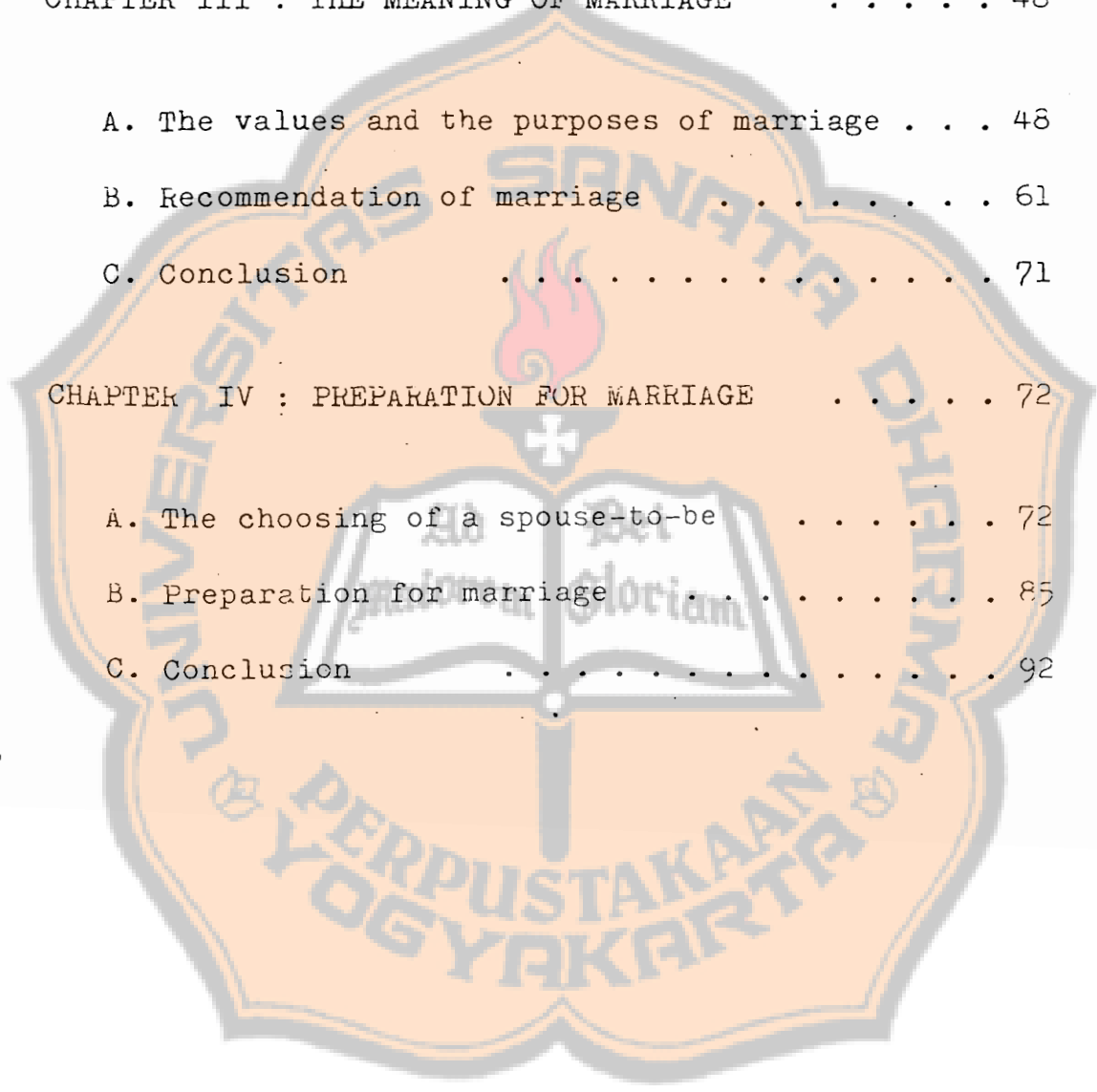
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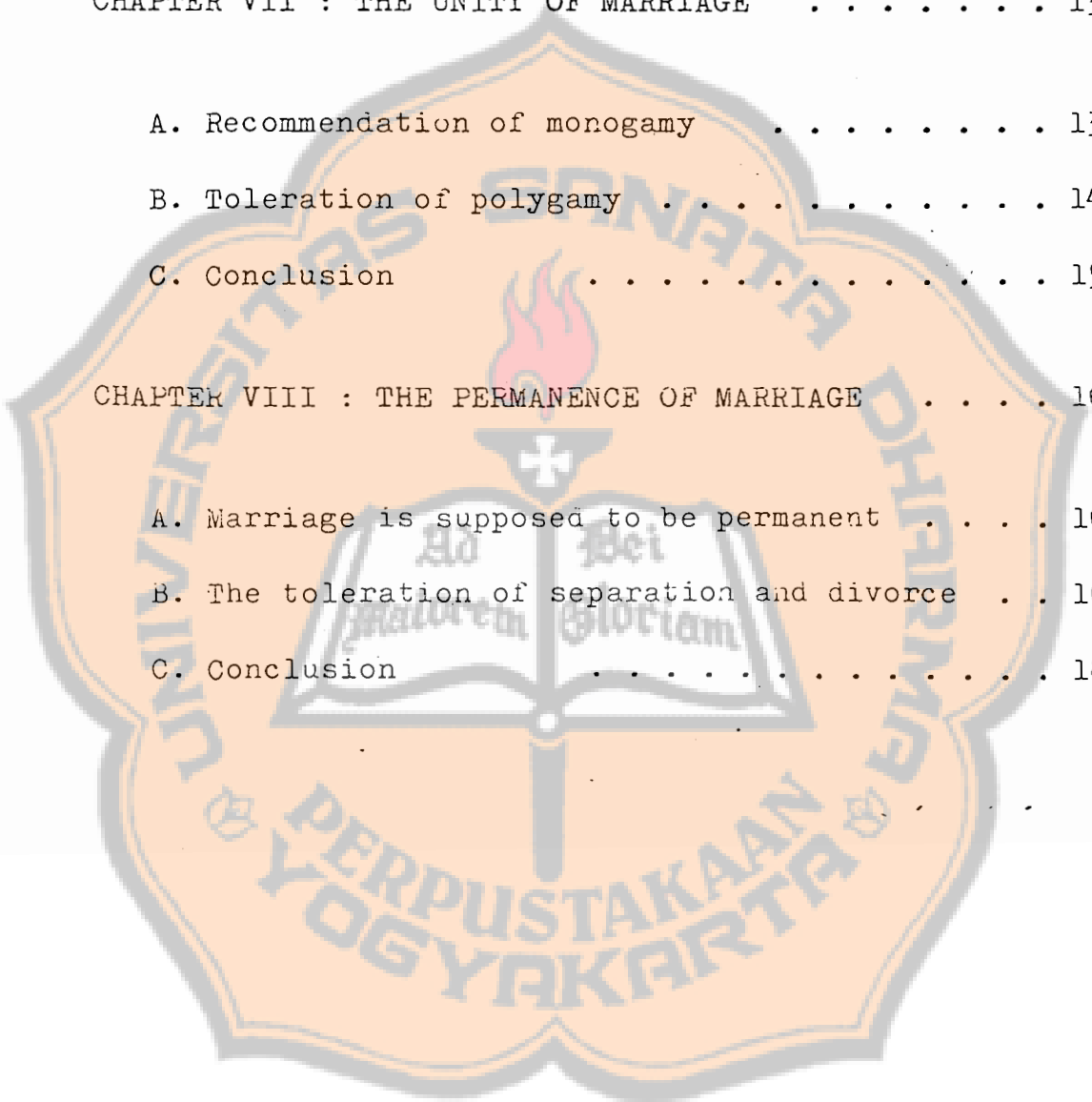
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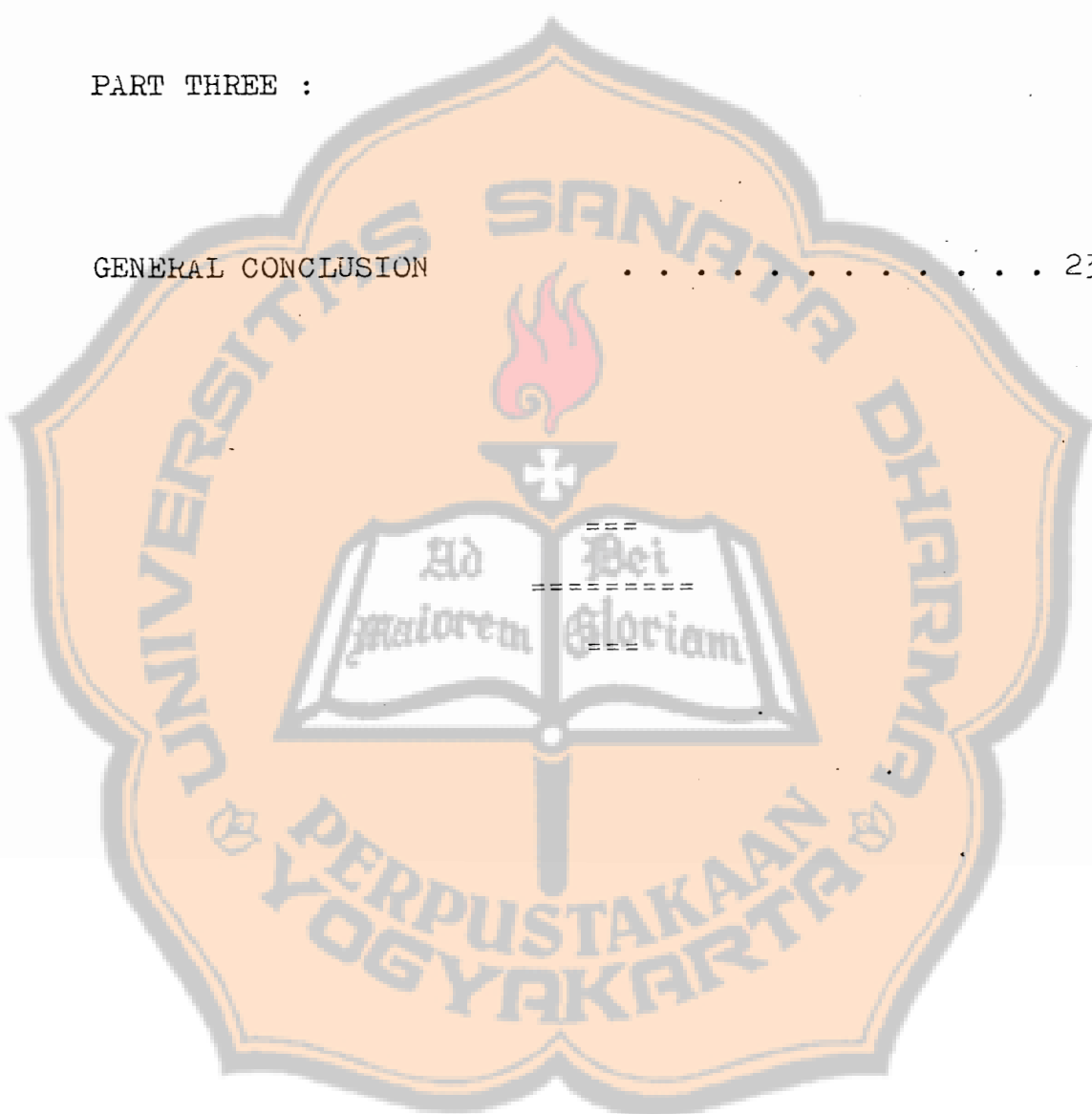
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## ABBREVIATIONS

A. General abbreviations

AAS	: <u>Acta Apostolicae Sedis, Roma.</u>
AA.VV.	: Autori vari - various authors
c.	: canon
cc.	: canons
Cfr.	: Confer (refer)
CIC.	: <u>Codex Iuris Canonici</u>
ibid.	: ibidem - in the same place
n. d.	: no date
n. p.	: no place
op. cit.	: opus citatum - the work cited
Q.	: <u>Qur'an</u>

B. Notes on Quotations

Unless otherwise mentioned, I have referred to the following versions for the quotations :

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The Qur'an	: <u>The Meaning of the Glorious Koran</u> , tr. by Mohammed Marmaduke Pickthall, London 1930.
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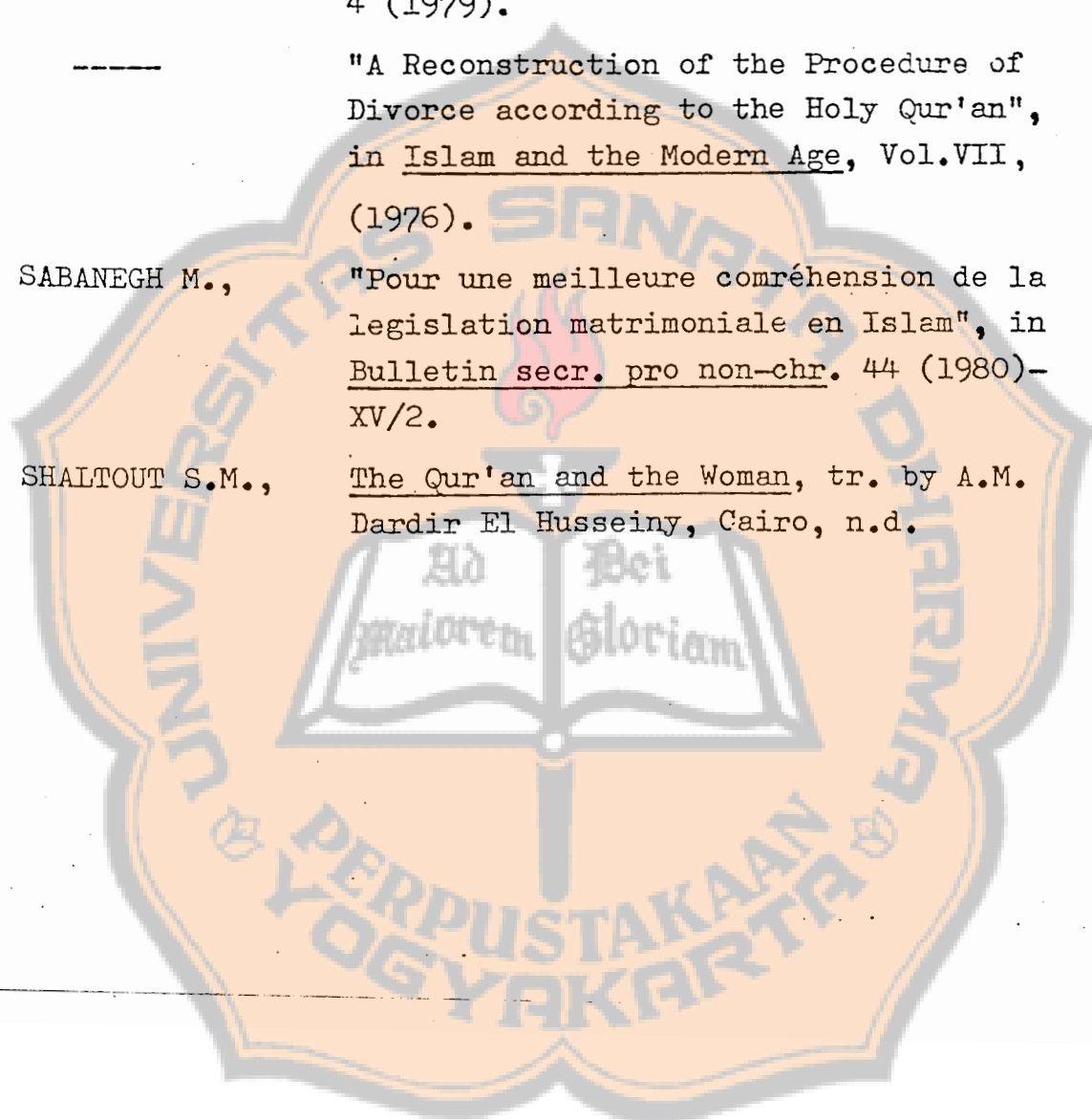
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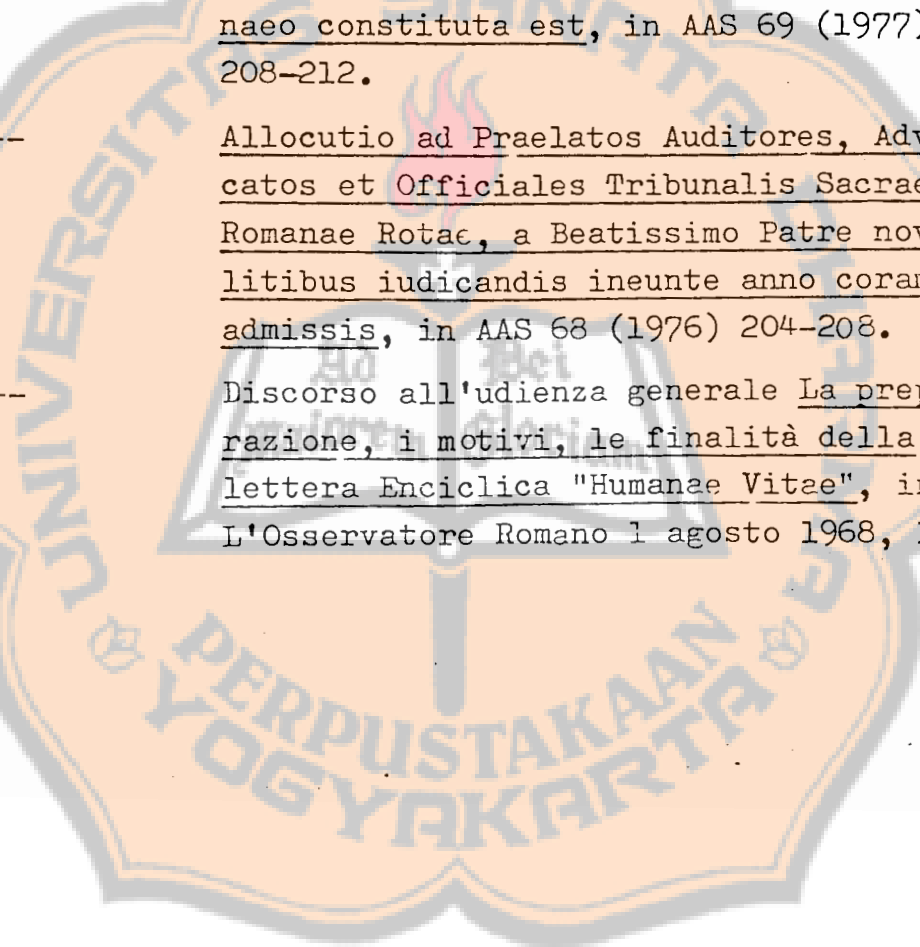
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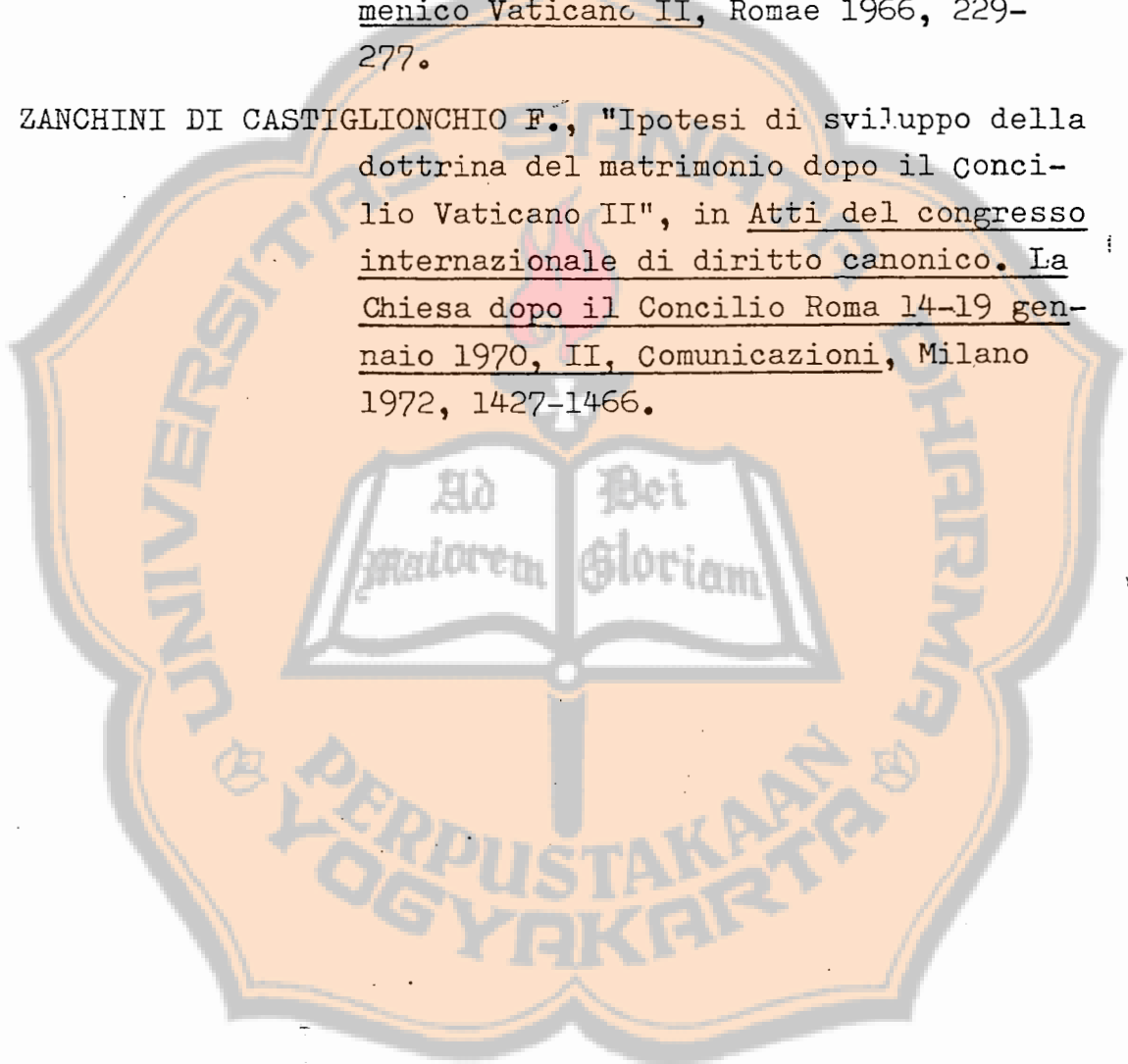
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## I N T R O D U C T I O N

"Although in the course of the centuries many quarrels and hostilities have arisen between Christians and Moslems, this most sacred Synod urges all to forget the past and to strive sincerely for mutual understanding. On behalf of all mankind, let them make common cause of safeguarding and fostering social justice, moral values, peace, and freedom" (1).

It is to respond to this calling of the Second Vatican Council that this work was begun and is completed. It intends to strive for mutual understanding, as a basis of cooperation in safeguarding and fostering moral values and social justice. It is aimed at preventing any quarrel or hostility which may arise on account of misunderstanding or false information.

The title of this work, "Islamic marriage morality in Indonesia in the light of present Catholic teaching", indicates its limitation and aim. Firstly, it limits itself to the problem of Islamic marriage morality in Indonesia. Secondly, it is directed towards

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(1) Cited from ECUMENICAL COUNCIL VATICAN II, Declaration on the relationship of the Church to non-Christian religions Nostra Aetate, n. 3, in AAS 58 (1966) 741-742. Hereafter cited as Nostra Aetate.

a christian evaluation of that Islamic marriage morality, based on present Catholic teaching.

In the sphere of moral theology, a better understanding of Islamic marriage morality may give a new impetus, no matter how small, to the process of renewal and lead towards a more creative theology, liberated from a "prepotent knowledge of dominion" (2). In fact, a process of renewal can be started by listening and making an effort to respond as well. Indeed, a better understanding of Islamic morality may contribute much to the creation of that capacity and sensibility in listening and responding.

### Catholics and Moslems

"In the Catholic Church, since the time of the Second Vatican Council, the way towards dialogue between Christians and Moslems has been marked out by texts and official declarations originating from the highest level of the hierarchy. One of these texts can be considered equivalent to a basic principle. This is the conciliar

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(2) An expression of BERNHARD HÄRING in his book : Free and Faithful in Christ, vol. I, Slough 1978, 57.

declaration Nostra Aetate ..., a document of capital importance in this field" (3).

Since the Second Vatican Council, the Church decisively shows her openness towards particular faith communities, especially those who profess monotheism. Immediately after his election Pope Paul VI stressed that it was necessary to enter into dialogue with non-Christians (4). Later, in 1969, he expressed his hope that what Christians and Moslems hold in common could serve to unite them "ever more closely, in true brotherhood" (5). Ten years later, Pope John Paul II confirmed the hope of his predecessor when he said at Ankara in 1979 : "I wonder whether it is not urgent, precisely today when Christians and Moslems have entered a new period of history, to recognize and develop spiritual trends which unite us..." (6).

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(3) Cited from LUCIE PROVOST, "From tolerance to spiritual emulation", tr. from French to English by M.L. Fitzgerald, in Islamochristiana 6(1980)1.

(4) Address at the opening of the Second Vatican Council, 29-11-1963, in AAS 55 (1963) 841-859, especially 854-858.

(5) Address to the leaders of Moslem communities in Kampala, Uganda, August 1969, in Bulletin. Secretariatus pro non-Christianis 12 (1969) 157.

(6) Discourse to the Catholic Community in Ankara, 29-11-1979, ibid., 43 (1980) 2-5.



The Second Vatican Council expressed its respect and esteem for Islam, giving the following description of that religion : "They adore one God, living and enduring, merciful and all-powerful, Maker of heaven and earth and Speaker to men. They strive to submit wholeheartedly even to His inscrutable decrees, just as did Abraham, with whom the Islamic faith is pleased to associate itself. Though they do not acknowledge Jesus as God, they revere Him as a prophet. They also honor Mary, His virgin mother ; at times they call on her, too, with devotion. In addition they await the day of judgment when God will give each man his due after raising him up. Consequently, they prize the moral life, and give worship to God especially through prayer, almsgiving, and fasting" (7).

Encouraged by the Second Vatican Council and recent Popes, Catholics all over the world have attempted to improve their relations with their Moslem brothers through sincere dialogue. In Indonesia, such dialogue has been promoted and supported by the government, which invited the various religions to take part in an interreligious consultative body (8). This body should prevent the emergence of hostile feelings toward any re-

(7) Cited from Nostra Aetate, n. 3.

(8) which is called "Badan Musyawarah Antar Agama".

religious belief and stimulate interreligious dialogue and cooperation.

Since 1970 the Department for Religious Affairs has organized and financed more than 20 official dialogues in Jakarta and some other cities in Indonesia, which were usually attended by representatives of the Indonesian Bishops' Conference, Moslem Universities and Academies, the Council of Churches, the Joint Secretariate of religious and mystical movements, and newspaper men as well (9). The government is aware, that Indonesian history and culture have been very much influenced by religious life. This country has witnessed the coming and flourishing of various religions and beliefs : first came Hinduism, followed by Buddhism, Islam, Confucianism and finally Christianity.

It is interesting to note, that though the so-called interreligious war is not known in the history of Indonesia, the religious problem remains a very sensitive one, capable of arousing minor or major conflicts. Therefore, interreligious dialogue is indispensable.

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(9) M. L. Fitzgerald lists 20 of such dialogues in an article "Christian-Muslim Dialogue in South-East Asia", in Islamochristiana 2 (1976) 180-183.

MARRIAGE MORALITY

The Second Vatican Council intended to direct "the attention of all, in the light of the Gospel and of human experience, to certain of the more urgent contemporary problems which worry the human race. Among many which today cause general anxiety these may especially be noted : marriage and the family ; culture ; social-economic life ; political life ; the solidarity of the family of nations and peace" (10). The Church is aware of the great importance of the family for the whole of society. The well-being of society, christian or not, is closely bound up with the well-being of the families which form it. Crises which are experienced by families will surely affect society as a whole. It is indispensable, therefore, to protect each family from any crisis or break down. And it is still more indispensable to protect the dignity of marriage, upon which every family is founded and remains closely attached.

The same awareness can be found among Indonesian Moslems. Ahmad Azhar Basyir, for example, writes as follows : "Marriage is very important for human life, individually or in community... family life is the

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(10) Pastoral Constitution on the Church in the World of today Gaudium et Spes, n. 46, in AAS 58 (1966) 1066. Hereafter cited as Gaudium et Spes.

nucleus of community life, in accordance with man's dignity as privileged creature excelling the others (11). Such an opinion is shared by almost all Moslem scholars in this country, as can easily be seen in so many books concerning marriage.

The fact, that the Church and Islam in Indonesia are aware of the importance of marriage and the family for the society, should be a good basis for dialogue between adherents to both religions. It should be done in the spirit of openness, free from prejudices, striving to safeguard and foster the moral values existing in this sacred institution and basic community.

There exists another fact which confirms the need or necessity of such a dialogue in Indonesia, namely the frequent recurrence of interreligious marriages between Catholics and Moslems. Although the Church and Islam do not recommend such a marriage, they could not always prevent it without denying one's right to marriage. In fact, it does not help to condemn such marriage outright or to have an entirely negative attitude towards it.

In many places, it may be quite difficult for the Catholic to find a Catholic partner who is suitable on other counts. Experience has also shown that

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(11) Cited from his book : Hukum perkawinan Islam,  
Yogyakarta 1980, 1.

some such marriages can help in interreligious rapprochement, especially when Catholics are more open to the values of Islam.

In any case, hostility between Catholics and Moslems should be erased from our history. Hostility was primarily based on fear, and fear had its roots in ignorance. Therefore, any dialogue can be fruitful if it is founded on knowledge of the other party, the partner in that dialogue.

#### METHODOLOGY

As regards methodology, the whole work has been divided into three parts :

PART ONE gives some elementary information concerning Islam and marriage in Indonesia, information which is considered useful for a better understanding of the whole work.

PART TWO deals with the most important questions concerning the Islamic marriage morality in Indonesia. Each chapter treats one of those questions, under six subtitles, namely : the Qur'an, the Sunnah, the Islamic Marriage Law in Indonesia, the Indonesian Marriage Law, the present Catholic teaching, and the Conclusion. Such a division facilitates an accurate and differentiated

knowledge of the prescriptions given by each of those five sources of "moral laws" , and finally leads to some concrete considerations or proposals in the Conclusion.

PART THREE concludes the whole work, providing a final conclusion as a short but comprehensive synthesis of the questions treated in the previous part.

The work does not pretend to provide a complete research into Islamic marriage morality, but only that which can be seen in Indonesia. It shows the salient principles of Islamic and Catholic laws on marriage.



PART ONE  
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## CHAPTER I : ISLAM AND MARRIAGE LAW IN GENERAL

This chapter intends to give some elementary information concerning Islam and Marriage Law in general. It starts with a general description of Islam, regarding its Founder, Scripture, Law and essential teaching. Finally, it ends by giving a brief information about marriage in the Islamic Law.

## A. ISLAM IN GENERAL

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1. The Founder

Islam is the name peculiar to a religion founded by Muhammad in Arabia in the 7th century. It is uncompromisingly monotheistic, and at the same time a political, social and cultural system (1). Arising as a result of Muhammad's preaching and teaching, it is now one of the foremost major world religions, with about 600 million adherents.

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(1) As confirmed by : MOHAMMAD IQBAL, The reconstruction of Religious Thought in Islam, Lahore 1951, 153 ; H.A.R. GIBB, Whither Islam ? . London 1932, 12 ; I.J. ROSENTHAL, Political Thought in Medieval Islam. An Introductory Outlines, Cambridge 1958, 8 ; LAURA VECCIA CAGLIERI, An interpretation of Islam, Washington 1963, 64.



Muhammad was born in Mecca in A.D. 570. His father had died seven months earlier. When he was six his mother also died, and two years later his grandfather. He was then educated by his uncle, until he reached adulthood. Tradition says that he belonged to the tribe of Qureysh, which had power over Mecca since the 5th century (2).

By the time that Muhammad was born, Arabia witnessed the collapse of Yemen, at the fertile southern tip of that peninsula. An economic decline accompanying the wars of Persia and the Byzantines to the north, coupled with the collapse of Yemen, gave rise to a period of conflict among the tribes of Arabia. In such a situation Mecca emerged as a new power, becoming a prosperous metropolis of sixth-century Arabia (3).

According to tradition, Muhammad traveled for the first time to Syria, when he was twelve years old, with his uncle in a merchant's caravan. And some years afterwards he made the same journey in the service of a wealthy widow named Khadijah. So faithfully did he transact that widow's business that soon afterwards she married him.

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(2) Cfr. W. MONTGOMERY WATT, Muhammad at Mecca, London 1953.

(3) Cfr. IRFAN SHAHID, "Pre-Islamic Arabia", in : P.M. HOLT (Ed.), The Cambridge History of Islam, Vol. I, London 1970.

At the age of forty, God called Muhammad to be a prophet through a revelation given in a kind of vision. Tradition says that he was asleep, or in a trance, when he heard a voice commanding him to read the revelation, announcing that God had chosen him to be His messenger. For three years, then, he preached only to his family and close friends. The first of all his converts was said to be his wife Khadijah. Only at the end of that period did he begin to preach publicly, pointing out the wretched folly of idolatry. At that time, in fact, many Arabs believed in and worshipped chiefly a number of idols which were called daughters of God or intercessors (4).

The tribe Qureysh soon became openly hostile towards him and began to persecute his followers. He had only little success among the Meccans and the opposition to his preaching had grown strong. Only a small group of men who came from Yathrib, which was then called Medina

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- (4) Although at that time the influence of both Judaism and Christianity was felt even in the interior areas of Arabia, the majority of the Arabs still worshiped various gods. However, they had a kind of national and religious unity. Firstly, they felt themselves to be brothers of the same family, as the sons of Abraham and Ismael. Secondly, they believed in the Lord of Ka'bah, which was found in Mecca and always considered as a temple built by Abraham.

by Muhammad, heard him gladly and converted. Invited by these converts from Yathrib, he decided to flee to that town, which he brought increasingly under his control, involving its resources and people in armed struggle in the cause of Islam (5).

Within ten years Muhammad led his followers and State to grow extensively, from Medina into the empire of Arabia. This period was filled with expeditions (6). The victory over the army of Qureysh gave him new prestige among the Arabs. Then, in the seventh year after that flight to Yathrib, he led a campaign against the stronghold of the Jewish tribes in Northern Arabia.

Finally, in the ninth year, from all parts of Arabia deputations came to Medina, the new name for Yathrib, to swear allegiance to him and to embrace Islam. In the tenth year, however, he fell ill and died, in A.D. 632.

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(5) Cfr. KENNETH CRAGG, The House of Islam, 2nd ed., Encino and Belmont in California 1975, 19; This flight to Yathrib has been considered by many as the beginning of Moslem era, making a clear division in the story of Muhammad's mission.

(6) According to W. Montgomery Watt, there were 74 expeditions. Cfr. his book : Muhammad at Medina, Oxford 1956, 2ff.

## 2. The Qur'an

The words which came to Muhammad were memorized by the first Moslems. It was only after some years following his death, apparently after a number of them were killed in battle, a collection of the whole Qur'an was made and put in writing, under the supervision of Abu Bakr (7). This collection was then revised several times during the history of Islam, until finally it assumed the definitive form of the actual Qur'an.

In its present form, it is divided into 114 chapters of unequal length. They, after the opening and very short chapter, are approximately arranged in order of diminishing length, from the longest to the shortest (chapter two being the longest, and the last ten chapters the shortest). For purposes of recitation during the holy month of Ramadhan, it is divided into 30 portions, one for each day of the month. Thus the longer chapters are divided into several portions, while the shorter ones are united into one (8).

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(7) As confirmed by REGIS BLACHÈRE, Introduction au Coran, Paris 1947, 137ff.

(8) According to Régis Blachère (op. cit., 137), the division of the Qur'an into 30 portions was made since a very ancient period of Islam.

In the accepted version now in use, each chapter is divided into verses and has a heading containing the following elements : a title which is derived from some conspicuous word, but not necessarily indicating the contents of the whole chapter ; the opening formula "In the name of God, the Merciful, the Compassionate" ; and an indication of whether the chapter was revealed at Mecca or at Medina and the number of its verses.

The chapters at the end of the Qur'an were revealed at Mecca during the earliest part of Muhammad's career and preaching (9). They are consecrated primarily to the proclamation of God : God's goodness and power ; the return to God for judgment ; Man's response, gratitude and worship ; Man's response, generosity and purification ; Muhammad's own vocation (10).

The chapters at the beginning of the Qur'an were revealed at Medina and contained various ideas: ancient prophets ; moral norms ; dogmas about religious truths; rules for human relationships ; the mission of Muhammad. Thus, the Qur'an also contains various laws concerning marriage, inheritance, contract or transaction, criminal cases, discipline, consultation, war, etc. In short,

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(9) Cfr. RÉGIS BLACHÈRE, op. cit., 137.

(10) Detailed analysis on this matter is given by W. MONTGOMERY WATT, Muhammad at Mecca, 62-71.

beside doctrinal teaching the Qur'an also contains legal, social and liturgical prescriptions of great importance for the daily life of the community and individual of Moslems (11).

For Moslems, therefore, the Qur'an has become the ultimate literature which guides their life. It has been held in high esteem as the ultimate authority in all matters, legal and religious, and has been generally regarded as infallible in all respects (12). Moral and religious education is exercised essentially through reading and meditating upon the verses of its chapters. Finally, it is also the Qur'an that has been able to unify Moslems of different countries and nations, being the only source so universally and widely accepted by all.

### 3. Other sources of Islamic Law

Although the most important one, the Qur'an is not the only source of Islamic Law. Since many centuries,

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(11) A good analysis of the contents of the Qur'an is given by W. MONTGOMERY WATT, Bell's introduction to the Qur'an, Edinburgh 1970, 148-166.

(12) On the importance of the Qur'an for the Islamic life, see for example : H.A.R. GIBB, Muhammedanism, London-Oxford-New York 1969, 36ff ; and KENNETH CRAGG, The Mind of the Qur'an, London 1973, 13ff.

the Islamic Law has been based on four sources : the Qur'an, the Sunnah of the Prophet Muhammad, the Qiyas or Ijtihad, and the Ijma or Consensus (13).

For the first Moslem community established under the leadership of Muhammad, the Qur'an laid down basic standards of conduct. After his death, however, it became clear that the Qur'an did not provide specific guidance for many questions facing the growing community. Supplementary sources, therefore, began to emerge. The Sunnah or Tradition relating to Muhammad was soon compiled and became an important supplementary source of Islamic Law.

The Sunnah is the compilation of the life, habits and sayings of Muhammad. It compiled testimonies, which are called hadiths, from the companions and disciples of Muhammad. They were generally transmitted orally, and only very slowly were written down. Some centuries after the Prophet's death, there were considerable compilations of such hadiths. In the 12th century, there were already known six principle Books of Hadiths which were held almost canonical by Moslems, namely : "Sahih" of Bukhari, "Sunan" of Abu Daud, "Djami" of Tirmidzi, "Sunan" of Nasa'i, "Sunan" of Ibn Majah, and "Sahih" of Muslim. However, the "Sahih" of Bukhari and the

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(13) It was for the first time affirmed by Shafi'i, one of four founders of the most important Schools of Law in Islam.

"Sahih" of Muslim have been appreciated more than the others (14).

The third source or fundamental principle of Islamic Law is Ijma or the Consensus. It means the agreement of the community as represented by its learned men. Some Moslem jurists assert that the agreement of any community of Islam, no matter in which period it lives, could become a source of Islamic Law. Other Moslem jurists, however, explain that only the agreement of the first generation of Islam which personally witnessed the Prophet's life could become such a source of Islamic Law (15).

The fourth source is differently called Qiyas, or Ijtihad, or Istislah. All mean a juristic and rational effort to comprehend the terms of legal prescriptions given by the Qur'an and the Sunnah, but with different accentuation or nuances. In seeking the answer to a legal problem, the jurist must first consult those two fundamental sources. If he fails to find any specific solution in them both, he can employ an analogy or certain subsidiary principles or reasoning. He can employ

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(14) A good analysis concerning these Books of Hadiths is found in CARRA DE VAUX, L'Exégèse. La tradition et la Jurisprudence, Paris 1923, 260ff.

(15) For example, the Founder of Maliki School of Law applicated the Ijma only to the first community of Islam in Medina at the time of Muhammad.



an analogy (qiyas), concealed or not-apparent analogy (ijtihad), or analogy-like reasoning (istislah). The difference of these three principles are not always clear, so that many jurists just call them with one term "qiyas" or analogy (16).

#### 4. The Schools of Law

In the primitive history of Islam many jurists tried to build a whole system of Islamic Law, based on certain sources and principles of law. Although they usually used the same sources and principles, they produced different Schools of Law, interpreting in different ways the Qur'an and the Sunnah, or applying in different ways the principles of Ijma and Qiyas.

There were many Schools of Law, but only four of them could maintain supporters until the present day, namely : The School of Hanafi, the School of Maliki, the School of Shafi'i, and the School of Hanbali. Actively sponsored by the Islamic rulers in the mid-8th century, who pledged to build a truly Islamic state and society, the jurists began their activities to build a truly Islamic jurisprudence.

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(16) The difference of these three principles is explained in CARRA DE VAUX, op. cit., 331ff.

The School of Hanafi was founded by Abu Hanifah, who was born in 699 and died in 767. After his study in Coufa, he began to teach and founded his School of Law in Bagdad, where he had been born and where he died. He conceived the Islamic Law as a rational science : he found it as being based on the Qur'an and the Sunnah of Muhammad, but still incomplete and fragmentary ; therefore he began to organize and develop it, with his human intelligence. He used not only analogy or qiyas , but also introduced the use of personal opinion (17).

The School of Maliki was founded by Malik bin Anas Al Ashbahi, born in 719 and died in 795. He completed his studies in Medina, and then wrote a book, which contained brilliant and new ideas on the Islamic Law. His system of law was principally based on the Qur'an and the Sunnah, limiting the use of analogy or human reasoning and explaining more precisely the concept of consensus. He taught that human reasoning could be applied only when the Qur'an and the Sunnah were silent about the matter, and that only the consensus of the first Islamic community in Medina could become a source of laws. Consequently, his system of Law has become less intellectual than that of Abu Hanifah.

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(17) He called the use of personal opinion "rai" .  
Cfr. CARRA DE VAUX, op. cit., 302.

The School of Shafi'i was founded by Muhammad bin Idris bin Shafi'i. He was born in 772 and died in 812. During his life, he visited several Moslem countries, and had a direct contact with the School of Hanafi and the School of Maliki as well. He led a more accentuated reaction than that of Malik against the use of personal opinion, showing his disapproval of the system of law developed by Abu Hanifah. However, he did not reject the use of analogy, as long as it was used under strict methodological regulations (18).

The School of Hanbali, finally, was founded by Ahmad bin Muhammad bin Hanbal bin Hilal, born in 807 and died in 863. Like Shafi'i, he visited several Moslem countries to enrich his knowledge about Islam and Islamic Law. His system of Law was very similar to that of Shafi'i, disassociating himself only in some specific cases.

#### 5. The essentials of Islamic life

There are five essential aspects in Islamic life, generally called "five pillars of Islam", namely :

- (18) Some orientalist like I. Goldziher, Brockelmann and Macdonald, therefore, considered Shafi'i as a moderate jurist, although his followers show a more conservative attitude.

the creed, worship, almsgiving, fasting and pilgrimage. Every Moslem shall try to fulfil the duties which derive from these five essential aspects of Islamic life.

The first aspect is the creed, which means that a Moslem believes in one God and in Muhammad the Messenger. The belief in one God is clearly expressed in the opening chapter of the Qur'an : "Praise be to Allah, Lord of the Worlds, the Beneficent, the Merciful. Owner of the Day of Judgment. Thee alone we worship , Thee alone we ask for help. Show us the straight path, the path of those whom Thou hast favoured , not (the path) of those who earn Thine anger nor of those who go astray" (19). The belief in Muhammad the Messenger , then, is based on Muhammad's own statement that he was the last Prophet of God, as it had been revealed to him in the Qur'an (20). He is called the Seal of Prophets, to whom the final revelation of God was given. Muhammad compared his mission with that of the ancient prophets, but saying that he was the seal of them all. Tradition attributes him the phrase : "After me, there is no prophet" . With him, God's revelation was completed.

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(19) Qur'an (hereafter cited as Q.) Ch. I, 1-7.

(20) Q. XXXIII, 40 reveals: "Muhammad is not the father of any man among you, but he is the messenger of Allah and the Seal of the Prophets ; and Allah is Aware of all things" .

The second aspect is worship , which is the consequence of the belief in God. Being aware of God's existence and power, a Moslem submits himself to God and worships Him. He prays to Him, establishing a communication with Him. The most important expression of this act of devotion is the observance of the ritual prayer which is to be done five times a day. The set times are at daybreak, noon, mid-afternoon, after sunset, and in the early part of the night. The Qur'an also mentions the noon prayer on Friday, which now becomes the principal congregational prayer of the week (21). To pray in an Islamic sense is to recite the verses of the Qur'an, to read the Word of God, either in a mosque or in their own houses.

The third aspect is almsgiving. A Moslem should not be content with having believed in God and praying five times a day. He has still many important things to do, and the most important of all is to be kind to the needy. The Qur'an affirms that those who desire to find God's mercy should establish worship and pay the poor-due and obey the Messenger (22). A believer must look beyond himself and spend his best possessions for the sake of others.

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(21) Q. LXII, 9-11.

(22) Q. XXIV, 56.

The fourth aspect is the observance of fasting in the month of Ramadhan. It was in that holy month that Muhammad was given the first revelation, calling him to be God's Messenger. To commemorate that great event, all Moslems shall not take food or drink throughout the day, while the sun shines. They could eat and drink only before the sunrise and after the sunset. Those who can afford it should feed the needy, and may not eat up their property among themselves in vanity (23).

Finally, the fifth aspect is pilgrimage to Mecca. Imitating Muhammad who made a farewell pilgrimage to "the temple of Abraham" in Mecca before his death, all Moslems should try to go on pilgrimage to that holy City at least once during their life. In practice such a pilgrimage is nevertheless only possible for a small number of Moslems. The Islamic Law admits that it becomes an obligation for those who are adult and have the necessary means. Those who are not able to undertake a pilgrimage to Mecca, may visit some other place which is historically important for Moslems.

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(23) Q. II, 184 orders: "Fast a certain number of days and (for) him who is sick among you, or on a journey, (the same) number of other days; and for those who can afford it there is a ransom: the feeding of a man in need ..."

B. MARRIAGE IN ISLAMIC LAW  
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1. History

In pre-Islamic Arabia, the social system was predominantly on a matrilineal basis, where men and women were reckoned as belonging to their mother's group. Marriage was generally uxorilocal : the women remained in their family house and their husbands visited them. Temporary marriage and divorce were common, while some people practiced polyandry or polygyny (24).

At the time that Muhammad was born, however, some people already practiced the patrilineal system, where the family consisted of the relatives in the male line. The practice of polyandry was diminishing, although marriage generally continued to be uxorilocal. At the time when Muhammad began to preach, the Arabian society was in transition, matrilineal and patrilineal features being found side by side and often intermingled (25).

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(24) Concerning marriage in pre-Islamic Arabia, see for example : W. MONTGOMERY WATT, Muhammad at Medina, 272ff. and 373ff.

(25) According to F. BUHL (Das Leben Muhammeds, Heidelberg 1961, 41-43) , the man began to become the leader of the family and the wife became more or less his belonging.

This transitional situation had not failed to influence Muhammad's teaching on marriage. It has inevitably borne the marks of his Arabian origin. However, he showed great authority and creativity in his preaching, making some meaningful reforms. He adopted the patrilineal system and his own marriages were virilocal, though each of his wives had her own apartment (26). The Qur'anic law of inheritance confirms the idea of a central family along with the husband's parents (27). Muhammad forbade polyandry and temporary marriage and showed his dislike for divorce. He promoted monogamy, though tolerating polygyny with limitations.

However, there remains a tension between the old system of the pre-Islamic Arabia and the reform made by Muhammad. His teaching on marriage is characterized with these tensions : the tension between the stability and the dissolubility of marriage ; the tension between the principle of monogamy and the toleration of polygyny.

After the death of Muhammad, these tensions remained undissolved. The first four successors of the Prophet closely adhered to Muhammad's teaching and began to collect the verses of the Qur'an and the Sunnah. The

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(26) It is confirmed by W. Montgomery Watt in his book Muhammad at Medina, 272-273.

(27) In Q. IV, 11-12.



collection and the editing of the text of the Qur'an, and even its final recension, took place in this early period (28). It is that text of the Qur'an, then, which exists without corruption to this day and becomes the authorized text for all Moslems.

The rise of different Schools of Law in the 8th and 9th century created a more accentuated diversity in marriage laws. Although the Qur'an and the Sunnah were used as fundamental sources of laws, they did not completely succeed in satisfying the founders of the Schools of Law in their attempts of codifying the whole Islamic Law. Thus Hanafi, Malik, Shafi'i and Hanbali, the founders of four Schools of Law, used the principles of consensus and human reasoning, beside the Qur'an and the Sunnah, to build their system of Law.

Since the 10th century, Moslem scholars applied themselves to the methods laid down by those four founders of the four Schools of Law. No individual jurist was ever afterwards recognized as having the same rank as those founders. The jurists tried to follow their doctrine, limiting the use of independent interpretation of law (29).

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(28) Under the supervision of Abu Bakr, the Qur'an was put in writing (between 632-634). The final recension took place in the reign of Uthman (c. 650).

(29) Cfr. A.A.A.FYZEE, Outlines of Muhammadan Law, London 1964, 35-37.

Such a situation continued until the abolition of the Caliphate in 1924 by the Turkish Republic. Since then there is no one to execute the behest of the Islamic Law. Thus the Islamic Law becomes a moral code and lost its juristic sanction.

## 2. Contemporary situation

The School of Hanafi is now followed by the vast majority of Moslems in India, Pakistan, Afghanistan and Turkey. North Africa and West Africa follow the School of Maliki, while the Hanbalis are nowhere else to be found except in the centre of Arabia. The School of Shafi'i, finally, is followed in the coast-line of Arabia and India, in South-East Asia, South Arabia, East Africa and Egypt.

In most Moslem countries, the Islamic Law becomes only a moral code, losing its juristic sanctions. Only in some countries like Saudi Arabia, Yemen, Oman and Pakistan, the Islamic Law still becomes a fundamental Law which regulates all law relations (30). The other countries prefer to use only certain elements of the Islamic Law in their modern and to some extent secularized

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(30) As affirmed in J.N.D. ANDERSON, Islamic Law in Moslem World, New York 1955, Ch. V.

Law. However, many of them still consider the Islamic Law as the most important source of legal provisions, especially for the family law.

As regards marriage law, the diversity among the four Schools of Law is generally only secondary. They agree in most fundamental questions, showing clear divergence in particular cases, primarily concerning the applications of human reasoning in specific themes. Therefore, a Moslem is allowed to pass from one School of Law to another (31), as it has occurred primarily among the scholars.

The Islamic Law generally deals with marriage in its three aspects : legal, social and religious. From the legal point of view, marriage is primarily considered as an agreement for the legalization of sexual intercourse and the procreation of children. It is an institution ordained for the promotion of a normal family life and the legitimation of children, and in order that human beings can guard themselves from adultery or unchastity (32).

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(31) Cfr. A. BAUSANI, L'Islam, Milano 1980, 41.

(32) Based on Q. XXX, 21 and the saying of Muhammad reported by Muslim, Abu Daud and Tirmidzi. Cfr. RAZAK and RAIS LATHIEF, Shahih Muslim, Vol. II, Jakarta 1980, 165.

From the social point of view, marriage gives a high social status to women. Moreover it entitles them to dowry, maintenance and inheritance. A high status is also given to the husbands. They gain marital authority and are entitled to the leadership of their family. Marriage is an institution highly respected and firmly protected by the whole of society.

For Islam, marriage is not only a mutual agreement of a legal and social nature, but also a form of worship (33). It is considered as man's participation in God's work of creation. Islam, therefore, rejects celibacy and strongly recommends marriage for all Moslems who are capable of it. In short, marriage is a religious reality, a sacred institution.

The Qur'an and the Sunnah do not present the moral norms concerning marriage in special chapters, but put them among the other verses concerning various subjects or themes. Moslem jurists, therefore, have tried to make a collection of those norms and used it as a basis for the Islamic Marriage Law. In the present Islamic Law, Marriage Law is presented in various ways. However, the following aspects of marriage are nearly always dealt with : the proposal ; the meaning and the purposes ; the

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(33) Based on the saying of Muhammad reported by Hakim and Thabrani. Cfr. SAYYID SABIQ, Fiqh Sunnah , tr. by Mahyuddin Syaf, Vol. VI, Bandung n.d., 14.

conditions for its validity ; the impediments ; the dowry ; the ceremony and feast ; the rights and responsibilities of both spouses ; divorce and remarriage or reconciliation (34). The reference concerning divorce are usually abundant, many times longer than those concerning marriage itself.

In fact, divorce has been common in the Moslem countries, although in recent times most of them have enacted legislation to tighten up marital relationships (35). Divorces pronounced arbitrarily by the husbands have led to frequent abuses in the family and have caused great suffering for many women. As regards polygyny, although the normal practice in Islamic society has been that of monogamy, access to polygyny has been relatively easy. Here, again, one can see the main tensions existing in the Islamic Law on marriage : the tension between the stability and the dissolubility of marriage, and the tension between the principle of monogamy and the toleration of polygyny. They are the tensions which already existed at the time of Muhammad.

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(34) See the following books dealing with Islamic marriage : AVERROES, La Bidaya du Mariage et de sa Dissolution, tr. par Laimèche, Alger 1926 ; MAHMUD YUNUS, Hukum Perkawinan Islam, Jakarta 1977 ; SAYYID SABIQ, op. cit.

(35) For example Indonesia, Turkey, Albania, Egypt.

## CHAPTER II : ISLAM AND MARRIAGE LAW IN INDONESIA

This chapter intends to provide some information concerning Islam and marriage in Indonesia. It starts with some information about Islam in Indonesia, and ends with some information about Marriage Law in Indonesia.

## A. ISLAM IN INDONESIA

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1. History

Beginning in the 7th century, Islam spread rapidly all the way from Arabia to the north of Africa and to the south of Europe and Asia. In the course of less than one century it developed into a world civilization and in only four centuries its power could stretch from Spain to Central Asia and northern India, absorbing many disparate countries into a coherent cultural and political unit (1).

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- (1) There are numerous books dealing with this rapid development of Islam in its first centuries. Among others are : C. BROCKELMANN, Geschichte der Islamischen Völker und Staaten, München und Berlin 1939; P. K. HITTI, History of the Arabs, London and New York 1940 ; J. SAUVAGET, Introduction à l'histoire de l'Orient musulman, Paris 1943.

According to some traditional stories, some Moslems from Persia came to the island of Sumatra in Indonesia already in the 8th century (2). However, it was only in the 12th century that Islam as religion was carried by some Indian and Arabic traders across the sea routes to Indonesia. According to the oldest reliable historical documents, then, it was in the 13th century that the first Moslem states were founded in northern Sumatra, namely in Perlak and Pasai (3).

From Sumatra, Islam then spread via Malacca to Java, Kalimantan, Moluccas and other islands. It came first to the coastal regions, and only slowly penetrated into the interior of the islands. An analysis of the historical documents and traditional stories shows that Islam was propagated in Indonesia by three methods, namely : by Moslem traders in the course of peaceful trade ; by Indian and Arabic preachers who came to Indonesia specifically to convert the believers ; and some times also by force and the waging of war (4).

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(2) As affirmed in ZAINUDDIN, Tarikh Aceh, Medan 1961.

(3) The oldest reliable historical documents are the reports of Marco Polo, Ibn Battuta, and the Chinese Royal Chronicle. Cfr. ABUBAKAR ACEH, Sekitar masuknya Islam ke Indonesia, Semarang 1979.

(4) Cfr. DE GRAAF, "South-East Asian Islam to the eighteenth century" , in P.M. HOLT (Ed.), The Cambridge History of Islam, Vol. II, London 1970, 123-154.

Java's first Moslem community was founded in the 15th century in the eastern part of the island. From there Islam spread throughout the whole island, first in the coastal regions, and after having gained control of the coasts it penetrated into the interior of the island (5). Continuing eastwards along the trade route, Islam reached the island of Moluccas in the latter half of the 15th century. In the 16th century Islam spread to the island of Kalimantan, and finally in the 17th century it reached the island of Sulawesi.

The Europeans appeared in Indonesian waters at the beginning of the 16th century, and since 1602 systematically dominated one island after another. This European domination disrupted the Indian influence upon Indonesian Moslems, facilitating the direct contact between Indonesian Moslems and the Moslem Arabs, especially after the opening of the Suez Canal (6). Christianity was brought by those Europeans, but it did not spread so rapidly as Islam had done. In the meantime, Islam spread with greater profundity in this whole archipelago.

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(5) Cfr. C.C. BERG, "Indonesia", in H.A.R. GIBB (ed.), Whither Islam?, London 1962, 250-259.

(6) This direct contact with the Moslem Arabs also meant that the Moslem Indonesians began to learn "the original Islam", which was different from the "Indian Islam" influenced by Hinduism.



The 19th and 20th century had witnessed repeated and powerful religious and political movements among major Moslem communities in Indonesia, although the colonialists (7) succeeded in defeating them at considerable human and financial cost until the mid-20th century. And finally, on 17th of August 1945, Indonesia proclaimed its independence.

## 2. Contemporary situation

The Republic of Indonesia has become the state with the largest number of Moslem inhabitants, with approximately 150 million people and 80% of the population acknowledging themselves to be Moslems. It is, however, in no sense an Islamic theocratic state. Its government has always guaranteed religious diversity, pledging itself to guide and assist the development in such a manner that every religion or belief could manifest itself fully and peacefully (8).

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- (7) Between 1602 and 1945 Indonesia was dominated by the Dutch, English and Japanese powers. Even after the Independence-Day, the Dutch government tried to colonize Indonesia but failed.
- (8) The Republic of Indonesia is based on five guiding principles called "Panca Sila", namely : 1. Monotheism ; 2. Humanism ; 3. Nationalism ; 4. Democracy ; 5. Social Justice.

Finally, with regard to the application of the Islamic Law, five groups of scholars could be mentioned (12), namely : a. Those who want to stick exclusively to the Shafi'i School of Law ; b. Those who are also in favor of using the principles of the other three Schools of Law, when their regulations are to be preferred to those of the Shafi'i School of Law ; c. Those who want to use certain opinions held by earlier but now extinct Schools of Law ; d. Those who want to develop a new system of Law adapted to the Indonesian situation ; e. Those who want to leave the decision to the individual in all cases which are not provided for in the Qur'an and the Sunnah (13).

Thus the Indonesian Moslems of today show widely varying commitments to Islam and its laws. There are various strains or approaches to Islam, which are generally not identical with sects but with varying ways of understanding Islam, its religious demands, and its social and political implications (14). Sometimes, how-

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(12) As confirmed in B.J. BOLAND, The struggle of Islam in Modern Indonesia, The Hague 1971, 165.

(13) This group is growing stronger among the youth.

(14) Cfr. THOMAS MICHEL, "The Religion in Indonesia today", in Bulletin. Secretariatus pro non-Christianis XV/2 (1980) n. 44, 213-220. This article gives a good analysis on the various strains of Islam in Indonesia.

ever, certain approaches to Islam led to the formation of some Islamic sects. Indonesia, in fact, has witnessed the formation of various Islamic sects (15).

## B. MARRIAGE LAW IN INDONESIA

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### 1. History

It is true that for many centuries the largest religion in Indonesia has been that of Islam. However, there was diversity of laws on marriage for the various groups making up the Indonesian community, until the passage of the present Marriage Law in 1974. Islamic Law has never been a Law for the whole Indonesian community, especially in the last century (16).

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(15) For example : "Agama Islam Hak" , "Darul Islam" and "Agama Islam Sejati Republik Indonesia". Many of them were founded by persons calling themselves Imam or even Prophet. Some Islamic sects wanted to build an Islamic theocratic State in Indonesia.

(16) At least since 1847 the citizens of European or Chinese origin were subject to the Civil Code 1847 instead of the unwritten customary Law or the uncodified Islamic Law. Since 1855 the Dutch government recognized the validity of the unwritten customary Law for almost all Indonesians.

During the last decades of the Dutch colonialization, there were codified laws for Indonesian citizens of European or Chinese origin (17) and for Christian Indonesians (18), while the majority of the Indonesian population were subject to unwritten customary Law or Islamic Law. There was no codified Marriage Law for the Indonesian Moslems. Some of them followed the regulations of the so-called customary Law, while the others preferred to obey the uncodified regulations of Islamic Law.

In 1855 the Dutch government stated, that the Indonesian Moslems were subject to the Islamic Law. The Moslems performed marriage according to the uncodified Islamic Law. Non-Moslems did it according to the unwritten customary regulations, differently from one region to another. The colonialist government also prescribed, that the Moslem Arabs and Chinese living in Indonesia were subject to the Islamic Law similar with that for the Moslem Indonesians (19).

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(17) namely : The Civil Code of 1847 with subsequent amendments in 1917.

(18) namely : The Marriage Ordinance for Christian Indonesians in Java, Madura and Ambon of 1933.

(19) In Reglement op het beleid der Regeering van Nederlandsch Indie, 1855 , nos. 75. 109.



As regards the so-called customary Law, it is called "customary" because it derives from local custom and remains unwritten, and is called "Law" because its regulations also have certain sanctions (20). Almost all regions in Indonesia have their specific customs, hence also so-called customary laws. That term was used by the Dutch government in Indonesia, to distinguish the regulations made by the colonialist government from local customs (21). The Indonesians themselves called them just "custom", distinguishing them from religious laws (22).

In 1919 the Dutch government in Indonesia changed its attitude toward the Islamic Law. It stated that the Indonesians could obey both the Islamic Law and the customary Law, provided that the regulations given by both Laws were not contrary to the public welfare. It considered both Laws only secondary to the codified Law made

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- (20) It is explained, for example, in VAN VOLLENHOVEN, Adatrecht, vol. I, 14.
- (21) Especially used by Snouck Hurgronje at the end of the 19th century, who began to use that expression as a fixed juridical term, in his book: De Atjeher (means : The Achehnese), vol. I, 357. *revisi 1966*
- (22) As admitted in HILMAN HADIKUSUMA, Hukum perkawinan Adat, Bandung 1977, 14.

by the colonialist government. They became only complementary (23). Moreover, the relationship between the Islamic Law and the customary Law became uncertain and confusing, because the Indonesians could use the regulations of both Laws choosing those which they preferred.

Finally, in 1929 the Dutch government stopped recognizing the Islamic Law as a source of laws for the Indonesians. The colonialist government affirmed, that the Moslem religious laws could be effective if they were already adopted in the customary Law, which remained unwritten and uncodified (24). It means, the Dutch government recognized only two different Laws for Indonesians, namely : the Civil Law made by the colonialist government and the unwritten customary Law (25).

After the Independence-Day there was uncertainty about the position of the Islamic Law in newly independent Indonesia. The 1945 Constitution only stated that "all existing state bodies and regulations shall remain effective as long as a new Law has not been made in con-

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(23) As stated in Reglement op het beleid der Regeering van Nederlandsch Indie, 1919, nos. 75. 109.

(24) In Indische Staatsregeling, 1929, n. 134.

(25) Cfr. SAJUTI THALIB, "Receptio in complexu, theorie receptie dan receptio a contrario" , in Pembahasan Hukum Islam, Jakarta 1977, 44-54.

formity with this Constitution" (26). Most of jurists agreed that such a statement made both Laws remained effective, namely : the Civil Law made by the colonialist government and the unwritten customary Law. Consequently, the Moslem religious regulations could be effective only if they were already adopted by the customary Law. Some jurists, however, rejected such an opinion and admitted that the Moslems should be subject to the Islamic Law, even when its regulations were not yet adopted by the customary Law. They said that since Independence-Day the codified Law made by the colonialist government stopped being effective, and was replaced by the customary Law and the Islamic Law (27). This controversy continued until the introduction of various laws dealing with specific subjects.

## 2. Contemporary situation

Since there were no codified regulations concerning marriage and divorce for the Indonesian Moslems ,

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- (26) Cited from : Undang-Undang Dasar Negara Indonesia, Jakarta 1945, Aturan Peralihan, Pasal II.
- (27) Among others : Hazairin, Sajuti Thalib, Ismail Suny. Cfr. ISMAIL SUNY, "Islam as system of Law in Indonesia", in Pembaharuan Hukum Islam di Indonesia , 16-21 ; and HAZAIRIN, National Family Law , Jakarta n.d., 4-5.

some Moslems performed their marriage according to their local customs, while the others performed their marriage according to the Islamic regulations. Such a situation affected the position of women and children: the women's position in marriage continued to be unsatisfactory and many children were forced to get married.

Some attempts were made by the government of Indonesia to improve the situation, without any results. The basic problem was always the question whether the principle of unification of laws (28) or diversity of laws (29) should be applied. Finally, however, a marriage Bill submitted by the government in 1973 and based on unification of laws was approved by the Parliament after some amendments, and then was enacted as Marriage Law of 1974. This Law has been effective since 1975 and applicable to all Indonesian citizens, regardless of religion (30).

This Law is really a step forward in the government's move towards codification and uniformity of Indonesia's legal system and an improvement of the position of women in marriage. It respects the elements

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(28) means : one Marriage Law for all different groups.

(29) means : different Laws according to the different groups.

(30) The former regulations will remain applicable in those matters which are not mentioned in the Marriage Law of 1974.



and regulations of different religions and beliefs existing in Indonesia. It recognizes that marriage is closely related to religion and spiritual values, affirming that there is no marriage performed outside the law of the respective religions or beliefs of the parties concerned.

The Indonesian Marriage Law of 1974 embodies the basic principles of marriage and all other regulations which have any relation with marriage. It is based on positive principles such as the following: marriage is valid if performed according to the laws of religions or beliefs of the spouses; marriage aims at establishing a happy and lasting family; the Law follows the principle of monogamy; the aspirant husband and wife must be mentally and physically mature; the rights and status of the wife are equal with the rights and status of the husband; divorce is to be discouraged (31).

This Law is a result of long and continuous efforts made by various groups existing in Indonesia, which have felt the urgent need of a codified Marriage Law. Such a need was primarily felt by the indigenous Indonesians of Moslem religion, who were subject to customary law and uncodified Islamic regulations. The Islamic mor-

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(31) As admitted in The Indonesian Marriage Law of 1974 especially in its General clarification n. 4.

al norms concerning marriage are clearly reflected in the Indonesian Marriage Law of 1974. However, the Law guarantees that all citizens may follow the regulations of their religions or beliefs as long as they do not run counter to the prescriptions of this Law.

Since the enforcement of the present Indonesian Marriage Law in 1975, Moslem scholars have tried to present a clear comparison between that Law and the Islamic Marriage Law. They show the convergences or similarities between both Laws, pointing out that the Indonesian Marriage Law of 1974 does not contain all the regulations necessary for an Islamic marriage.

Most characteristics of the general Islamic regulations on marriage, already indicated in Chapter I of this work, can be found in Indonesia. One can see, for example, the tensions already existing at the time of Muhammad : the tension between the stability and the dissolubility of marriage ; and the tension between the principle of monogamy and the toleration of polygyny.

Most Indonesian Moslems follow the directions of Shafi'i, but there are also some scholars who prefer not to stick exclusively to one School of Law. Therefore an analysis of Islamic marriage morality in Indonesia should be done in such a way that the opinions of the minority will not totally be left out.

PART TWO  
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## CHAPTER III : THE MEANING OF MARRIAGE

This chapter deals with two important questions concerning marriage, which may be formulated as follows :

- A. What are the values and the purposes of marriage ?
- B. And how far, therefore, is it to be recommended ?

## A. THE VALUES AND THE PURPOSES OF MARRIAGE

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1. The Qur'an

The Qur'an mentions some values and purposes of marriage, without distinguishing in a precise way those which are more important from those which are less important. There is no doubt, however, that the procreation and the upbringing of children are emphasized. The Qur'an affirms, that God has created every kind of living being in couples, as sexual pairs (1). Man was also created male and female, and from them God has made nations and tribes (2). This work of creation re-

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(1) Q. XXXVI, 35 affirms : "Glory be to Him Who created all the sexual pairs, of that which the earth groweth, and of themselves, and of that which they know not".

(2) Q. IV, 1 ; VI, 2 ; VII, 11 ; XV, 26ff ; XVI, 4.

veals and reflects the Wisdom of the Lord, and hence urges men and women to glorify His name and to participate in His work of creation.

Marriage is considered as a commitment of God's work in creation, to generate life and to continue the history of mankind and the universe. Marriage is a duty given to man, a duty which is prescribed to enable man to collaborate with Him in generating new life and new generations of mankind. In fact God has given to men and women not only the duty to generate new life, but also the power to do it. To men and women, God has given the sexual need, which requires its completion. Male is instinctively attracted by the female, and vice versa.

The Qur'an admits the believers to satisfy their sexual need in marriage. They may not surrender to the instinctive impulse just to satisfy their sexual need, but to control and to direct that need towards its right direction prescribed by God. To seek contentment and to satisfy one's sexual need without committing sin is considered by the Qur'an as a purpose of marriage (3).

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(3) Q. LXX, 29-31 affirms : "Those who preserve their chastity save with their wives and those whom their right hands possess... they are not blameworthy. But whoso seeketh more than that, those are they who are transgressors".

See also Q. XXIII, 5-6 ; LX, 12 ; II, 187. 222-223.

Finally, marriage is also aimed at love and mercy between the spouses. The Qur'an affirms that marriage is one of many signs created by God, which gives rest and ordains between man and woman love and mercy (4). Therefore, justice and peace within the family are to be earnestly sought, primarily based on love and mercy between the husband and the wife.

## 2. The Sunnah

On different occasions Muhammad indicated the values and the purposes of marriage. He recommended marriage for all believers, from which would result more and more children to be proud of, also in front of the other prophets at the Last Day (5). He praised the women who bore many children to their husbands. In fact, having a greater number of Moslems was a question of life and death for Muhammad and his first Islamic community. Not only faith and enthusiasm, but also a greater number of the believers was needed for the consolidation and the spread of Islam.

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- (4) Q. XXX, 21 affirms: "And of His signs is this: He created for you helpmeets from yourselves that ye might find rest in them, and He ordained between you love and mercy..."
- (5) Hadith written by Bukhari, in SJARIEF SUKANDY, Tarjamah Bulughul Maram, Bandung 1980, 357.

Muhammad also affirmed, that marriage might be aimed at satisfying one's sexual need without committing any sin of adultery. Marriage is a way that leads to chastity, and a guide that prevents the believers from committing sins of adultery. The young Moslems were commanded to get married, when they were capable, or otherwise to practice continence, when they were not yet capable of it (6).

Marriage was proclaimed by Muhammad as the best way towards happiness and sanctification. It could give rest, love and mercy. It would give satisfaction and consolation, provided that the partner had been well selected. Marriage leads to chastity : Muhammad strongly admonished the husbands to come to their wives, when they were tempted to commit adultery with any other woman (7).

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(6) Hadith written by Bukhari, in SJARIEF SUKANDY .  
op. cit., 356.

(7) Hadith written by Muslim, in RAZAK and RAIS LATHIEF,  
Terjemahan Hadis Shahih Muslim, Jakarta 1980, Vol.  
II, 165.

On other occasion, Muhammad reminded his followers, that a woman should be married primarily because of her piety and religion instead of her beauty or her social status. Only such a woman could give rest, love and mercy, and lead to happiness and sanctification.

### 3. The Islamic Marriage Law in Indonesia

The Islamic Law in Indonesia, as presented in many books written by Indonesian authors, lists various purposes and values of marriage. The following values and purposes of this institution are usually found in almost all of those books : procreation and education of the children ; the allaying of concupiscence ; mutual love and support between the spouses ; unity of the society as a whole ; and to fulfil the personal wish of Muhammad (8).

The basis of the Law remains the Qur'an and the Sunnah, which teach that marriage is aimed at generating new life, at satisfying the sexual need, and at finding happiness. Being explicitly admitted by those fundamental sources of Islamic laws, these three values or purposes of marriage are underlined by all Indonesian Moslems scholars. Therefore, they may be seen as the main purposes of the Islamic marriage.

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- (8) Among others, in : KAMAL MUCHTAR, Asas2 Hukum Islam tentang Perkawinan , Jakarta 1974 , 20-22; ZAHRY HAMID, Pokok-Pokok Hukum Perkawinan Islam dan Undang-Undang Perkawinan di Indonesia , Yogyakarta 1978, 2 ; AHMAD AZHAR BASYIR, Hukum Perkawinan Islam, Yogyakarta 1980 ; SAJUTI THALIB, Hukum Keke - luargaan Indonesia, Jakarta 1974.
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As regards the generation and the upbringing of children, the authors remind that Moslem spouses should generate and educate their children according to the spirit of Islam. Every Moslem is called to take part in the spreading of Islam and thus participates in the same mission with Muhammad. It is a religious duty to have children and educate them, collaborating with God in His work of creation. This mission of generating new life is so important, that a man may marry another woman when his existing wife remains childless (9).

The sexual need, then, should be satisfied and well directed for the good of mankind. That need is considered as a power granted by God, destined for procreation and satisfaction. It is not to be suppressed or denied. It should be lawfully satisfied and directed for the good of mankind and oneself, through marriage. Only in marriage, in fact, may a Moslem satisfy his sexual need (10). Adultery, premarital and homosexual intercourse are strongly condemned.

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(9) Cfr. AHMAD AZHAR BASYIR, Hukum Perkawinan Islam, Yogyakarta 1980, 35.

(10) As affirmed in : MAHMUD YUNUS, Hukum Perkawinan dalam Islam, Jakarta 1977, 7-8 ; ABDULLAH SIDDIK, Hukum Perkawinan Islam, Djakarta 1968, 8-12; and MAWARDI, Hukum Perkawinan dalam Islam, Yogyakarta 1975, 3.

Another important purpose of marriage is mutual support between the spouses. Indonesian Moslem scholars sometimes affirm, that married people can more easily be happy than those who live alone (11). In marriage, one can always expect the support of the other. In marriage, one must not be afraid of solitude.

Besides, marriage is a means of unity. It unites a man and a woman. It unites two families. It unites the whole society (12). In the history of Indonesia, in fact, it happened many times that a Moslem Sultan got married to the daughter of another Sultan, hoping that the two Sultanates would be peacefully united. Several times such a wish was really fulfilled.

Finally, marriage is considered as the best way to imitate the life of Muhammad and to fulfil his wish for a Moslem world, in which the majority of mankind profess Islam and practice its prescriptions in their daily life.

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(11) Cfr. TAMAR DJAJA, Tuntunan perkawinan & Rumahtangga Islam, Bandung 1980, 16-17.

(12) Indonesian Moslems like to point out the importance of marriage as a means of unity. See, for example : SULAIMAN RASJID, Fiqh Islam, Jakarta 1976, 356 ; AHMAD AZHAR BASYIR, op. cit., 1-11 ; KAMAL MUCHTAR, op. cit., 22 ; ABDULLAH SIDDIK, op. cit., 8-10.

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 provides some interesting notes concerning the purposes of marriage, formulated in very personalistic terms. It shows great respect for human and religious values of marriage, considering it as the basis of the whole of society.

Dealing with the foundations of marriage, the Law opens the whole chapter with the following affirmation: "Marriage is a relationship of body and soul between a man and a woman as husband and wife with the purposes of establishing a happy and lasting family (household) founded on belief in God Almighty" (13). Such an affirmation presents a very positive idea of marriage, showing its deep significance and fundamental value.

The Law recognizes the fundamental fact that marriage is a relationship between two persons in their whole personality, physical and spiritual: it is a relationship of body and soul. Clarifying this affirmation, the Law admits that marriage does not only possess a physical value but a mental value as well, which plays a vitally important role (14).

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(13) Cited from REPUBLIC OF INDONESIA, The Indonesian Marriage Law of 1974, Jakarta 1975, Ch. I, a. 1.

(14) Ibid., clarification a. 1.

Marriage is to be founded on belief in God. Marriage is seen as a religious commitment. The Indonesian people, in fact, have always believed that all human activities should be founded on belief in God. Marriage is to be directed to the glory of God (15).

Finally, marriage is aimed at establishing a happy and lasting family, or household. The Law affirms, that marriage is normally aimed at the generation and upbringing of children. However, marriage keeps its value even if children are lacking. It is the basis of the society as a whole. Only when the families are happy and lasting, can the society be healthy and prosperous.

#### 5. The present Catholic teaching

As regards the meaning of marriage, the Second Vatican Council affirms that "God who made marriage endowed it with various values and purposes. All these are of the highest importance for the continuance of the human race, for the personal profit and eternal welfare of the members of families, for the dignity ,

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(15) The State itself has always been based on five guiding principles called "Panca Sila", the first of which being "belief in One God" .

stability, peace and prosperity of the family itself and of human society as a whole" (16).

The Second Vatican Council confirms the traditional teaching of the Church, that the task of transmitting and rearing human life is to be regarded as a proper mission of married people. Marriage is to be ordained to the procreation and upbringing of the children, who are "the outstanding gift of marriage" given by God Himself (17). However, the Council denies that marriage is instituted merely for procreation. The union persists as a lifelong partnership and keeps its value even if it lacks children, often so much desired by many married people (18).

Marriage is created by God to unite man and woman in love, forming an intimate union, a community of love and life (19). Husband and wife are called to love each other in a sacred and stable marital bond, even when God does not give them any child. Instead of speaking about the allaying of concupiscence as a secondary end of marriage (20), the Council teaches that the conjugal act is honorable and worthy if it is exercised in a truly human fashion.

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(16) Cited from Gaudium et Spes, n. 48.

(17) Ibid., nos. 50-52.

(18) Ibid., n. 50.

(19) Ibid., nos. 48-49.

(20) As affirmed in Codex Iuris Canonici, c. 1013.

Marriage is also aimed at the well-being of the members of families, the good of the family itself and of human society as a whole. The Council admits, that the personal well-being and the well-being of society are closely bound up with the happy condition of the marital and family community. The family is called (21) "a kind of school of more abundant humanity... in which different generations live together, helping each other to acquire greater wisdom and to harmonize personal rights with other social needs" .

Finally, the Council confirms the traditional teaching of the Church concerning the special benefits of marriage between the baptized persons. A marriage between the baptized persons is a sacrament. It leads the spouses to God and to each other : their love is caught up into divine love and directed and enriched by the redemptive power of Christ and the salvific action of the Church ; they are blessed and guided by Christ Himself in their way of salvation (22).

In his encyclical letter Humanae Vitae (23) , Pope Paul VI defends the teaching of the Council about the inseparable unity between the transmission of life

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(21) In Gaudium et Spes, n. 52.

(22) Ibid., n. 48.

(23) in AAS 60 (1968) 433-445.

and the conjugal love (24). He insists that this unity should be preserved in any use whatever of marriage (25) and asserts that conjugal love should be : fully human , total, faithful and exclusive until death, and creative of life (26). Conjugal love is not subordinate to, but necessarily implies the procreation of children. It may not be "exhausted by the loving interchange of husband and wife" , but must also contrive to go beyond this to bring new life into being.

This teaching is further confirmed by Pope John Paul I. Only one week before he died, he spoke to a group of Bishops in these words : "Let us never grow tired of proclaiming the family as a community of love : conjugal love unites the couple and is procreative of new life" (27).

Pope John Paul II shows the same attitude. In his homily at the the Church of Gesu (28) , he pointed out two fundamental values of marriage and family which fall strictly into the context of conjugal love : the first

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(24) Cfr. Gaudium et Spes, n. 50.

(25) Humanae Vitae, n. 11.

(26) Ibid., n. 9.

(27) Cited from his allocution to the Bishops of the Northern part of the United States of America , in AAS 70 (1978) 766.

(28) in AAS 71 (1979) 91-94.

is the value of the person which is expressed in mutual faithfulness of the husband to his wife and of the wife to her husband ; the second is the personal value of the new life, that is, of the child. Later (29) , the Pope affirmed that the conjugal union conditions the transmission of life, and the transmission of life is a prospect which husband and wife should insert in their conjugal union.

It may be concluded, therefore, that the present Catholic teaching recognizes various values and purposes of marriage, and that the Church does not indicate any hierarchy of the purposes of that institution. Marriage is a community of love and life which is ordained for the procreation and education of children. The Church also teaches that the transmission of life is inseparable from the conjugal love and marriage itself (30).

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- (29) In his discourse at the general audience on March 12th, 1980, in Matrimonio e Famiglia. Genesi cc. 1-3 nell'insegnamento di Giovanni Paolo II, Ciclo di discorsi alle udienze generali , Collana Magistero 58, 82. Hereafter cited as : Matrimonio e Famiglia , in Collana Magistero 58.
- (30) Pope John Paul II defends this traditional teaching of the Church in his apostolic exhortation Familiaris consortio , given in Rome on 22-11-1981, esp. nos. 28-35. Hereafter cited as Familiaris consortio.



## B. RECOMMENDATION OF MARRIAGE

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### 1. The Qur'an

The Qur'an recommends marriage for all believers who are capable of entering it. Even in poverty, one may not be discouraged from getting married, because God will give the necessary means. Thus says the Qur'an (31) : "And marry such of you as are solitary and the pious of your slaves and maid servants. If they be poor, Allah will enrich them of His bounty. Allah is of ample means, Aware" .

The recommendation of marriage is primarily linked with God's command to multiply. God has created each kind of living beings in couple, as sexual pairs (32). Marriage is considered as a duty to the Lord who created man from a single soul and from it created its mate, and from them twain has spread abroad a multitude of men and women (33). Marriage is recommended because of its intrinsic value : it was created by God, in order that man and woman will participate in His work of creation.

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(31) Q. XXIV, 32.

(32) Q. LI, 49 affirms : "And all things We have created by pairs..."

(33) Q. IV, 1.

To each of living beings God will give a sexual partner. Therefore, those who cannot find a match should keep chaste, till Allah give them a good partner of His grace (34). Also wife, children and grandchildren are all His gift (35).

Besides, marriage will give the spouses happiness and satisfaction, love and mercy (36). The Qur'an very clearly admits, that Moslems may seek contentment and satisfy their sexual need in marriage. Marriage is hence recommended, in order that Moslems do not surrender to the instinctive impulse, trying to satisfy their sexual need unlawfully.

## 2. The Sunnah

Muhammad recommended marriage for all believers. He clearly showed his disapproval to some of his followers willing to embrace celibacy, even when it was for the sake of Islam and its mission (37). He clarified, that marriage did not hinder but would help the mission and the spreading of Islam. He pointed out that great

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(34) Q. XXIV, 33.

(35) Q. XVI, 72.

(36) Q. XXX, 21; LXX, 29-31.

(37) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 164.

prophets before him had embraced married life in spite of their full dedication to God.

Muhammad himself married more than four women and affirmed that he was ordered by God to do so. Once (38) there was a crisis in his family, when some of his wives complained about the economic stringency that they experienced. Only after a long discussion with all of his wives, did he succeed in overcoming the difficulty. This experience of the Prophet, then, encouraged the Moslems to get married even when they could not support their wives and children in their material necessities.

The recommendation of marriage was often linked with one's sexual need. Muhammad recommended marriage as a lawful means to satisfy the sexual need without committing sins of adultery. Otherwise, one should fast to keep oneself chaste, if one cannot marry. Muhammad also recommended marriage for all Moslems, so that his followers would be numerous, more than those of the other prophets (39).

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(38) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 214-221. The Qur'an commands : "O ye wives of the Prophet! ...whosoever of you is submissive unto Allah and His messenger and doeth right, We shall give her reward twice over, and We have prepared for her a rich provision" (XXXIII, 30-31) .

(39) Hadith written by Bukhari, in SJARIEF SUKANDY, op. cit., 357.

### 3. The Islamic Marriage Law in Indonesia

Most Indonesian Moslem scholars interpret the recommendation of the Qur'an and the Sunnah concerning marriage in the following affirmations (40) :

- marriage is generally recommended ;
- marriage is highly recommended for those who are able to perform it and are eager to do so ;
- marriage is absolutely commanded for those who are able to perform it and are afraid of committing sins of adultery ;
- marriage is not recommended for those who cannot afford it financially and psychologically ;
- marriage is not allowed for those who want only to harm his or her partner .

It is obvious from these affirmations, that marriage is generally recommended by Islamic Law in Indonesia.

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(40) As affirmed in : ZAHRY HAMID, op. cit., 3-4 ; AHMAD AZHAR BASYIR, op. cit., 12-14 ; SAJUTI THALIB, op. cit., 49-51 ; ABDULLAH SIDDIK, op. cit., 14-15 ; MAWARDI, op. cit., 3-4 ; MAHMUD YUNUS, op. cit., 2-9 ; KAMAL MUCHTAR, op. cit., 23-25 ; SULAIMAN RASJID, op. cit., 362 ; SIRADJUDIN ABBAS, Kitab Fiqih Ringkas, Jakarta 1978, 120. Usually, they use these terms of law : mubah, sunnat, wajib, makruh, haram.

Holy Scripture : from the beginning God created male and female, wishing to associate them in a special way with his work of creation ; God blessed man and woman, giving them a mission of transmitting life and subdueing the earth (47).

Marriage is recommended for those who are called by God to live it. It is God's gift, endowed with dignity and sublime value. The dignity of this institution becomes resplendent in christian marriage, in which the spouses are fortified and consecrated by a special sacrament (48). Christian marriage is enriched by the redemptive power of Christ and the Church's saving action.

Pope Paul VI confirms the teaching of the Church concerning marriage as a vocation (49). He affirms that the sacrament of matrimony confirms anew and makes more explicit the vocation to christian life, which derives from the baptism. The sacrament of matrimony strengthens and consecrates the christian spouses to the faithful fulfilment of their duties, and to bearing witness to Christ before the world.

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(47) Gaudium et Spes, n. 50 which cites Gen. 1:28 and Mt. 19:4 .

(48) Ibid., n. 48 ; See also the Dogmatic Constitution on the Church Lumen Gentium , n. 11 , in which the role of married people is lauded.

(49) In his encyclical letter Humanae Vitae, n. 25.

In his short Pontificate, Pope John Paul I could already express his concern for the promotion of truly christian family life (50). He said that the christian family is very important and its role is basic in transforming the world and in building up the Kingdom of God. The christian family has great power for the sanctification of the world : the mutual sanctification of husband and wife and the reciprocal influence between parents and children. By the loving witness of their lives, then, they can bring Christ's Gospel to this world.

Later, Pope John Paul II confirms the dignity of marriage as God's calling, coming back to the source of the christian faith. In his discourses at some of his general audiences (51) , he points out that God's calling to married life was already given since the beginning of His work of creation. In his apostolic exhortation Familiaris consortio , then, he writes : " God created man in his own image and likeness : calling him to existence through love, He called him at the same time for love... Christian revelation recognizes two

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(50) In his allocution Ad Archiepiscopos et Episcopos XII Regionis Pastoralis Foederatarum Civitatum Americae Septentrionalis, in AAS 70 (1978) 765-767.

(51) Cfr. Matrimonio e Famiglia, in Collana Magistero 58, esp. 31-39.

specific ways of realizing the vocation of the human person, in its entirety, to love : marriage and virginity or celibacy" (52).

Being willed by God Himself, marriage is thus recommended by the Church for those who are called by God to embrace such a state of life. However, the Church also affirms that her holiness is fostered in a special way by those who devote themselves to God alone with an undivided heart in virginity or celibacy. The Second Vatican Council confirms this teaching and affirms that this perfect continence for love of the Kingdom of God has always been held in high esteem by the Church as a sign and stimulus of love, as a singular source of spiritual fertility in the world (53).

Celibacy is embraced especially by religious people who desire to live the evangelical counsels in a special way. The Council points out two reasons of such a profession (53): first, to be set free from hindrances that could hold oneself back from loving God ardently and worshipping One perfectly, and secondly, to consecrate oneself in a more thoroughgoing way to the service of God. The Council also confirms the priestly celibacy

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(52) n. 11.

(53) In Lumen Gentium , n. 42.

(54) Ibid., n. 44.

and affirms, that there are many ways in which celibacy is in harmony with the priesthood (55).

The values and the dignity of celibacy for the sake of the Kingdom is confirmed by the recent Popes : Paul VI (56) , John Paul I (57) , John Paul II (58). From these affirmations, it may be concluded, that celibacy for the sake of the Kingdom of God is held in high esteem by the Church, recommended for those who are called by God to embrace such a state of life.

The Church's attitude concerning marriage and celibacy for the sake of the Kingdom, finally, can be clearly shown in the following statement of the Second Vatican Council : "In the Church not everyone marches along the same path, yet all are called to sanctity and have obtained an equal privilege of faith through the justice of God" (59).

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- (55) In the Decree on the ministry and life of priests Presbyterorum Ordinis, in AAS 58 (1966) 991-1115.
- (56) In his apostolic exhortation on the Renewal of Religious life Evangelica testificatio , in AAS 63 (1971) 497-526.
- (57) Only implicitly, in his first speech in the Sistine chapel, in AAS 70 (1978) 691-699.
- (58) In his letter for all priests, in AAS 71 (1979) 393-417; and in Familiaris consortio, n. 16.
- (59) Lumen Gentium, n. 32.
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## C. CONCLUSION

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The purposes and the values of marriage as taught by Islam, the Indonesian Law and the Catholic Church are obviously complementary, not contradictory. The diversity is seen only in the emphasis laid down upon certain issues. A dialogue between Islam and the Catholic Church is clearly possible.

The description of marriage given by the Indonesian Marriage Law of 1974, moreover, offers a very good basis for such a dialogue in Indonesia. Its affirmation that marriage is "a relationship of body and soul between a man and a woman as husband and wife with the purpose of establishing a happy and lasting family" accords with what has been taught by Islam and the Catholic Church.

Since the Second Vatican Council, the importance of conjugal love in marriage has been emphasized by the Church. Such an emphasis has never been given by Islam in Indonesia. It is necessary, that in a dialogue with Moslems in Indonesia the Catholics do not fail to offer them such a very positive view of marriage. Indeed, given the easy access to divorce, Indonesian Moslems must put more emphasis on the importance of conjugal love in marriage. Such an emphasis is not contrary to the teaching of the Qur'an and the Sunnah.

Indonesian Moslems generally present the various values and purposes of marriage as if they were separated from each other. Regarding this matter, the explanation given by Paul VI in Humanae Vitae is a great help to have a better understanding about the unity existing among those values, especially the unity between conjugal love and the transmission of life.

Conjugal love, which is the soul of married life, should be human, total, faithful and exclusive until death, and open to new life. The unity between the transmission of life and conjugal love may not remain a theory, but ought to become a living reality, faithfully and consciously practised by married people.

Finally, Islam and the Catholic Church clearly show different attitudes concerning celibacy. However, a dialogue is still possible. The Catholics should let the Moslems understand what the Church means by God's calling or vocation. But, only theoretical understanding is not enough. Those who live celibacy for the sake of the Kingdom themselves should give their loving witness to the others. Only then, indeed, are the values of celibacy plausible. Celibacy in itself has no special meaning. It is meaningful if done for the sake of God's Kingdom, as total self-dedication to Him.

## CHAPTER IV : PREPARATION FOR MARRIAGE

This chapter deals with two questions concerning the preparation for marriage, which can be formulated as follows :

- A. Who can become one's wife/husband?
- B. How shall a marriage be prepared?

This chapter will speak only briefly about the impediments of marriage , which can render a marriage invalid or illicit.

#### A. THE CHOOSING OF A SPOUSE-TO-BE

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##### 1. The Qur'an

The Qur'an considers religion an important element for the creation of a good Moslem family. Therefore, it does not allow any Moslem to marry an idolater or idolatress. It commands : "Wed not idolatresses till they believe ; for lo! a believing bondwoman is better than an idolatress though she please you ; and give not your daughters in marriage to idolaters till they believe , for lo! a believing slave is better than an idolater though he please you. These invite you unto the Fire, and Allah inviteth you unto the Garden , and unto for-

givenness by His grace, and expoundeth thus His revelations to mankind that haply they may remember" (1).

The Qur'an uses the term "idolater / idolatress" instead of "non-Moslem" or the like. With another verse the Qur'an affirms that Moslem men may marry so-called "virtuous women of those who received the Scripture before you" (2). Moslem interpreters generally affirm, that Jews and Christians are meant with "those who received the Scripture" before them.

The Qur'an considers chastity very important for Islamic marriage. It regards adultery as bad as idolatry. Therefore, no Moslem is allowed to marry an adulterer or adulteress. The Qur'an says that a vile woman is only for a vile man, and a good woman is only for a good man. An adulterer shall not marry save an adulteress or an idolatress, and an adulteress shall not marry save an adulterer or an idolater (3).

Besides, the Qur'an gives a list of impediments to marriage caused by certain family relationships (4), which is addressed to Moslem men. It prescribes, that

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(1) Cited from Q. II, 221.

(2) Q. V, 5.

(3) Q. XXIV, 3. 26.

(4) Q. IV, 23. Besides, the Qur'an gives another list of impediments to marriage in Q. IV, 22.24.

a Moslem may not marry : his mother or his daughter, his aunt or his niece, his mother-in-law or his daughter-in-law, his foster-mother or foster-sister (5) ; his step-daughter who is under his protection and born of his wife, if his marriage with the latter is already consummated (6). It is also forbidden to marry the wife of one's father (7) , a married woman (8) , or two sisters (9). From any of these impediments, the Qur'an admits no dispensation.

## 2. The Sunnah

Muhammad recommended Moslems to marry women who were believing, women who had already embraced Islam. He considered religion more important than any other factor. He said that a woman should be married primarily because of her religion, and only afterwards because of her other properties like wealth , beauty or social status (10).

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(5) Q. IV, 23.

(6) Idem.

(7) Q. IV, 22.

(8) Q. IV, 24. Polyandry is thus forbidden.

(9) Q. IV, 23.

(10) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 203.

Muhammad mentioned three positive characteristics of woman, namely : fertility, chastity and love. Thus he recommended his followers to marry women who could give many children, be chaste and lovable (11). He confirmed the Qur'anic prescription, forbidding any marriage with an adulterer or adulteress (12).

Muhammad also confirmed the Qur'anic prescription concerning the impediments to marriage, and added two more impediments : it is forbidden to marry at any one time two women who are aunt and niece (13) ; it is also forbidden to marry at any one time more than four women (14). From the latter impediment, Moslem scholars conclude that Muhammad gave his authoritative interpretation on the Qur'anic prescription concerning polygyny (15).

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(11) Hadith written by Ahmad, in SJARIEF SUKANDY ,  
op. cit., 357.

(12) Hadith written by Ahmad and Abu Daud, ibid., 368.

(13) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., vol. II, 169.

(14) Hadith written by Ahmad, in SJARIEF SUKANDY ,  
op. cit., 371.

(15) Q. IV,3 affirms : "And if ye fear that ye will not deal fairly by the orphans, marry of the women who seem good to you, two or three or four" . It is not clear from itself, whether it is a recommendation or a restriction.

### 3. The Islamic Marriage Law in Indonesia

The Indonesian Moslem scholars always confirm the prescription of the Qur'an and the Sunnah concerning the characteristics of good women to marry and concerning the impediments to marriage. They also add some new elements drawn from the principles given by the Schools of Law, especially that of Shafi'i .

Most scholars recommend Moslems to marry women who are Moslem, virtuous, honest, obedient, not childless , and preferably still virgin (16). Some of them assert, that love is important for future marriage, but some others reject such an opinion, arguing that love will emerge and develop after the wedding, as long as the choosing of partner is done according to God's will. One should pray that God will show him and give him a good partner (17).

To know the will of God concerning the future husband and wife, one should also turn to the elders for help. The latter should interpret the will of God as shown in the so-called "external match" between the

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(16) Cfr. SULAIMAN RASJID, op. cit., 359-360 ; MAHMUD YUNUS, op. cit., 74-81 ; KAMAL MUCHTAR, op. cit., 68-73 ; and MAWARDI, op. cit., 17-19.

(17) It is affirmed, for example, in AHMAD AZHAR BASYIR, op. cit., 16.

future spouses. A Moslem, for example, is a match of an other Moslem. An honest man is a match of an honest girl or woman. A slave is a match of another slave. Although religion is the most important norm for such matching, the elders usually also consider some more external factors such as wealth, beauty, and social status (18).

As regards the impediments to marriage, then, the scholars try to give some precision and completion. They explain that the impediments concerning family relationships are imposed, because Islam respects and intends to foster good relationship between relatives. They recommend the believers to create more relatives through marriage. Marriage between relatives is to be prevented, because a failure of such a marriage will create enmity among relatives (19).

The Islamic Law in Indonesia has extended the impediments to marriage prescribed by the Qur'an and the Sunnah. It prescribes that no marriage shall be allowed between two persons who :

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- (18) Cfr. MAHMUD YUNUS, op. cit., 74-81 ; ZAHRY HAMID, op. cit., 19-22 ; TAMAR DJAJA, Tanya-jawab Perkawinan, Jakarta 1980, 108-110 ; ALI AKBAR and YUSUF ABDULLAH PUAR, Bimbingan Sex untuk Remaja, Jakarta 1980, 38-47 .
- (19) Cfr. UMAR HUBEIS, Fatawa, vol. II, Surabaya 1978, 124-126 ; HADIYAH SALIM, Memilih jodoh, Bandung 1980.
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- a. have either an ascending or descending line of blood relationship (20) ;
- b. have a lateral line of blood relationship (21) ;
- c. have a relationship by marriage : step child (22) or step mother or step father, parent-in-law or son-in-law or daughter-in-law ;
- d. have a foster relationship (23) ;

Besides, the Law confirms the Qur'anic prescription that a Moslem may not marry two women who are sisters (24) and the prescription of Muhammad that a Moslem may not marry two women who are aunt and niece (25). Indonesian Moslem scholars, finally, give some precision on these impediments :

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(20) this is to be applied to all degrees.

(21) There is no consensus about the extension of this impediment. Most scholars apply it only to the following relationships : between brothers and sisters and between first cousins. Some scholars, however, apply it to all degrees of such a lateral line of blood relationship.

(22) but only if that marriage is consummated.

(23) Most scholars apply it only to foster-parent or foster-child.

(24) q. IV, 23 ; Cfr. page 74 of this work.

(25) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, *op. cit.*, vol. II, 169.

- a. a Moslem woman may not marry a non-Moslem ; a Moslem man may marry a non-Moslem woman of Jewish or Christian religion ;
- b. a Moslem may not marry an adulterer or adulteress , except after an evident repentance of the latter ;
- c. a Moslem may not marry his/her sister/brother-in-law except after a permanent dissolution of the marriage which affected such a relationship (26) ;
- d. a Moslem woman may not marry a man who already has four wives ;
- e. a Moslem may not marry a married woman ;
- f. a Moslem may not marry his/her ex-wife/ex-husband after the third divorce between them (27).

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 prescribes, that no marriage shall be allowed between two persons who "have such relationship as being prohibitive for marriage by any religion or other regulations in force" (28). Besides, it prescribes some impediments independ-

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(26) For Islam, a divorce makes void all relationships by marriage and the marital bond itself.

(27) See Chapter VIII of this work concerning divorce.

(28) The Indonesian Marriage Law of 1974, Ch. II, a.8.

ently from the prescription of any religion. It states, that "no marriage shall be allowed between two persons who :

- a. have either ascending or descending line of blood relationship ;
- b. have a lateral line of blood relationship, i. e : between brothers and sisters, between a person and a brother or sister of either parent and between a person and a brother or sister of any grandparent ;
- c. have a relationship by marriage, i.e. parent-in-law, step child, daughter or son-in-law and step-mother or step father ;
- d. have a foster relationship, i. e. foster-parent , foster-child, foster-sister or foster-brother, and foster-aunt or foster-uncle ;
- e. have a sibling relationship with a wife or as an aunt or niece of a wife, if a husband has more than one wife" (29).

Finally, the Law prescribes that marriage shall be permitted only if the male aspirant has reached the age of 19 years, and the female aspirant has reached the age of 16 years. The Law holds that both aspirant spouses must be mentally and physically mature enough, so that

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(29) Cited from The Indonesian Marriage Law of 1974, Ch. II, a. 8.

they will successfully perform their marriage in a lasting form, without ending in a divorce (30). Besides, this age limit is said to ensure the health of offspring (31). The Indonesian government intends to improve the existing situation in that country, which has witnessed frequent marriage among children.

##### 5. The present Catholic teaching

As regards the choosing of a person to become a future husband or wife, the Catholic Church constantly recommends marriage between Catholics, because she is "most desirous that Catholics be able in matrimony to attain to perfect union of mind and full communion of life" (32). The Church discourages any mixed marriage, especially between a Catholic and a non-baptized person, although she makes such arrangements that the natural right of every man to marry and beget children be always respected. Religion should seriously be taken into consideration by all Catholic young people who intend to get married.

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- (30) The Indonesian Marriage Law of 1974, general clarification, 4.
- (31) Ibid., Ch. II, a. 7.
- (32) Cited from PAUL VI, Litterae apostolicae motu proprio datae Matrimonia mixta, in AAS 62 (1970) 258. Hereafter cited as Matrimonia mixta.

Moreover, chastity and love are considered important for the preparation for marriage. The Second Vatican Council affirms that young people must learn to reverence chastity, so that having practised it before marriage itself, they will be able to live that virtue of chastity in their married life (33). Marriage is a community of love and life. Consequently, love should be fostered since their engagement, so that both aspirant spouses can start their family life upon a sound basis.

As regards the impediments to marriage, the Canon Law makes a distinction between those impediments which could render a marriage illicit and those which could render a marriage invalid (34). The former are called "impeding impediments" and include : simple vows (35); mixed religion (36) ; and relationship through adoption if according to the law of state it renders marriage illicit (37). The latter are called "annulling or diriment impediments" and include : want of age ; im-

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(33) In Gaudium et Spes, n. 49.

(34) The Second Scheme of the proposed new Code of the Canon Law only prescribes diriment impediments.

(35) CIC., c. 1058.

(36) PAUL VI, Matrimonia mixta; Cfr. BERNARD A.SIEGLE, Marriage today. A Commentary on the Code of Canon Law , New York 1979, 91-100.

(37) CIC., c. 1059.

potency ; disparity of cult ; existing bond of previous marriage ; sacred orders ; solemn religious vows ; consanguinity ; affinity ; abduction ; crime ; public propriety ; spiritual relationship ; legal relationship through adoption, if according to the law of state it invalidates marriage (38).

The Church teaches, moreover, that the Supreme Authority of the Church has the sole right to declare in what instances the divine law forbids or invalidates marriage, and to establish impeding or annulling impediments for baptized persons (39). Only the Roman Pontiff can abrogate or derogate impediments of ecclesiastical law whether they be impeding or annulling (40) , or dispense from the same. However, the Church can also grant this power to other authorities, either by the common law or by special indult from the Holy See (41). No human authority, not even the Church, can abrogate or dispense from any divine law (42).

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(38) CIC., cc. 1067-1080 ; PAUL VI, Matrimonia mixta ; Cfr. BERNARD A. SIEGLE, op. cit., 101-145.

(39) CIC., c. 1038.

(40) Pope Pius XII, for example, abrogated the c.1099,2 in 1949 with a Motu Proprio issued in 1-8-1948 , in AAS 40 (1948) 305-306.

(41) Pope Paul VI granted special faculties and privileges with Motu Proprio Pastorale Munus issued on 30-11-1963, in AAS 56 (1964) 5-12.

(42) or natural law, prescribed by God Himself.

As regards marriage between a Catholic and a non-Catholic, Paul VI confirms the traditional teaching of the Church that "Neither in doctrine nor in law does the Church place on the same level a marriage between a Catholic and a baptized non-Catholic, and one between a Catholic and an unbaptized person" (43). Marriage between a Catholic and a baptized non-Catholic is a sacrament, and thus enjoys a certain communion of spiritual benefits. When both parents belong to the same confession, the universal Church of Christ is somehow realised in that basic community. However, there exist many difficulties inherent in such a marriage.

There exists an even greater anomaly in a marriage between a Catholic and a non-baptized person. Firstly, there exists a basic diversity in religious belief which touches the depths of the personality. Secondly, there is the problem of the children's religious education. Finally, the diversity of religion very often implies a great difference of opinion regarding the essential (44) qualities of marriage.

Because of these serious difficulties, mixed marriage is constantly discouraged by the Church!

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(43) In Matrimonia mixta, in AAS 62 (1970) 258; this apostolic letter crystallizes the post-conciliar stand of the Church concerning the question of mixed marriage.

(44) especially concerning its indissolubility and its unity.

## B. PREPARATION FOR MARRIAGE

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### 1. The Qur'an

The Qur'an speaks very little about preparation for marriage. One can only conclude its prescription on this matter from its prescriptions concerning marriage in general, especially concerning the conditions necessary for the validity of marriage. From the Qur'anic prescriptions, for example, it is not clear whether an intervention of a qualified person such as a priest or a jurist is necessary.

The first step towards marriage is the choosing of the future partner. It implies, first of all, an investigation of an eventual impediment. This is very important, because no marriage can be valid if there exist any impediment. The Qur'an does not prescribe any possibility of dispensing any Moslem from such an impediment. A Moslem should choose a person to become his or her future spouse, with whom he or she can get married validly (45).

The second step is to propose to the chosen partner. A proposal must be offered wisely and patiently. The Qur'an affirms: "There is no sin for you in that

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(45) Q. IV, 22-24 lists different impediments to marriage. See part A of this chapter.



which ye proclaim or hide in your minds concerning your troth with women. Allah knoweth that ye will remember them. But plight not your troth with women except by uttering a recognised form of words... Know that Allah knoweth what is in your minds, so beware of Him" (46).

The last step is to prepare the wedding itself, which can include : the investigation of an eventual impediment, more accurately than before ; an attempt to reach a consensus concerning the form and the sum of the dowry ; preparation of the wedding feast ; and to get the permission to marry from the parents, especially of the bride (47).

## 2. The Sunnah

Muhammad emphasized the importance of personal contact between the aspirant spouses. He allowed them to get to know each other, so that they could found a happy family. He ordered a young man to get to know his future wife, and to verify if she had the necessary qualities of a good woman (48). However, he strongly

(46) Q. II, 235. It is to be noted, however, that this verse speaks about widows who have not yet finished their waiting period.

(47) Cfr. Q. II, 222 ; XXIV, 32.

(48) Hadith written by Ahmad and Abu Daud, in SJARIEF SUKANDY, op. cit., 358.

forbade the aspirant spouses to remain alone, far from the presence of other persons, so that they should not be tempted to do that "which is reserved for married persons only" (49). Premarital intercourse was never allowed.

Knowing that the desired woman possesses the necessary qualities of a good spouse, and that there is no impediment to marrying her, one may make a proposal to her family. Such a proposal was forbidden, if the woman had already been proposed to by another man (50). Muhammad prescribed that a woman could validly marry, if her parents or guardian had given their permission to it (51).

### 3. The Islamic Marriage Law in Indonesia

The Indonesian Moslem scholars emphasize the importance of a good preparation for marriage. But they impose limitations on the relationship between two aspirant spouses, admonishing them not to remain alone, criticizing the modern tendency towards "decadence" as seen in some major cities of Indonesia (52).

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(49) Hadith written by Ahmad, in MAHMUD YUNUS, op.cit., 14.

(50) to hinder any enmity among the believers.

(51) without which there should be no valid marriage.

(52) Cfr. TAMAR DJAJA, op. cit., 243-249.

The first step towards marriage is to learn to get to know one another. Aspirant spouses are recommended to learn to know each other, observing the physical and mental characteristics of one another. The scholars also recommend that such an observation shall be done before the proposal (53).

The second step is to observe, if the aspirant husband is really a match for the aspirant wife. There have been different opinions about the norms of such a match. However, most authors agree that religion and moral conduct should be the main norms. In principle, a Moslem may marry only another Moslem.

The third step is to choose just one woman or man and to fix oneself on that choice. A young man is often attracted by several girls. After a period of time, he must choose just one of them. Moslem scholars list the following aspects, considered necessary in taking a decision : religion, moral conduct, honesty, obedience, beauty, educational background, and social status (54).

Finally, having chosen just one girl or a woman, a Moslem man shall offer a proposal to her parents or guardian. It is the last important step before the wedding itself. The Islamic Law in Indonesia confirms the

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(53) Cfr. ZAHRY HAMID, *op. cit.*, 17-18.

(54) For example, in : AHMAD AZHAR BASYIR, *op. cit.*, 15-16 ; HADIYAH SALIM, *op. cit.*, 10-12. 23-27.

prescription of the Sunnah, that a Moslem shall offer a proposal only to a woman who is marriageable for him and who has not yet been proposed to by another man. →

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law speaks very little about the preparation for marriage. It prescribes (55) that whosoever intends to perform a marriage shall notify such intention to the Registrar in the district where the marriage is to be performed. The notification shall be carried out not later than ten working days prior to the performance of the marriage.

The Registrar who has received the notification of such intention to marry shall conduct an inquiry if the marriage prerequisites have been fulfilled and whether there are any legal obstructions to the marriage (56). The findings of the inquiry shall be recorded in a register maintained for such a purpose (57).

In the event the findings of the inquiry reveal that there are marriage obstructions, these facts shall be brought to the attention of the parties concerned. If

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(55) In The Government Regulation of 1975..., Ch. II, a. 3.

(56) Ibid., Ch. II, a. 6.

(57) Ibid., Ch. II, a. 7.

there are no marriage obstructions, the Registrar shall make public the notification of the intent to marry by means of affixing a publication document at a predetermined location for easy access by the public (58).

The Law affirms that "a marriage may be prevented in the case of any party not meeting the prerequisites for the performance of the marriage" or "if consequently the marriage would result in misery for the other aspirant" (59).

##### 5. The present Catholic teaching

The Second Vatican Council says that young people need suitable and timely instruction in important matters concerning marriage (60). It emphasizes the importance of education as a remote preparation towards a responsible married life, affirming that "children should be so instructed that when they grow up they will be capable of responsibly following a calling, even a sacred one, and of choosing a state of life. If they choose marriage, then they should be fit to found their own family in favourable moral, social, and economic circumstance" (61).

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(58) The Government Regulation of 1975..., Ch. II, a.8.

(59) The Indonesian Marriage Law of 1974, Ch.III, a.13.

(60) In Gaudium et Spes, n. 49.

(61) Ibid., n. 52.

This recommendation was again underlined by the 1980 Synod of Bishops. In their message to christian families, the Bishops affirmed that "formation in faith, chastity, and other christian virtues, as well as education in human sexuality, must start in the home" (62). The Bishops also emphasized, that the family ministry of the Church should always include preparation for marriage (63). The same emphasis is given by Pope John Paul II in his apostolic exhortation Familiaris consortio. He writes : "More than ever necessary in our times is preparation of young people for marriage and family life... This is even more applicable to Christian marriage, which influences the holiness of large numbers of men and women. The Church must therefore promote better and more intensive programmes of marriage preparation... in order to favour positively the establishing and maturing of successful marriage" (64).

In practice, a marriage of Catholics is preceded by the following preparatory steps : the engagement ; instruction of the pastor ; investigation of its valid and licit celebration ; proof of baptism of the parties concerned ; publication ; and dispensation for any impediment, when existing (65).

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(62) Message to christian families in the world, n. 14.

(63) Ibid., n. 17.

(64) Familiaris consortio, n. 66.

(65) CIC., cc. 1018-1033.

### C. CONCLUSION

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It is obvious, that preparation for marriage is considered very important by Islam and the Church as well. It is also obvious, that both the investigation of impediments and the personal approach of aspirant spouses are emphasized, because the failure or the success of marriage depends much upon these two important steps.

Among the necessary qualities of an aspirant husband or wife, religion is considered very important by Islam and the Church. For Islam, it is so important that a Moslem woman can never validly marry anyone save a Moslem man. In the Catholic Church, a baptized person can never validly marry a non baptized one, unless a dispensation is given under just reasons.

As regards the impediments to marriage, three points can be noted : firstly, that the Catholic Church prescribes more impediments than Islam ; secondly, that the Church makes a distinction between impeding impediments and annulling impediments ; thirdly, that the Church grants dispensation for some impediments, while Islam does not. A marriage between a Moslem woman and a Catholic man, for example, can never be valid for the Islamic Law, even if the Catholic Church has given a dispensation !

A marriage between a Moslem and a Catholic, if it can not be hindered, should be prepared for seriously, because the chances of such a marriage succeeding have proved to be less than a sacramental marriage. A long time of engagement may be recommended, because there is a real need for an in-depth reflection on all the issues involved.

Unfortunately, such a marriage can not always be avoided without denying the natural right to marry, granted to man by God Himself. In Indonesia, in fact, it is not easy for the Catholic to find a Catholic partner who is suitable on other counts. It does not help to condemn such marriage outright, or to have an entirely negative attitude towards them. In spite of many counter indications, there is still need to respect the freedom to choose one's own partner, and at the same time to help the couple to make their marriage a success.

The Church in Indonesia should help the Catholic youth who wish to get married to Moslems to see the very serious implications of the step they are taking. They must deepen their own faith during that preparation, and the final decision of marrying a Moslem partner should be done only with the utmost care. The time for consideration should be sufficiently long.



## CHAPTER V : THE WEDDING CEREMONY

This chapter deals with the ceremony of marriage in two parts, namely :

- A. Essential elements of the ceremony which are necessary for the validity of marriage ;
- B. Non-essential elements of the ceremony which are not necessary for the validity of marriage.

## A. ESSENTIAL ELEMENTS OF THE CEREMONY

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1. The Qur'an

The Qur'an speaks very little about the ceremony of marriage. It is probable that the form of wedding ceremony was changing from time to time in the first period of Islam. However, we can still find some traces in the verses of the Qur'an which speak about some essential elements of the wedding ceremony, which are necessary for the validity of marriage.

In its recommendation of marriage, the Qur'an shows that it is the man who has the right to decide upon marriage : he may marry two, three or four women; he may give his daughters in marriage ; he may propose marriage to a woman and exchange one wife for another ;

he may divorce his wife (1). As regards the consent of woman, the Qur'an only speaks about that of a widow whose husband has died and that of female slaves. The Qur'an says that a Moslem may not forcibly inherit the wife of his deceased kinsman (2). The Qur'an also says that a Moslem may marry a slave woman who is a believer but he must ask for the permission of her folks (3):

From these prescriptions, one can only conclude that an Islamic marriage ceremony implies the consent of the bridegroom and of the bride's party. The permission of the bride's folks are necessary, if she is a slave woman. The consent of the bride herself is also necessary, if she is a widow and her husband has died.

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(1) Cfr. II, 221. 235 ; IV, 20 ; LXV, 1-7 ; XXIV, 4-9.

(2) Q. IV, 19 affirms : " O ye who believe! It is not lawful for you forcibly to inherit the women ( of your deceased kinsmen ) ..."

(3) Q. IV, 25 says : " And whoso is not able to afford to marry free, believing women, let them marry from the believing maids whom your right hands possess. Allah knoweth best (concerning) your faith. Ye (proceed) one from another ; so wed them by permission of their folks, and give unto them their portions in kindness, they being honest, not debauched nor of loose conduct... This is for him among you who feareth to commit sin ".  
The Qur'an does not speak about the consent of free women and that of virgins.

## 2. The Sunnah

Muhammad taught that there should be no valid marriage without the consent of the bride's guardian (4) and the presence of two witnesses (5). He also prescribed that no woman may give herself or another woman in marriage (6). It means that only a male person can be a bride's guardian, who has the right to give her in marriage. His consent is necessary for the validity of marriage.

However, Muhammad added that the consent of the bride herself is necessary for the validity of marriage. He said that a marriage should be performed with the approval or permission of the bride : if she is a widow, an explicit agreement is needed ; if she is a virgin, her silence could be interpreted as her approval (7).

As regards the witnesses, Muhammad said that the presence of two witnesses who are just is necessary for the validity of marriage (8). He forbade clandest-

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- (4) Hadith written by Abu Daud, Ibnu Majah and Tirmidzi, in SJARIEF SUKANDY, op. cit., 362.
  - (5) Hadith written by Ahmad, in HASSAN, op. cit., 489.
  - (6) Hadith written by Ibnu Majah and Daruqutny, in SJARIEF SUKANDY, op. cit., 363.
  - (7) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 171.
  - (8) Hadith written by Ahmad, in MAHMUD YUNUS, op. cit., 18.

tine marriage, saying that marriage is to be made known to others (9). The witnesses should be just (10) , but it is not clear whether they should be Moslem and male persons. Some interpreters say (11) that the witnesses should be male and Moslem. But some others (12), following analogy with the Qur'anic prescription about witnesses for financial contract (13), affirm that a man and two women of whatever religion may be called to witness "if two men be not at hand" (14).

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(9) Hadith written by Ahmad, in SJARIEF SUKANDY, op. cit., 362.

(10) Hadith written by Ahmad, in MAHMUD YUNUS, op. cit., 18. The School of Hanafi has doubted the authenticity of this hadith, and therefore admits that also unjust persons can become witnesses.

(11) Especially the scholars who follow the teaching of Shafi'i and Hanbali.

(12) Especially the scholars who follow the teaching of Hanafi. They say that the Qur'an admits two male persons or a man and two women as witnesses of a financial contract, and therefore analogically also for a wedding.

(13) Q. II, 282 orders : " O ye who believe! When ye contract a debt for a fixed term, record it in writing... And call to witness, from among you men, two witnesses. And if two men be not ( at hand) then a man and two women, of such as ye approve as witnesses ..."

(14) *Idem.*

### 3. The Islamic Marriage Law in Indonesia

The Indonesian Moslem scholars confirm the prescriptions of the Qur'an and the Sunnah about the ceremony of marriage. The majority of them follow the interpretation of Shafi'i regarding the importance of the consent of the bride's guardian and the necessary characteristics of two witnesses.

The consent of the bridegroom and the bride's guardian is considered necessary for the validity of marriage, and therefore should be pronounced explicitly at the wedding (14). The bride's guardian shall express his consent, saying to the bridegroom : " I give my daughter in marriage with you". And then the bridegroom will respond : " I accept your offer to marry her". The Indonesian scholars prescribe, that the consent of both parties should form a united-action, and not two separate actions confused by other things (15).

The approval of the bride is not pronounced by herself at the wedding ceremony, but is considered necessary for the validity of marriage. No marriage shall be performed without the bride's approval. Confirming

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(14) In principle the consent is to be orally pronounced using a formula prescribed by the Law. If it is not possible, it may be expressed by writing the formula or by gesture which indicates the consent.

(15) for example by a homily or a speech.

the teaching of Muhammad, the scholars say that the silence of the bride may be interpreted as her approval or permission. If she refuses, therefore, she has to express it explicitly (16).

In principle, the bridegroom and the bride's guardian themselves should be present and pronounce the consent at the wedding ceremony. Only in some circumstances, therefore, may they appoint a proxy (17). The Law does not prescribe the presence of the bride. Her presence is not necessary for the validity of marriage.

As regards the witnesses, the Indonesian scholars prescribe that marriage should be performed in the presence of at least two witnesses who are adult, free, Moslem and just (18). Besides, most scholars affirm that they should be male persons. Only a few reject such an interpretation and say, following Hanafi, that a man and two women can also validly witness a marriage (19).

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(16) Some authors affirm that an explicit approval of the bride should now be required. Sajuti Thalib, for example, writes: "Nowadays, silence of a woman does not express an approval. Therefore, we should require her explicit approval, at least by a written document or by gesture" (op. cit., 71).

(17) A man usually appoints a proxy, if he has already a wife and some children of his previous marriage.

(18) Cfr. AHMAD AZHAR BASYIR, op. cit., 42-43.

(19) Cfr. MAHMUD YUNUS, op. cit., 17-21.

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 recognizes the validity of marriage performed according to the laws of the respective religions or beliefs of the parties concerned, as long as it is then registered according to the regulations of the legislation in force (20). In fact, all marriages in Indonesia shall be performed in the presence of a Registrar, as it is stated in the Indonesian Marriage Law of 1974 and the regulations issued afterwards for the implementation of that Law (21). Without the presence of a Registrar appointed by the government, a marriage is illegal for the Indonesian government, although it is valid for the respective religion (22).

Registration of marriage for those whose marriage is performed according to the Islamic religion shall be carried out by the Registrar appointed by Islamic religious officials (23). Registration of marriage for those whose marriage is performed according to the Catholic religion is normally carried out by the priest

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(20) The Indonesian Marriage Law of 1974, Ch. I, a. 2.

(21) In The Government Regulation of 1975 concerning Implementation of the Indonesian Marriage Law of 1974. Hereafter cited as Government Regulation of 1975...

(22) Cfr. SAIDUS SYAHAR, op. cit., 26-35.

(23) These officials are not always priests.

who is authorized by the Church and by the government as well. Thus the priest functions as a Registrar of the government. The regulation prescribes, that immediately after the performance of the wedding ceremony, the bridegroom and the bride (24) shall sign the marriage certificate, prepared by the Registrar (25). The certificate shall be further signed by both witnesses and the Registrar present during the ceremony.

The Indonesian Law also prescribes that marriage shall be performed in the presence of at least two witnesses. They must be present physically and morally (simultaneously) with the Registrar and capable of giving testimony that a marriage was performed (26). Immediately following the performance of the marriage ceremony, they must sign the marriage certificate. But the Law does not describe any other characteristics for the witnesses. The respective religions or beliefs of the spouses have the right to regulate it.

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(24) For Moslems : the bridegroom and the bride's guardian.

(25) In The Government Regulation of 1975..., Ch.III, a. 11.

(26) The Government Regulation of 1975..., Ch.III, a.10 prescribes : "While observing the marriage ceremony according to the laws of the respective religion and faith, the marriage shall be performed before the Registrar and in the presence of two witnesses".



The consent of the bridegroom and the bride themselves is considered necessary for the validity of marriage. A marriage shall be founded upon an agreement between both spouses (27). It means that marriage which is performed only with the consent of the bridegroom and the bride's guardian shall be invalid, if the bride herself does not give her approval or permission.

Finally, the Law prescribes that a person who has not yet attained the age of 21 years shall obtain the permission of both parents or guardian, in order to enter a matrimony (28). If the parents show difference of opinion, the Court of Law can grant permission after having heard both parents.

#### 5. The present Catholic teaching

The Catholic Church prescribes certain conditions for the validity of marriage, saying that the essential part of the wedding ceremony is the consent of both spouses, without which there shall be no valid marriage (29). The Second Vatican Council states that marriage

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(27) The Indonesian Marriage Law of 1974, Ch. II, a. 6.

(28) *Idem.*

(29) CIC., c. 1081 prescribes : "Matrimony is effected by the consent of the parties legitimately expressed between persons capable according to law ; which consent no human power can supply".

is based on "an irrevocable personal consent" (30). It confirms the prescription of the Canon Law, which says that matrimony is effected by the mutual consent of two persons capable of it (31).

The presence of two witnesses and a priest is normally necessary for the validity of Catholic marriage. Since the Council of Trent (32), in fact, the Catholic Church has ordered that marriage of a Catholic shall be performed before a pastor or the Ordinary of the place, or a priest delegated by either of these. Only in places where a priest is lacking, a deacon or layman commissioned by the Ordinary may assist at and bless the marriage in the name of the Church (33). In danger of death, marriage is valid and licit when celebrated before the witnesses alone; and even outside the danger of death, marriage is valid and licit when celebrated before the witnesses alone, provided it be

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(30) In Gaudium et Spes, n. 48.

(31) CIC., c. 1081 already cited on page 102, footnote n. (29).

(32) In its decree Tametsi issued on 11-11-1563, in JOSEPHO ALBERIGO et al., Conciliorum Oecumenicorum Decreta, 3rd ed., Bologna 1973, 756; before the Council of Trent, it was possible to perform marriage by means of a letter.

(33) S.C. pro Disc.Sacr., 15-5-1974, Prot.N.23/73 A-g II; S.C. pro Cultu Divino; and PAUL VI, Sacrum diaconatus Ordinem, n.22, in AAS 59 (1967) 697-704.

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prudently foreseen that it is difficult to approach a priest or a deacon for a month (34).

Normally marriage shall be performed in the presence of both spouses themselves. However, the Church allows marriage by proxy, if there is a just cause and there is no doubt regarding the authenticity of the mandate ; and if there is time, the pastor shall have the permission of the Ordinary (35). Moreover, the mandate must be signed by the principal and by a priest or by at least two witnesses (36).

As regards the consent, the Church prescribes (37) that the parties must express their matrimonial consent in words. They may not use equivalent signs, if they are able to speak. It is not admissible, for example, to perform marriage by means of a letter, in which one of the spouses expressing his or her consent (38).

Special prescription is given by the Church concerning the marriage ceremony between a Catholic and a non-Catholic, baptized or not (39). Normally such a

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(34) CIC., c. 1098 and Sacrum diaconatus Ordinem, n.22.

(35) CIC., cc. 1088 and 1091.

(36) CIC., c. 1089.

(37) CIC., c. 1088.

(38) It was still possible before the Council of Trent.

(39) CIC., c. 1102 ; PAUL VI, Matrimonia mixta ; SECOND VATICAN COUNCIL, Decree on the Eastern Catholic Churches Orientalium Ecclesiarum, n. 18, in AAS 57 (1965) 82.

marriage shall be performed in the canonical form indicated above, which means : in the presence of the spouses, two witnesses, and a priest or deacon who assists at that marriage ceremony in the name of the Church (40). However, local Ordinaries may dispense from that canonical form in any mixed marriage, if serious difficulties stand in the way of observing it (41). Prior to 1966 there were penalties incurred by Catholics who married "outside the Church" and before a Protestant minister. But Pope Paul VI lifted retroactively and abolished all such penalties (42).

The Second Vatican Council (43) permitted Eastern Catholics to marry validly in the Orthodox Church without a dispensation from canonical form, although propriety still required permission from the Catholic Ordinary. This was later extended to Latin Catholics (44).

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(40) PAUL VI, Matrimonia mixta ; Cfr. CIC., cc. 1081, 1088. 1094-1099. 1102.

(41) PAUL VI, Matrimonia mixta.

(42) Idem ; Cfr. CIC., c. 2319.

(43) In its Decree on the Eastern Churches Orientalium Ecclesiarum, n. 18, in AAS 57 (1965) 82.

(44) SACRED CONGREGATION FOR THE ORIENTAL CHURCH, Decree on mixed marriages between Latin Catholics and the Orthodox Crescens matrimoniorum, issued on 22-2-1967, in AAS 59 (1967) 165-166.

## B. NON-ESSENTIAL ELEMENTS OF THE CEREMONY

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### 1. The Qur'an

The Qur'an speaks a lot about an important element of marriage ceremony, although it is not essential for the validity of marriage itself, namely the promise of the bridegroom to give some dowry to his bride. The Qur'an prescribes that husbands shall give a dowry to the wives (45), during or after the wedding ceremony. After the consummation of marriage, the wife has the right to the whole dowry for herself. Any one else may accept some of it only when it is given by her as a free gift (46).

However, the marriage remains valid although the bridegroom does not explicitly promise to give the dowry to his bride at the wedding ceremony. The Qur'an admits Moslems to divorce their wives without giving them any dowry, provided that the marriage is not yet consummated and the sum of the dowry is not yet

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(45) Q. IV, 4 affirms : " And give unto the women , (whom ye marry) free gift of their marriage portions ... " ; this prescription shall be applied in marriage with slave women (Q. IV,25).

(46) Q. IV, 4 continues : " But if they of their own accord remit unto you a part thereof, then ye are welcome to absorb it (in your wealth) " .

appointed (47). If the sum of the dowry was already appointed, then, the husband shall give the half of it to the wife before he divorces her (48).

## 2. The Sunnah

Concerning the sum of the dowry, Muhammad said that there should be no exact maximum and minimum amount of dowry which Moslems had to give as a duty to their wives. He affirmed that a dowry might be even a pair of sandals or just teaching the Qur'anic verses to one's wife (49). Muhammad himself gave freedom from slavery as the dowry for his wife Shafiah, and gave 500 dirham for his wife Aisyah (50).

Moslem women were recommended not to ask for any great amount of dowry, because it would become a burden for their husbands. Muhammad said that women who asked for only a small dowry would bring abundant blessing

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- (47) Q. II, 236 ; However, they are recommended to provide for their divorced wives a fair provision.
- (48) Q. II, 237 orders : "If ye divorce them before ye have touched them and ye have appointed them a portion, then (pay the) half of it which ye appointed ..."
- (49) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 174-179.
- (50) Idem.

for their husbands (51). Muhammad also confirmed the qur'anic prescription that consummation of marriage gives the wife a right to the whole dowry (52). He said that after the consummation a woman has the right to the whole dowry even when her marriage is to be dissolved for being invalid (53).

Besides, Muhammad prescribed another important element of the Islamic wedding ceremony. He commanded all Moslems to have a feast to celebrate their wedding ceremony (54). Muhammad himself celebrated his weddings with feasts. When he married Shafiah, for example, he asked his companions to bring the food (55). But he slaughtered a goat when he married Zainab (56). Even when the wedding ceremony was performed on a journey, a feast should be held, however simple it might be (57).

On the other hand, Muhammad ordered all Moslems to attend a wedding feast when they were invited. (58).

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(51) Hadith written by Ahmad, Hakim and Baihaqi, in AHMAD AZHAR BASYIR, op. cit., 49.

(52) Hadith written by Abu Daud, in SAYYID SABIQ., op. cit., vol. VI, 237-238 ; Cfr. Q. IV, 20-24.

(53) Hadith written by Abu Daud, ibid., vol. VI, 237.

(54) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 183.

(55) Hadith written by Muslim, ibid., 178-179.

(56) Hadith written by Muslim, ibid., 182-183.

(57) Hadith written by Muslim, ibid., 176-177.

(58) Hadith written by Muslim, ibid., 183.

such a command was applied to other kinds of feast held by Moslems (59). Criticizing the fact that some people had only invited the rich to attend their feasts, Muhammad commanded Moslems to invite the poor people too (60). Even during the fasting time, a Moslem was allowed to attend a wedding feast and to eat and drink on that occasion (61).

### 3. The Islamic Marriage Law in Indonesia

The Indonesian Moslem scholars agree that marriage is valid also if the bridegroom does not promise to give a dowry during the wedding ceremony itself. But they affirm that the wife has the right to a dowry, which in any case should be given by the husband after the wedding ceremony (62). It is recommended to promise and to give an appropriate dowry which one can pay without difficulty. The bridegroom must not incur any debt, in order to give a precious dowry to his bride.

The Islamic Law affirms that marriage is not valid if performed on the condition that no dowry shall

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(59) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 183

(60) Hadith written by Muslim, ibid., 184-185.

(61) Idem ; this prescription shows the importance of wedding feast for Islam.

(62) Cfr. SULAIMAN RASJID, op. cit., 373.



be given (63). Such a condition is considered contrary to the fundamental meaning of matrimony, namely a self-giving to the partner. A dowry is a symbol of self-giving of the bridegroom to his bride, and its acceptance by the bride symbolizes her approval of it.

In Indonesia, the dowry is usually given in the form of a book of Qur'an and other instruments for praying (64). Sometimes, the bridegroom also gives his bride a ring and a sum of money. The Ministry of Religion usually prescribes a very small sum of money as the minimum dowry for all Indonesian Moslems (65).

Confirming the teaching of Muhammad, the Indonesian Moslem scholars consider the wedding-feast very important, although it is not necessary for the validity of marriage itself. It may be held simply or luxuriously, depending on the financial prosperity of the families concerned. Moslems are recommended not to have a wedding-feast greater than they can afford. What is most important is that the relatives be invited and thus the matrimony is made known to them. On the other hand, the scholars recommend all Moslems to attend such a feast when they are invited (66).

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(63) Cfr. ZAHRY HAMID, *op. cit.*, 42.

(64) As affirmed in SAJUTI THALIB, *op. cit.*, 73-74.

(65) *Idem.*

(66) Cfr. KAMAL MUCHTAR, *op. cit.*, 103-104.; AHMAD AZHAR BASYIR, *op. cit.*, 45-46.

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 prescribes nothing about the dowry and the wedding-feast. The Law allows the people to perform marriage according to the laws of their respective religions or beliefs and their local custom. It only demands that such marriage shall be registered according to the regulations of the legislation in force (67).

However, the Indonesian Law allows the parties concerned in marriage to enter into a written contract, at the time or before the wedding ceremony. It should be legalized by the official keeper of the marriage register and may not violate any legal, religious and moral limits (68). The Law prescribes that such a contract shall come into force as from the moment of the performance of the marriage. It may not be modified for the duration of the marriage, except when both parties have agreed to the modification. If the contract also concerns the interests of third parties, a modification is allowed only if agreed to by those parties too (69).

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(67) The Indonesian Marriage Law of 1974, Ch. I, a. 2.

(68) Ibid., Ch. V, a. 29 ; the Law recognizes the right of all religions and beliefs to regulate marriage of the believers.

(69) Ibid., Ch. V, a. 29.

In its clarification on this prescription, the Law states that the permission of entering into a written contract does not include what is called talik-talak (70). No marriage shall be performed on the conditions that it will be dissolved if the husband does not fulfil the given promises. The Law considers marriage as a permanent institution, the performance of which may not imply its eventual dissolution.

This prescription also means that both spouses may enter into a written contract concerning the dowry. The bridegroom and the bride can make a legalized agreement about the form and the amount of the dowry. The Law will then guarantee that the husband shall pay the promised amount of dowry. However, the wife can not demand a divorce solely because of the fact that her husband does not pay the dowry.

#### 5. The present Catholic teaching

The recent documents say nothing about the dowry in marriage. The term "dowry" itself is now used in the Canon Law only in reference to institutes of women

(70) Talik-talak is a promise given by the bridegroom after the wedding ceremony, that he will allow his wife to sue a divorce if he does not fulfil certain promises approved by both parties. It was a common practice in Indonesia.

religious and never to marriage. It consists of a sum of money or its equivalent, paid by a postulant to a religious community in which she wishes to make her religious profession.

However, it does not mean that the dowry in marriage is then forbidden. The Church, in fact, recognizes the competence of the civil power in regard to the civil effects of marriage such as dowry and property. The fact that the Indonesian Law does not oblige the giving of a dowry either at or after the wedding ceremony leads to the conclusion, that the dowry is not required from Catholic spouses in that country (71).

The same thing can be said about the wedding-feast. The Church considers it as under the competence of the civil power and the interests of the parties concerned. The wedding-feast is separable from the substance of the marriage ceremony. Provided there is no infringement of divine or canon law, the civil law may prescribe regulations regarding it, which safeguard health and public order (72).

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(71) The majority of the population in Indonesia are Moslems. For them to give dowry is obligatory, for it is prescribed by Islam. The Indonesian Law does not oblige dowry in matrimony, and hence the Indonesian Catholics are free to give dowry or not.

(72) Cfr. CIC., cc. 1016 and 1529.

On the other hand, the Church prescribes another important element of the Catholic marriage ceremony, which is known as marriage celebration. The marriage ceremony between Catholics is considered a sacred rite, a celebration of the sacrament of matrimony, by which the spouses "signify and share the mystery of the unity and the faithful love between Christ and the Church" (73). In that celebration the spouses express to each other the consent of marriage before the whole Church, which is represented by the priest or deacon present and acting as official assistance. It is normally celebrated in the church and within what is called "nuptial Mass". When it is necessary, however, it can be done at home and without the Mass (74). During such a celebration the spouses receive what is called "nuptial blessing" given by the priest who assists at their marriage (75). While the nuptial Mass is prohibited in mixed marriage between a Catholic and a non-baptized person (76), the nuptial blessing is always given for both a Catholic and mixed marriage.

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(73) Cited from Lumen Gentium, n. 11.

(74) CIC., c. 1109.

(75) CIC., c. 1101.

(76) CIC., c. 1102; Motu Proprio Matrimonia mixta prescribes that a mixed marriage between a Catholic and a baptized non-Catholic can be celebrated within the Mass, if the Ordinary permits it.

### C. CONCLUSION

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Both Islamic and Catholic marriage laws prescribe the consent of spouses and the presence of two witnesses as necessary for the validity of marriage. It is also affirmed by the Indonesian Marriage Law. In this case, in fact, there is no principal difference.

The Islamic Law in Indonesia prescribes that the consent shall be pronounced by the bridegroom and the bride's guardian, although it shall be certain that the bride does not reject the marriage. The Catholic Church prescribes that the consent shall be pronounced by the bridegroom and the bride, or when necessary also by their proxy. However, the Church can recognize the validity of Islamic marriage, if the bride's consent is certain.

In a mixed marriage between a Moslem and a Catholic, there is sometimes a problem regarding the bride's guardian if the bride is Moslem. According to Islamic Law, the bride's guardian shall pronounce the consent, primarily of his own and only implicitly also that of the bride. Meanwhile, the Church requires that the bride herself, or when necessary her proxy, will pronounce her consent. A similar attitude is shown by the Indonesian Law, which prescribes that marriage shall be founded upon an agreement between both aspirant spouses.

The Islamic Law in Indonesia also prescribes that the witnesses shall be male persons. Such a prescription is not given by the Church. In mixed marriage between a Moslem and a Catholic, the Pastor may follow the Islamic prescription, appointing two male persons to witness the marriage. The most important prescription given by the Church is that an authorized priest or deacon will assist at the wedding ceremony.

As regards the dowry and the wedding-feast, there is no serious problem in spite of diversity existing between Islamic and Catholic teaching. In Indonesia, the Catholics usually do not give a dowry to their wives, but consider the wedding-feast very important. At the wedding, they invite relatives, christians or not, to attend the feast and join in that joyful and meaningful event. The wedding-feast becomes so meaningful, that many Catholics do not feel it as only additional to the wedding ceremony itself.

Finally, a problem can arise concerning the marriage celebration. The Church requires a church celebration also for marriage between a Catholic and a Moslem. The difficulty that may arise in this context is that the Catholic celebration is taken from other cultures. It is advisable, therefore, that the Pastor can create a celebration which embraces both canonical and traditional elements together.

## CHAPTER VI : THE NATURE OF MARRIAGE

This chapter deals with the problem of the nature of marriage. It is intended to answer these questions:

- A. Is marriage a legal and social institution?
- B. Is marriage a sacred institution?

A. MARRIAGE IS A LEGAL AND SOCIAL INSTITUTION  
=====1. The Qur'an

The Qur'an uses the term "aqad" for the marriage ceremony. It means "mutual agreement". The same term is used to indicate other kinds of mutual agreement which have legal and social effects. It means an agreement of two or more persons to establish, regulate or even dissolve a legal bond between them (1).

In fact, the Islamic marriage is performed by mutual agreement between the bridegroom and the bride's guardian (2). Such agreement creates obligations for both parties : the bridegroom shall protect his wife , and be responsible for her full maintenance (3) ; the

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(1) As affirmed in KAMAL MUCHTAR, op. cit., 16.

(2) As can be concluded from Q. II,221.235; IV,19.20.

(3) Q. IV, 4.29.32.34 ; XXX, 21.



bride shall obey and be cooperative with him (4). Their agreement is recognized not only by both parties, but also by the whole Islamic society.

The prescriptions of the Qur'an concerning marriage show that the Qur'an considers marriage as a legal and social institution, based on mutual consent and regulated by various laws (5). The Qur'an reveals various laws concerning this institution : about its performance (6) ; its permanence (7) , and its dissolution (8). The Qur'an also reveals the aim (9), the character (10), and the exigencies of marriage, seen as a basis of the whole of society. Marriage is obviously regarded as a legal and social institution, regulated by fixed laws and having great impact upon society.

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(4) Q. IV, 34 ; XXIV, 31.

(5) All Qur'anic laws are considered as divine laws.

(6) Q. II, 235 ; IV, 19-20.25 ; and Q. II, 235-237.  
Cfr. Chapter V of this work.

(7) Q. II, 229-232 ; IV, 19.34-35 ; XXX, 21.  
Cfr. Chapter VIII of this work, especially Part A.

(8) Q. II, 226-232.236-237 ; IV, 35.128.130 ; LXV,1-7 ;  
and Q. XXIV, 4-9. Cfr. Chapter VIII, Part B.

(9) Q. IV, 1. 24-25 ; II, 187 ; XXX, 21 ; XXIV, 35-36.  
Cfr. Chapter III of this work, especially Part A.

(10) Q. II, 187.230-232 ; IV, 1.19.24.129 ; XXX, 21 ;  
and Q. IV, 3 ; XXXIII, 49-50. Cfr. Chapter VII  
and Chapter VIII of this work.

## 2. The Sunnah

The Sunnah also considers marriage as a legal and social institution. It also uses the term "aqad" for marriage, a term used for all kinds of legal and social agreement. Rejecting clandestine marriage, Muhammad ordered Moslems to marry before at least two male witnesses and to announce it publicly (11).

The social character of marriage is more clearly shown in Muhammad's prescription, that all Moslems should hold a feast during or after the wedding ceremony (12). Muhammad himself held a feast after each of his weddings (13). Marriage should be made known to the whole society (14). It should be a social happening (15). Muhammad considered clandestine marriage as invalid and adulterous (16), not corresponding to the social nature of marriage.

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- (11) Hadith written by Ahmad, in HASSAN, op. cit., 489; and hadith written by Ahmad, in SJARIEF SUKANDY, op. cit., 362.
- (12) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 176-178.
- (13) Hadith written by Muslim, ibid., 179-183.
- (14) Hadith written by Ahmad, in SJARIEF SUKANDY, op. cit., 362.
- (15) Therefore, to attend such a feast is a social duty.
- (16) Hadith written by Ahmad, in HASSAN, op. cit., 489.

As a legal and social institution, marriage sets both spouses certain rights and responsibilities. Muhammad ordered Moslem husbands to be good leaders and heads of their family (17), responsible for the maintenance of their wives and children (18). On the other hand, he ordered Moslem women to be honest and obedient wives, doing their best so that their husbands would be pleased and merciful (19).

### 3. The Islamic Marriage Law in Indonesia

The Islamic Marriage Law uses the term "nikah" for marriage. It originally means "sexual intercourse". It is a wide term, comprising many different forms of sex relationship, but in Islamic Law it has a very definite meaning, namely "a community of life for the legalization of intercourse and the procreation of children" (20). Marriage is thus considered as a community of life with legal character. It makes sexual intercourse lawful and promotes chastity between the

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(17) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 205.

(18) Hadith written by Abu Daud and Ibnu Hibban, in MUHAMMAD YUSUF QARDLAWI, Halal dan haram dalam pandangan Islam, vol. II, Surabaya 1978, 19.

(19) Hadith written by Hakim, ibid., 20.

(20) As defined in SULAIMAN RASJID, op. cit., 355.

sexes (21). It is a serious commitment and permanent bond, which legitimizes the children born to this union (22). Therefore, marriage is to be free from casual and temporary designations (23).

The social character of marriage is constantly affirmed by Indonesian Moslems. Marriage gives a new social status to both spouses, higher than that of unmarried people, especially in the case of the woman. She has henceforth the right to property and to full maintenance (24). Marriage vests her with some privileges, assuring her of economic security and giving her other rights of a social nature.

Islamic marriage is a community of life of two spouses and their children, but with much larger legal and social consequences. It unites families, and thus strengthens Islamic society, legalizing sexual intercourse and many other things. Marriage, in fact, has a great influence on the regulations concerning inheritance too. Therefore, the Islamic Law in Indonesia provides very detailed regulations concerning marriage.

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(21) As affirmed in ABDULLAH SIDDIK, *op. cit.*, 8-12.

(22) The Islamic Marriage Law in Indonesia confirms the prescription of Muhammad, that temporary marriage is forbidden.

(23) MAHMUD YUNUS, *op. cit.*, 27.

(24) AHMAD AZHAR BASYIR, *op. cit.*, 50-52.

Marriage is a legal and social institution, which sets the spouses precise rights and responsibilities : the husband becomes the head of his family and is given specific rights and responsibilities (25) ; he enjoys great authority over his wife and children, but on the other hand is responsible for their full maintenance and their whole life ; meanwhile, the wife is given the right and responsibility to educate their children by herself (26). Besides, the Law also prescribes certain rights and responsibilities of the children.

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law deals with marriage first and foremost as a legal and social institution, more than marriage as an agreement or a contract. It is defined as a relationship between a man and a woman as husband and wife with the purpose of establishing a happy and lasting family (27). Marriage is a legal and social institution which is strongly connected with the establishment of a family.

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(25) Cfr. SAJUTI THALIB, op. cit., 80-83 ; AHMAD AZHAR BASYIR, op. cit., 55-59 ; AMINULLAH, Hak dan kewajiban suami-isteri, Bandung 1972, 21-26.

(26) Cfr. MOENAWWAR CHALIL, Nilai Wanita, Semarang 1977, 85-102 ; FARIED MA'RUF NOOR, Menuju keluarga sejahtera & bahagia, Bandung 1980, 85-98.

(27) The Indonesian Marriage Law of 1974, Ch. I, a.1.

The Law points out the legal nature of marriage, prescribing precise regulations concerning its performance and validity : it may be performed according to the laws of the respective religions of the parties concerned, but then registered according to the regulations of the Indonesian Law (28). As regards the validity of marriage, the Law prescribes mutual consent, the presence of two witnesses, and the age limit of the spouses (29).

Marriage is seen as a social institution, which concerns not only some families but also the whole of society. The social character is made clear from the very beginning : marriage shall be performed publicly, at least before two witnesses and a Registrar (30). The Law explicitly affirms that marriage constitutes "the fundamental basis of the structure of society" (31).

The Law regulates the rights and responsibilities of the spouses : equivalent status is given to both spouses (32) ; the husband is the head of the family, while the wife is the mother of the household (33).

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(28) The Indonesian Marriage Law of 1974, Ch. I, a. 1.

(29) Ibid., Ch. II, a. 6.

(30) The Government Regulation of 1975 ..., Ch. III, a. 10.

(31) The Indonesian Marriage Law of 1974, Ch. VI, a. 30.

(32) Ibid., Ch. VI, a. 31.

(33) Idem. Besides, the Law prescribes that both spouses shall bear the responsibility of maintaining their household.

5. The present Catholic teaching

To denote its legal and social character, marriage has been described for some centuries as a very special "contract" by the Catholic Church. In the Code of Canon Law, it is defined as a contract between a man and a woman who are juridically capable of contracting it, by which they give to each other the perpetual and exclusive rights to acts suitable for the generation of offspring (34). It is clear from this definition that marriage is regarded as a contract, the object of which is the "perpetual and exclusive right over the body, for acts which are of themselves suitable for generation of children" (35).

As a contract, marriage has some characteristics common to all contracts, namely : requiring real and mutual consent ; lawfully expressed by the parties who are juridically qualified ; and implying a transfer of rights and obligations. However, marriage has a very

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(34) CIC., c. 1081; the second scheme of the proposed New Code of Canon Law enlarges the extension of the object of the matrimonial contract, affirming that "Consensus matrimonialis est actus voluntatis quo vir et mulier foedere irrevocabili sese mutuo tradunt et accipiunt ad constituendum matrimonium". The object of the contract is the whole life!

(35) CIC., c. 1081.

special character : the object of its contract is not something outside the contracting parties, but their own personality, their own life ; besides, it is not only subject to human laws but also to religious and divine laws.

The Second Vatican Council confirms the teaching of the Church that marriage is rooted in the irrevocable personal consent of spouses (36). Besides, the Council enlarges the object of the matrimonial consent : the essential giving in marriage consent is not only the right to those acts apt for the generation of children, but the total giving of self (37). Marriage receives its stability from that personal consent by which the partners mutually surrender themselves to each other (38). As regards the social nature of marriage, the Council affirms that marriage has a very decisive bearing on the prosperity of the whole of society and the continuation of human race (39). Marriage is called the basis of society (40).

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(36) In Gaudium et Spes, n. 48.

(37) Idem. It enlarges the object of the matrimonial consent defined by the Canon Law : CIC., c. 1081.

(38) Gaudium et Spes, n. 48.

(39) Ibid., nos. 47-48.

(40) Ibid., n. 52



Pope John Paul II confirms the institutional nature of marriage. As a legal and social institution marriage has its place and function in society, enjoying juridical guarantees for the accomplishment of the duties and responsibilities derived from it (41). Marriage is the beginning of the new community of life and this community is the basis of society.

Pope John Paul II puts strong emphasis on the procreative character of marriage. He writes in his apostolic exhortation : "According to the plan of God, marriage is the foundation of the wider community of the family, since the very institution of marriage and conjugal love are ordained to the procreation and education of children, in whom they find their crowning" (42). The Pope reaffirms the declaration of the Synod Fathers at their last assembly : "This Sacred Synod , gathered together with the Successor of Peter in the unity of faith, firmly holds what has been set forth in the Second Vatican Council ... and afterwards in the Encyclical Humanae Vitae , particularly that love between husband and wife must be fully human, exclusive and open to new life ...." (43).

(41) Discourse to the Council of General Secretariat of Synod of Bishops 23-2-1980, in In the Image of God, Vatican City 1980, 46.

(42) Familiaris consortio, n. 14.

(43) Ibid., n. 29 ; Message to christian families in the modern world, nos. 7-9.

## B. MARRIAGE IS A SACRED INSTITUTION

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### 1. The Qur'an

The Qur'an also considers marriage as a sacred institution. It calls marriage a "mitsaqon gholidon" which means "solemn covenant". This term is used many times throughout the Book. It is first and foremost used to denote the covenant between God and His prophets or apostles (44). Secondly, it denotes the covenant between God and the Children of Israel (45). Finally, it also denotes the conjugal covenant between husband and wife (46).

The use of the term "covenant" by the Qur'an symbolizes its deepest attitude in considering marriage as a sacred institution. It is a commitment that married people make to one another as well as to God. It is a commitment to life itself, to society, to God's work and plan for creation. Marriage is regarded as a righteous commitment, a commitment of responsible devotion and worship.

(44) Q. III, 81; XXXIII, 7. (45) Q. II, 63. 83ff.

(46) Q. IV, 20-21 asks: "If ye wish to exchange one wife for another and ye have given unto one of them a sum of money, take nothing from it... How can ye take it back after one of you hath gone in unto the other, and they have taken a solemn covenant from you?"

This religious meaning of marriage is reinforced with the Qur'anic idea of God who blesses married persons and their children. God wills that man and woman get married and have children. He blesses them and wills that they be faithful to each other. He exhorts them to be dutiful to Him, even at the most trying times of their married life.

## 2. The Sunnah

Muhammad affirmed that marriage has a religious meaning. He said that marriage "constitutes a half of worship to God" (47). He encouraged his followers to get married, criticizing those who were trying to embrace celibacy (48). For Muhammad, marriage is not only a legal and social institution, but also an act of devotion, a part of worship, a sacred institution.

Muhammad taught that marriage would not hinder but help Moslems in reaching holiness. Moslems are called by God to take part in His work and plan of creation. Muhammad called those who tried to live celibacy as "not of our community" (49).

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(47) Hadith written by Ath Thabrani, in KAMAL MUCHTAR, op. cit., 14.

(48) Hadith written by Muslim, in SJARIEF SUKANDY, op. cit., 356.

(49) Idem. He showed his followers, how all great prophets had also married and begotten children.

At the wedding of a Moslem, Muhammad prayed for the spouses, saying : "May God bless you and unite you in kindness" (50). He also encouraged married people to have children and to educate them to be good and pious Moslems. He wished that at the Last Day he could be proud of the great number of Moslems before God (51). Marriage is a sacred mission given to all Moslems, for the sake of Islam.

### 3. The Islamic Marriage Law in Indonesia

The Indonesian Moslem scholars constantly affirm that marriage is a sacred institution, a religious reality which brings God's blessing and internal peace. It is called as an important part of "ibadah", which means "worship". But it is at the same time a worldly affair or "muamalah". It is worship, because it is a sacred covenant between man and woman which concerns God (52). It is a worldly affair too, because it concerns worldly affairs and interests like dowry and inheritance, parentage and guardianship.

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(50) Hadith written by Ahmad, in SJARIEF SUKANDY, op. cit., 357-358.

(51) Idem.

(52) As affirmed in : SAJUTI THALIB, op. cit., 47 ; KAMAL MUCHTAR, op. cit., 14-16.

Marriage concerns God, because it is a response to His calling to cooperate with Him in creating new generations of mankind (53). Marriage is created by God and is a sign of His creative power. From the beginning man is called by God Himself to be creative of life, to multiply. Therefore, getting married is worship and an act of devotion, an expression of man's obedience to God's laws, a positive response to God's calling (54).

Some Moslems affirm that marriage is a religious reality created by God to help the believers in their efforts and pilgrimage towards holiness. Marriage keeps the spouses chaste, away from adultery (55). Marriage fosters a healthy and good morality. It unites man and woman on their way towards holiness and piety.

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 recognizes the religious meaning of marriage. It defines marriage as a relationship of body and soul between a man and a woman founded on belief in God Almighty (56). It says

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(53) As affirmed in SAJUTI THALIB, op. cit., 48.

(54) AHMAD AZHAR BASYIR, op. cit., 9-10 ; MAHMUD YUNUS, op. cit., 6-8 ; KAMAL MUCHTAR, op. cit., 20-22.

(55) Emphasized by ABDULLAH SIDDIK, op. cit., 9-11. and FARIED MA'RUF NOOR, op. cit., 29-30.

(56) The Indonesian Marriage Law of 1974, Ch. I, a. 1.

that marriage is closely related to religion and spiritual values (57). This consideration inspires the government to recognize the validity of marriage which is performed according to the laws of the respective religions or beliefs of the parties concerned.

The Law clarifies that marriage does not only possess a physical value but a spiritual value as well, which plays a vitally important role (58). Therefore, the Law establishes that there shall be no marriage performed beyond the law of the respective religions or beliefs of the spouses (59). Marriage is considered as primarily subject to religious laws, and has first of all religious and spiritual meanings or values.

Consequently, the Law formulates its regulations in cautious formulations, in order that they will not run counter to the laws of existing religions. Several times the Law provides certain prescriptions, showing the alternatives provided by the rules of the laws of the religions (60).

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(57) The Indonesian Marriage Law of 1974, clarification of a.1.

(58) Idem.

(59) Ibid., clarification of a.2.

(60) In its clarification of a.22, for example, the Law affirms : "The term may in this article implies that marriage may be dissolved or may not be dissolved according to... the Law of the religion".

### 5. The present Catholic teaching

Since the Second Vatican Council, the Church uses the term "covenant" rather than "contract" to denote the main character of marriage in general. The Council, in fact, defines marriage as a community of love and life rooted in the conjugal covenant (61).

The term "covenant" is taken from the Scripture, and primarily means personal relationship and mutual commitment. In the Old Testament, the term denotes the personal relationship and mutual commitment between God and Israel, which was characterized with God's fidelity and Israel's infidelity (62). In the New Testament, the term denotes the personal relationship and mutual commitment between the Church and Christ (63).

Adopting this biblical term, the Council intends to provide a definition indicating marriage as a personal relationship and mutual commitment between a man and a woman loving each other. Marriage is not only a legal and social institution, but also a community of love and life, an intimate partnership (64). Marriage is an institution which has a very personal meaning.

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(61) In Gaudium et Spes, n. 48 ; the term "covenant" translates the Latin word "foedus".

(62) Cfr. Dt. 26:17 ; Jos. 24:19-20 ; Jr. 31:31-34.

(63) Cfr. Eph. 5:27 ; Mt. 9:15 ; Mk. 2:19-20 ; Lk. 5:34.

(64) Gaudium et Spes, n. 48.

The Council considers that the biblical term "covenant" is better than the juridical term "contract" at least to denote the personal values of marriage. Covenant is, in fact, a form of mutual commitment like contract. However, in a covenant the legalistic prescriptions of rights and obligations are secondary and do not overshadow the basic commitment of persons in fidelity and spontaneity.

Besides, the term "covenant" also indicates the divine origin of marriage. The covenant between God and Israel was started by God. The covenant between Christ and the Church was started by God who sent His own Son to become man in the person of Jesus Christ. The Second Vatican Council teaches very clearly that marriage was established by God Himself and qualified by His laws, endowed with various benefits and values (65).

The sacred value of marriage becomes clearer in the sacrament of marriage. The Church teaches that marriage between baptized persons is a sacrament. The Second Vatican Council confirms this teaching, saying that marriage between two baptized persons is formed by Christ "on the model of His own union with the Church" (66). The spouses are fortified for the duties and dignity of their state by a special sacrament.

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(65) In Gaudium et Spes, n. 48.

(66) Idem ; it is based on Eph. 5:21-37.



Pope Paul VI confirms the dignity of marriage. He affirms that it is far from being "the effect of chance or the result of the blind evolution of natural forces" (67). Marriage is an institution created by God, the purpose of which was to establish in man his loving design. As regards marriage between baptized persons, Pope Paul VI affirms that it is invested with "the dignity of a sacramental sign of grace, because it represents the union of Christ and His Church" (68).

Pope John Paul II affirms (69) that marriage is an institution in the following sense : it has its place and functions in society ; it must have juridical guarantees for the accomplishment of its duties and in order to have the stability and influence expected of it ; but primarily it transcends the will of the individuals, the spontaneous projects of the couples and the decisions of social and governmental organisms. In his apostolic exhortation Familiaris consortio (70) , finally, he confirms the sacramentality of marriage between two baptized persons.

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(67) In Humanae Vitae, n. 8.

(68) Idem.

(69) In his discourse to the Council of General Secretariat of Synod of Bishops 23-2-1980, in In the Image of God, Vatican City 1980, 46.

(70) n. 13.

## C. CONCLUSION

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Both Islam and the Catholic Church have taught that marriage is a legal, social and sacred institution. They use different terms, but with similar meanings. Marriage is called a legal institution, because it is performed and regulated by fixed legal prescriptions. It is a social institution, because it is performed publicly and gives to the spouses specific status in the society. Finally, it is also a sacred institution established by God and qualified by His laws.

The legal character of marriage is very clear. To denote this nature, Islam uses the term "aqad" and the Church uses the term "contract". Marriage is based on mutual consent lawfully expressed by the parties, who are juridically capable of doing it. It gives both spouses legal rights and responsibilities. But, it is a very special "aqad" or "contract", because its object is not outside of the contracting parties, but their own personality, their life.

As a social institution, marriage gives both spouses a special status in the society, enjoying protection and recognition of the society. It gives them a specific function too. In spite of some rights and responsibilities of a familiar and conjugal nature, it also brings some rights and responsibilities of a social nature.

As a sacred institution, marriage can not be well defined as "agad" or "contract". The term "covenant" can much better denote its personal character and its divine origin. Both Islam and the Catholic Church know the deepest meaning of the covenant between God and Israel, which was characterized by personal relationship and mutual commitment and primarily by the infinite faithful love of God. Marriage is a personal relationship and mutual commitment between a man and a woman loving each other.

Marriage between two baptized persons is called a "sacrament". The Church teaches, that marriage between two baptized persons is blessed and formed by Christ on the model of His own union with the Church. Thus, it is not only a legal, social and sacred institution of natural level, but also a sacrament of supernatural level. It is Christ's redemptive action.

A theological problem may arise about the nature of a marriage between a Catholic and a Moslem. Such a marriage is undoubtedly legal, social and sacred. But, is it also sacramental? There are different opinions. The term "sacrament" seems not entirely suitable for such marriage, at least in the full sense of the term. It seemingly does not entirely symbolize the inseparable union between Christ and His Church.

## CHAPTER VII : THE UNITY OF MARRIAGE

This chapter deals with one of the important characters of marriage , which is generally called the unity of marriage. Two main questions shall be answered :

- A. How far is monogamy recommended?
- B. How far is polygamy tolerated?

#### A. RECOMMENDATION OF MONOGAMY

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##### 1. The Qur'an

The Qur'an seems to recommend monogamy for Moslems in general. In its account of the creation of mankind, it recognizes that God created them from a monogamous spouse, coming out from only one living soul (1). Spouses are said to be each other's garments and ordained to be kind to one another, to live in love and mercy (2). In God's plan, marriage is monogamous!

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(1) Q. IV, 1 commands : " O mankind! Be careful of your duty to your Lord who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women..." ; See also Q. VII, 189.

(2) Q. II, 187 says : "They are raiment for you and ye are raiment for them" ; Q. XXX, 21 affirms : "He created for you helpmeets from yourselves that ye might find rest in them, and He ordained between you love and mercy" ; See also Q. IV, 19.

For women, monogamy is always a rule. The Qur'an absolutely forbids them to marry more than one man (3). Only after a legal divorce and the prescribed term, can they marry another man (4). The practice of polyandry which existed in Arabia during the time of Muhammad is strongly criticized and rejected.

It seems that the Qur'an also advises men to marry only one woman, at least in normal circumstances. Monogamy guarantees better care for woman, at least from the point of view of economic security. The Qur'an suggests, that one shall never be able to do justice among women, no matter how much he desires (5). It is better, therefore, to marry only one woman, in peace!

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(3) Q. IV, 24 prescribes it indirectly, saying to men: "And all married women (are forbidden unto you) save those (captives) whom your right hands possess. It is a decree of Allah for you".

On another occasion, the Qur'an explains that Moslems may marry captive women who are separated from their husbands, provided that they become Moslem.

(4) Q. II, 231 orders: "When ye have divorced women, and they have reached their term, then retain them in kindness or release them in kindness"; Q. II, 232 commands: "And when ye have divorced women and they reach their term, place not difficulties in the way of their marrying their husbands".

(5) Q. IV, 129 affirms: "Ye will not be able to deal equally between (your) wives, however much ye wish (to do so)".

## 2.. The Sunnah

Muhammad forbade Moslem women to marry more than one man. A married woman should not be proposed to for marriage, unless she had legally been divorced by her previous husband and had finished the waiting period. Muhammad even forbade his followers to propose to any woman already proposed to by another man (6), obviously to prevent conflict between the parties concerned.

Muhammad himself lived with one wife during 25 years of his married life, namely with his first wife, Khadijah. Only after her death, did Muhammad marry several women. He did it primarily because of social reasons : he married Aisyah when she was 6 years old and some other women who were all widows, who needed his care and protection (7).

From these facts, one can conclude that Muhammad was in favour of monogamous marriage, unless there existed a particular situation which required the toleration of polygyny, at least from social point of view. At the time of Muhammad, in fact, women could not afford their own independent life.

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(6) Hadith written by Bukhari, in SJARIEF SUKANDY, op. cit., 359.

(7) Cfr. A.R. BASWEDAN, Rumah Tangga Rasulullah, Jakarta 1976 ; FAZL AHMAD, Aisyah : Ummu l-Mukminin, tr. by Adam Saleh, Jakarta 1974.

### 3. The Islamic Marriage Law in Indonesia

Most of Indonesian Moslem scholars firmly promote monogamy, either for moral or financial reasons. Many of them have also tried to give convincing proofs that monogamy is preferred by the Qur'an and by the Sunnah as well. They confirm, that monogamy promises greater happiness and a calmer life than polygamy. They explain it not only from a doctrinal point of view, but also from the psychological and sociological one (8).

Confirming the prescription of the Qur'an and the Sunnah, the Islamic Law in Indonesia prescribes that monogamy is an absolute rule for woman. The scholars say that monogamy for woman is necessary to know the right parentage of children. Polyandry makes it quite difficult, because one cannot easily know the real father of any child born in such a marriage.

The Law also prescribes, that a woman already engaged may not be proposed to by another man, and that a married woman may not be proposed to or married by another man, unless after a legal divorce and the waiting period. It confirms the prescription of the Qur'an and the Sunnah.

(8) Cfr. ABDUL NASIR TAUFIQ AL 'ATTHAR, Polygami ditinjau dari segi agama, sosial dan perundang-undangan, tr. by Chadidjah Nasution, Jakarta 1976, 128-144.

Indonesian Moslems interpret the Qur'anic verses concerning the unity of marriage as recommending monogamy. They tend to weaken the literal meaning of the Qur'anic verses which seemingly encourage polygamy. The intention is clear : to promote monogamy, urging all Moslems to consider polygamy as an exception (9).

#### 4. The Indonesian Marriage Law

Indonesian women have done their best for many years to reach a real emancipation with men in social and married life. Many of them have tried to influence the government, in order that monogamy shall be made a rule also for men. Such progressive attitudes seem to be growing, particularly among the younger generation of today.

The Indonesian Marriage Law of 1974 declares that it follows the principles of monogamy, although it also states that the Law does not intend to forbid polygamy, if desired by the parties concerned and allowed by the law of the religion they adhere to (10).

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( 9 ) See, for example : SAJUTI THALIB, *op. cit.*, 57 ; ANWAR HARJONO, *Hukum Islam*, Jakarta 1968, 274 ; NASHRUDDIN THAHA, *Pedoman Perkawinan Umat Islam*, Djakarta 1967, 68-74.

(10) In its general clarification n, 4.



. Monogamy is obligatory for woman, even if it is allowed by the law of certain religions or beliefs. The Indonesian Law states that "a female person shall be allowed to have one husband only" (11). Polyandry which was practiced in some areas and cultures is thus rejected. The Law follows the prescription of major religions and adapts itself to progress and the demand of time.

In principle, the Law prescribes monogamy also for man (12). The unity of marriage is seen as very important for the establishing of a happy and lasting family, which is called the fundamental aim of this institution. The provision is also given to promote stability and prosperity of the whole society, avoiding the recurrence of polygyny which can provoke conflicts and scandals. The Law urges husband and wife to really appreciate and value each other and thus establish a peaceful and lasting family (13). Society will be stable and prosper, if the families are peaceful and lasting.

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(11) The Indonesian Marriage Law of 1974, Ch. I, a.3.

(12) Idem.

(13) Ibid., Ch. VI, a. 33.

The Indonesian Marriage Law of 1974 uses many terms which denote the personal values of marriage.

### 5. The present Catholic teaching

It was not Christianity which introduced monogamy in the world. Monogamy was already prescribed by the Roman Law at the time when Christianity began its mission in the Greco-Roman world (14). However, it was Christianity which insisted upon the pure monogamy and gave a solid religious basis for it. Acknowledging the profound influence of Greco-Roman culture upon the understanding and the structure of marriage among the early Christians, the Fathers of the Church held that the Christian rule of monogamy was based on the teaching of the New Testament (15).

The traditional teaching of the Church, then, follows the principles of monogamy. She teaches that monogamy is the only form of marriage which corresponds with the dignity of that sacred institution. The biblical account of Adam and Eve is often presented as an affirmation that from the beginning God established marriage to be monogamous. Monogamy for Christians is

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- (14) Cfr. SCHILLEBEECKX, Marriage : Secular Reality and Saving Mystery, II, London 1965, 7ff. ; E.O. JAMES, Marriage Customs through the Ages, New York 1965, 103ff.; EDWARD WESTERMARCK, The History of Human marriage, New York 1922, III, 84ff.
- (15) Cfr. DIONIGI TETTAMANZI, Il Matrimonio cristiano, Milano 1979, 79ff.; St. Augustine was one of the the most important of them.

then based on the sacramental significance of their marriage (16) : Christian marriage was blessed and formed by Christ on the model of His own union with His Church (17). Married love uniting Christian spouses shall be totally faithful, as Christ has also been totally faithful, giving Himself up for her.

The Second Vatican Council affirms that the unity of marriage is argued by the nature of marriage as a total self-giving between husband and wife, as a community of love (18). The unity of marriage is not externally imposed by human or ecclesiastical law, but is established by God, for the good of the spouses and their children.

Pope Paul VI gives a still clearer explanation concerning the nature of marriage and married love. He says that marriage is "the wise and provident institution of God the Creator, whose purpose was to establish in man his loving design" (19). As regards married love, it derives from God and finds its supreme origin in Him who is Love, and has the following characteristics : fully human, total, faithful and exclusive until death, and finally open to life (20).

(16) CIC., c. 1013, 2.

(17) Eph. 5: 21-33.

(18) Gaudium et Spes, n. 48.

(19) Humanae Vitae, n. 8.

(20) Ibid., n. 9.

The unity of marriage is based on the totality and the exclusiveness of conjugal love. Conjugal love is said to be a special form of personal friendship in which husband and wife share everything, allowing no unreasonable exceptions or thinking just of their own interests. Whoever loves the partner, loves that partner for her own sake.

On several occasions, Pope John Paul II affirms that the initial couple, in God's plan, is monogamous, as it is revealed in the famous narrative of Creation with which the Bible begins (21). Monogamy appears there as the expression of the interpersonal relationship, in which each of the partners is recognized by the other in an equal value and in the totality of his person (22). Conjugal love involves a totality, in which all the elements of the person enter : it aims at a deeply personal unity, the unity that leads to forming one heart and one soul (23).

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(21) Especially in his discourses at the general audiences, in Matrimonio e Famiglia in Collana Magistero 58 ; Cfr. Familiaris consortio, n. 19.

(22) His homily at Mass for families at Kinshasa, 3-5-1980, in In the Image of God, Vatican City 1980, 12.

(23) His address to two international group of researchers : CLER and IFFLP/FIDAF, 3-11-1979, in In the Image of God, 19.

See also : Familiaris consortio, n. 11.

## B. TOLERATION OF POLYGAMY

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### 1. The Qur'an

Although it strongly forbids polyandry, the Qur'an tolerates polygyny under some conditions (24). Firstly, it is tolerated for one who is afraid of not dealing fairly by orphans. It is better for him to marry several women than to marry the orphans under his custody. The toleration of polygyny is given to prevent abuses committed by guardians wanting to marry the orphans in their custody just to absorb the wealth of the latter. Secondly, it is tolerated for such persons, provided that they think they will be able to do justice to more than one wife. On another occasion, the Qur'an even suggests that nobody shall ever be able to do justice among women (25).

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(24) Q. IV, 3 which is the basis of the Qur'anic prescription on polygyny commands : "And if ye fear that ye will not deal fairly by the orphans, marry of the women, who seem good to you, two or three or four ; and if ye fear that ye cannot do justice (to so many) then one only or (the captives) that your right hands possess..."

(25) Q. IV, 129 affirms : "Ye will not be able to deal equally between (your) wives, however much ye wish (to do so)..."

Historically, this verse was revealed after the battle of Uhud, when many Moslems were killed, so that the number of orphans and widows for whom the first Moslem community had to care was great. Besides, they had also to care for many female captives separated from their husbands. This toleration of polygyny is hence to be considered as an exception given for a very specific situation (26).

As regards the number of wives, there are two different interpretations of the Qur'anic prescription on the matter. While the majority understands that the Qur'an limits the number of legal wives to a maximum of four, some jurists argue that the number is given not as limitation but as a recommendation, saying that it was to meet the increase in the number of widows that the Qur'an encouraged polygyny (27).

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(26) It means, that the Qur'an may not be used as an argument to tolerate polygyny for all persons who want it. The prescription of the Qur'an does not provide general toleration of polygyny.

(27) Cfr. W. MONTGOMERY WATT, Muhammad at Medina, Oxford 1972, 276-277 ; CARRA DE VAUX, La doctrine de l'Islam, Paris 1909, 163ff. ; SAYYID SABIQ, op. cit., 152-161 ; NASHRUDDIN THAHA, op. cit., 68-74 ; MU'AMMAL HAMIDY, op. cit., 40-45 ; KAMAL MUCHTAR, op. cit., 31-33 ; SAJUTI THALIB, op. cit., 57-65 ; ABDULLAH SIDDIK, op. cit., 47-55.

However, the Qur'an gives privileges to Muhammad, permitting him to marry or to divorce women as he liked without any limitation (28) : he was allowed to wed and to divorce believing women without reckoning the Qur'anic general prescription concerning the number of wives ; he was allowed to marry his own cousins ; he was allowed to marry any woman who gave herself unto him, if he desired to marry her.

## 2. The Sunnah

Muhammad said that a Moslem should not marry more than four women. He ordered a man converting to Islam to choose only four of his ten wives and released the others, no matter whether the latter also converted to Islam or not (29). From this fact, many Moslem jurists conclude that the Qur'anic verse concerning the number of legal wives was authoritatively interpreted and clarified by Muhammad.

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(28) Q. XXXIII, 50 affirms : "O Prophet! Lo! We have made lawful unto thee thy wives unto whom thou hast paid their dowries, ... and the daughters of thine uncles... and the daughters of thine aunts ..., and a believing woman if she gives herself unto the Prophet..." ; Cfr. Q. XXXIII, 51-52.

(29) Hadith written by Ahmad, in SJARIEF SUKANDY, op. cit., 371.

As regards the condition for polygyny, he said that justice should be done to all wives one might have. He threatened any injustice with punishment in the hereafter (30). Muhammad himself tried to do justice among all his wives, although he loved Aisyah more than the others (31). He prayed that God would grant him the spirit of justice (32). He visited all wives, each on the days fixed together according to the principles of justice (33). For Muhammad, indeed, polygyny was not a problem of sexual needs but a social and humanitarian one.

Only when one of the wives gave her rights to another, for example regarding the visit, was the husband allowed to do differently from the fixed appointments with his wives (34). Finally, Muhammad gave another example of doing justice among his wives : every time he wanted to go on a journey, he assigned by lot one of his wives who would accompany him (35).

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(30) Hadith written by Ahmad, Ibnu Majah, Abu Daud, and Tirmidzi, in SJARIEF SUKANDY, *op. cit.*, 388-389.

(31) Hadith written by Bukhari and Muslim, *ibid.*, 390.

(32) Hadith written by Abu Daud and Nasa'i, *ibid.*, 388.

(33) Hadith written by Bukhari and Muslim, *ibid.*, 389.

(34) Hadith written by Ahmad and Abu Daud, *ibid.*, 390.

(35) Hadith written by Bukhari and Muslim, *ibid.*, 389-391.



### 3. The Islamic Marriage Law in Indonesia

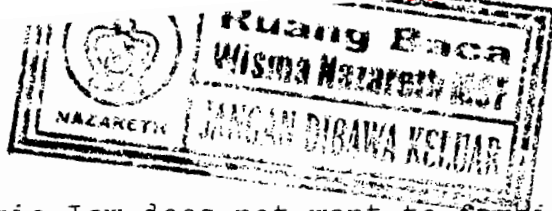
Confirming the prescription of the Qur'an and the Sunnah, the Islamic Law in Indonesia tolerates polygyny. Such toleration shall never be modified, because it is based on the fundamental sources of Islam, which are considered infallible. The Law shall only provide some regulations complementary to that prescription.

Apart from its abuses, polygyny as such is not considered as morally less good than monogamy. Moslem scholars firmly defend the Islamic toleration of polygyny, especially when it is under criticism and attack from outside of the Islamic world. They give various arguments, showing that polygyny has positive values and advantages, provided that it is done according to the Islamic regulations (36). They say, polygyny can be a good solution for occasional problems, political, social and economic (37).

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(36) Cfr. ABDULLAH SIDDIK, op. cit., 47-55 ; AHMAD AZHAR BASYIR, op. cit., 33-36 ; MU'AMMAL HAMIDY, op. cit., 40-45 ; SAJUTI THALIB, op. cit., 57-65 ; KAMAL MUCHTAR, op. cit., 31-33 ; and UMAR HUBEIS, Fatawa - I ; Surabaya 1979, 110.

(37) Most Indonesian Moslem scholars agree, that polygyny must be considered as an exception. It is tolerated because of social and humanitarian reasons, not for sexual satisfaction.



The Islamic Law does not want to forbid polygyny. It only wants to regulate the practice and prevent abuses. Firstly, it confirms the prescription of the Qur'an and the Sunnah : that justice shall be done to all wives ; and that one may not have more than four wives. Secondly, it prescribes that polygyny may be tolerated if there exists one of these circumstances : wife being childless ; excess of women in the society ; wife being unable for sexual union ; wife being unable to satisfy her husband's sexual need ; or wife being imprisoned for years (38).

From this provision, one can see certain values of married life which are considered important by Indonesian Moslems : marriage is supposed to give children ; marriage shall keep the spouses chaste, preventing them from adultery , marriage is the only institution which makes sexual intercourse lawful ; marriage also gives economic security to woman. In many Islamic countries, in fact, unmarried women suffer poverty and insecurity because of the fact that they can hardly work and thus support their own life.

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(38) Some scholars, however, do not limit the toleration of polygyny only for such circumstances. They say, there are only two conditions necessary, namely : that justice shall be done to all wives ; and that the number of wives is not more than four.



#### 4. The Indonesian Marriage Law

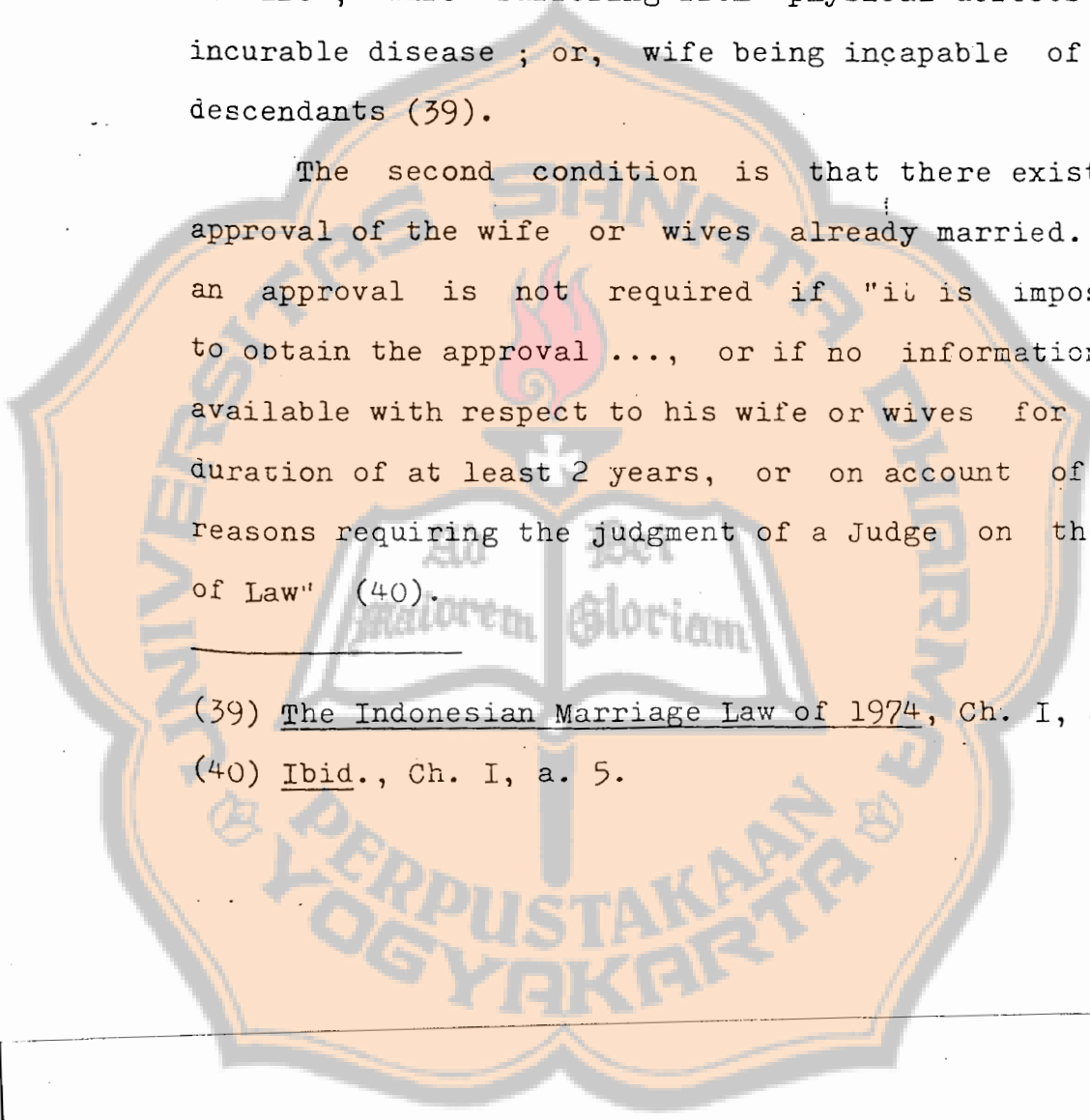
Although favouring the principles of monogamy, the Indonesian Marriage Law of 1974 nevertheless tolerates polygyny, which is allowed by Islam, the religion adhered to by the majority of the Indonesian population. The Law only tries to regulate the practice and prevent abuses, particularly to protect the rights of women and improve their condition.

The first condition prescribed by the Law is that there exists a just reason for the request to take an other wife. Three possible reasons could justify such a request, namely: wife being unable to perform her duties as wife ; wife suffering from physical defects or an incurable disease ; or, wife being incapable of having descendants (39).

The second condition is that there exists the approval of the wife or wives already married. Such an approval is not required if "it is impossible to obtain the approval ..., or if no information is available with respect to his wife or wives for the duration of at least 2 years, or on account of other reasons requiring the judgment of a Judge on the Court of Law" (40).

(39) The Indonesian Marriage Law of 1974, Ch. I, a. 4.

(40) Ibid., Ch. I, a. 5.



The third condition is that there exists the assurance, that the husband will guarantee the necessities of life for his wives and their children, and that he shall act justly in regard to them (41).

Besides, the Law prescribes that only the Court of Law shall be capable of granting permission to a husband to have more than one wife, if all parties concerned so wish (42). A husband who wants to take more than one wife, therefore, shall submit a written request to this effect to the Court (43). The Court shall then conduct an inquiry concerning: the validity of the reasons for the performance of a second marriage; the consent of the wife already married; the capability of the husband to guarantee the livelihood of his wives and children; and the existence of a safeguard that the husband will treat his wives and children fairly by means of a statement or a promise by the husband on a form designated for such a purpose (44).

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(41) The Indonesian Marriage Law of 1974, Ch. I, a. 5.

(42) Ibid., Ch. I, a. 4.

(43) The Government Regulation of 1975 ..., Ch. VIII, a. 40.

(44) Ibid., Ch. VIII, a. 41. Cfr. SAIDUS SYAHAR, op. cit., 88-92; ABDURRAHMAN and RIDUAN SYAHKANI, Masalah-masalah Hukum Perkawinan di Indonesia, Bandung 1978, 79-104.

5. The present Catholic teaching

The Church firmly teaches, that the unity of marriage is connatural with marriage as a community of love and life. The recent documents of the Church concerning marriage show it very clearly (45). However, some Catholic theologians try to create a better understanding of the whole problem concerning polygamy. They present some proposals for a different policy and a new approach, appealing to the Church to give a proper answer to the modern questions concerning polygamy and its social implications (46).

Confirming the teaching of the Church formulated by some Popes since the 8th century (47), the Council of Trent forbade polygamy in the following formulation: "If one asserts that it is permitted to Christians to have several wives at the same time, and that this is forbidden by no divine law, let him be anathema" (48). The condemnation was primarily directed against certain Reformers, but the teaching itself surely binds the conscience of all Catholics.

(45) Cfr. Gaudium et Spes, n. 48 ; Familiaris consortio, n. 11 ; Humanae Vitae, n. 9.

(46) Cfr. E. HILLMAN, Polygamy reconsidered, N. Y. 1975; M.C. KIRWEN, African Widows, N. Y. 1978.

(47) Gregory II, 730 ; Nicholas I, 866 ; Innocent III, 1201.

(48) Issued on 11-11-1563, in JOSEPHO ALBERIGO et al., Conciliorum Oecumenicorum Decreta, 1973, 754.

The teaching of the Church was since re-confirmed by the Holy Office and by Pope Leo XIII (49). They reasserted that simultaneous polygamy was illicit under evangelical law. Finally, in modern times Pope Pius XI reaffirmed that Christ restored monogamy for all, to the exclusion of polygamy (50). And the Second Vatican Council considers polygamy as one of the disfigurements which obscure the dignity of marriage (51).

Polygamy is still more incompatible with the nature and the deepest meaning of sacramental marriage, which was formed and blessed by Christ "on the model of His union with His Church" (52). It is Christ who elevates conjugal love and takes it up into divine love. If conjugal love, by its nature, demands full fidelity and argues indissoluble unity (53), the sacramentality of marriage leads the spouses to respond to the demand of divine love uniting them with still more faithful love to one another.

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(49) In 1866, in Coll. S.C.P.F., Rome 1907, vol.I,649; In Arcanum divinae Sapientiae, Inseg. Pontifici,123.

(50) In his encyclical letter Casti Connubii, 31-12-1930 in AAS 22 (1930) 547.

(51) In Gaudium et Spes, n. 47.

(52) Ibid., n. 48 ; Eph. 5:25.

(53) As affirmed in Gaudium et Spes, n. 48 ; See also : Humanae Vitae, n. 9.

Pope John Paul II explicitly affirms that polygamy does not correspond to the nature of married life (54). Confirming the indivisible unity of conjugal communion, he teaches that "Such a communion is radically contradicted by polygamy : this, in fact, directly negates the plan of God which was revealed from the beginning, for it is contrary to the equal personal dignity of men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive (55).

The Church is aware that polygamy has very close connections with certain cultures. However, she is not ready to tolerate or adopt it. The 1980 Synod of Bishops writes that "all cultural elements must be evaluated in the light of the Gospel, to insure that they are consistent with the divine plan for marriage and family" (56). It means that the Church's teaching on the unity of marriage shall be defended also in those regions where polygamy has been accepted by the local customs and beliefs. Christians are called to be a leaven of moral progress for society (57).

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(54) In his apostolic exhortation Familiaris consortio, n. 19.

(55) Idem.

(56) In the Message to christian families in the modern world, n. 3.

(57) Cfr. Homily of John Paul II at Mass for families at Kinshasa (Zaire), 3-5-1980, in In the Image of God, 24-25.

### C. CONCLUSION

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Monogamy is clearly recommended and promoted by Islam and the Church. It is considered as ideal and preferred to polygamy. In this case both religions can work together without difficulties, particularly in Indonesia, the government of which follows the same principle. Emancipation and equality for women in front of men should be first fought for, because polygyny has been partly encouraged by the belief in the superiority of man over woman.

The fact that there have been frequent abuses of the polygyny among Indonesian Moslems should encourage the Church and Islam to work still more strenuously, so that more and more people consciously choose to live in monogamous marriage. The people should be given to understand, that monogamy promises a happier and peaceful family life. Monogamy should not be a rule which is externally imposed, but first and foremost an ideal form of marriage which is willingly chosen because of its intrinsic values and advantages.

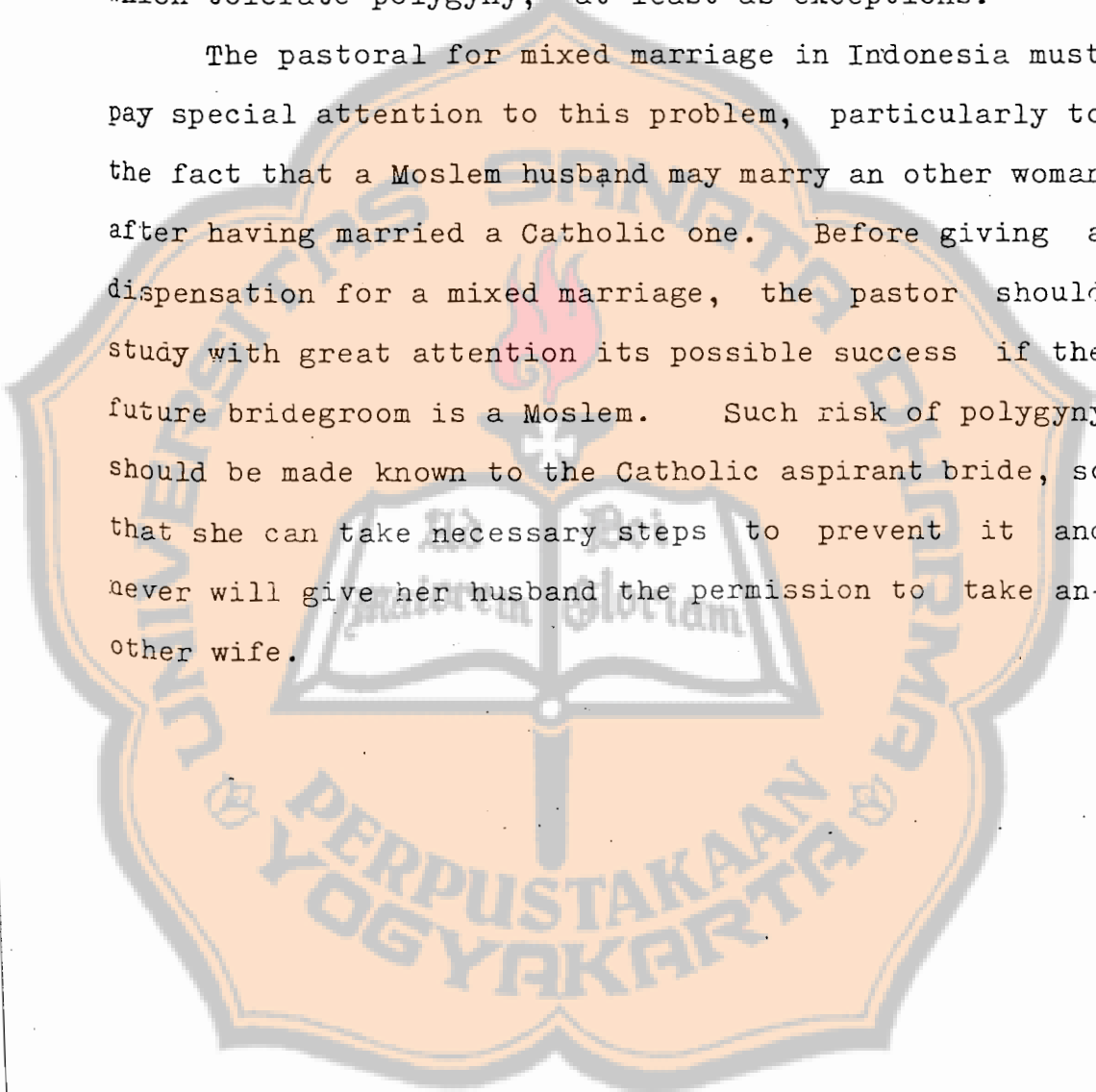
The Indonesian government and many Moslems are aware, that the principle of monogamy must be followed, if the society desires to better the economical and social conditions of women. Polygyny in Indonesia must be considered as exception, tolerated under strict con-



itions and regulations. It is a pity, that the Islamic law in Indonesia is still too permissive in regard to polygyny and its abuses ; and the conditions prescribed for its toleration show that too many privileges are given to husbands, contrary to the principles of emancipation and equality of both sexes.

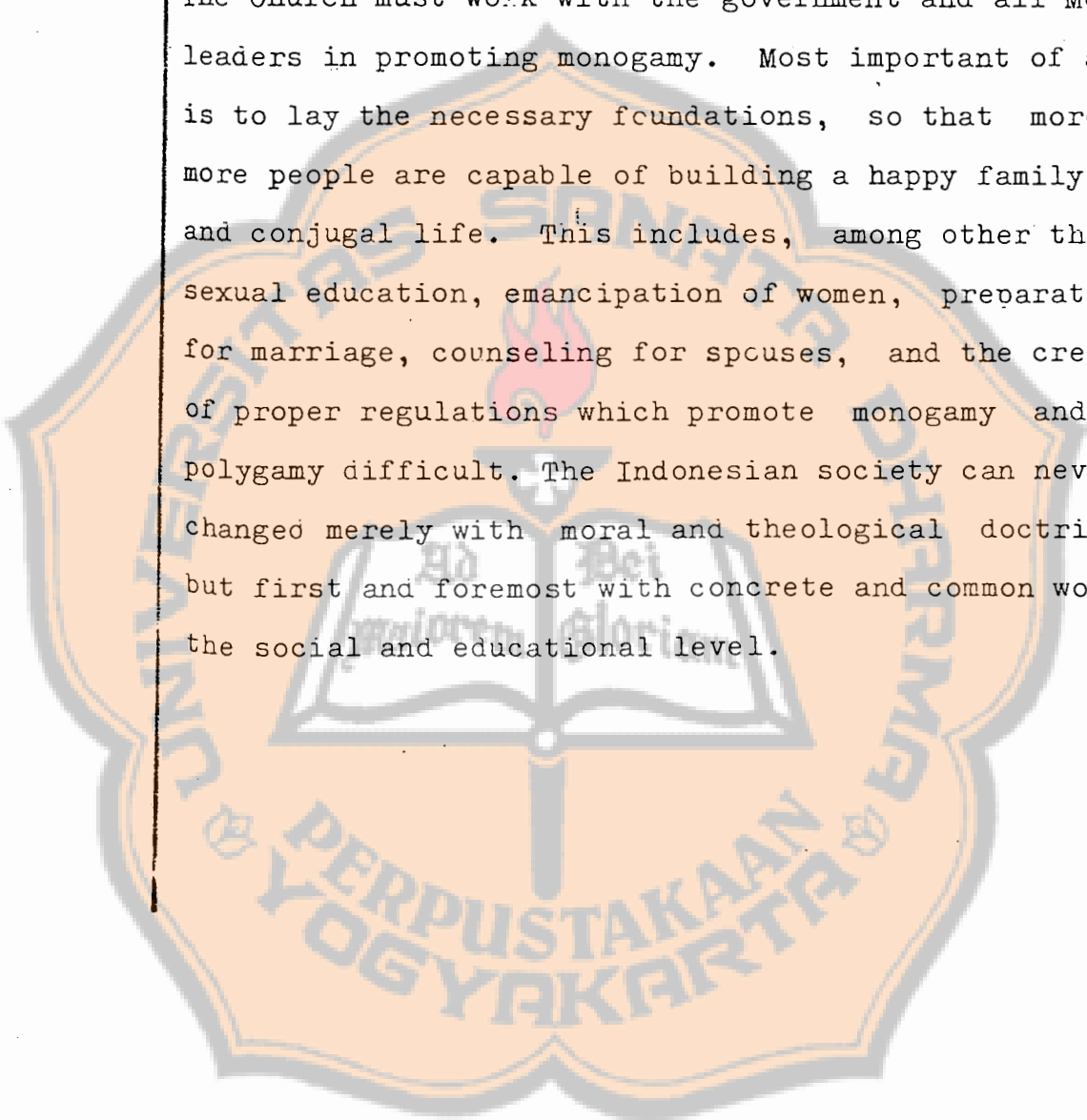
In promoting monogamy and rejecting polygamy, the Church in Indonesia may not use merely theological arguments, but also and first of all present plausible arguments that can easily be understood by the people. Theological arguments against polygyny shall never be accepted by Moslems, because they believe in the infallibility of the Qur'an and the Sunnah of Muhammad, which tolerate polygyny, at least as exceptions.

The pastoral for mixed marriage in Indonesia must pay special attention to this problem, particularly to the fact that a Moslem husband may marry an other woman after having married a Catholic one. Before giving a dispensation for a mixed marriage, the pastor should study with great attention its possible success if the future bridegroom is a Moslem. Such risk of polygyny should be made known to the Catholic aspirant bride, so that she can take necessary steps to prevent it and never will give her husband the permission to take another wife.



The toleration of polygyny by the government and Islam in Indonesia may lead to the conclusion, that dispensation for mixed marriage in Indonesia should be more easily given to marriage between a Catholic man and a Moslem woman. Such marriage offers greater possibility of success, having less danger of polygamy. However, it lacks the Islamic recognition of its validity, because Islam firmly teaches that no Moslem woman can ever validly marry a non-Moslem man.

Finally, one thing remains important for our consideration : as a minority, the Catholic Church in Indonesia cannot impose her moral teaching on the whole Indonesian society in which Moslems are the majority. The Church must work with the government and all Moslem leaders in promoting monogamy. Most important of all is to lay the necessary foundations, so that more and more people are capable of building a happy family life and conjugal life. This includes, among other things, sexual education, emancipation of women, preparation for marriage, counseling for spouses, and the creation of proper regulations which promote monogamy and make polygamy difficult. The Indonesian society can never be changed merely with moral and theological doctrines, but first and foremost with concrete and common work on the social and educational level.



## CHAPTER VIII : THE PERMANENCE OF MARRIAGE

This chapter deals with the second character of marriage, namely its permanence. Two questions shall be answered :

- A. Is marriage a permanent bond?
- B. Is marriage a dissoluble bond?

A. MARRIAGE IS SUPPOSED TO BE PERMANENT  
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1. The Qur'an

The Qur'an orders the believers to be faithful to their wives or husbands. It appeals for settlement of family disputes in a peaceful way, so that a breach will not take place. When a dispute between husband and wife occurs, and both or their relatives fear a breach between them, they have to appoint an arbiter from his folk and an arbiter from her folk. These arbiters, then, would know the problem of both parties, and would be able to effect a real reconciliation (1).

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(1) Q. IV, 35 says: "And if ye fear a breach between them twain (the man and the wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind. Lo! Allah is ever Knower, Aware".

The Qur'an does not give any explicit prescription concerning temporary marriage. However, such a marriage is seemingly forbidden by the Qur'an. This can be concluded from the fact that the Qur'an views marriage as a strong bond, as a solemn covenant which should be kept sacred in spite of difficulties and challenges (2).

The Qur'an considers marriage as a natural sign of God's kindness, recommending Moslem spouses to live in love and mercy (3). Moslem husbands are warned not to hate their wives, because it may happen that they hate "a thing wherein Allah hath placed much good" (4). The Qur'an commands husbands to consort with their wives in kindness. All these prescriptions show the internal attitude of the Qur'an towards marriage, supposed to be a permanent bond, a sign of God's kindness and love.

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(2) Q. IV, 20-21 questions : "And if ye wish to exchange one wife for another and ye have given unto one of them a sum of money, take nothing from it... How can ye take it (back) after one of you have gone in unto the other and they have taken a solemn covenant from you?".

(3) Q. XXX, 21 says : "And of His signs is this : He created for you helpmeets from yourselves that ye might find rest in them, and He ordained between you love and mercy..."

(4) Q. IV, 19 says : "But consort with them in kindness, for if ye hate them it may happen that ye hate a thing wherein Allah hath placed much good".

## 2. The Sunnah

Muhammad firmly forbade temporary marriage, which had been commonly practised in Arabia. Only once did he allow his followers to perform such a marriage because of the particular situation of that time. It was during the battle of Authas, when Muhammad allowed his followers to perform temporary marriage with women of that place, so that they would not go to prostitutes. After the battle, they should return to their previous wives, and temporary marriage was then forbidden forever (5).

Muhammad promised God's grace and happiness in the hereafter for spouses who live faithfully to each other (6). He ordered new spouses to ask for God's grace and help, so that they could live peacefully in their married life, overcoming all possible difficulties.

To promote permanent marriage, Muhammad ordered aspirant spouses to learn to know each other (7). He prescribed, that marriage should be performed with the consent of the bridegroom and the approval of the bride in spite of the consent of her guardian.

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- (5) Hadith written by Bukhari, Muslim, Abu Daud, Ahmad, Nasa'i, Ibnu Majah and Ibnu Hibban, in SJARIEF SUKANDY, op. cit., 366-367.
- (6) Hadith written by Ahmad, Abu Daud, Tirmidzi, Ibnu Majah and Nasa'i, ibid., 357-358.
- (7) Hadith written by Muslim, ibid., 359.

### 3. The Islamic Marriage Law in Indonesia

The Indonesian Moslems promote the permanence of marriage in accordance with the prescription of the Qur'an and the Sunnah of Muhammad. The recommendation of it is given through abundant advice during and after the wedding ceremony. Both spouses are told, that marriage should be permanent for the sake of their children and the whole society. Conflicts between husband and wife will effect conflicts among families and disturb the stability of the society. Therefore, disputes between husband and wife shall be settled peacefully (8).

Temporary marriage is absolutely forbidden. It is considered contrary to the meaning of Islamic marriage which is the foundation of a lasting family (9). The Law explicitly rejects the toleration of temporary marriage shown by some scholars and jurists (10), for such a marriage will break-up the family and lead to a series of miseries.

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(8) Based on Q. IV, 35.

(9) As affirmed in KAMAL MUHTAR, op. cit., 28-29.

(10) Some scholars of Shiite sect allow temporary marriage for Moslems living in a battle far from their wives for a long time ; Cfr. MAHMUD YUNUS, op. cit., 27.

Indonesian Moslem scholars affirm that marriage is aimed at the creation of a peaceful and orderly family (11). This requires that marriage be stable and permanent. Besides, both spouses should work together, that all difficulties would be overcome. It is always said by Moslem leaders, that faith constitutes the most important basis for the stability of marriage (12).

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 intends to promote the permanence of marriage, considering it as a basis for the stability of society as a whole. Many times the Law affirms, that the aim of marriage is to establish a happy and lasting family (13).

Mental and physical maturity of the spouses is considered necessary for the stability of marriage : The Law prescribes that marriage shall be performed on the condition that both spouses are sufficiently mature (14). Marriage of those who are under-age is explicitly forbidden, because such a marriage does

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(11) Cfr. MAHMUD YUNUS, op. cit., 1-2.

(12) Based on the saying of Muhammad.

(13) It is also said in the definition of marriage in The Indonesian Marriage Law of 1974, Ch. I, a. 1.

(14) The Indonesian Marriage Law of 1974, General clarification, 4.

not provide a solid basis for a permanent marriage. The Law prescribes a high limit for both aspirant spouses : 19 years for the male aspirant, and 16 years for the female aspirant (15).

To ensure that marriage will be stable, the Law prescribes that the performance of marriage shall be approved by all parties concerned (16). Marriage shall be prevented if any of the parties so wish, or in the case that any party does not meet the prerequisites for the performance of the marriage (17).

In its general clarification, the Law affirms that husband and wife must support and supplement each other, in order that they succeed to establish a happy and lasting family (18). The government is aware that the stability of marriage not only depends on the Law and its regulations, but also and foremost on the union between husband and wife.

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(15) The Indonesian Marriage Law of 1974, Ch. II, a. 7.

(16) Not only the bridegroom or the bride, but also the families of both aspirant spouses.

(17) The Indonesian Marriage Law of 1974, Ch. III , aa. 13-21.

(18) Ibid., General clarification, 4 ; the Law also prescribes that "husband and wife shall love and respect each other and give each other physical and moral support" (ibid., Ch. VI, a. 33).



Finally, the Law promotes the permanence of marriage through the recognition of emancipation between man and woman. The Law gives equal rights and social status to both spouses, not only in their own household but also in their social intercourse (19). Emancipation helps both spouses to be able to value and respect each other, and together establish a happy and lasting family.

#### 5. The present Catholic teaching

The Catholic Church firmly teaches the permanence of marriage, considering it as an essential character of this institution (20). The permanence of marriage is founded on the divine law revealed in the Old and New Testament : husband and wife are no longer two but one; what therefore God has joined together, let no man put asunder (21). It means, that the permanence of marriage is not externally imposed by human or ecclesiastical law, but by God Himself. The stability of marriage does not depend on men's choice, but on God's will.

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(19) The Indonesian Marriage Law of 1974, Ch. VI, a. 31.

(20) It is based on Christ's teaching and was already taught by the Fathers of the Church, particularly by St. Augustine ( De Gen. ad litt., 1.9, c.7, 12).

(21) Gen. 2:24 and Mt. 19:6.

The Second Vatican Council confirms the Church's teaching, affirming that the permanence of marriage is demanded by the intimate union between husband and wife and the good of the children (22). The Council affirms that marriage is an institution which is based on the irrevocable personal consent of both spouses, and which by divine ordinance is stable, even in the eyes of society (23). This bond is sacred and does not depend on men's choice.

As regards marriage between baptized persons, the permanence of their marriage is also rooted in its sacramental dignity. Christ has blessed both spouses and remains with them. Just as He loves the Church, so must husband and wife love each other with a lasting fidelity (24). More than other persons, Christian spouses are called to establish permanent marriage. Full married love will be more highly valued, if Christian spouses excel in witnessing to it by their loyalty to each other (25), and by their devotion in educating their children (26).

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(22) In Gaudium et Spes, n. 48.

(23) Idem.

(24) Idem.

(25) Ibid., n. 49.

(26) The Church emphasizes that the procreation of children is connected with the education of them.

Pope Paul VI affirms, that the permanence of marriage is rooted in the nature of conjugal love which is faithful until death. On the day when they freely vowed themselves to one another in marriage, husband and wife were aware that they were called to be faithful to each other. Conjugal fidelity is not impossible, although sometimes it presents difficulties. It has been shown by many married persons down through centuries, that fidelity is connatural to marriage and is the source of profound and enduring happiness (27).

John Paul II, finally, reaffirms the permanence of marriage in his apostolic exhortation issued as a follow-up of the 1980 Synod of Bishops. He writes : "It is a fundamental duty of the Church to reaffirm strongly, as the Synod Fathers did, the doctrine of the indissolubility of marriage ... It is necessary to reconfirm the good news of the definitive nature of that conjugal love that has in Christ its foundation and strength. Being rooted in the personal and total self-giving of the couple, and being required by the good of the children, the indissolubility of marriage finds its ultimate truth in the plan that God has manifested in his revelation" (28). Consequently, the Church rejects "trial marriage" , "free union" , and divorce (29).

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(27) In Humanae Vitae, n. 9.

(28) Cited from Familiaris consortio, n. 20.

(29) Cfr. Familiaris consortio, nos. 80-81.

## B. THE TOLERATION OF SEPARATION AND DIVORCE

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### 1. The Qur'an

The Qur'an clearly tolerates separation and dissolution of marriage, prescribing certain conditions and circumstances. However, in principle it discourages any permanent divorce, recommending all efforts to bring about reconciliation between husband and wife who are in dispute. The Qur'an even considers divorce as detestable, being contrary to the aim of marriage.

The Qur'an recognizes a legitimate separation "from table and bed". In this case the partners to a marriage live separately and cease to cohabit, but neither is free to marry another person while the partner is living. The Qur'an gives the right to decide upon separation to the husband only. It orders him to admonish his wife and banish her to a separate bed when she is unfaithful or disobedient (30). Then, if she obeys him, he may take her back and thus both spouses can live together as before.

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(30) Q. IV, 34 says : "So good women are the obedient, guarding in secret that which Allah hath guarded. As for those from whom ye fear rebellion, admonish them and banish them to beds apart, and scourge them".

Allowing Moslem husbands to divorce their wives, the Qur'an nevertheless provides some prescriptions to check hasty action as far as possible and leave the door to reconciliation open at many stages. In fact, the Qur'an prescribes the process of permanent divorce as follows :

A husband who wants to divorce his wife shall first meditate it, trying to reach some reconciliation. If he fails, he may pronounce what is called "talaaq" which means "repudiation" or "divorce". The wife whom he wants to divorce shall wait, keeping herself apart, three monthly courses. During this waiting period, both spouses try again to reach reconciliation and the husband has the right to retain her without renewing the marriage consent. Meanwhile, the wife may still stay in the husband's house, and the husband is responsible for her maintenance (31).

If such a reconciliation does not take place before the end of the waiting period, the husband should release his wife in kindness (32), and both parties are free to get married to other persons. Or, they

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(31) Q. II, 228 orders : "Women who are divorced shall wait, keeping themselves apart, three (monthly) courses... And their husbands would do better to take them back in that case if they desire a reconciliation. And they (women) have rights similar to those (of men) over them in kindness.."

(32) Cfr. Q. II, 229-232.

may remarry each other through a renewal of consent, provided that it is done sincerely and freely.

Such a process of pronouncing the talaq, waiting period and reconciliation or remarriage can only be repeated once again. A husband who has pronounced the talaq for the third time to a given wife, has no more right of any reconciliation or remarriage (33). Then he must release the wife in kindness and may not place difficulties if she wants to marry another person (34). Only after this marriage, followed by another divorce, can she be married again by the former husband.

## 2. The Sunnah

Muhammad discouraged but tolerated divorce. He explicitly affirmed that divorce is, of all things permitted, most hateful to Allah. He himself never pronounced any talaq to his wives, although once he gave them the opportunity to leave him because of the

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(33) Q. II, 230 says : "And if he hath divorced her (the third time), then she is not lawful unto him thereafter until she hath wedded another husband. Then if he (the other husband) divorce her it is no sin for both of them that they come together again ..."

(34) Q. II, 232 says : "And when ye have divorced women and they have reached their term, place not difficulties in the way of their marrying their husbands if it is agreed between them in kindness".

poverty they experienced in his household (35). But that opportunity was not used by any of his wives. They decided to be faithful to him. →

As regards the process of divorce, Muhammad confirmed the Qur'anic prescription. Besides, he gave some precision or clarification concerning its practice. He said that any intention of divorce should be pronounced clearly and explicitly, not only as an invitation or an allusion. It means that a mere giving of option of divorce to one's wife will not make a divorce effective (36).

Muhammad forbade his followers to divorce their wives during their menses (37), during which conjugal union was also forbidden (38). They were not allowed to divorce their wives, simply because they wanted to satisfy their sexual need, by marrying other women.

Finally, Muhammad also admitted that the women might ask for a divorce. In this case, they had to give the dowry back to the husbands (39). The divorce would then be pronounced by the husbands.

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(35) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, *op. cit.*, 210-220.

(36) *Idem.*

(37) Hadith written by Muslim, *ibid.*, 206-208.

(38) Based on the Qur'anic prescription : Q. II, 222.

(39) Hadith written by Bukhari, in HASSAN, *op. cit.*, 526.

### 3. The Islamic Marriage Law in Indonesia

The Indonesian Moslem scholars consider divorce as an exception, discouraging the Moslems from practising it. They affirm that marriage is aimed at establishing a happy and lasting family. They like to cite the saying of Muhammad : divorce is, of all things permitted, most hateful to God. It is hateful to God, for it is contrary to God's plan for marriage to be a strong bond.

However, when it must take place, it will be tolerated and regulated according to the prescription of the Qur'an and the Sunnah of Muhammad. In reality, the regulations concerning divorce are now complicated. The Law lists all possible reasons, that may urge any divorce, and various kinds of divorce with their proper names and procedures (40).

In principle, divorce can be tolerated if married life becomes unbearable for one or both spouses, or if it can never reach one of its fundamental purposes. Being impotent or childless, for example, a wife can be divorced, because procreation is one of the most important purposes of marriage (41). Other possible reasons

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(40) Cfr. MAHMUD YUNUS, *op. cit.*, 111-137 ; and KAMAL MUCHTAR, *op. cit.*, 144-208.

(41) As affirmed in MU'AMMAL HAMIDY, *op. cit.*, 88.



for divorce are : wife being mad ; wife being leprous; wife suffering skin-spots ; wife being disobedient, or committing adultery ; wife having disappeared for a long time.

There are various ways of dissolving marriage : The first and the most frequently practised way is by the pronouncement of divorce called talaq. It is pronounced by the husband, followed by the waiting period which lasts around four months (42). The divorce takes place at the end of the waiting period, if no reconciliation has been brought about.

The second way is what is called khulu (43). This divorce is asked by the wife, but pronounced by the husband. She may ask a divorce from her husband, if she feels that she can no longer live together with him in harmony and peace. In this case, the husband may grant her the pronouncement of divorce, getting back the dowry that he has given to her (44). This kind of divorce can happen any time if approved by both spouses, even when the wife is pregnant or during her menses. This khulu

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(42) Or longer, if the wife is pregnant. In this case, the waiting period will last until the day the child is born. Cfr. SAJUTI THALIB, op. cit., 137.

(43) which is not frequently practised in Indonesia.

(44) Khulu is based on the Qur'anic prescription, in Q. II, 229 ; Cfr. AHMAD AZHAR BASYIR, op.cit., 73.

is followed by the waiting period, but nullifies the matrimonial consent. Reconciliation can take place only through a renewal of consent (45).

Similar to khulu is what is called talik-talak, which is frequently practised in Indonesia. This kind of divorce is asked by the wife from her husband, because he breaks his promises given at the wedding. In this case, the husband must grant her the pronouncement of divorce, getting some gift from her (46). This kind of divorce is followed by the waiting period, and also nullifies the matrimonial consent. Therefore, reconciliation can take place only through a renewal of consent before at least two witnesses.

Divorce can also take place through what is called li'an. When it happens that a husband accuses his wife of adultery and there is no eyewitness, he must swear by God publicly and repeat it five times, saying that he is speaking the truth. If the wife rejects the accusation, she will do the same thing, swearing by God publicly five times. Just after both of them have sworn by God that they speak the truth, a divorce occurs, and reconciliation is forbidden.

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(45) Before at least two witnesses. It is called rujuk.

(46) This is to be noted: In the case of khulu, the wife must give back the dowry. In the case of talik-talak, she must give just some gift, which is called iwadl.

To protect women from continuous mistreatment, the Islamic Law in Indonesia recognizes the right of woman to claim for a divorce, provided that there is a just reason for it. In this case she must hand the the claim to a Court of Islamic Law. When the judge finds out that there exists a just reason, he may dissolve the marriage with or without the approval of the husband. The Law considers these following as just reasons for such a claim : husband being impotent, mad, or leprous ; husband suffering skin-spots ; husband being poor, unable to provide for her necessities ; husband having dissapeared for a long time (47). This kind of divorce is called fasakh.

Finally, divorce can occur through what is called ila. A husband who forswears his wife must wait four months (48). Then, he must decide either to take her back or to divorce her. In the case in which he decides to divorce her, she must complete her waiting period. Reconciliation can take place only through a renewal of consent before at least two witnesses (49).

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(47) This list of reasons can be found, for example, in AHMAD AZHAR BASYIR, op. cit., 78.

(48) This kind of divorced is based on Q. II, 226-227.

(49) This kind of divorce is aimed to protect women from continuous spiritual and psychological suffering, caused by the fact that the husband forswears her.

#### 4. The Indonesian Marriage Law

Although recommending the permanence of marriage, the Indonesian Marriage Law of 1974 tolerates divorce under some conditions. In principle the Law intends to make divorce more difficult than before. It prescribes that "For divorce to be granted it must be supported by reasons that are warranted and only through a process before a Court hearing" (50). Such a process may occur only after the Court has endeavored and has been unsuccessful in bringing about a reconciliation between the spouses concerned (51). The Law also mentions some reasons which can justify a request of divorce, namely (52) :

- a. Either of the parties has committed adultery or has become a drunkard, a narcotics addict, a gambler, or anything that is difficult to reform ;
- b. Either of the parties has abandoned the other party for two years in succession without permission from the other party and without any valid reason or due to force majeure ;

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(50) The Indonesian Marriage Law of 1974, general clarification, 4.

(51) Ibid., Ch. VIII, a. 39.

(52) The Government Regulation of 1975 ..., Ch. V, a.19. One can see very easily that the Indonesian Law follows the prescription of the Islamic Law.

- c. Either of the parties has been sentenced to a prison term of five years or longer, after the marriage had been performed ;
- d. Either of the parties has suffered a physical disfigurement or malady with the consequence of being unable to perform the duties of a spouse ;
- e. Either of the parties has inflicted cruelty on or maltreated his/her partner, making life hazardous to the other party ;
- f. Disputes and discords have occurred between husband and wife and there is no hope of living peacefully together within a household .

From this prescription it becomes clear, that the Law adopts the spirit of Islamic Law on this matter. The Indonesian Law only gives some precision and imposes on it a legal character. Divorces that are carried out only according to the law of the respective religions of the parties concerned are not considered legitimate, unless they are carried out before a session of any Court of Law authorized by the government (53). This regulation is aimed at discouraging married people from deciding upon divorce. Spouses in dispute are encouraged to strive for a reconciliation.

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(53) In reality it means : a Religious Court for those adhering to Islam, and a General Court for all the others.

### 5. The present Catholic teaching

Affirming that the permanence of marriage derives from God Himself, the Church teaches that no human power may dissolve the matrimonial bond. This teaching is founded on the words of Christ Himself. Answering the questions posed by some Pharisees, He affirmed very clearly : "For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so. And I say to you : whoever divorces his wife, except for unchastity (54) and marries another, commits adultery ; and he who marries a divorced woman commits adultery" (55). This teaching was then confirmed by the Fathers of the Church, and reconfirmed by the Catholic Church till nowadays (56).

However, the Church is aware of the difficulties that can arise in married life. Hence the spouses who are in dispute are helped to reach a reconciliation. Realizing that certain conditions are often obstacles to a harmonious and stable married life, the Church invites all to contribute to furthering the cause of marriage and family (57).

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(54) The Church interpretes it as invalidity .

(55) Cited from Mt. 19:8-9.

(56) See the first part of this chapter.

(57) Cfr. Gaudium et Spes, n. 52.

In principle the Church obliges married persons to observe the community of conjugal life. However, she admits what is called "separation" of spouses, if some just reason excuses them from observing the community of conjugal life. Separation is not a divorce. In this case the partners live separately and cease to cohabit, but the matrimonial bond remains. It is always directed towards reconciliation, especially if there are children involved. The Church admits separation of spouses for reason of adultery, or grave bodily or spiritual danger, or heresy or schism (58). The Church has the right to separate the spouses, temporarily or permanently, provided there exist grave and legitimate reasons for such grave action.

The Second Vatican Council only summarily rejects divorce, confirming very clearly the indissolubility of marriage. The Council speaks of the plague of divorce as one of the disfigurements that obscure the dignity of this institution (59). Divorce cannot guarantee the good of spouses, the good of the children and the stability of society. It negates the irrevocability of the matrimonial consent and the nature of marriage as an institution which is stable by divine ordinance.

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(58) CIC., cc. 1128-1132 ; separation cases must be handled with the pastor or the local ordinary.

(59) In Gaudium et Spes, n. 47.

John Paul II considers divorce as one of many signs of a disturbing degradation of some fundamental values, at the root of which lies a corruption of the idea and the experience of freedom (60). The Pope says that the spread of divorce among the faithful is one of the more troubling signs of the phenomenon, as also stressed by the Synod Fathers (61). Therefore he urges the whole Church to a deep reflection and commitment, so that the new culture now emerging may be evangelized in depth (62).

Apart from the firm teaching on the indissolubility of marriage, however, the Church has granted a dissolution of the matrimonial bond in certain cases. In fact, Christ Himself has given a power to the apostles, promising to bind and to loose what they would bind or loose (63). From the apostles, then, the Church is given the divine power to dissolve the matrimonial bond (64).

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(60) In Familiaris consortio, n. 6.

(61) Ibid., n. 7 ; The 1980 Synod of Bishops discussed the role of Christian families in the modern world.

(62) Ibid., n. 8.

(63) Mt. 16:19; 18:18 ; Jn. 20:23.

(64) There is a discussion on the limit of this power ; Cfr. A. ABATE, The Dissolution of the Patrimonial Bond in Ecclesiastical Jurisprudence, New York, n.d. 25-29 ; A. BRIDE, "Le Pouvoir du Souverain Pontiff sur le Mariage des infideles" in Revue de Droit Canonique, X-XI, 1960-1961, 98-99.



Such power has been used by the Church in the following cases : non-consumated marriage between baptized persons, or between a baptized and a non-baptized person, is dissolved by solemn religious profession and by a dispensation granted by the Holy See for a just cause (65); legitimate marriage between unbaptized persons is dissolved by another marriage performed by one of them after being baptized, "in favor of faith" (66); legitimate marriage between a baptized person and unbaptized person is dissolved by the Roman Pontiff "in favor of faith"(67); a man, before being baptized. must keep only one of his wives, namely the first wife if he remembers her, and dismiss the rest (68); a man, before being baptized, may choose from among his wives the one who wishes to be baptized with him and keep her to the exclusion of all the rest, even though she was not the first one he married (69). In spite all of these, the Church exercises the power of dissolving marriage with the greatest care, preventing any injustice!

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(65) CIC., c. 1119 which terminated previous theological and juridical controversies.

(66) CIC., cc. 1120-1126 based on I Cor. 7:12-16 and hence called "Pauline Privilege". The main condition : the other party remains unbaptized and has physically or morally departed.

(67) Based on the vicarious power given to the Roman Pontiff, and known as "Petrine Privilege".

(68) CIC., c.1125 based on PAUL III, Altitudo, 1537.

(69) CIC.,c.1125 based on PIUS V,Romani Pontificis,1571.

## C. CONCLUSION

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Both Islam and the Catholic Church intend to promote the permanence of marriage. Since 1974 the Indonesian government has done the same thing. In reality, however, the number of divorces in this country is very high, much higher than the number who practise polygamy simultaneously or successively. Therefore, all parties should work together to better the situation, being aware that the permanence of marriage is necessary for the stability and prosperity of the whole society and of the individual family.

Both Islam and the Church discourage divorce and regard it as an exception. They prescribe conditions and limitations concerning its toleration, trying to make divorce most difficult. However, from the Catholic point of view, both Islamic and Civil Law in Indonesia are still too permissive in granting permission for divorce. For example, permission for divorce has been given simply because one of the parties has to undergo a jail sentence or develops an incurable disease. Such toleration does not correspond to the natural features and exigencies of conjugal love which should be faithful until death. Perhaps the Church cannot hope that the Islamic Law will change such a prescription, being based on the "infallible" Qur'an and the Sunnah. But

the Church may appeal to the government to improve its own regulations concerning the matter, and appeal to the Moslems so that they would willingly limit the recurrence of divorce.

The Church must take the initiative for a fruitful dialogue with Moslem leaders, which should lead to a common awareness that the toleration of divorce should be more strictly limited. Such an attitude also corresponds to the authentic teaching of the Qur'an and Muhammad, which considers divorce as detestable. Family problems cannot be resolved by divorce. Rather, it will only create new problems, especially for the woman, who becomes its miserable victim.

Greater attention is to be paid to the risk of divorce among married people of different religions. The possibility of divorce really exists in a mixed marriage between a Catholic and a Moslem, particularly when the husband is the Moslem. The Church should help them, so that they succeed in establishing a peaceful and lasting family. They need intensive preparation and frequent consultation with the Pastor, so that from the beginning of their married life they can overcome the differences with a common effort. When such a marriage meets difficulties, the spouses deserve special help and attention from the Pastor.

Mixed marriages are normally performed with good will and love. The spouses believe that they will be able to overcome differences and to build a happy community of love and life. In the course of time, however, many of them fail to realize their own wishes. The Moslem may sue for a divorce, and the Catholic is not always capable of preventing such a miserable end. Many times there remain two choices of the same nature : divorce or polygamy.

There is still a real problem concerning divorce in Indonesia. The Catholic Church can never solve the problem when she works alone. The permanence of marriage should be more courageously promoted by the Church, but in cooperation with the Indonesian government and Moslem leaders.



## CHAPTER IX : RIGHTS AND RESPONSIBILITIES OF THE SPOUSES

This chapter tries to describe the rights and responsibilities of the spouses, first as husband and wife to each other, then as parents to their children.

A. THE SPOUSES AS HUSBAND AND WIFE  
=====1. The Qur'an

The Qur'an clearly states the primacy of husband over his wife, affirming that God has made man excelling woman (1). The Qur'an vests the husband with some privileges which are not given to the wife. All these privileges clearly show the husband's primacy in his household, and his superiority over his wife.

This primacy, however, implies a great responsibility. The husband is the leader in the household and the family. He is in charge of his wife. He must protect her. The leadership given to him implies duties or responsibilities, imposed by God. As leader to his wife he is given this authority : he has the right to obe-

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(1) Q. IV, 34 says : "Men are in charge of women, because Allah hath made the one of them excelling the other, and because they spend of their property (for the support of women)". Cfr. Q. II, 228.

dience and respect from his wife. Therefore, in the case of disobedience, he should warn and punish her, by banishing her to a bed apart and scourging her (2). When she is guilty of lewdness, he may scourge her with some stripes, or even confine her to his house "until death takes her" (3).

The Qur'an gives him the right to come to his wife to have sexual union whenever he desires. It compares the wife as a tilth for him, and allows him to go to her as he will (4). Only during her menstruation, is such a union forbidden. Then he must wait until she is cleansed (5).

Finally, he is given the right to pronounce a divorce and to take several wives (6), provided that there exist the prescribed conditions for such a decision (7). In fact, it is in these rights that the scales are more heavily weighted against his wife.

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(2) Q. IV, 34.

(3) Q. IV, 15 orders : "As for those of your women who are guilty of lewdness, call to witness four of you against them. And if they testify (to the truth of the allegation) then confine them to the houses until death take them or (until) Allah appoint for them a way..."

See also Q. XXIV, 2-10.

(4) Q. II, 223.

(5) Q. II, 222.

(6) Cfr. Q. II, 226ff. ; IV, 3.129 ; LXV, 1-7.

(7) Q. IV, 3.129 and Chapters VII-VIII of this work.

On the other hand, the Qur'an assures the wife economic security and kind treatment. First, she has the right to a full maintenance from her husband's property (8) and the prescribed dowry (9). Secondly, she has the right to the property she has acquired prior to and after the wedding (10), and at least the eighth of that which her husband leaves when he dies, after his legacy and debt have been paid (11).

She is also given rights of a moral nature. The Qur'an admits that the wife has the right to kind treatment and justice from her husband (12). Even in case of divorce, she is to be released in honor and kindness (13). In case of polygyny, justice forms the most important condition for its toleration (14). In short, the wife has the right to be treated as a person and a partner, not as a slave or a servant.

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(8) Q. IV, 34.

(9) Q. IV, 4 ; See Chapter V of this work.

(10) Q. IV, 29.32 which authorize husband and wife to keep and use their property separately.

(11) Q. IV, 12.

(12) Q. IV, 19 and Q. XXX, 21.

(13) Q. II, 232 orders: "And when ye have divorced women and they reach their term, place no difficulties in the way of their marrying their husbands if it is agreed between them in kindness".

(14) Q. IV, 3 ; The term "justice" in this context implies not only that of financial but also moral value.

The main duty of a Moslem wife is to contribute to the success and happiness of the marriage. To fulfil this duty, she must be obedient, faithful, trustworthy, honest and cooperative with her husband. The Qur'an affirms that the good women are obedient, guarding in secret that which Allah has guarded (15). It commands the believing women to lower their gaze and to be modest, to draw their veils over their bosoms, and not to reveal their adornment save to their own husband or relatives (16). The virtues of obedience, chastity and modesty, therefore, are obligatory for them.

## 2. The Sunnah

Muhammad gave a concrete example through his own married life to all Moslems of how a husband should live and act as the leader of the household and family. He was kind to all his wives, doing justice for them all. He was patient, merciful, and loved all his wives.

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(15) Q. IV, 34 says : "So good women are the obedient, guarding in secret that which Allah hath guarded".

(16) Q. XXIV, 31 commands : "And tell the believing women to low their gaze and be modest, and to display of their adornment only that which is appar - ent, and to draw their veils over their bosoms, and not to reveal their adornment save to their own husbands or fathers of husbands' fathers, or their sons or their husbands' sons, or their brothers.."



Muhammad confirmed the primacy of the husband in the household and family. But he commanded all Moslems to use their marital authority with kindness and mercy, to direct and to lead the whole family. He warned them not to beat their wives as if they were slaves (17).

Confirming the rights of husbands to divorce and polygyny, Muhammad nevertheless set some limitations. He forbade Moslems to have more than four wives (18) and prescribed clear regulations concerning the application of justice for all wives one might have (19). He forbade Moslems to divorce wives during their menses, ordering husbands to live in love and mercy with their wives.

As the leader of the family, the husband has the right to the obedience from the wife. At any time he may ask his wife to sleep with him and oblige her not to go of the house or entertain a guest without his permission (20). Otherwise it can create suspicion or jealousy, and the peace between both spouses is endangered.

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(17) Hadith written by Bukhari, in MUHAMMAD ZUHRI, op. cit., 604.

(18) Hadith written by Ahmad and Tirmidzy, in SJARIEF SUKANDY, op. cit., 371.

(19) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 199-201.

(20) Hadith written by Muslim, ibid., 186-187 ; hadith written by Hakim, in YUSUF EL QARDLAAWI, op. cit., II, 20.

. On the other hand, Muhammad gave women the right to economic security and kind treatment. He confirmed that women should be given some dowry, although praising those women who did not demand a precious dowry (21). He also affirmed that women had the right to full maintenance from their husband's property.

Muhammad said that the best Moslems are those men who love their wives and support them according to their capacity and in a decent manner (22). Husbands should regard those aspects of their wives which are positive and good, so that they can love them. However, they may punish their wives, when they are not obedient. Muhammad said, that it is not permissible for a woman to abandon the bed of her husband, since he has the right over her body (23).

### 3. The Islamic Marriage Law in Indonesia

The Islamic Marriage Law confirms the prescription of the Qur'an and the Sunnah concerning the primacy of husband in the household. The husband is leader for his wife and the whole family. He is the chief who guides and

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(21) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 174-176.

(22) Hadith written by Ahmad, Abu Daud, Nasa'i and Ibnu Majah, in SJARIEF SUKANDY, op. cit., 376.

(23) Hadith written by Bukhari and Muslim, ibid., 377.

decides. Consultation is recommended, but not obligatory. A man is believed to be more capable than a woman, at least in guiding the family (24).

The primacy also means great responsibility. The husband is responsible for the maintenance of the wife and the whole family, spending of his property for the support of them. It may entail her right to lodging, clothing, nourishment and general care (25).

As regards the wife, the Islamic Law in Indonesia assures her of economic security and kind treatment. She has the right to some dowry and full maintenance. All property she has acquired before and after the performance of marriage belongs to her alone. The Law also prescribes that she has the right to all these without any obligation of working outside the house to earn for herself and for her children's livelihood (26).

The wife, moreover, has the right to kindness, love and mercy. She is to be respected and treated with kindness. Only in case of her lewdness and disobedience is she deserving of punishment. When she leaves her husband, she loses all of her rights as a wife (27).

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(24) Confirmed in ALI ALHAMIDY, Islam dan Perkawinan, Yogyakarta 1980, 5-14.

(25) Cfr. KAMAL MUCHTAR, op. cit., 119-129.

(26) As stated in ZAHRY HAMID, op. cit., 64-65.

(27) Cfr. AHMAD AZHAR BASYIR, op. cit., 80-81.

.In fact, obedience to the husband is always confirmed by the Islamic Law. A woman is to obey her husband's commands. The Law reminds her, that her husband shall support and treat her well only as long as she obeys him. At least the following prescriptions are to be obeyed : to live together with him, not to go out without his permission, not to entertain any male guest without his agreement, and to obey his command concerning the household (28).

Through marriage a woman belongs to her husband. She may not obey any other man except him. She may not walk side by side with another man without his permission. It is her duty to be completely faithful and uncompromisingly chaste (29). The wife must contribute to the success and the good reputation of her husband. It is her duty to be attractive, responsive, and faithful. Something shameful which she commits shall destroy her husband's reputation. The woman, therefore, is called upon to be modest, faithful and obedient (30).

It is to be noted, however, that the Islamic Law recommends Moslem spouses to live with love and mercy, to be kind to each other, and to help one another.

(28) Cfr. AHMAD AZHAR BASYIR, *op. cit.*, 55-59.

(29) As affirmed in MOENAWWAR CHALIL, *Nilai wanita*, Surakarta 1977, 220-244.

(30) Stated in ALI ALHAMIDY, *op. cit.*, 120-127.

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 calls the man as head of the family and the wife as mother of the household (31). It does not give the husband the same authority and primacy as are granted by Islamic Law. Man and woman are given equal rights and responsibilities in the life of the household and in the social intercourse (32). Either party to the marriage has the right to conduct legal actions, and property acquired during marriage becomes joint property (33).

The Law recommends the spouses to love and respect each other, be faithful to each other and give each other physical and moral support (34). The spouses have equal rights and responsibilities in maintaining the household. The Law prescribes that husband and wife shall have a permanent residence, which shall be determined jointly (35). Husband and wife are called to support and supplement each other to develop themselves towards spiritual and material well-being (36).

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(31) Ch. VI, a. 31.

(32) The Indonesian Marriage Law of 1974, Ch. VI, a.3..

(33) Ibid., Ch. VI, a. 31 and Ch. VII, a. 35.

(34) Ibid., Ch. VI, a. 33.

(35) Ibid., Ch. VI, a. 32.

(36) Ibid., General clarification, 4.

However, equal rights and responsibilities do not mean that husband and wife have the same role and duties in the household. Their rights and responsibilities are equal, but not identical. The husband is the head of the family. It is not clear if that title given to the man implies any legal rights. But that title surely gives him some right of a moral nature : he is leader for the whole family, the person who guides and decides.

The Law prescribes, that the husband shall provide his wife with all the necessities in the household in accordance with his capabilities. This responsibility corresponds to his position as the head of the family. Only he, and not his wife, is obliged to support the whole family. When he neglects this responsibility, his wife may sue for a divorce (37). Besides, he must protect her from any harm and love her wholeheartedly.

On the other hand, the Law prescribes that the wife shall have the responsibility of taking care of the household to the best of her ability (38). She is the mother of the household, who shall create a peaceful family primarily through a good relationship with her husband. Therefore, she shall love and respect him, and with him bears the responsibility of maintaining the household through dialogue and consultation.

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(37) The Indonesian Marriage Law of 1974, Ch. VI, a.34.

(38) *Idem*.

### 5. The present Catholic teaching

Affirming marriage to be a community of love and life, the Church emphasizes the equality between husband and wife. Both spouses are equal and complementary. The husband is not superior to his wife, neither in the family nor in society. Having different charisms, they play different roles in the spirit of equality and complementarity. The difference should be respected but never used to justify the domination of one by the other.

The Second Vatican Council affirms, that man and woman shall help and minister to each other in an intimate linking of their persons and activities, so that they can experience the real meaning of their union and achieve it more every day (39). To achieve the fullness of their married life, they should share their thoughts and aims and build an affectionate communion of minds. The Council affirms, that married people are made in the image of God and have true personal status and hence should be joined in equal affection, harmony of mind and mutual sanctity (40). Man and woman are no longer two but one (41). They should give themselves to each other and love each other with a lasting fidelity, just as Christ loved the Church and gave Himself up for her.

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(39) In Gaudium et Spes, n. 48.

(40) Ibid., n. 52.

(41) Mt. 19:6, cited in Gaudium et Spes, n. 48.

The 1980 Synod of Bishops confirms the equality and the complementarity of man and woman. In their message to Christian families, the Synod Fathers affirm : "In speaking of God's plan, the Church has many things to say to men and women about the essential equality and complementarity of the sexes, as well as about the different charisms and duties of spouses within marriage. Husband and wife are certainly different, but they are also equal. The difference should be respected but never used to justify the domination of one by the other" (42).

Pope John Paul II puts a strong emphasis on love as the basis of married life, as the inner principle of the tasks given to all members of every family. Husband and wife may not remain two individuals, living side by side for their own interests (43). They should live a love which is not only of affections and emotions, but also of dedication - mutual, free, voluntary, total and irrevocable (44). Conjugal communion is rooted in the natural complementarity that exists between man and woman, and is nurtured through the personal willingness of the spouses to share their entire life.

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(42) Cited from Message to christian families in the modern world, n. 19.

(43) Homily at the Mass in Limerick, 1-10-1979, in In the Image of God, Vatican City 1980, 14.

(44) Address to the Sacred Roman Rota, 4-2-1980, ibid., 14.



As regards the role of the husband, Pope John Paul II writes in his apostolic exhortation as follows: "Within the conjugal and family communion-community, the man is called upon to live his gift and role as husband and father ... Authentic conjugal love presupposes and requires that a man have a profound respect for the equal dignity of his wife...In revealing and in reliving on earth the very fatherhood of God, a man is called upon to ensure the harmonious and united development of all the members of the family" (45). He is the one who promotes the unity of the family.

Then, confirming the message given by the Synod Fathers (46), the Pope underlines the dignity and the role of women within the family and society. He writes (47) that women have very important roles in the family and in society as well, and that these roles should be harmoniously combined; the work of women in the home is to be recognized and respected by all in its irreplaceable value ; society must be structured in such a way that wives and mothers are not in practice compelled to work outside the home. The Pope affirms, that a wife is the one who dedicates herself first of all for the creation of a harmonious, peaceful and prosperous family.

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(45) Cited from Familiaris consortio, n. 25.

(46) In Message to christian families in the modern world, n. 19.

(47) In Familiaris consortio, n. 23.

B. THE SPOUSES AS FATHER AND MOTHER  
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1. The Qur'an

The Qur'an clearly indicates the importance of husband and wife as father and mother in their family. First of all, the Qur'an gives them the inalienable right to procreation and education of their children, which are considered as two important aspects of family life. It is a right which implies a great responsibility. The mother, and not another woman, has the right and responsibility to suckle her own children for two whole years (48). Only when she is not capable of it, and after consultation with her husband, is she allowed to give their children out to nurse.

Both spouses are responsible for the life of their children. Their life should always be protected, for it is God's gift. The Qur'an very strongly forbids abortion (49) and the slaying of any child (50). Human life is sacred and hence to be protected.

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(48) Q. II, 233.

(49) It can probably be concluded from Q. II, 228 ; VI, 138.152 ; XVII, 31 ; LXXXI, 8.

(50) Q. XVII, 31 orders : "Slay not your children, fearing a fall to poverty, We shall provide for them and for you ..."

On the other hand, the Qur'an extols filial piety and obedience. The parents have the right of respect and gratitude of their children. Children should obey them, as long as they do not command something contrary to divine law (51). In case of need, especially when they are sick or attain old age, they have the right to support and good treatment from their children. In such a situation, the children should show kindness unto them, doing good to them and speaking unto them gracious words (52).

## 2. The Sunnah

Muhammad emphasized filial piety, reminding the children that the parents had brought them into the world, protected them and provided all necessities of life (53). The children should respect and obey their parents, and their respect should continue when their parents attain old age. Such a respect was said by Muh-

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(51) Q. XIX, 42-48 and Q. XXIX, 8.

(52) Q. XVII, 215 says : "Thy Lord hath decreed, that ye worship none save Him, and (that ye show) kindness to parents. If one of them or both of them to attain old age with thee, say not Fie unto them nor repulse them, but speak unto them a gracious word".

(53) Hadith written by Bukhari, Muslim, Abu Daud, Ibnu Majah and Tirmidzi, in ALI ALHAMIDY, op. cit., 167.

ammad to be better than a pilgrimage or a holy war. He commanded a young Moslem to live and to support his parents instead of participating in the holy war (54). Muhammad commanded all Moslems to respect their parents even if the latter were not Moslems.

Obedience is an important aspect of such respect. Muhammad affirmed that children should obey God through their obedience to their parents (55). The parents have the right to the obedience of their children, provided they do not command something contrary to God's law.

On the other hand, Muhammad prescribed great responsibility for the parents. The father is the head of family who provides the family with all necessities of life. Muhammad gave permission to a woman to take some of her husband's property, in order that she might support her life and that of the children (56).

Finally, the parents shall educate their children so that they may grow up and become good Moslems. Muhammad recommended religious education to be given while the children are still very young, especially through prayer.

(54) Hadith written by Bukhari and Muslim, in ALI ALHAMIDY, op. cit., 174.

(55) Hadith written by Thabrani, ibid., 170.

(56) Hadith written by Bukhari and Muslim, in SJARIEF SUKANDY, op. cit., 419.

### 3. The Islamic Marriage Law in Indonesia

The Islamic Law in Indonesia confirms the prescription of the Qur'an and the Sunnah concerning the rights and responsibilities of the parents. It affirms, that the man as husband and father is responsible for the maintenance of his wife and children, and the woman as wife and mother is responsible for the success and reputation of her husband and for the suckling of the children (57).

The Law obliges the man to give maintenance to his wife and children. Only when he is not capable, should his wife help him. All is to be done in an honest way according to their capacity. This responsibility shall cease only when the children have grown up and are able to earn their own living. In case of need, the parents are to be supported by the children (58).

It is a moral duty, then, to educate the children. The parents are responsible for the future of each of them, giving them a good name, educating them according to Islamic teaching, and sending them to good schools. They shall choose partners for their daughters. Without their approval and permission, no marriage shall be performed for their daughters (59).

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(57) Cfr. ZAKARIYA AHMAD AL BARRY, Hukum Anak-Anak dalam Islam, Jakarta 1977, 45-50.

(58) Stated in AHMAD AZHAR BASYIR, op. cit., 100.

(59) Cfr. FARIED MA'RUF NOOR, op. cit., 77-85.

.Parents shall love their children, protecting their life and treating them in justice. In fulfilling these responsibilities, both parents should work together. In case the father neglects his responsibility, the mother should protect their children from any mistreatment committed by him. The Law permits her to take something from his property without his permission, so that she can support their life (60).

On the other hand, the Law affirms that the parents are worthy of respect, obedience and love of their children. The father is to be respected as the head of the whole family, the mother as educator and mother of the household. They deserve gratitude, for they have brought the children into the world.

Obedience is a serious duty for all children. It is an expression of respect and gratitude. As long as their commands are not contrary to God's law, parents should be obeyed. When they are proven wrong, they shall not be badly treated but brought in kindness to the right path (61). In their old age, they may not be repulsed or considered as a burden, but are to be supported and consoled (62).

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(60) Based on Muhammad's teaching ; Cfr. AHMAD AZHAR BASYIR, op. cit., 52.

(61) As affirmed in MU'AMMAL HAMIDY, op. cit., 138.

(62) Cfr. ALI ALHAMIDY, op. cit., 163-186.

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 recognizes the man as head of the family and the wife as mother of the household. As parents they have a common and equal responsibility of maintaining their household and of educating their children. They shall work together for the success of their own marriage and for the welfare of the whole family (63).

The responsibility of the woman is equivalent to that of the man. Both husband and wife are responsible for the maintenance of their children, and this responsibility shall be in force until the latter are able to support themselves or get married. It continues to be in force even after a divorce between the parents. It can happen, that their custody of their children is taken away. In such a case, a guardian will exercise the custody over their children, while they shall provide living expenses for them. For revocation of the right does not include revocation of responsibility (64). This prescription is aimed at protecting the rights of children to life and education.

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(63) The Indonesian Marriage Law of 1974, Ch. X, a. 45.

(64) Ibid., Ch. VIII, a. 41 and Ch. X, a. 49 ; the custody by the parents of their children may be taken from them because of their negligence.



On the other hand, the Law affirms that children shall honour their parents and obey their just wishes (65). Those who have not attained the age of 18 years or have never been married shall be in the custody of their parents (66), as long as they have not been removed from their parents' custody. It also means that the parents shall represent their children in all legal actions before or outside of a Court of Law (67).

In defining the rights of parents, the Law tries not to leave all power to them, giving possibilities to children of freeing themselves from an irresponsible father or mother. Without any just reason, however, no other person may deprive them of their right to keep their children under their custody (68).

In case of need, they have the right to be supported by their children. Having attained maturity, in fact, children shall be responsible for maintaining their parents and the members of the family in a straight ascendancy line, if they are in need of such assistance (69).

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(65) The Indonesian Marriage Law of 1974, Ch. X, a. 46.

(66) Ibid., Ch. X, a. 47.

(67) Idem.

(68) Ibid., Ch. X, a. 49.

(69) Ibid., Ch. X, a. 46.



### 5. The present Catholic teaching

The Church constantly defends the rights of the parents to have children and to educate them. Nobody may deprive them of these rights given to them by God Himself who has established marriage and gives children to the spouses. But the Church affirms that procreation and education of children are not only God's gift but also God's mission which implies a responsibility.

The Second Vatican Council affirms that parents shall diligently carry out the task of education, which is first and foremost theirs, especially that of religious upbringing (70). This task needs affectionate communion of minds : the spouses shall share their aims and thoughts, always cooperating in bringing up their children. The Council writes : "The active presence of their father is of great help in Children's training, but their mother's care in the home, which the young especially need, must also be safeguarded, without losing sight of the legitimate social advance of woman" (71). The parents shall educate their children with love and help them, especially by example and prayer, to find out the way of salvation and holiness (72).

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(70) In Gaudium et Spes, n. 48.

(71) Ibid., n. 52.

(72) Ibid., n. 48.

.Speaking about responsible parenthood, Pope Paul VI reminds Christian married people of the most serious duty of transmitting human life, in which they collaborate freely and responsibly with God the Creator. The commitment to responsible parenthood requires that husband and wife, keeping a right order of priorities, recognize their own duties towards God, themselves, their families and society (73). The Pope confirms the traditional teaching of the Church, that "in any use whatever of marriage there must be no impairment of its natural capacity to procreate human life" (74). The teaching is based on the inseparable unity between the unitive significance and the procreative significance which are both inherent to the marriage act (75). Hence, artificial contraception, direct sterilization and direct abortion are absolutely excluded as lawful means of controlling the birth of children (76).

The 1980 Synod of Bishops condemns certain governments and international organizations which do violence to family rights in regard to religious liberty, responsible parenthood, and education. The Synod Fathers then

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(73) In Humanae Vitae, n. 10.

(74) Ibid., n. 11.

(75) Ibid., n. 12.

(76) Ibid., n. 14 ; only recourse to infertile periods is permitted as a lawful means of birth control.

remind Christian married people of their tasks of forming free persons in love and faith (77). Formation in faith, chastity, and the other Christian virtues, as well as education in human sexuality, must start in the home (78). In fulfilling these tasks, husband and wife shall unite themselves in a community of love and life, nourishing themselves on God's word and participating in the life of the sacraments (79).

Finally, Pope John Paul II writes in his apostolic exhortation Familiaris consortio that the family must devote special attention to the children, by developing a profound esteem for their personal dignity and a great respect and generous concern for their rights and needs (80). The Pope also affirms that the Church must help everyone to discover and to make good use of the role of the elderly within the civil and ecclesial community, in particular within the family (81).

Being responsible for the welfare of the children, the parents are worthy of gratitude and affection, devotion and trust. Children shall remember their parents' need in time of trouble or in their loneliness.

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(77) Message to christian families in the modern world, n. 12.

(78) Ibid., n. 14.

(79) Ibid., n. 13.

(80) n. 26.

(81) Familiaris consortio, n. 27.

## C. CONCLUSION

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Both Islam and the Catholic Church recommend husband and wife to love each other and to work together for the good of the children. As regards the rights and responsibilities of each member of the family, the Islamic Law confirms the primacy of the man as head of the family, while the recent documents of the Church put a stronger emphasis on the equality and the complementarity between husband and wife.

The primacy of the husband is confirmed and justified by the Islamic Law in Indonesia. Though justice and equality are recommended, the man is given certain privileges which confirm his primacy and superiority over his wife. These privileges have often led to certain abuses such as polygyny and divorce.

The present Catholic teaching clearly shows the firmness of the Church's intention to promote equality and complementarity between man and woman, between husband and wife. The husband is not superior to his wife, neither in the family nor in society. They have different roles and different charisms, but this difference does never justify the domination of one by the other. Both spouses are made in the image of God and have true personal status, and hence should be joined in equal affection, harmony of mind and mutual sanctity.

As regards the rights of the woman, the Islamic Law prescribes for her the economic security and kind treatment of the husband. Very often, however, the emphasis falls upon that right of a material nature. The Church, at least since the Second Vatican Council, emphasizes much more the spiritual and moral rights of the woman. She needs total and faithful love, personal respect, understanding and comprehension. She is to be treated as a true partner of love and life.

When a Catholic marries a Moslem girl, he may know what expectations she has. She hopes for economic security, including a dowry, and good treatment. She may claim a divorce, when these rights are neglected. On the contrary, a Catholic girl who marries a Moslem man should know that some of her expectations may not be realised. A true equality shall probably not take place in their life as spouses. She cannot stop him from taking another woman or from divorcing her, when their marriage is considered unsatisfactory.

From an ecumenical point of view, a marriage between a Moslem and a Catholic may be acceptable. From psychological and sociological point of view, however, such a marriage brings with itself a risk of failure. The diversity of expectations is great. Greater risk of failure and more difficulties are found particularly in a marriage of a Moslem man and a Catholic woman.

As regards the rights and responsibilities of the spouses as parents, both Islam and the Catholic Church affirm that married people have the inalienable right to procreation and education of their children. They have the right and responsibility to plan the number of their children, but without pressure and without using unlawful contraceptive methods. They have the right and responsibility to educate their children in accordance with their religious belief. The good intention of any government to improve material welfare of the people cannot be an excuse to deprive the parents of their inalienable right to have children and to educate them.

Though using different expressions, Islam and the Catholic Church prescribes similar duties of parents towards their children. Only in the division of those responsibilities, then, the Islamic Law emphasizes the primacy of the man as head of the family. Father and mother are responsible for the material and spiritual welfare of their children. It is necessary that both couples love each other sincerely, as they love their children.

In a marriage between a Moslem and a Catholic, difficulties will arise as regards the religious education of their children. Both religions are missionary in character. Both spouses have the duty to educate their children according to their religions.

## CHAPTER X : NULLIFICATION OF MARRIAGE AND REMARRIAGE

This chapter deals with what is called nullification of marriage and remarriage, two special cases which in a particular way can show the nature of marriage bond. A nullification is a declaration that a marriage is not valid. A remarriage is a marriage performed by a person previously married.

A. NULLIFICATION OF MARRIAGE  
=====1. The Qur'an

The Qur'an allows a nullification of marriage only indirectly. After having listed some impediments of marriage, the Qur'an affirms that the prescription is not retroactive. Hence all marriages performed before the pronouncement of those impediments by the Qur'an were valid (1). Following the publication of the Qur'an no marriage is to be considered valid if there exists an impediment prescribed by that Sacred Book.

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(1) Q. IV, 22 orders : "And marry not those women whom your fathers married, except what hath already happened (of that nature) in the past".

See also Q. IV, 23.

. Consequently, any marriage shall be declared null if an impediment is proved to exist. In fact, the Qur'an does not provide any dispensation from impediments. Such invalid marriage should be declared null and both partners should live separately. If they insist on their living together, they commit an act of abomination (2). However, a convalidation is possible if the impediment has already ceased. In this case, both partners to that marriage may continue their conjugal communion by a renewal of mutual consent.

A marriage can also be declared null on account of an other reason, namely if it was not performed according to the Qur'anic prescription concerning the marriage ceremony. The Qur'an prescribes that marriage can be validly performed if it is approved by both parties concerned (3). A marriage which was performed by force is to be declared null. But convalidation is possible, if both partners insist on their living together, namely by expressing their mutual consent lawfully.

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(2) Cfr. Q. IV, 22.

(3) This prescription can be concluded from Q. II, 221 and Q. IV, 19-25 ; the consent is necessarily of both parties concerned, but not necessarily of both spouses themselves. The Qur'an shows, in fact, that it is a male person who has the right to decide upon marriage.



## 2. The Sunnah

Muhammad confirmed the impediments prescribed by the Qur'an, which render a marriage void and null. Like the Qur'an, Muhammad did not grant any dispensation of impediments. It means that any marriage performed notwithstanding an impediment is to be declared null, and both partners to that marriage should live separately. Convalidation is possible only if the impediment has already ceased (4).

Muhammad clearly admitted nullification of marriage which had been invalidly performed. Once he himself dissolved his marriage with one of his wives (5), being aware that she was physically defective and her family had never let him know about it. Although the physical defect was not a ground impeding the validity of that marriage, a nullification was in order. The silence of the bride's family about her true character of personality was considered by Muhammad as a deceit, which rendered their marriage consent defective. That marriage had been invalid and hence was declared null.

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(4) Some impediments prescribed by the Qur'an and confirmed by Muhammad are temporary, for example : adultery and idolatry ; such impediments cease , when the adulterer or idolater has repented or converted to Islam.

(5) Hadith written by Al Hakim, in KAMAL MUCHTAR , op. cit., 195-196.

On another occasion Muhammad let a woman choose, either to nullify or to convalidate her marriage which had been performed without her consent. Though confirming that parents should not force their daughter to get married, that woman decided upon convalidation (6). The permission given by Muhammad shows very clearly, that a marriage performed without free consent on the part of one of the two spouses is invalid. Therefore, it can be declared null, or convalidated by mutual consent.

### 3. The Islamic Marriage Law in Indonesia

The Indonesian Moslems confirm the prescription of the Qur'an and the Sunnah concerning nullification. The Law prescribes that nullification can be carried out without any interference of a judge, at the very moment when an impediment is discovered by both spouses (7). In fact, the Law confirms all impediments prescribed by the Qur'an and the Sunnah and gives no dispensation. A marriage is invalid if performed notwithstanding an impediment. Therefore, it shall be declared null and void. Only when the impediment has ceased, is a convalidation possible, provided that both partners to that union decided upon it.

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(6) Hadith written by Ahmad, Abu Daud and Ibnu Majah, in SJARIEF SUKANDY, op. cit., 364.

(7) Cfr. AHMAD AZHAR BASYIR, op. cit., 77-79.

Compared to other ways by which marriage can cease, nullification can take place the most easily. At the moment when both spouses recognize an impediment to their marriage, nullification takes place "immediately" (8). It needs no explicit pronouncement by the husband like that in divorce, and it needs no interference of a judge. The Law prescribes, however, that nullification has no retroactive consequence as regards the legitimacy of the children. The children are always legitimate, and the wife does not have to give back the dowry to the husband (9).

A marriage which was performed notwithstanding a defective consent can be declared null, or convalidated. The Law affirms that matrimonial consent is defective, if there exists an error regarding the person or a quality of the person, especially regarding virginity and blood relationship (10). A man, for example, may nullify his marriage with a woman who was said to be virgin but in reality was not. In such a case, he may ask for the interference of a judge, who has to decide upon the fact of such an error and upon the nullification.

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(8) Cfr. AHMAD AZHAR BASYIR, *op. cit.*, 78.

(9) As affirmed in SAJUTI THALIB, *op. cit.*, 129.

(10) Or even regarding less important quality of a person : the wife having just a wig instead of her own hair but said that it was her own hair!

#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 treats the problem of nullification explicitly and directly, separated from dissolutions of marriage such as divorce. It affirms, first of all, that a nullification can take place if the marriage was invalid on account of an impediment. The term "may" means that it may be dissolved or may not be dissolved according to the alternatives provided by the Law of the religion concerned (11). The Indonesian Law shows its respect to the laws of all religions existing in that country.

However, the Law prescribes that a nullification of marriage should normally be carried out in a Court of Law. To prevent any unlawful dissolution of marriage nullification may not be carried out authoritatively by either husband or wife or their relatives. Married people are bound to submit a request for a nullification to the Court of Law, as soon as they become aware of an impediment which made their marriage invalid (12). Thus a nullification of marriage starts at the moment when the judgment of the Court of Law has become final and comes into force from the moment of the performance of

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(11) The Indonesian Marriage Law of 1974, Ch. IV, a. 22 and its clarification.

(12) Ibid., Ch. IV, a. 25.

the marriage, without retroactive effect nonetheless with respect to : the children born of the marriage, joint property, and other third parties (13).

Secondly, defect in matrimonial consent or in marriage form is admitted by the Law as a just reason for such a request, except when there exist serious doubts about the fact of the defect itself. A married person, for example, may submit a request for a nullification of his marriage if it was performed under illegal threat. Such right shall be forfeited, however, if he has continued living together with his partner subsequently during a time period of six months, after such a threat had ceased to exist and he has become aware of that situation (14).

A request of nullification may also be submitted in the following cases : a marriage was performed before an unauthorized Registrar, or without the presence of two witnesses; at the time of the performance of a marriage there was misinformation with respect to the person of the partner (15). However, the Law is always in favor of the continuance of any marriage. When a marriage can still be continued, convalidation is recommended.

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(13) The Indonesian Marriage Law of 1974, Ch. IV, a.28.

(14) Ibid., Ch. IV, a. 27.

(15) Idem.

### 5. The present Catholic teaching

All marriages enjoy the favor of Church law (16). A nullification, therefore, may be carried out only when there exists a certainty about its being invalid. Nobody may dissolve his marriage authoritatively, upon becoming aware of any annulling impediment existing at the time of the wedding ceremony. For marriages of baptized persons, at present only the Church authority may declare their nullity, after having reached moral certainty about their being invalid (17). Before such a declaration, the marriage was considered to be in good standing and enjoyed the favor of the Church law. Even the nullification does not make illegitimate children born to this marriage. The children retain the benefit of that good standing and the Church favor.

A marriage is invalid because of an undispensed diriment impediment, or a defect of form, or for want of consent, or when the consent was in some way defective. A marriage which is invalid because of an undispensed diriment impediment may be validated when the impediment ceases or has been dispensed. In this case,

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(16) CIC., c. 1014; this prescription is confirmed in the second scheme of the proposed New Code of Canon Law, although there have been serious objections.

(17) Confirmed by PAUL VI in his Motu Proprio Causas matrimoniales, in AAS 63 (1971) 441-446.

the Church law requires that the consent be renewed at least by the party who is aware of the impediment, even though both parties gave their consent in the beginning and have never revoked it (18). The Pope and Bishops (19) can dispense from this obligation of renewing the consent, provided there is a just cause. Convalidation is impossible if the impediment is of divine or natural law and has not yet ceased (20). In such a case, both partners should separate. In some extraordinary circumstances, however, the Pastor could let them go, for example through what is called "brother and sister arrangement" (21).

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(18) CIC., c. 1133 ; this renewal of consent is only required by ecclesiastical law. It is not required by divine or natural law.

(19) CIC., c. 1141 explicitly affirms that what is called "sanatio in radice" (namely a convalidation which involves the dispensation or cessation of the impediment, the dispensation from the obligation of renewing the consent, and retroactivity through fiction of law as regards canonical effects to the past) can be granted only by the Apostolic See. But, with the Motu Proprio Pastorale Munus , Paul VI granted this faculty on a permanent basis to all Bishops throughout the world.

(20) The Church does not dispense from such impediment.

(21) For example in the following circumstances : convalidation is impossible ; separation of the parties is extremely difficult (children and property) ; danger of incontinence is removed ; and scandal will not result from this arrangement.

A marriage which is invalid for lack of form must be performed again in the form prescribed by the law in order to be made valid (22), or through what is called radical convalidation (23) granted by the Apostolic See or by the Bishop. Such a marriage is not necessarily to be dissolved. In general the Church recommends the continuance of married life, especially for the good of the children.

A marriage which is invalid for want of consent is validated if the party who had not consented, consents now, provided the consent given by the other party continues to exist (24). The Church may grant a convalidation, but such a union could lawfully be declared null and both partners be separated (25).

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(22) CIC., c. 1137.

(23) That is, a convalidation involving the dispensation from the obligation of renewing the consent etc. as defined in CIC., c. 1138.

(24) CIC., c. 1136.

(25) The Catholic Church does not grant divorce but does grant annulments. Annulment is the official declaration that the marriage de facto and de iure never existed.

Cfr. PAUL VI, Motu Proprio Causas matrimoniales ; RALPH BROWN, Marriage Annulment in the Catholic Church, Essex 1977.

The number of annulment cases is increasing at the present time, and hence the Church cannot but be concerned about this matter.



Finally, a marriage is invalid if the matrimonial consent was in some way defective (26). Such a marriage is validated if the party whose consent was defective now gives a true consent. Convalidation may be granted by the Church, especially for the good of the children born to this union.

The Church grants a dissolution of such a union if a convalidation is hardly possible. Nullity cases is to be decided by a Tribunal of the Church (27) or by an Ordinary (28). A serious attempt must be made to know the events surrounding the marriage in question and the family life of both parties to that marriage. If it is possible and prudent, efforts must be made to bring about a convalidation of the marriage before the Tribunal or the Ordinary accepts the case.

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(26) Because of certain obstacles such as : insanity ; ignorance ; error ; sexual anomalies ; simulation, total or partial ; force and fear ; fraud etc. Cfr. CIC., cc. 1081-1087 ; Rotal decisions ; and the second scheme of the proposed New Code of Canon Law, cc. 41-50.

(27) For formal cases. See: CIC., cc. 1960-1989 ; the Instruction Provida of the Congregation of Sacraments, in AAS 28 (1936) 313-361 ; and PAUL VI, Causas matrimoniales, in AAS 63 (1971) 441-446.

(28) For informal cases, in the following cases: defect of form ; documentary ; and presumed death. See : CIC., cc. 1990-1992 ; Instruction Provida, a. 231; Instruction Matrimonii Vinculo issued in 1868 by the Holy See.

## B. REMARRIAGE

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1. The qur'an

The qur'an affirms that a woman who is divorced shall wait three monthly courses, during which her husband may take her back if he desires upon a reconciliation (29). When she has reached that term, her husband must decide either to retain her or to release her in kindness (30). If he decides upon releasing her, he shall not place difficulties in the way of her marrying another person (31). If he decides upon retaining her, he may remarry her, provided that she agrees upon it. The qur'an allows such a remarriage between ex-spouses only after the first or the second divorce between them. It is forbidden after the third divorce, except after she has wedded another person and is divorced by the latter (32).

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(29) Q. II, 228 orders : "Women who are divorced shall wait, keeping themselves apart, three (monthly) courses ... And their husbands would do better to take them back in that case if they desire a reconciliation..."

(30) Q. II, 231. (31) Q. II, 232.

(32) Q. II, 230 affirms : "And if ye hath divorced her (the third time), then is not lawful unto him thereafter until she hath wedded another husband. Then if he (the other husband) divorce her, it is no sin ... that they come together again".

A divorced person is given the right to marry another person. A man may marry another woman shortly after having divorced his wife. Meanwhile, his wife shall wait until the prescribed term is completed. The waiting period for her usually lasts three monthly courses (33). A divorced woman may marry another person shortly after the pronouncement of divorce, without any obligation of completing such a waiting period, if her marriage has not been consummated (34).

A married person, whose spouse has died, is also allowed to marry another person. In case of a woman the waiting period shall last four months and ten days (35). In case of a man, he may marry another woman shortly after his wife's death. The Qur'an forbids the Moslems to marry the wives of their deceased kinsmen, although death and divorce are considered as dissolving marriage bond totally, as if it never existed.

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(33) Q. II, 228 ; it is probably aimed to identify the parentage of the child, if the divorce takes place while the woman is pregnant.

(34) Q. XXXIII, 49 ; a waiting period is not necessary, because pregnancy is excluded.

(35) Q. II, 234 orders : "Such of you as die and leave behind them wives, they (the wives) shall wait ... four months and ten days. And when they reach the term... then there is no sin for you in aught that they may do with themselves in decency ..."

In this case pregnancy is also possible, hence a waiting period is necessary.

## 2. The Sunnah

Confirming the Qur'anic prescription, Muhammad allowed remarriage between ex-spouses only after the first and the second divorce between them. After the third divorce, the husband may not remarry his wife, except after she has married another man and has been divorced by the latter. Muhammad added, that the second marriage should be consummated, if that woman decided to remarry her previous husband (36).

Muhammad also permitted a divorced person to marry another person. He himself married a divorced woman, the ex-wife of his own adopted son. He asked the latter to send her his proposal (37). Except Aisyah who was virgin, in fact, all of Muhammad's wives were widows (38).

A widow, whose husband had died, was allowed to marry another person after the waiting period was completed. Muhammad confirmed the Qur'anic prescription that her waiting period should last four months and ten days. After that term, she was free to get

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(36) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, op. cit., 185-186.

(37) Hadith written by Muslim, ibid., 179-181.

(38) On the marriages performed by Muhammad, see : A.R. BASWEDAN, op. cit. ; W. MONTGOMERY WATT, Muhammad at Medina, Oxford 1956.

married. Her waiting period could last longer, if she was pregnant when her husband died. In this case, she should wait until the child was born (39).

After the waiting period was completed, widows had no right to ask for any maintenance from their ex-husband (40). It is understandable that Muhammad allowed widows to remarry, at least for financial reasons, for their economic security. There existed a real danger, that they might be forced to remarry against their wishes. Therefore, Muhammad warned that no widow should be forced to marry without her explicit consent (41).

On the other hand, widows were not allowed to arrange another marriage before the waiting period was completed. Muhammad commanded them to stay in their house, except for very necessary matters (42). Such a plan or arrangement of remarriage should be done only after the prescribed term.

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(39) Hadith written by Muslim, in RAZAK and RAIS LATHIEF, *op. cit.*, 225-229 ; the waiting period could last shorter too, in case the child was born shortly after its father died.

(40) Hadith written by Muslim, *ibid.*, 223-225 ; even, divorced woman could not ask for her residence.

(41) Hadith written by Bukhari, Muslim, Abu Daud and Nasa'i, in SJARIEF SUKANDY, *op. cit.*, 363.

(42) For example, Muhammad permitted a widow to pluck dates from her own garden during her term. See : hadith written by Muslim, in RAZAK and RAIS LATHIEF, *op. cit.*, 225.

### 3. The Islamic Marriage Law in Indonesia

Confirming the prescription of the Qur'an and the Sunnah, the Indonesian scholars affirm that remarriage between ex-spouses is only admissible after the first and the second divorce between them. Such a remarriage is not allowed if the woman has been divorced three times by her husband, unless after she has wedded another person and then has been divorced by the latter, after its consummation (43).

Moslem scholars admit that such prescription is given to show the seriousness of divorce. Divorce is to be pronounced with a sense of responsibility and full awareness of its consequences. A husband shall not easily pronounce a divorce against his wife, above all if it is the third divorce which practically closes the way for any reconciliation or remarriage between them.

Reconciliation and remarriage are recommended but they shall be carried out with a good intention, namely to find peace. Nobody may remarry his ex-wife just to cause her harm. Divorce is considered better than reconciliation or remarriage, if the latter is done just to cause harm to the partner (44).

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(43) Cfr. AHMAD AZHAR BASYIR, op. cit., 69-71.

(44) Based on Q. II, 231.

The Islamic Law in Indonesia affirms that divorce totally dissolves the existing marriage bond, as if it never existed, except as regards the legitimacy of the children born to that union. Therefore, a divorced person is allowed to marry another person. In case of a man, he may marry another woman shortly after having pronounced the divorce. In case of a woman, she must first complete her waiting period, before she may marry another man (45).

A widower or a widow, whose spouse has died, is also allowed by the Islamic Law to marry another person (46). A widower may marry another woman shortly after his wife has died (47). A widow who is not pregnant when her husband dies must wait four months and ten days, before she is allowed to marry another man (48). If she is pregnant, then, she must wait until the child has been born (49).

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(45) Confirmed by most Indonesian scholars, among others : AHMAD AZHAR BASYIR, op. cit., 87 ; KAMAL MUCHTAR, op. cit., 21off. ; ABDULLAH SIDDIK, op. cit., 93-95.

(46) As affirmed in MAHMUD YUNUS, op. cit., 111.

(47) But Indonesian Moslems normally do not practise it, because it will annoy the family of their wife.

(48) Eben though her marriage has not been consummated.

(49) It can be shorter than four months and ten days. Even in this case she may marry shortly after the child has been born.

As regards the waiting period, it depends on the nature of the divorce and the condition of the woman. A woman who is divorced before any consummation of her marriage has no waiting period. She may marry another person shortly after such a divorce (50). A woman who is divorced after the consummation of her marriage, and is not at that time pregnant, must wait for three monthly courses (51). If she is pregnant, she shall wait until the child's birth (52).

Indonesian Moslem scholars affirm, that the prescription concerning waiting period is given primarily to guarantee the legitimacy of the child which may be born after the divorce. A marriage with another person performed by a pregnant woman can cause confusion about the parentage of the child (53).

As regards the performance of remarriage, the Law prescribes that it should be performed as any marriage whatever. Only if it is a remarriage between ex-spouses the husband has no obligation to give some other dowry.

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(50) With an exception already said above : if it is caused by the death of the husband, she must wait four months and ten days.

(51) If she has reached her time of menopause, she must wait four months.

(52) As affirmed in ZAHRY HAMID, *op. cit.*, 114.

(53) True parentage is considered important. Islam does not consider adoption as causing legal parentage.



#### 4. The Indonesian Marriage Law

The Indonesian Marriage Law of 1974 allows remarriage between ex-spouses only after the first divorce between them, insofar as the Law of their respective religions and beliefs does not provide otherwise (54). It means that Moslem spouses are freed from such regulation, because the Islamic Law allows remarriage between ex-spouses also after the second divorce between them (55).

The Law also allows a divorced person to marry another person, the husband shortly after the divorce and the wife after the prescribed waiting period. The Law prescribes that for a woman, whose marriage has been dissolved, there shall be applicable a waiting period (56). However, the divorce itself has already abolished the marriage bond between both parties in a perfect way since the pronouncement of it by the Court of Law. Therefore, a simple reconciliation between ex-spouses already divorced is not possible. If they agree to remarry each other, they shall perform a remarriage in the presence of two witnesses and a Registrar.

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(54) The Indonesian Marriage Law of 1974, Ch. II, a. 10.

(55) Remarriage is forbidden only after the third divorce between them. See the previous part of this chapter.

(56) Ibid., Ch. II, a. 11.

The length of a waiting period depends on the condition of the woman and the marriage bond, at the time a divorce is decided upon by the judge. The waiting period for a woman who is still menstruating shall be three monthly courses with a minimum of 90 days, and for a woman who has stopped menstruating shall be 90 days (57). If the marriage has been dissolved while the woman is pregnant, the waiting period shall be until childbirth (58). There shall be no waiting period for the divorcee, if her marriage has not yet been consummated (59).

A marriage is also terminated due to the death of a spouse. The Law prescribes that the living spouse has the right to marry another person. In case of a man, he may marry shortly after the death of his wife. In case of a woman, she must first complete her waiting period which lasts 130 days, before marrying another person, even though her marriage has not yet been consummated (60). The Law clearly follows the Islamic prescription.

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(57) The Government Regulation of 1975..., Ch.VII, a.39.

(58) Idem.

(59) Idem.

(60) The Law does not give explicit explanation about the prescription concerning a non-consummated marriage terminated due to death. It is not clear, why the woman shall wait 130 days.

### 5: The present Catholic teaching

Based on her firm teaching about the permanence of marriage, the Catholic Church normally rejects divorce merely as a solution of a dispute between spouses (61). Instead of divorce, a separation is admitted. When the spouses agree to a reconciliation they can be reconciled without renewing their marriage consent, because a separation does not dissolve the existing marriage bond between them. Thus, the Church normally deals with a reconciliation instead of a remarriage between ex-spouses.

One who is bound by a previous marriage bond can validly perform another marriage in favor of the faith by what is called Pauline Privilege (62). In this case, the previous marriage bond is dissolved not before but at the very moment the second marriage is performed. To utilize this privilege, it is required that some conditions prescribed by the Church shall be fulfilled (63).

A prior marriage is dissolved by the death of one of the parties, whereby the surviving party is allowed by the Church to marry. In "presumption of death" cases,

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(61) See chapter VIII of this work concerning divorce.

(62) Based on I Cor. 7:12-16. See chapter VIII of this work, and CIC., cc. 1120-1126.

(63) Cfr. CIC., cc. 1120-1126 and chapter VIII of this work.

the validity of the second marriage depends upon the fact whether the former spouse is actually dead. If it happens that the spouse is still living, the second marriage is invalid. Therefore, the Church shall give no permission for a second marriage, until the proper authorities can decide with moral certainty on the basis of the presumption that the former spouse is dead (64). Whenever any serious doubts are present, the matter must be referred to the Holy See.

Remarriage is also admissible for those, whose previous marriage bond has been dissolved by the Church for a just cause (65). Thus a baptized person, whose previous marriage bond with an unbaptized person has been dissolved by the Roman Pontiff in favor of the faith (66), may marry another person. Baptized persons, whose marriage has not been consummated and then has been dissolved by the Holy See (67), are also allowed to perform another marriage.

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(64) See : Instruction of the Holy See on "presumption of death" cases Matrimonii Vinculo, issued on 13-5-1868 ; Cases decided by the Sacred Congregation of the Sacraments, in AAS 3 (1911) 26.

(65) That is, by the Holy See.

(66) It is known as the Petrine Privilege ; Cfr. PIUS XII, Address to the Roman Rota, in AAS 33 (1941) 426.

(67) CIC., c. 1119.

Those persons, whose previous "marriage bond" has been declared null by the Church, may be allowed to marry another person, provided there exists no impediment (68). In this case, there is in reality no remarriage, but a first valid marriage, for hitherto there existed no marriage. A remarriage, however, may not be lawfully performed until the nullity of the former has been established according to the law and with certainty (69).

Finally, it is to be noted that some Catholics have obtained a civil divorce and entered into a new union without any Catholic religious ceremony. For the Church, the former marriage remains the only valid marriage, even though it has been dissolved by the civil authorities (70). However, the Church does not abandon those persons to their own devices. Pope John Paul II confirms such an attitude in his apostolic exhortation, affirming (71) : "Together with the Synod, I earnestly call upon pastors and the whole community of the faithful to help the divorced, and with solicitous care to make sure that they do not consider themselves as separated from the Church, for as baptized they can, and indeed must, share in her life".

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(68) For example : impotency, total and perpetual.

(69) CIC., c. 1069.

(70) The Church teaches that marriage between baptized persons is governed primarily by divine law and by Canon Law. Cfr. CIC., c. 1016.

(71) In Familiaris consortio, n. 84.

## C. CONCLUSION

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Both Islamic and Catholic Law admit the possibility of a nullification of marriage. There exists nevertheless a great diversity in their prescriptions about its procedure and permissiveness. The Islamic Law admits that a nullification may take place very easily without interference of any Court of Law, at the very moment when an impediment is discovered by both spouses. On the other hand, the Canon Law prescribes that for any Christian marriage only the Church authorities may declare its nullity.

According to Islamic Law, a mixed marriage between a Moslem woman and a Catholic man could never be valid, and hence is to be dissolved. Even when such a marriage has been validly performed in the Church, it remains invalid in the eyes of Islamic Law and hence liable to be declared null. According to Islamic Law, dissolution of such a marriage is obligatory. It appears that the stability of such a marriage is precarious, at least from the juridical point of view.

As regards remarriage, there is also a great diversity between Islamic and Catholic Law. In Islam, remarriage is very common and frequent. In the Catholic Church, it is very rarely performed, except that of a widow or widower, whose former spouse has died. In any

case, the key problem lies in the permanence of the marital bond. If a divorce can be more easily carried out, like in Islam, a remarriage can also more easily take place. A divorce is often followed by a new marriage.

This diversity of law between Islam and the Catholic Church can raise some problems and difficulties for those Catholics divorced by their Moslem partners. Without a dispensation from the Pope they cannot validly marry other persons, even when their partners left them and remarried. A Moslem woman may leave her Catholic husband anytime, because her marriage is considered invalid by Islam. A Moslem man may also leave his Catholic wife without serious difficulties. Thus, the Catholics risk being easily divorced and can remarry only with great difficulties. In many cases they must live alone and support themselves courageously.

For many Catholics, who have already been left by their Moslem partners, such a life is often difficult on account of various reasons. Some of them have remarried and lived peacefully with Catholic spouses, though their former marriage has not been dissolved by the Pope.

One may ask, if such remarriages should not be blessed by the Church. If a mixed marriage has failed because of the departure of the non-baptized party, the Church should not punish the innocent Catholic by not dissolving his former marriage.

PART THREE





## GENERAL CONCLUSION

Having set forth the most important aspects of marriage in the light of the Islamic and Catholic teaching, it is time now to draw some general conclusions about Indonesian Islamic marriage morality.

First of all, it is obvious that Islamic marriage morality is in some aspects very different from Catholic marriage morality. Such differences are rooted deeply in the Holy Scriptures of both religions, Islam and Catholic, so that it is not easy to find any bridge which can bring them near to each other. It is also obvious, however, that both religions could learn from each other for their own perfection. In spite of the differences, there are in fact similarities between them, especially as regards the ideals of marriage. They should strive for mutual understanding, as a basis of cooperation in safeguarding and fostering moral values and social justice.

In general, we can conclude that Islamic marriage morality prescribes different moral laws for different persons and circumstances. It indicates the ideal, but at the same time tolerates deviations. It also affirms that both are prescribed by God. The circumstances and

the ability of persons play a great role in moral considerations. Polygyny, for example, can be morally good or bad. It is considered good if exercised justly and honestly. It is considered bad when exercised unjustly and dishonestly. Such a type of moral decision is also valid for divorce, reconciliation, remarriage and nullification. Something is intrinsically bad only if it is so taught by the Qur'an and the Sunnah.

The fact that Islam prescribes different moral laws for different persons and circumstances is the most important factor that makes Islamic morality different from Catholic morality. While she grants some dispensations, the Church delineates moral laws that are prescribed for all Christians, and sometimes even for all men. Islam prescribes many regulations, which are also prescribed by the Church, but at the same time tolerates many deviations for those who cannot attain to such regulations. The difference between Islam and the Catholic Church swings greatly from this toleration.

The other difference comes from the fact that Islamic Law is more or less already fixed and stable, while the Catholic one is developing not only in some unimportant issues but also in very fundamental aspects. For many centuries, for example, both Islam and Catholic moral teaching considered procreation and the education of children as the primary purposes of marriage, subordinating the other purposes. Now, while Islam is

teaching practically the same, the Church teaches that such important purposes shall not subordinate the other important purposes such as intimate union between husband and wife. A true historicity does not really exist in the Islamic teaching. It is fixed and stable.

As regards the ideals of marriage, however, there are similarities between the Islamic and Catholic teaching. Both admit that marriage is an institution created by God and endowed with various values and purposes.

Besides, the purposes and the values of marriage as taught by Islam and the Catholic Church are obviously similar and complementary. The diversity is seen only in the emphasis laid down upon certain issues. Generation and education, for example, are considered very important duties for all married people. For Islam, it is so important that infertility can be a just reason for divorce or for polygyny. Some decades ago, the Catholic Church also emphasized the importance of procreation and education of children, considering them as the primary purpose of marriage, to which the other purposes were subordinated. Present Catholic teaching, however, clearly admits that procreation does not thrust into the background the other purposes of marriage. Even therefore if children are lacking, marriage persists as a lifelong partnership, and keeps its value and dignity. Marriage is not instituted merely for procreation.

As regards the preparation of marriage, both Islam and the Catholic Church admit the importance of personal and legal preparation. Both aspirant spouses should know each other and the absence of all impediments should be ascertained. There is nonetheless a difference between Islam and the Catholic Church in dealing with such impediments. The Islamic Law prescribes the impediments without any possibility of granting a dispensation. The Canon Law distinguishes two kinds of impediments, namely prohibiting impediments and diriment impediments, and allows some possibility of dispensation.

Concerning the impediment of disparity of cult, there are similarity and diversity too. The Islamic Law gives a clear prescription : a Moslem may marry women who are Christians or Jews, but a Moslem woman may never marry a non-Moslem. No dispensation is granted for any Moslem to marry a pagan. Meanwhile, the Church Law prescribes the same prohibition for men and women : no Catholic can perform a valid marriage with non-baptized person, unless a dispensation is given by the Church ; no Catholic can licitly marry a non-Catholic but baptized person, unless a dispensation is given by the Church. A marriage between a Moslem woman and a Catholic man, for example, can never be valid for the Islamic Law even if the Catholic Church has given a dispensation.

From these prescriptions it becomes obvious, that a mixed marriage between Moslems and Catholics is fundamentally out of favor with both religions. This fact alone has already rendered such a marriage less privileged, if it has not directly put it in the second place. Those who live such a marriage, therefore, risk a kind of isolation or abandonment by both the Moslem and Catholic community. It is precisely those people, unfortunately, who need attention and help from the community so that their marriage can be lasting and happy.

As regards the other conditions necessary for a valid marriage, both Islam and the Catholic Church provide similar prescriptions. The most important of these are the free consent of both spouses and the form of marriage. Concerning consent, however, Islam shows a different attitude to that of the Catholic Church. According to Islam, a marriage is effected by the consent of the bridegroom and the bride's guardian. From the bride herself, an approval is needed, and her silence may be interpreted as her approval. Here there arises a danger that a truly free consent of the bride does not really exist. Such danger becomes greater when the marriage is performed while she is still very young. Indeed, many times young girls have not enough courage to express their disapproval, because such action can cause grave consequences for their life.

Concerning the form of marriage, both Islamic and Catholic Law affirm the importance of the presence of at least two witnesses at the time of marriage ceremony. A marriage shall be valid only if it is also witnessed by two or more other persons. Clandestine marriage is rejected. The presence of a priest is not considered important by Islamic Law, but normally required by the Church Law. Moreover, Islam does not oblige both spouses to be present at the wedding, provided that they send their proxies to substitute for them and to pronounce the marriage consent in their name.

.In spite of these differences, marriage continues to have a strongly social character in the eyes of Islam and the Church. It is not merely a private affair, but is to be recognised and supported by society as a whole. The personal aspect of it may not overshadow its social aspect so that marriage becomes merely a private matter. The presence of witnesses is not considered merely as a good tradition, but is primarily a meaningful thing symbolizing the presence of the whole society. Thus the spouses show their openness to the society, while the society recognizes their union and accepts them as full members of it, precisely as husband and wife.

This social aspect is emphasized by Islam, recommending Moslems to invite as many relatives as possible to their wedding feast. The feast itself may be very

simple and short, but the relatives and neighbours must be invited, because a marriage performance is a social happening. On the other hand, those who are invited come willingly and greet both spouses wholeheartedly. Islam has always recommended this wedding feast, in accordance with its teaching on brotherhood and solidarity among believers.

As to the nature of marriage, then, the Islamic teaching is relatively stable in considering it as a community of life for the legalization of intercourse and procreation. A fundamental development regarding this teaching is not to be expected. Peace, harmony and love are recognized as important purposes of the institution, but do not enter into its very nature. On the other hand, the Catholic Church now considers marriage first of all as a community of love and life. Conjugal love enters into the very nature of marriage. Marriage is an institution created by God and rooted in the conjugal covenant. It is a sacred bond and at the same time an intimate partnership of two persons loving each other totally and faithfully.

Only when marriage is recognized as a community of love and life, can the teaching of the Church about its permanence and unity be more easily understood and accepted by modern societies. But the terms "love" and "life" in this affirmation should be rightly under-

stood. The totality of love and the loyal service to life should be the guiding principles for marriage morality in the modern time.

Even the divorces and separations which have been carried out should be reviewed and reevaluated in the light of this new insight. Many divorcees are only the innocent victims of circumstances. Many women are living alone, left by their unfaithful husbands for an other marriage. The total love and loyal service to life is often only unilateral. Moreover, sometimes a divorce takes place after married people have failed to love each other, for their marriage was not based on true love. The marital bond is fragile if it is not based on love and nurtured with love.

Conjugal love may not be considered as one of many purposes of married life, or as a goal which probably will be reached. It should be more than that. In its own measure, conjugal love should also be the cause and the basis of every marriage. It is not only the result but also the ground of marriage. Consequently, the term "contract" is not suitable to define the nature of such a basic community of love. The fact that both spouses give their consent at the beginning of their married life can be better indicated by defining marriage as a "covenant of love and life". Such a covenant builds a community of love and life, an intimate partnership.



The unity and stability of marriage is not determined merely by ecclesiastical laws, but derived from the nature of the conjugal covenant and conjugal love. Since man can also destroy nature, intentionally or unintentionally, the laws are written and codified to remind him of what is naturally good and what is against nature. The Church is faithful in exercising her task of interpreting the natural laws, and confirms that the nature of conjugal love is human, total, faithful and exclusive until death, and creative of life. Divorce and polygamy do not entirely correspond to the nature of marriage viewed as a community of love and life.

Human love nevertheless can change in the course of time. Hence the unity and stability of marriage can be felt by both spouses as merely juridical limitations if their love to each other has already weakened. The marital bond is to be nurtured by conjugal love, which means understanding, cooperation, affection and other expressions of mutual love.

Therein lies the most important task for both spouses: to love each other totally and faithfully. From this love flow the other rights and responsibilities for them both, as husband and wife. Even the task of procreation and education of their children can and should be seen as the natural consequence of their love for each other. In spite of being total and faithful, conjugal

love is fecund, or creative of life. The fecundity of conjugal love does in fact distinguish this kind of love from other kinds of love such as fraternal love and parental love.

Equality of status between husband and wife may also be seen as a natural expression of conjugal love, although it should be already based on the equality of man and woman in general. Conjugal love which is total and exclusive should also be mutual, reciprocal, and equal. Mutuality and reciprocity of conjugal love demand a true equality. There cannot be any true equality if mutuality and reciprocity are lacking in their married life, when the husband dominates the wife.

Equality, however, does not abolish the natural differences existing between husband and wife. They are in fact different physically and psychologically. They cannot always do the same things and with the same result. This difference should be respected without using it to justify the domination of one by the other. Both are called to educate their children, for example, but they may agree in organizing it in such a way that each can do what is appropriate to his or her ability. The most important thing is that both are always ready for cooperation and mutual help.

Concerning the generation and the education of children, both spouses should also cooperate with God.

In this important case, they may not proceed arbitrarily without paying attention to the divine laws. They should try to conform their conscience to the divine laws which call them to defend and to promote life. A mere cooperation and consultation between them both is not enough, especially if it concerns an abortive act.

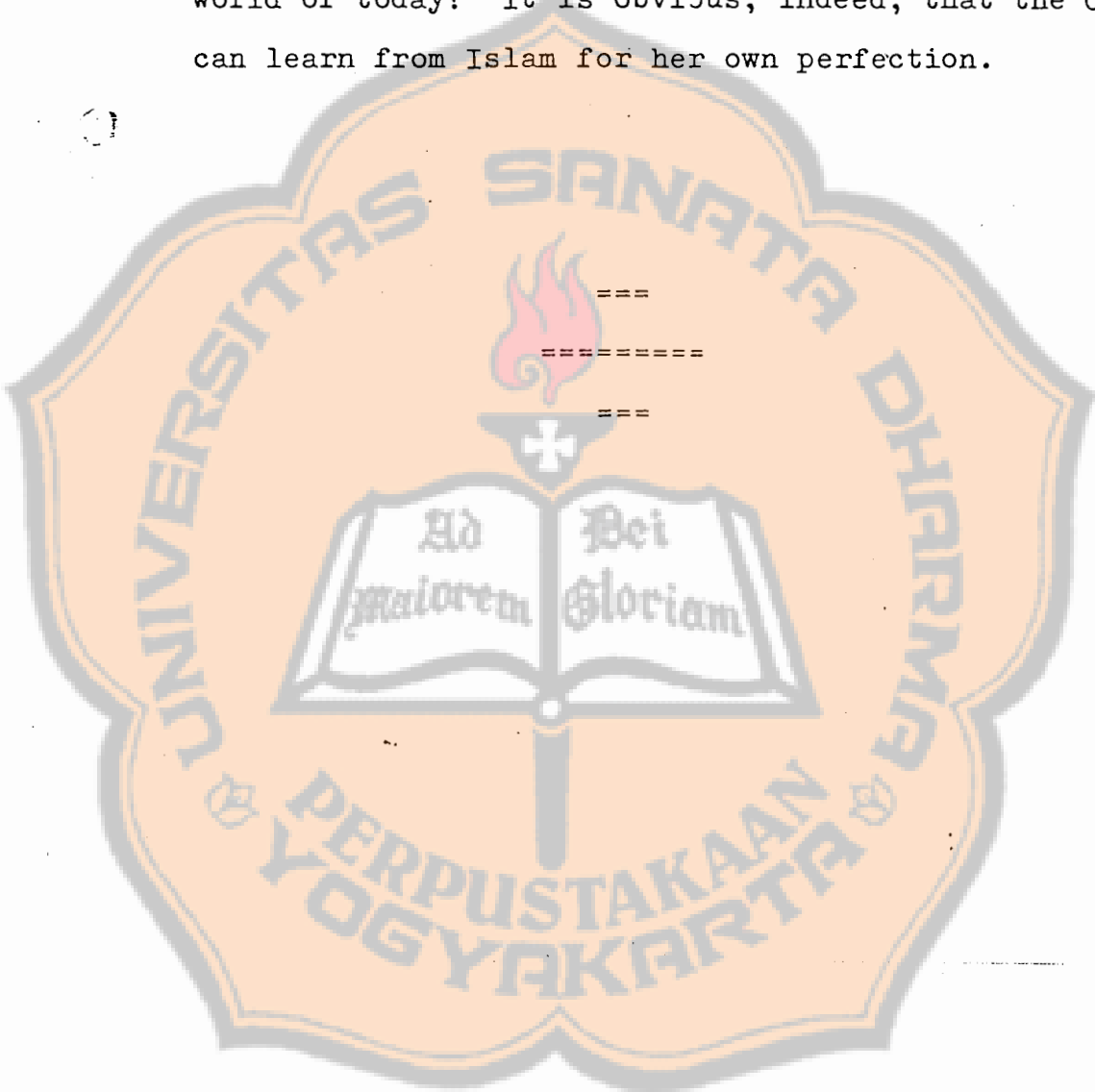
Two things are always firmly taught both by Islam and by the Catholic Church : firstly, that abortion is to be rejected ; and secondly, that religious education is to be assured. In our modern times, these important aspects of family life are often put in danger by some parents and societies, and hence are to be more firmly and uncompromisingly defended.

It is also to be noted that procreation and education are first and foremost the right of both parents and not of governments or other institutions. The rights of parents in regard to responsible parenthood and education should be respected and never be violated.

Catholic marriage morality is in many respects more severe than the Islamic one. This teaching is based on the consideration that marriage is a community of love and life, and that conjugal love is human, total, faithful, exclusive and creative of life. The Church orders all Catholics to respect the divine or ecclesiastical laws concerning marriage. On the contrary, Islam has prescribed different laws for different people and

situations, so that the laws themselves express its comprehension and mercy towards those who are weak or failing. The Islamic marriage morality provides different level of morality or gradual morality. Such morality appears to be more human, although it risks being permissive.

At the end of this work, I ask myself whether the Church's way of proposing, or eventually imposing, her moral norms on the peoples of different cultures and circumstances do not contradict her basic message of God's kindness and mercy. How is the Church's traditional understanding and practice of marriage morality to be reconciled with the diverse human cultures in the world of today? It is obvious, indeed, that the Church can learn from Islam for her own perfection.



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Mistake in numbering the pages :  
 Page 72 : double  
 Page 205 : is lacking