DIVORCE, GENDER, AND STATE AND SOCIAL POWER: AN INVESTIGATION OF THE IMPACT OF THE 1974 INDONESIAN MARRIAGE LAW

This Thesis is Presented for the Degree of Doctor of Philosophy of The University of Western Australia

History Discipline
School of Humanities

Kate Elizabeth O’Shaughnessy
B.A (Hons)
2006
Divorce, Gender, and State and Social Power: An Investigation of the Impact of the 1974 Indonesian Marriage Law

Kate O'Shaughnessy
The University of Western Australia

The 1974 Indonesian Marriage Law required all divorces to be ratified by courts and vested household leadership with husbands. This thesis examines the impact of this law upon the negotiation of divorce, and its implications for the constitution of state and social power. I argue that the New Order state used this law to attempt to control gender relations and reinforce political legitimacy, but that women and men resisted this project in a variety of ways. Divorce may entail the contestation of state ideological prescriptions on gender. It also reveals gender relations operating independently of the state. As such, it is a particularly fruitful site for an analysis of the location and constitution of state and social power.

In order to analyse the complex relationship between marriage, divorce, and power, I have adopted several original strategies. I expand the definition of property to encompass “social” property such as status, enabling a more nuanced analysis of the significance of divorce for women. My thesis also departs from earlier studies of divorce by drawing out the national implications of local actions. To do this, I undertake a microhistorical, qualitative analysis of divorce in the Special Region of Yogyakarta. I employ legislation, Religious and State Court records of Muslim and non-Muslim divorces, newspaper reports, fiction, and interviews with court officials, NGO workers and divorced women. My study presents the only known detailed analysis of women’s divorce court negotiations, employing 151 unpublished and hitherto unexamined court records, from 1965 to 2005. I challenge the view that liberation from authoritarian rule necessarily effects positive changes in women’s experience of divorce. Rather, my data suggests that changes in state formations do not always encourage changes in the character of gender relations.

I argue that New Order power was partly predicated upon the regulation of marriage and divorce according to an ideology of a subordinate and domesticated female citizen. However, my study demonstrates that state power was not hegemonic; it was both
contested and co-opted by its citizens. This contestation and co-optation reveals an ordering of social, religious and cultural power according to gender.

Men’s actions in and out of court throughout the period of this study demonstrated their superior social position, and indicated a certain degree of autonomy from the state. Despite New Order state efforts to limit male-initiated divorce and polygamy, my data shows that in general men have consistently been able to circumvent such prescriptions, without legal consequence. This demonstrates a long-standing concentration of social power with men.

Unlike men, women rarely openly contested the state’s power. They used state structures for their benefit, but from and in terms of a subordinate social position. Frequently, they used state legal frameworks to protect their status as wives, or supported their divorce claims using discourses of obedience. Such efforts did not undermine state constructions of women’s role, but by using these discourses to convince courts to order husbands to pay child support and divorce gifts they were attempting to reshape historical patterns of male abandonment and financial neglect of wives. In doing so, they asserted alternative visions of female membership in a local and national polity. My post-New Order data reveals increasingly conservative Religious and State Court decisions despite increasing democratisation. Ironically, the collapse of the authoritarian state appears, in some instances, to have led to decreased possibilities for women to use state structures to challenge cultural and religious male authority.

Through my detailed legal history of divorce negotiations after the introduction of the Marriage Law, I attempt to provide a significant reassessment of Indonesian history. I suggest that the national and political histories of Indonesia have been shaped in part by the regulation of gender relations through marriage and divorce. Moreover, I argue that a history focused on the gendered distribution of social power reveals little change in women’s subordinate condition. Rather, in the four decades analysed in this thesis, male power in political, social, and religious contexts has generally remained dominant. I conclude that although the Indonesian state has consistently sought to position women as subjects, women’s pursuit of their goals in divorce constituted an attempt to redefine the terms by which they could participate in the state, and so to reclaim their citizenship.
# CONTENTS

ACKNOWLEDGEMENTS................................................................................................................................. iv
NOTE ON TRANSLATIONS AND SPELLING ................................................................................................... vi

INTRODUCTION.................................................................................................................................................. 1

1. HISTORIOGRAPHY: MARRIAGE, GENDER, POWER, AND THE STATE .......................................................... 7
2. TERMS AND CONCEPTS ........................................................................................................................................ 16
3. SOURCES ......................................................................................................................................................... 21
   3.1 Court Records........................................................................................................................................... 21
   3.2 Other Printed Sources – Newspapers and Fiction...................................................................................... 26
   3.3 Oral History............................................................................................................................................. 27
4. METHODOLOGY ................................................................................................................................................ 28
5. THESIS STRUCTURE ......................................................................................................................................... 29

PART 1: LEGAL CONTEXTS OF DIVORCE

CHAPTER 1

GENDER AND LAW: SHAPING FEMALE LEGAL SUBJECTIVITY.......................................................... 34

1. HISTORIOGRAPHY AND METHODOLOGY ................................................................................................... 34
2. COLONIAL AND POST-INDEPENDENCE MARRIAGE LAWS...................................................................... 37
   2.1 The Colonial Legal System and the Civil Code (Burgerlijk Wetboek)..................................................... 37
   2.2 The Post-Independence Legal Situation ................................................................................................... 39
3. NEW ORDER MARRIAGE LAWS ..................................................................................................................... 42
   3.1 The Ideal Marriage: The Marriage Law (UU1/1974) and Implementing Regulations (PP9/1975)................ 42
   3.3 Engaging with Muslims: Religious Jurisprudence Law (UU7/1989) and the Compilation of Islamic Laws (Inpres 1/1991).................................................................................................................. 49
4. POST-NEW ORDER LAWS AND CALLS FOR REFORM: LIBERATION OR CONSTRAINT? ......................... 51
5. CONCLUSION .................................................................................................................................................. 56

CHAPTER 2

DIVORCE, PROPERTY RELATIONS AND POWER .................................................................................. 58

1. HISTORIOGRAPHY AND REDEFINING “PROPERTY”............................................................................... 61
   1.1 Critiquing the Historiography of Property ............................................................................................. 61
   1.2 Redefining Property.................................................................................................................................. 64
2. MARITAL PROPERTY ACCORDING TO ADAT ............................................................................................ 65
3. MARITAL PROPERTY ACCORDING TO ISLAM ........................................................................................... 69
4. MARITAL PROPERTY ACCORDING TO COLONIAL AND POST-COLONIAL STATE LAW ......................... 72
   4.1 Civil Code ............................................................................................................................................. 72
   4.2 Post-Colonial Laws .................................................................................................................................. 73
5. CONCLUSION ................................................................................................................................................ 75

PART 2: DISCOURSES OF DIVORCE

CHAPTER 3

CONSTRUCTING AND NEGOTIATING SHAME................................................................................... 77

1. SOURCES AND METHODOLOGY ................................................................................................................ 79
2. DEFINITIONS AND HISTORIOGRAPHY OF SHAME ................................................................................... 82
3. STATE REGULATION OF SHAME .............................................................................................................. 88
4. PRINT MEDIA REPRESENTATIONS OF SHAME .......................................................................................... 97
CHAPTER 4
CONSTRUCTING AND NEGOTIATING MARITAL RIGHTS AND OBLIGATIONS.............................. 125
1. DEFINITIONS AND HISTORIOGRAPHY OF RIGHTS AND OBLIGATIONS........................................ 126
2. STATE DEFINITIONS OF MARITAL RIGHTS AND OBLIGATIONS.................................................. 129
   2.1 Public Representations of Women’s Social Rights and Obligations ........................................... 130
   2.2 Legal Representations of Marital Rights and Obligations.......................................................... 133
3. ISLAMIC DEFINITIONS OF MARITAL RIGHTS AND OBLIGATIONS.............................................. 138
4. RIGHTS AND OBLIGATIONS IN RELIGIOUS AND STATE COURTS............................................. 143
   4.1 Pre-Marriage Law Divorce: 1965-1973 ....................................................................................... 143
   4.2 The Early Impact of the Marriage Law: 1975-1980 ................................................................... 145
   4.3 Divorce During the Height of the New Order: 1984 – 1999 ....................................................... 151
   4.4 Post-New Order: 2000-2005 .................................................................................................. 158
5. RIGHTS AND OBLIGATIONS IN WOMEN’S ORAL NARRATIVES, 2004 - 2005 ..................... 162
6. CONCLUSION .......................................................................................................................... 168

PART 3: IMPLICATIONS OF DIVORCE

CHAPTER 5
WOMEN’S AGENCY: ACQUIESCENCE, CO-OPTATION AND RESISTANCE .............................. 172
1. DEFINITIONS AND HISTORIOGRAPHY ....................................................................................... 175
2. ACQUIESCENCE: AN INDICATOR OF FEMALE AGENCY OR OPPRESSION? ............................... 180
3. WOMEN CO-OPTING THE STATE: CONFORMITY OR SUBVERSION? ......................................... 187
   3.1 Preparing to Engage with the State: Legal Education and Advice .............................................. 188
   3.2 Co-opting State Legal Frameworks: Women’s Strategies in Court ............................................ 196
4. WOMEN’S RESISTANCE AS A DIAGNOSTIC OF STATE AND SOCIAL POWER .................................... 204
5. CONCLUSION .......................................................................................................................... 214

CHAPTER 6
MODERNITY, RELIGION, AND NATION: DIVORCE AND THE PRODUCTION OF GENDERED IDENTITIES................................................................. 217
1. APPROACHES TO ANALYSING DIVORCE AND IDENTITY ............................................................ 218
2. DEFINITIONS AND HISTORIOGRAPHY ....................................................................................... 222
3. RELIGION ..................................................................................................................................... 228
   3.1 Inter-Religious Marriage .......................................................................................................... 231
   3.2 Unregistered Marriage and Divorce ....................................................................................... 240
4. MODERNITY ............................................................................................................................ 248
   4.1 The Public Representations of Modernity ................................................................................ 250
   4.2 Individual Negotiations of Modernity: Court Cases and Women’s Oral Narratives ................. 260
5. CONCLUSION .......................................................................................................................... 267

CONCLUSION .......................................................................................................................... 269
1. REINTERPRETING NATIONAL AND POLITICAL HISTORIES: MARRIAGE, GENDER AND STATE POWER ......................................................................................................................... 269
2. ALTERNATIVE HISTORICAL CHRONOLOGIES: WAS 1974 A WATERSHED MOMENT IN INDONESIA’S HISTORY? ................................................................................................................... 272
3. UNCOVERING GENDER HISTORIES THROUGH LEGAL HISTORIES: WOMEN AND SOCIAL POWER ....................................................................................................................................... 274
<table>
<thead>
<tr>
<th>APPENDIX I</th>
<th>GLOSSARY OF FOREIGN TERMS .................................................................................................................. 277</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPENDIX II</td>
<td>ABBREVIATIONS AND ACRONYMS .............................................................................................................. 282</td>
</tr>
<tr>
<td>APPENDIX III</td>
<td>ORGANISATIONS CONSULTED IN YOGYAKARTA ............................................................................................ 284</td>
</tr>
<tr>
<td></td>
<td>BIBLIOGRAPHY ........................................................................................................................................ 287</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

Researching and writing this thesis has been both intellectually and personally rewarding. The most challenging and worthwhile aspect of this process was the opportunity it afforded to conduct research for twelve months in Yogyakarta in 2004 and 2005. This was an invaluable experience which taught me a great deal about engaging with, and celebrating, cultural difference. I trust this was only the very beginning of a life-long journey of learning. None of this would have been possible without the assistance and kindness of a great many people in both Australia and Indonesia. Consequently there are number of acknowledgements that must be made.

Firstly, I acknowledge the financial support of the UWA Travel Award, the Postgraduate Student’s Association Research Travel Award and the UWA Completion Scholarship which made travel and research in Indonesia and Australia possible. I gratefully acknowledge the contribution of my original supervisor, Dr Esta Ungar, for her assistance and encouragement in first two years of the project. I also thank Dr Greg Acciaioli (UWA Anthropology) for providing me with introductions to my sponsor institution in Yogyakarta, Universitas Islam Indonesia. After my return from Indonesia in 2005, I had an extremely fruitful discussion with Associate Professor Lyn Parker (UWA Asian Studies). This ultimately proved to be critical to my future thinking about this project and I acknowledge that important contribution.

I offer especial thanks to my two additional supervisors, Dr Ian Chalmers (Department of Language and Intercultural Education, Curtin University) and Dr Susan Broomhall (History, UWA), who assumed the primary supervision of the thesis in mid-2005, two-and-a-half years into the doctoral programme. I am fully aware of the difficulties of entering a project at such a late stage, and so I am deeply appreciative of their hard work and advice. I would like to express particular gratitude to Sue who, as an historian of early modern France, was extremely kind to supervise a topic so far removed from her own area of expertise. This proved to be a great advantage, as Sue challenged me to think about the broader significance of my work, and its accessibility to non-specialist readers. Her incisive criticisms were always offered with much good grace and, most importantly for me, humour. Our working relationship has been by far the most productive and enjoyable one of my undergraduate and postgraduate career, and I feel very privileged indeed to have worked with her.

In Indonesia, those who are owed my deep gratitude are far too numerous to list. The research itself would not have been possible without the support of the Indonesian Institute of Sciences (LIPI) and I acknowledge in particular Bapak Ruben Silitonga in the Foreign Researcher section for his assistance in facilitating my research permission. I also offer my thanks to the late Bapak Endro Swasoko at the Consulate of the Republic of Indonesia in Perth for his assistance in processing my research visa.

My research in Yogyakarta was sponsored by Universitas Islam Indonesia; a productive and enjoyable collaboration. I offer my heartfelt thanks to all of the staff and students at that institution, particularly at the Faculties of Law and Economics and the Central Administration, for the unfailing hospitality, kindness and support shown to me throughout
my year in Yogyakarta. I especially acknowledge the pivotal importance of Dr Jawahir Thontowi, a PhD graduate of UWA and then Dean of UII’s Faculty of Law, to the success of this project. Despite his own busy teaching and research schedule, Dr Thontowi supported my application for sponsorship by UII, introduced me to key legal scholars and members of the Yogyakarta judiciary and provided me with the opportunity to give presentations at the Faculty of Law, as well as extending great hospitality to me. I am also grateful to Dr Muhammad Akhyar Adnan, UII’s Vice-Rector IV, for his endorsement of the many research proposals and documents required to access government records. I am indebted to Bapak Wiryono Raharjo, Coordinator for Collaborative Affairs at UII, who was my first point of contact when I arrived in Yogyakarta. Pak Wiryono helped me to find a place to live, arranged documentation for my research visa, allowed me to share office space with him and always provided friendly support throughout the tribulations of my research. His help was invaluable, and I am truly grateful for his hospitality, advice, humour and friendship.

I also acknowledge the scholarly advice and assistance of a number of academics at UII’s Faculty of Law, including Bapak Agus Triyanta, Ibu Sri Wartini, Bapak Abdul Jamil, Ibu Aroma Martha, Ibu Karimatul Ummah and Bapak Budi Riswandi. My thanks are due to the staff at UII’s Legal Education and Training Centre (PUSDIKLAT) and the Legal Aid Institute (LKBH-UII) for their kind help with negotiating Indonesian court bureaucracy, especially Bapak Mukmin Zakie, Minarni, Budi Susilo, Solichin, Jupri, Ferry, Pak Supri, Mas Hamid, Mas Eko, Ayu, Hesti and Mega, amongst many others.

I thank the staff at the Religious and State Courts in Yogyakarta, Sleman, Wates and Wonosari and the many other government and non-government agencies I consulted. I offer special thanks to Bapak Mungkiono at the Sleman State Court, Bapak Muktiarto at the Religious High Court in Yogyakarta and Bapak Lanjarto at the Wates Religious Court for their exceptional assistance in locating court records. I also make special mention of Bu Ina, Bu Yus and Mbak Dita at LBH Apik in Yogya for clarifying Indonesian law to a non-lawyer, helping me make research contacts and for their hospitality.

My carrel-mate in the UWA Scholar’s Centre for the past 18 months, Sue Hart, deserves a special mention. Her friendship and intellectual support was invaluable in the final stages of the project. Finally, I offer my thanks to all of my entertaining friends and family. They were never the slightest bit interested in my thesis, but rather concerned with fun and laughter, and have so provided the most important support of all for an otherwise difficult endeavour.
NOTE ON TRANSLATIONS AND SPELLING

All translations from Indonesian to English are my own.

Because this topic may also be of interest to non-Indonesian speakers, all quotations appear in the main text of the thesis in English. The original Indonesian quote is included in the footnote. Current standard Indonesian spelling is used throughout the thesis, in keeping with the various changes to the Indonesian spelling system that occurred from the 1960s onwards. However, quotes contain the spelling used in the original source.

Book and article titles are referenced with their original Indonesian titles.

In footnotes, specific components of court files and legislation are cited in Indonesian. The first time such terms are used in each chapter they are accompanied by an English equivalent in brackets. Non-Indonesian readers can find a more lengthy explanation of these terms in Appendix I.
INTRODUCTION

On January 2 1974, Indonesian President Suharto ratified Marriage Law 1/1974 (Undang-Undang Perkawinan). Under the provisions of this law, all marriages were required to include a religious ceremony and state registration, and all divorces were to be ratified by a court. Women and men were declared to have equal rights to file for divorce, and equal social status. However, husbands were defined as “heads of the family” (kepala keluarga), and wives as the “mothers of the household” (ibu rumah tangga, sometimes translated as “housewife”, although this term does not exist in Indonesian). These disparate components of the law were indicative of a range of interests. The emphasis on religious rather than civil marriage accommodated Muslim groups, who had protested the bill in 1973. As the first unified state regulation on marriage, it marked the culmination of five decades of campaigning by Indonesian women’s groups. Despite this influence, the law also reflected the conservative gender ideologies of the New Order state. This major piece of legislation had numerous implications for women’s and men’s experience of marriage and divorce, as well as for the formation of both state and citizen. The Marriage Law has frequently been cited in passing in feminist scholarship, but there have been few studies which analyse its impact upon Indonesian society in depth. Taking divorce as an entry point by which this law was contested, this thesis makes a significant and original contribution to scholarship by analysing how the state attempted to use the Marriage Law (and related legislation) to shape Indonesian society from 1974 to 2005, and how citizens, women especially, responded to this state project.

The regulation of marriage by both the colonial and the post-colonial Indonesian state has always been an exercise of state power. Under Dutch rule, a tripartite system of laws

2 Susan Blackburn, Women and the State in Modern Indonesia (Cambridge: Cambridge University Press, 2004) 130-31, Elizabeth Martyn, The Women's Movement in Post-Colonial Indonesia: Gender and Nation in a New Democracy, ed. Louise Edwards, Women in Asia Series (London: Routledge Curzon, 2005) 41, 123. The Indonesian women’s movement, from the 1920s onwards, played a major role in securing a unified marriage law, as both Blackburn’s and Martyn’s work details exhaustively. Blackburn also argues however that the New Order was keen to de-politicise Islam, and to harness women’s organisations to its development agenda which included family planning. I agree with Blackburn’s basic proposition that marriage law reform, while it was in part responsive to women’s activism, also suited the regime’s broader goals of establishing centralised control over the Indonesian archipelago. This thesis extends upon that proposition by examining how, in practice, the state attempted to exercise that control.
regulated the marriage of “Europeans,” “Natives” and “Foreign Orientals” differently. This effort was directed towards defining individuals, and by extension families, as either citizens or subjects of the colonial state. The family was understood as a site where state values might be instilled, and reproduced, and has therefore been deemed essential to the state-formation process in Indonesia throughout the twentieth century. This was in part because the concept of an Indonesian nation was a consciously created, artificial entity. It was delineated by the Dutch as the colonial Netherlands Indies and later by nationalists as an independent Republic, and has been contested ever since.

Familial loyalty to a new nation is one way of ensuring the perpetuation and unity of that nation. However, state regulation of marriage (and therefore of families) has always co-existed with familial, religious and customary (adat) processes and obligations. Thus, individual negotiations of marriage, which may have resisted or supported state prescriptions on marital behaviour to different degrees, may be understood as expressions of social power, which also have gendered dimensions. In other words, the extent to which women and men can obtain their goals in divorce (whether that be in terms of obtaining the divorce, or financial or custodial settlements) also reflects the degree of power they may hold in any given (and usually overlapping) social framework (which includes the family, religious community, village and nation). I further contend that all personal actions have a macro-political dimension and consequence, even if social actors engaged in these actions do not have such explicitly political intentions. Thus, for example, while a woman engaged in a court-mediated divorce suit in the late 1970s in New Order Indonesia may indeed have been using the court exclusively to obtain a divorce, her actions (whether unconscious or otherwise) nonetheless opposed emergent New Order discourses about ideal femininity. This, I will argue, reveals both the nuances of women’s power in social, non-political contexts (that is, a lack of social power for certain women in religious or community contexts necessitates seeking the assistance of the court), and the gendered complexities of state power (which is predicated on macro-political control of parties and parliament, and

---

micro-political control of families). In the New Order context, the role of gender in determining how marriage and divorce might mediate the distribution of state and social power has been little interrogated, and forms the basis of my inquiries.

The New Order’s implementation of a marriage law which applied to all Indonesian citizens is worthy of close study, in particular because it succeeded where the colonial and Sukarno-led states had failed. The role of the state in regulating marriage had always been a point of contention for Muslims, at least since women’s groups first posited the issue of a unified marriage law in the 1920s. While colonial legal divisions between “Native” subjects and “European” citizens were abolished through the 1945 constitution, a range of disparate colonial marriage laws were retained. Sukarno’s newly formed government was able to pass only basic legislation on the registration of Muslim marriage and divorce in 1946 and 1954. But these laws still did not regulate marital age, spousal maintenance, custodial and marital property settlements, or require a court’s permission to divorce. The Marriage Law addressed all of these issues to varying degrees, but also contained clear ideological prescriptions on the roles of wives, husbands, and the family within the Indonesian nation. Different social actors may have used these prescriptions differently, thus inviting analysis of the success or otherwise of state projects.

My thesis is concerned with the variety of possible responses to, and uses of, the Marriage Law. Such responses and uses were generally characterised by a range of overlapping markers of identity. As my study was based in the Special Region of Yogyakarta, I analyse divorce cases from rural and urban courts in this region, filed by Javanese and ethnic

---

4 Blackburn notes that from the colonial period onward, the Indonesian state did not aggressively pursue the protection of women’s individual interests, preferring to leave matters relating to the care of widows and divorcees to familial, ethnic and religious communities. For example, the colonial government attempted to eradicate child marriage in the early twentieth century, but eventually abandoned these efforts when it became clear that male-led communities opposed this. I contend therefore that the New Order decision to regulate marriage, even in the face of opposition, is a unique event in the history of state regulation of families in Indonesia, and an extremely important event in the history of the New Order itself. See Susan Blackburn, "Women and Citizenship in Indonesia," *Australian Journal of Political Science* 34, no. 2 (1999): 191-92, Susan Blackburn and Sharon Bessell, "Marriageable Age: Political Debates on Early Marriage in Twentieth-Century Indonesia," *Indonesia* 63 (1997).

5 Article 27 of the 1945 constitution granted equal political and civil rights to all citizens. However, prior to the 1974 Marriage Law separate regulations continued to govern marriage for Indonesian Christians, Europeans and Chinese. “Native” Indonesians were subject to customary (adat) and Islamic law. This point is discussed in further detail in Chapter 1.

Chinese, who were variously Muslim, Christian or Confucian. Where relevant, I have also drawn upon published cases of divorce in regions other than Java. Throughout the four-decade period analysed in this thesis, Muslims comprised approximately 88% of the Indonesian population, and so also predominate in the sources employed in my analysis.  

At this juncture, there are three key points regarding this research that should be noted. Firstly, I am not attempting to provide a comprehensive analysis of divorce in Indonesia. I focus on the experience of women primarily in State and Religious courts, and the significance of their actions to the state and to their local communities, which has thus-far been under-researched. Secondly, and extending from that point, because I am also interested in formal uses of the Marriage Law, and particularly women’s interactions with the state and how such encounters may have changed over time, my key sources are written court records. Of course, as I discuss later in the thesis, many Indonesian women and men did, and continue to, marry and divorce according to religious and customary rites without reference to state institutions. This is also an under-researched topic and further investigation of this issue may provide new insights into women’s experience of marriage and divorce and the character of female and male social power in various parts of Indonesia. However, time and length limitations inherent in a thesis preclude anything further than a comparative analysis of this topic based on the current literature. Finally, because access to Indonesian court records are entirely dependent on the strength of a researcher’s personal contacts, a systematic collection and analysis of data that would occur in a traditional historical project has not been possible here. Nonetheless, rather than leave this important topic untouched, I have approached a relatively small body of material from a range of different thematic angles in order to illustrate some of the ways in which women interacted with the state on the matter of divorce. Much of course remains to be done, including investigation of unregistered marriage and divorce, of the role of polygamy in influencing divorce, and of domestic violence. This thesis attempts to provide a starting point for future work.

———

7 Ian Chalmers, *Indonesia: An Introduction to Contemporary Traditions* (Melbourne: Oxford University Press, 2006) 102. At the 1971 census, 87.5% of Indonesia’s 118 million inhabitants were Muslim. At the 2000 census, 88% of 200 million people were recorded as Muslim.
An interrogation of state and social power in Indonesia necessarily intersects with the relationship between Islam and the state, a relationship that has been debated by Indonesian Muslims throughout the twentieth and twenty-first centuries. Before the Declaration of Independence in 1945, some Muslims had called for an Islamic state and the implementation of *syariah* law. However, this was rejected by Sukarno’s government in favour of the state ideology of *pancasila* (“five principles,” including belief in a singular God), intended to accommodate Indonesia’s significant religious and ethnic minority populations. After his rise to power in 1965-66, Suharto curtailed Muslim political strength and organizations. Following the Islamic revival of the 1980s and the emergence of pro-democracy Muslim activism in the 1990s, Suharto sought the support of religiously conservative Muslims. Post-Suharto, the enactment of the Regional Autonomy Law has resulted in some areas (notably West Java and Aceh) implementing *syariah* law, and their own regional regulations on public morality and behaviour (see also Chapter 1 for a review of Islamic-based proposals for national law). Thus, although Islam has been accorded differing levels of political freedom throughout Indonesia’s modern past, as a social and political force it has often retained a level of insularity from the state. This renders Muslim uses of and resistances to the Marriage Law a fruitful site for analysis of the subtleties of how state and social power might be constituted and used.

My study aims to build upon feminist scholarship on family, gender and power, by considering the interlinked significance of marriage and family to the constitution of state and social power under the New Order. Scholars such as Ann Stoler, Frances Gouda and Elsbeth Locher-Scholten have already highlighted the significance of gender, race, sexuality and family in the formation of the colonial state. Similarly, there has been

---


widespread feminist scholarship identifying the New Order’s emphasis on nuclear family formations and domesticated and subordinated femininity.\footnote{The scholarship on the general topic of New Order constructions of women and family is enormous. Some useful examples include Blackburn, \textit{Women and the State in Modern Indonesia}, Suzanne April Brenner, "On the Public Intimacy of the New Order: Images of Women in the Popular Indonesian Print Media," \textit{Indonesia} 67 (1999), Norma Sullivan, "Gender and Politics in Indonesia," in \textit{Why Gender Matters in Southeast Asian Politics}, ed. Maila Stivens (Centre for Southeast Asian Studies: Monash University, 1991).} However, there has been little historical scholarship which examines the minute details of the local implementation of New Order state power through the family, which I undertake here through a microhistory of divorce. By investigating the state’s application and litigants’ use of the Marriage Law in divorce, I aim to answer a number of key questions. Did the New Order attempt to harness gender order (by which I mean the organisation of society according to gendered social hierarchies) to achieve their goals, how did this happen, and was it effective? How did women in particular experience the Marriage Law? Were women targeted by the state for the purposes of reinforcing state power, and if so in what ways did this occur? How did women and men resist state projects differently? How were citizens’ actions in divorce influenced by the state, and how might their actions both reflect and constitute gender hierarchies within society? My examination of divorce, a contestation of the state’s ideological prescriptions, may reveal further nuances of the nexus between gender order and the operation of power in state and society, about which still too little is known.\footnote{As suggested in previous pages, I argue throughout this thesis that divorce itself was contrary to state ideals of femininity, family and citizenship. This does not imply that all citizens engaged in divorce necessarily consciously understood their actions as contesting the state; presumably few (if any) women and men think about highly personal, and distressing, life events such as divorce in these terms. But because the New Order was so involved at a legislative and administrative level in attempting to shape families, divorce did inevitably constitute an affront to those state efforts. Consequently, the responses of judges, and the changing strategies of litigants, provide an extremely useful case study of the nuances of power between women and men, and between the state and its citizens.}

By answering these questions, I intend to offer a significant reassessment of Indonesian history along four major axes. Firstly, my analysis of legal developments and individual case studies provides a detailed legal history of how divorce has been negotiated through the court systems after the introduction of the Marriage Law, an issue that has received limited attention from scholars prior to my study. Secondly, I will reassess the political history of the New Order, asking if the institution of marriage is a significant tool used by the state to establish legitimacy. Thirdly, I offer a reinterpretation of the national history of Indonesia by asserting the importance of marriage as an indicator of historical and social change. Finally, as divorce is frequently characterized by competing assertions of the
meanings of gender, I will use this feature to chart a history of the ways in which gender roles may have changed in meaning and determined women’s and men’s access to social power. These four major aims are grounded in the basic feminist assumption that if any given historical moment is analysed through the lens of gender, previously accepted historical markers or events may change in meaning. This thesis does not presume to provide a “new national history of Indonesia” but rather contributes towards looking at this history in a new light, using new points of reference; namely gender and women’s particular experience of historical milestones.

I approach my study of the constitution of social and state power through an investigation of the Marriage Law, however I do not assume that 1974 was necessarily a watershed moment in Indonesian history. Rather, through my investigation I will also examine whether the Marriage Law was, as most feminist scholars, Indonesian activists and various Indonesian state regimes have long posited, a turning point in Indonesia’s legal (and implicitly social and political) history or whether there were other chronological markers which were of greater significance. Consequently, while my analysis primarily concentrates on developments after 1974, some of my analysis of necessity examines divorce prior to 1974.

1. HISTORIOGRAPHY: MARRIAGE, GENDER, POWER, AND THE STATE

My thesis analyses marriage, gender, power, and the state concurrently, an approach frequently advocated by feminist scholars, but less so by “mainstream” (usually male) scholars of political and national history. Feminist scholars such as anthropologist Maila Stivens have long argued that formal politics is inseparable from household, family and sexuality. However, in “standard” political and historical studies of the Indonesian nation and state, the critical role of marriage, gender and family has often been overlooked. Conversely, studies of marriage, gender, and power have not always been linked explicitly to state formation. In the Indonesian context, marriage has received greater attention from anthropologists and demographers than from historians or political scientists. My study

13 Maila Stivens, "Theorising Gender, Power and Modernity in Affluent Asia," in Gender and Power in Affluent Asia, ed. Krishna Sen and Maila Stivens, New Rich in Asia Series (London: Routledge, 1998), 14. This problem is not limited to studies of Indonesia. Stivens observes that in scholarship on Asia in general, discussions of theoretical issues of gender and state have been rare.

assumes that pivotal life events such as marriage and divorce form the basis of societal function, and so constitute important historical events. I claim that the regulation of marriage and divorce was an important tool by which the New Order state sought to control families and constitute itself. This was of course not the only determining factor in the constitution of state and social power, but it was a significant one, which has been largely neglected by scholars of Indonesia.

Inattention to gender has been a long-standing problem in the study of Indonesian politics (and indeed in that discipline generally). Historian and political scientist Susan Blackburn, in a 1991 review of studies of Southeast Asian politics, found few scholars who addressed even her deliberately minimalist criteria of female representation in political parties and parliament. A brief review of some historical and political studies of the New Order state published in the last decade reveals a similar situation. Historians and political scientists such as William Liddle, Colin Brown, Adrian Vickers and Damien Kingsbury highlight the role of military coercion, the crippling of political opposition parties and economic development in the consolidation of New Order power. Studies of political resistance to the New Order state, such as that of Edward Aspinall, focus on the role of male intellectuals and religious leaders, male-led Non-Government Organisations (NGOs) and a non-gendered, but implicitly male, middle-class opposition. With the exception of Vickers, whose study does briefly discuss women’s representation in parliament and the debates about gender roles ushered in by modernisation, the bulk of these studies rarely mention women at all, nor (more importantly) do they examine the gendered subjectivity of the male social actors they describe. Rather, male action is accepted as normative. Certainly institutions such as political parties, the military, NGOs and religious organisations are frequently led by males, shaping the scholarship surrounding these institutions. However,
this has led to an intransigent problem in the study of politics, whereby the exclusion of women from public organisations and roles leads also to their exclusion from scholarly discourse on the state.\footnote{Susan Blackburn, "Gender Interests and Indonesian Democracy," *Australian Journal of Political Science* 29, no. 3 (1994): 557. Again, this is a point that feminist scholars have been making insistently for at least the past two decades. Blackburn puts this particularly well with regards to Indonesia when she notes that “the fact that women are almost invisible in politics does not mean, however, that they are not affected by the state and its policies. Different regimes serve gender interests and affect the construction of gender in different ways. In Indonesia, much interest revolves around the shift from a military-dominated regime to one controlled by civilians, which must in itself have important consequences for gender interests.”} My thesis, as an explicitly feminist study, posits that all historical processes and outcomes may change in meaning if gender is employed critically as a tool for analysis.

It is therefore extremely important that scholars grapple not only with the influence of gender in shaping the institutions they describe, but also remain attentive to the possibility that marginalised or less powerful groups (such as women) might engage with the state in less public but equally important ways. Without detracting from the important findings of the scholars described above, many questions remain unanswered, especially regarding how women and men might participate differently within the state, and how gender identity might constrain or facilitate such participation.

Despite this continuing tradition of male-oriented political scholarship, there have been a number of feminist studies of women and their interaction with the Indonesian state. These have revealed that women’s actions, both within their everyday lives and within the formal political forum, have been of great significance to the constitution of state and social power. In a colonial context, Stoler argues that both female and male colonial subjects in the Netherlands Indies actively contested the right of the state to regulate race and sexuality by engaging in inter-racial unions, co-habiting instead of marrying, refusing to give up children from inter-racial unions to European charitable institutions and at times using the court system to protest colonial incursions into the private sphere.\footnote{Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule*, Stoler, "Sexual Affronts and Racial Frontiers: European Identities and the Cultural Politics of Exclusion in Southeast Asia."} Locher-Scholten has also shown that women’s resistance to the state’s gender ideology can be ambivalent, as was the case when the colonial state attempted to pass a law on monogamous marriage in 1937. This was interpreted by Muslim groups as an attempt to shape a secular colonial
citizen. They garnered the support of the women’s movement on the grounds of the unity of the nationalist effort, and the bill was successfully opposed.\textsuperscript{20} Both studies provide guidance on areas requiring further research, which this thesis addresses. Stoler’s microhistorical analysis of individuals’ court actions interrogates the effectiveness of paternalistic state control, a process I wish to examine in the post-colonial context. Locher-Scholten’s demonstration of the ambivalent results of women’s resistance, and the importance of noting which power structures they can choose to resist and which they cannot, also invites investigation within the history of the New Order regime.

In the post-colonial context there have also been a number of important feminist studies of women and the state. Susan Blackburn’s seminal 2004 book, \textit{Women and the State in Modern Indonesia}, identifies a hitherto unacknowledged history of twentieth-century Indonesian women’s engagement with the state on issues including education, marriage, polygamy and citizenship. She argues that while the interests of the women’s movement and the state have sometimes converged, the women’s movement has frequently been dissatisfied with the state’s implementation of such policies.\textsuperscript{21} Moreover, she finds that at moments when the state is weak (such as in the post-Suharto era), women may also become vulnerable to discrimination due to a “resurgence of local identities and ethno-nationalisms.”\textsuperscript{22} Elizabeth Martyn’s study focuses on women’s activism in the 1950s, arguing that women’s groups pursued nationalist and gender interests simultaneously, but that this ultimately ensured that gender interests were often ignored by the state.\textsuperscript{23} Both Blackburn and Martyn primarily analyse the manner and success of women’s political mobilization. They highlight the importance of the Marriage Law, but their analyses focus on the struggle to obtain it in the period up to 1974. Combined, their work comprehensively documents the women’s movements role in obtaining a Marriage Law, and consequently this thesis does not explore this issue in any great depth. Importantly, Blackburn further notes that women’s experience of state-mediated divorce remains an area of research requiring greater attention.\textsuperscript{24} This thesis makes a much-needed contribution to scholarship

\begin{thebibliography}{99}
\bibitem{20} Locher-Scholten, "Marriage, Morality and Modernity."
\bibitem{21} Blackburn, \textit{Women and the State in Modern Indonesia} 224-25.
\bibitem{22} Ibid. 228.
\bibitem{23} Martyn, \textit{The Women’s Movement in Post-Colonial Indonesia} 209.
\bibitem{24} Blackburn, \textit{Women and the State in Modern Indonesia} 226.
\end{thebibliography}
through an historical examination of women’s experience of divorce, and its implications for the constitution of state and social power, beyond 1974.

Other studies have focused on the importance of sexuality to nation and state-building. Saskia Wieringa’s history of the communist Indonesian Women’s Movement (Gerakan Wanita Indonesia) argues that male military aggression and the demonisation of female sexuality were the foundation of the New Order state.25 Similarly, Indonesian sociologist Julia Suryakusuma contends that the state’s regulation of male and female civil servant’s sexuality (with a higher level of restriction for women), enabled the state to exert a greater control over all citizens. Subjugated male civil servants undertook the state’s work by resorting to “to subjugating women, who are socially defined to be even more powerless than they are.”26 I approach my study of divorce in a similar way, arguing that the political basis and function of the state is inextricable from the distribution of power between the sexes.

In theorising the significance of gender, marriage, and family to the state, the work of feminist historians of early modern Europe is useful. In particular, Sarah Hanley’s concept of the “State-Family compact” in the early modern French state, and Julia Adam’s notion of the “Familial State” in the early modern Netherlands yields some important insights for my study.27 Both argue that the early modern state was predicated upon a patriarchal family formation, whereby male heads of household purchased official positions within the state, which could also be obtained through female dowry at marriage, and later inherited by male offspring.28 Hanley in particular notes that marriage and women’s sexuality was important to the state, as illegitimate children or imprudent marriages affected men’s access to financial capital, symbolic capital (in the form of reputation) and therefore their ability to maintain a position within the patronage system. Men’s position in the family, and therefore in political office, was dependent upon women’s subordination, which Hanley argues “casts women as prime participants, never merely spectators, in early modern state

building.” 29 Notwithstanding the obvious comparisons with the nepotism of the New Order state, Hanley’s argument that the subjugation of women is essential to the maintenance of state power, and that women’s resistance challenges the legitimacy of the state, is a concept of some significance, which I will interrogate in the context of divorce in this study. 30

Building upon the insights of the feminist scholars described above, my thesis challenges received views of state power in Indonesia on a number of grounds. I suggest that the constitution of the state can occur in part through the family and to this end my analysis is underpinned by Hanley’s notion of the State-Family compact. Moreover, in the context of limited possibilities for overt opposition under the New Order, I suggest that resistance to the state can also occur through actions such as divorce. This premise is an important foundation of the thesis. If resistance to the state can only be gauged through organised political action, feminist scholars are limited to the discussion of the same, male-oriented political movements that have been the focus of decades of political scholarship. However, in all historical and cultural contexts, state attempts to regulate families have been embraced or rejected to varying degrees by citizens. This offers an insight into the power of the state to control (or fail to control) its citizens at the most basic level, and may illustrate the gendered distinctions in the ability of women and men to reject state control (even if this is not overtly understood by the social actor her or himself as an act of political resistance). Consequently, as men and women both participate in divorce, their actions may be deemed to have had varying levels of influence in constituting state and social power.

By analysing state and social power through a microhistory of divorce, my thesis also makes an important contribution to the study of marriage and gender in Indonesia. Existing studies of marriage have not, in general, examined its macro-political dimensions. Moreover, the most detailed qualitative studies of marriage and divorce were all conducted prior to the introduction of the Marriage Law.

29 Ibid.: 27.
30 This also resonates with Diane Wolf’s argument, that the subordination of female Javanese factory workers was directly related to the creation and maintenance and wealth and power for male industrialists and corrupt government officials. Diane L. Wolf, “Javanese Factory Daughters: Gender, the State and Industrial Capitalism,” in Fantasizing the Feminine in Indonesia, ed. Laurie J. Sears (Durham: Duke University Press, 1996), 155-56.
Numerous demographic studies have addressed marriage and divorce, taking a necessarily quantitative perspective. Such studies have revealed much about patterns of marital behaviour. Demographers have scrutinized links between divorce and population control, concurring that the 50% divorce rates of the 1950s across the Malay Archipelago have consistently and significantly decreased since then, as a result of increased female education and reduced parental arrangement of marriages. Such conclusions will inform my analysis, but a demographic approach cannot answer some of the qualitative concerns of my thesis, including why the state regulated marriage in the way that it did, and how men and women experienced this regulation differently.

There have also been specialised studies of the Indonesian legal system, which provide important insights into the legal framework of state rule, although by and large the Marriage Law has not received detailed attention. This has included the excellent studies by M.B. Hooker and Tim Lindsey, which explain respectively how the colonial and post-colonial legal systems functioned in practice, but do not examine how and why law might be written and applied in a gendered manner. My analysis assumes that gender is integral to understanding law, and uses law as a source for understanding historical change.

It should also be noted that marriage and divorce have been topics of great interest to Indonesian scholars. However, such research has often consisted of descriptive studies of the law, guided by practical concerns such as how to interpret and apply the Marriage Law, what aspects of Islamic and customary law are accepted by courts and how marital property can be claimed and divided. These studies have been inevitably shaped by the nature of

---


33 Hilman Hadikusuma, Hukum Perkawinan Adat (Bandung: Penerbit Alumni, 1977), Amir Mu'allim, "Kompilasi Hukum Islam dan Rancangan Undang-Undang RI tentang Hukum Terapan Peradilan Agama (Studi Evaluatif Terhadap Materi dan Dasar Hukum Pemberlakuananya)," Unisia XXVI/II, no. 48 (2003), Sudarsono, Hukum Perkawinan Nasional (Jakarta: Rineka Cipta, 1991), E Sundari and M.G Sumiarni,
data kept by courts, which deal primarily with causes and rates of divorce. Such studies provided important context for my own research. However, because these studies have not generally been concerned with interrogating gender order, I have not drawn significantly upon them.

The most significant studies of gender and marriage in Indonesia have been produced by anthropologists. However, these immensely useful analyses necessarily lack historicity, which is important if we are to understand how gender orders change, and under what circumstances women can and cannot access power. Hildred Geertz’ classic 1961 study, *The Javanese Family*, was one of the earliest anthropological examinations of family, gender, and marriage and divorce in Java. Geertz argued that Javanese women controlled domestic finances and thus had considerable power within the family and society, and also that they were able to divorce easily. Her argument regarding female domestic power has subsequently been critiqued by Suzanne Brenner, Ward Keeler, Diane Wolf and Norma Sullivan, amongst others, who note that in Java, concern with monetary matters signifies a lack of spiritual strength and social power. Both Wolf and Sullivan conclude, based on fieldwork conducted respectively in rural Java in the 1980s and urban Yogyakarta in the 1970s, that the ideology of female power functioned to mask women’s inferior social position. Keeler and Brenner further argue (based on fieldwork in Java in the 1980s) that while dominant Javanese models of gender dictate that women have lower status, women can manipulate this status to produce benefit for themselves and their family, for example through aggressive market trading. However Brenner (working in Java), as well as Michael Peletz (working in Malaysia in the 1980s), also encountered counter-hegemonic views that attributed greater emotional restraint and therefore spiritual strength and cultural power to women. I adopt these notions of concurrently operating gender ideologies, which social actors attempt to manipulate to their advantage, in my subsequent analysis of divorce.

---


34 H. Dadan Muttaqien, "Perkara Perceraian Akibat Perselingkuhan Di Pengadilan Agama Yogyakarta Tahun 2003." (Yogyakarta: Lembaga Penelitian, Universitas Islam Indonesia, 2003), 3. This paper provides an example of how research questions are guided by the available statistics. Muttaqien investigated the number of divorces caused by affairs, producing a figure of 14.67%, and concluded that the community needed to seek ways to eradicate such behaviour and preserve marriage.


Only two further studies after Geertz examine the issue of women and divorce in any depth, and they do not use gender as a tool for analysis in the way that I intend. Political scientist Daniel Lev’s 1972 work is a descriptive study of the function of Islamic courts in Indonesia. He found that women, as the primary users of the court system, received largely sympathetic treatment from courts when they filed for divorce. Anthropologist Hisako Nakamura focuses on divorce practices in the Kota Gede suburb of Yogyakarta in the late 1960s and early 1970s, arguing that customary practices (adat) were in fact rooted in Islamic doctrine. As the studies of Geertz, Lev and Nakamura were all conducted prior to 1974, an analysis of the subsequent three decades is timely.

Because the Marriage Law defined women’s marital role as subordinate to men, western feminist scholars have sometimes automatically assumed that the law has had a negative effect upon women. For example, an anthropological study in Java in the 1980s by Jutta Berninghausen and Birgit Kerstan claims, without reference to court records or observance of court proceedings, that most official divorce proceedings were initiated by men and that courts discriminated against women. Detailed interrogation of specific divorce negotiations may or may not prove this contention. In contrast, I have approached my study assuming that benefit or disadvantage for women and men is subjective, mediated by culture, class, and religion.

The potential for women to employ ostensibly patriarchal state structures to their advantage has been shown in anthropological studies of court use in Sumatra in the 1970s and 1980s

by Herman Slaats and Karen Portier, and Keebet von Benda Beckmann. These studies note that litigants often engage in “forum shopping,” using whichever state, religious or customary legal avenues are most advantageous to them. In Slaats and Portier’s study, 88% of the litigants in divorce cases in a State court (which deals with all non-Muslim divorces) in North Sumatra between 1956 and 1974 were women, who used the state court to circumvent the Karo Batak custom of stripping divorced women of their bride-wealth and access to marital property. This suggests that as much as the state or other local power structure might attempt to elicit particular behaviour from its constituents, those citizens may also attempt to manipulate those state or local power structures, or even play one power structure off against the other. I approach my analysis of divorce with such reciprocal possibilities in mind.

Through a microhistory of state-mediated divorce, my study attempts to uncover an under-researched aspect of the formation of the New Order state, as well as to reveal the nuances of female resistance to state, religious, and local authority. In doing so, I offer an original approach to the study of Indonesian history.

2. TERMS AND CONCEPTS

I use a number of key terms and concepts throughout this thesis which need to be defined. One of the central concepts underpinning this thesis is that of “the state.” In the last century, Indonesia has experienced four different state formations: the colonial state, the independent Republic led by Sukarno (1945 – 1967), the authoritarian New Order state under Suharto (1967 – 1998) and the emerging democratic state, heralded by the 1999 parliamentary elections, the first uncensored ballot in more than three decades. Using the


41 After the military crushed an alleged communist coup in 1965, Sukarno remained the nominal head of state. He formally transferred power to General Suharto in 1967. After the Asian financial crisis and riots which led to the deposition of Suharto in 1998, B.J. Habibie became interim president of Indonesia. Democratic elections for members of parliament were held in 1999. Parliamentary members then selected the new president, Abdurrahman Wahid. In 2001, the plenary parliament (Majelis Permusyawaratan Rakyat, People’s Deliberative Assembly) passed a vote of no-confidence in Wahid, and he was replaced by vice president and Indonesian Democratic Party of Struggle (Partai Demokrat Indonesia Perjuangan) leader Megawati Sukarnoputri (the daughter of former president Sukarno) in 2001. In 2004, the first full democratic elections
concept of the state is theoretically difficult because, as political scientist Nira Yuval-Davis notes, “the state is not unitary in its practices, its projects or its effects.”

States may be comprised of institutions which have competing interests and government policies may be administered differently by both men and women whose interests might diverge according to religion, ethnicity, class, gender or age. This means that, as historian Tony Day argues, “the state never becomes a fully, finally constructed “thing,” nor does its power act independently from or simply upon human actors. It is made and remade by human beings who form a “complex agent.””

Political scientist Joel Migdal contends that in relatively new states, this process is even more pronounced, as there is a constant struggle between the state and other organizations over who can make rules that govern society.

I approach this study by using “the state” to refer to the ideological power vested within a central ruling authority, which attempts to elicit the compliance of citizens to its laws. The New Order state attempted to elicit such compliance though military coercion, censorship and the repression of political opposition. Ordinary citizens, as well as employees of the state such as judges and civil servants, may therefore have had very circumscribed opportunity to shape or change policies and instructions emanating from presidential, ministerial and military authorities. Nonetheless, as my study will show, the state’s authority was implemented in fragmentary ways. Given that neither judges nor litigants were able to exercise democratic choice regarding the composition of the state, divorce can be understood as forum by which individuals could participate in the state, and attempt to shape it, however circumscribed those attempts might have been. As the role of the state in regulating marriage and divorce in Indonesia has often been contested, divorce is a particularly valuable area in which to analyse how the state and its citizens interact, and therefore how the state itself is constituted.

In stating that courts and litigants did not have the option of exercising democratic choice regarding the composition of the state, I am suggesting simply that no one during the rule were held, in which Indonesians voted directly for parliamentary members and the president, resulting in former military leader Susilo Bambang Yudhoyono taking office.

---

of the New Order had the option of going to the ballot box and voting out the regime. This statement should not be inferred to imply a comparison of Indonesian jurisprudence, which is a relatively new concept, with Anglo-Saxon legal systems where judges and courts may play an active and clearly defined role in shaping state decisions. What I am suggesting is that while Indonesian judges were ostensibly employees of the state, they may not always have implemented laws consistently, and this may usefully illustrate the fragmentary authority of the state. Similarly, litigants who challenge an aspect of the law in a public court forum, in my view, are also challenging (albeit out of self-interest) an aspect of state ideology. The grounds on which they might choose to challenge state ideology is the point of interest in this thesis, revealing tensions between state and local conceptions of citizenship, gender and power.

I also refer to the concept of “nation”, which Benedict Anderson famously defined as an “imagined political community... imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.”\footnote{Benedict R. O’G. Anderson, \textit{Imagined Communities: Reflections on the Origin and Spread of Nationalism} (London: Verso, 1983) 15.} An Indonesianist himself, Anderson’s argument fits the incredible ethnic, linguistic and religious diversity that characterizes the modern Indonesian political entity, and I take his definition of the nation as an entry point for my analysis. In doing so, it is worth stating that “Indonesia” was a construction of the early twentieth-century, male-led nationalist movement, and was based upon the boundaries of the colonial state. While in theory it was an inclusive ideology, in practice “Indonesia” has always been contested and at times exclusive. Groups in Aceh and South Maluku attempted to withdraw from the nation soon after independence, Suharto’s government excluded Chinese Indonesians from citizenship in the nation, and women’s role in the nation was defined as different to men, to name just a few examples of how different groups could be marginalised within the nation. In this study, I am particularly aware of the gendered implications of the term “nation.” Here, I concur with Joanne Nagel’s argument that nationalism is a masculinist project, and that men and women may therefore experience citizenship and national identity dissimilarly.\footnote{Joanne Nagel, ”Masculinity and Nationalism: Gender and Sexuality in the Making of Nations," \textit{Ethnic and Racial Studies} 21, no. 2 (1998): 244, 61.}
In Indonesia, national identity may be subordinate to an individual’s identity defined through their membership in a range of other communities, such as religious, regional and ethnic communities. Thus, the term “identity” implies multiple allegiances, each of which may sometimes conflict with others. I use “community” as a shorthand for a local or neighbourhood community, but specify where I intend this to imply other communities (such as gender or religious communities).

In referring to “citizens,” I understand this to imply an active participation within a polity. Following gender historian Patricia Crawford’s framework, I use “citizens” to refer to self-defined, rather than state-defined, members of a polity. Crawford argues that exclusion from formal rights of citizenship does not necessarily mean that social actors understand themselves to be excluded from making meaningful contributions to society. She demonstrates that in early modern England, although women were denied many of the formal attributes of citizenship, they nevertheless engaged in public life through religious and familial activities on issues they deemed to be of public concern. This constituted “subterranean citizenship,” a term she used to encompass women’s informal activities previously overlooked by historians and political theorists in their analyses of citizenship. I find this concept to be a useful way of approaching citizenship in Indonesia, where women were similarly constructed as inferior by the New Order state, yet sought to engage with the state in ways that countered this construction. However, I distinguish “citizens” from “subjects,” who are the passive recipients of the injunctions of political authority. Although most frequently in the body of the thesis I refer to citizens, I suggest that the outcomes of women’s attempts to participate in the state may determine whether they were in fact citizens or subjects; I will return to this dichotomy at the conclusion of the thesis.

I also frequently refer to state and social power, and my investigation will demonstrate whether these terms are necessarily mutually exclusive. In using the term “state power”, I am referring to the capacity of a central ruling authority to establish and maintain legitimacy, and to influence, control or coerce the actions of its citizens. I understand “social power” to encompass the capacity of social actors to influence or control other

---

social actors, to maintain social status, and to access or control a variety of forms of economic and cultural capital. I use the term “cultural capital” following theorist Pierre Bourdieu, who argues that access to economic, social and political power is also determined by social attainments and status (see Chapter 2 for further explanation of the idea of cultural capital).\(^{48}\) Such attributes are further defined by class, ethnicity and gender. Thus while Javanese women are generally presumed to have lesser ascetic abilities and social standing than men, a higher-class Javanese woman may have greater social power than a poor, rural man. Power thus is relative to circumstance. My analysis of state and social power does not presume that it is simply a matter of male versus female, but rather examines the particularities of each case.

In the negotiation of power, the concepts of agency and resistance are important. I draw upon anthropologist James C. Scott’s influential definition of resistance as an act which may outwardly comply with hegemonic ideologies, concealing minute confrontation of that ideology.\(^{49}\) This concept is central to my argument that divorce may also constitute a micro-resistance by women to various structures of authority (patriarchal, religious, familial, and state). I use agency to describe actions that bring a positive outcome for the social actor, however such an outcome may be defined (these concepts are discussed in detail in Chapter 5).

I refer to women and men in this study, cognisant of the fact that female and male are not transparent categories, but rather are further defined by ethnicity, religion and class, a point that has also been made by feminist theorists such as Chandra Mohanty.\(^{50}\) Finally, in using the term gender, I am following Joan Scott who argues that “gender is the knowledge that establishes meanings for bodily differences” and that this knowledge is historically shaped.\(^{51}\) Throughout this study, I attempt to situate the operation and use of gender in its historical context, as a category which may change in meaning according to circumstance.


3. SOURCES

My thesis is based upon analysis of legislation, court records, and interviews with court and government officials. This has been enriched by newspaper reports, fiction and interviews with NGO workers and women who have divorced. As alluded earlier, this is an historical project and the majority of the sources used in the thesis are written records. I have used oral history where possible to supplement these sources, but oral history is not the foundation of the thesis.

I obtained my sources during fieldwork between April 2004 and April 2005 in the Special Region of Yogyakarta (Daerah Istimewa Yogyakarta), inhabited by approximately three million people, the centre of which is the Javanese court city of Yogyakarta.\(^{52}\) Research was conducted across the entire province, encompassing Religious and State Courts from the central urban district (Kabupaten) of Yogyakarta, the semi-urban/rural district of Bantul and Sleman, and the rural districts of Gunung Kidul (and its major town, Wonosari, where the court is located) and Kulon Progo (and its major town, Wates). My analysis is based upon 151 unpublished divorce cases dating from 1965 to 2005 sourced from these courts, 35 court case registers, 11 published cases (published primarily in the Supreme Court’s journal *Varia Peradilan*), 88 interviews, 21 pieces of legislation relating to marriage, five works of fiction and random sampling from newspapers.\(^{53}\) Below I will explain the benefits and limitations of these sources.

3.1 Court Records

Divorce records represent a rich resource for charting the history of women’s encounters with the state which, for a number of reasons, have until now remained largely untapped. This was not least because, under the New Order, research access to government records of any kind was extremely limited. In the post-New Order era, many of the formal and informal restrictions upon access to written records of any kind have been lifted and my study takes timely advantage of this development. Nonetheless, there were numerous challenges to collecting court record data for this project. Courts were (and are) generally

---


\(^{53}\) See appendix III for a detailed list of all organisations consulted. All individuals interviewed for this project have been accorded pseudonyms.
understaffed, record keeping techniques haphazard and records pre-dating 2000 often difficult to locate.

Divorce records, of course, are particularly sensitive. Even with my undertaking to protect the identities of litigants, their release was contingent upon the permission of court officials. The records I was able to analyse depended on the strength of my contacts within the court, the views of the archival officers on what information should be made available to me and the state of organisation of the archives themselves. In addition, there are no useful or systematic catalogues in courts which enable focused sampling of case records, nor are there comprehensive (or catalogued) public archives which would enable cross-checking of information. In short, the focused, comprehensive and systematic historical research that I have conducted on other topics (Australian history for example) was not possible for this project. Instead, I had to collect as many cases as court officials were willing to provide me, and examine these cases in detail. To further address the limitations of this research methodology (over which I necessarily had little control), I broadened my search to courts across the province. Consequently, the database I have amassed provides an entirely unexamined body of historical evidence. This is not a demographic, or sociological project and therefore I do not use this data-set in a quantitative manner. Rather, I analyse a relatively small (in demographic terms) sample in depth, that is, qualitatively. Although this is not an empirical study, I contend that my qualitative analysis offers particular insights into the localised effects of the Marriage Law and allows me to examine the nuances of individual personhood, social discourses of rights and of honour in ways a quantitative study would not identify. Moreover, within the constraints of a doctoral thesis, it was the only practicable approach, and certainly preferable to not researching this topic at all.

Before I explain the nature of court records and how I used them, it is also important to clarify that I sourced records from both Religious Courts (*Pengadilan Agama*, which deal with Muslim cases) and State Courts (*Pengadilan Negeri*, which deal with all non-Islamic and customary cases). State-sponsored Religious Courts (*priestraad*) were first established in Indonesia under Dutch colonial rule in 1882. Hooker, "The State and Syariah in Indonesia 1945-1995," 98.
such as marriage and divorce disputes, and although headed by Muslim *penghulus* (Religious Court leaders), all decisions were required to be ratified by the secular *landraad* ("Native" state court), which were controlled by Dutch judges.\(^{55}\) Although the *priestraad* and *landraad* were ostensibly different court systems, they were inextricably linked. This linkage, political scientist Daniel Lev argues, illustrated the importance the colonial state attributed to controlling both Muslim and non-Muslim family matters.\(^{56}\) The basic structures of Religious and State courts were retained after independence and indeed, until 1989, all Religious Court decisions needed to be ratified by State Courts before they attained legal force.

Muslim and non-Muslim divorces of course have their own legal particularities. Islamic personal law was employed in Muslim divorces, while colonial statutes such as the Civil Code sometimes applied to Christian divorce, and official interpretations of customary law applied in others. Prior to 1989, slightly different laws of procedure also applied to either court system, although each court consists of a panel of three judges (*Majelis Hakim*).\(^{57}\) Religious Court judges also historically often had less (or no) formal university training compared to their State Court counterparts. However, in my analysis of records from both court systems over a four-decade period, it became apparent that the Marriage Law provided a unifying framework and discourse that was applied by judges in both systems. Moreover, in terms of the gender ideologies employed by judges, women’s experience of divorce did not seem to differ greatly between the two systems. Therefore, as I am most interested in women’s and men’s experiences of divorce, and in particular the operation of gender ideologies and discourses in court, I have analysed Muslim and non-Muslim divorces concurrently.\(^{58}\)

The majority of the cases, naturally, relate to Muslim divorce, although I have also consulted some Catholic, Protestant and ethnic Chinese cases. All cases used in this thesis

---


\(^{57}\) Hooker, "The State and *Syariah* in Indonesia 1945-1995," 105.

\(^{58}\) Nonetheless, a specifically legal analysis of the differences between the two systems, in particular with regard to divorce regulations, remains a topic which would greatly benefit from further research.
which date prior to the introduction of the Marriage Law (that is, 1965, 1967 and 1973, dates selected solely because they were the only extant records made available to me) were sourced from the Wates Religious Court, which was the only court able to locate earlier records.

Indonesian court records in both Religious and State Courts comprise a case file, which includes documentary evidence submitted by litigants, a record of each of the hearings (berita acara) which is sometimes presented as a verbatim transcript and sometimes clearly paraphrased, and a summary of the panel of three judges’ legal considerations and decision (salinan putusan). Litigants may appear on their own behalf, or be represented by a lawyer, or NGO. In the majority of cases, court officials were prepared to release only the record of the judges’ decision. However, I was able to access full case files from the Sleman State Court, and from the records section of the legal aid NGO attached to my sponsor university (Lembaga Konsultasi dan Bantuan Hukum, Universitas Islam Indonesia, LKBH-UII). Throughout the thesis, I use the term “court” as shorthand for the panel of three judges (Majelis Hakim) that presides over all civil and criminal cases, inclusive of the administrative processes, bureaucratic mechanisms and staff and state laws mediated through this institution. I refer to litigants and legal representatives (lawyers, NGOs) separately.

I interpret the information presented in courts as part of a public performance which reveals litigants’ and judges’ perceptions of how best to negotiate structures of power, and to apply power. This method of analysis was employed by historian of early modern France Natalie Zemon Davis, who argues that rather than searching for the “truth” of a case, court documents show how a narrative was crafted, which offers the potential to analyse why it may have been crafted in this way.\(^\text{59}\) The records I am using offer a more nuanced picture than has been available in existing scholarship of the diversity of ways different women negotiated divorce. My records include a range of socio-economic classes, religious affiliations and urban and rural locations. However, my thesis does not pursue an urban/rural, class or religious-based analysis as its primary investigation. Rather, I use this diverse material to answer questions about how gender was used in state processes, and

what implications marriage and divorce had for the distribution of social, political and state power in Indonesia during the late twentieth century.

In my citation of court cases, I follow standard procedures used when citing Australian court cases. I reference the case number and the court, but litigant and witness names are withheld, abbreviated to the first initial of their first name. If an honorific was used in the original case, this is retained (see appendices I and II for a full explanation of honorifics used throughout the thesis). Otherwise, the terms Ibu (older woman, or one of higher standing) or Mbak (younger woman) and Bapak (older man, or one of higher standing) or Mas (younger man) are used to assist the reader in discerning the gender and age or status of the litigant under discussion. In the Supreme Court journal Varia Peradilan, full litigant names are published. However, in this thesis those names are also withheld.

The published court cases used in this thesis form only a small part of the data, and as such should be understood as supplementary to the unpublished records. These cases would be read primarily by the judiciary, and by Indonesian scholars and students of law. At times of strict state control, they could also provide a broader national signal of the way in which the state required the law to be applied. Like unpublished records, these cases are not catalogued in any systematic way and the cases I have collected were largely those pointed out to me by Indonesian legal specialists. Again, I do not use these as a quantitative indication of all published cases but employ them to illustrate particular discourses and gender ideologies that were publicly disseminated during the rule of the New Order.

My thesis focuses on formal court-based negotiations of divorce, but also acknowledges that court records represent only one aspect of divorce negotiations for Indonesians. Firstly, for some Indonesians, both their marriage and divorce will have been negotiated entirely without contact with state institutions. These occurrences are not analysed in this thesis, and remain a topic for further research, especially in urban Java. Secondly, court transcripts do not show the level and nature of pre- and out-of-court negotiations in divorce, and it is for this reason that I have used other sources such as oral history, and newspaper reports.
3.2 Other Printed Sources – Newspapers and Fiction

Newspapers were both directly and self-censored under the New Order, and at key moments of crisis newspapers were often banned.\(^6^0\) Using censored texts as historical sources requires careful attention to the possible silences.\(^6^1\) However, following historian Cyndia Clegg, I also find such texts to be useful because they allow us to “locate not only where power resides but what instabilities exist in the grounding of that authority.”\(^6^2\) Issues relating to marriage and divorce, adultery, and failure to comply with new marriage laws were frequently reported in the Indonesian press throughout the period studied, suggesting this issue was deemed socially and politically significant. I use newspaper reports therefore both to examine the anxieties of the New Order regarding potential weaknesses in the rubric of the nation, as well as to glean a deeper understanding of marriage and divorce behaviours that were occurring within and outside the court system.

The primary newspapers consulted for this study were *Kedaulatan Rakyat, Kompas, Sinar Harapan* and *Pelita*. While *Kompas* is a national broadsheet dealing with both national and international issues and directed at an educated readership, the remainder focus on domestic issues and are directed at a middle and working class readership. *Kedaulatan Rakyat* is the main local newspaper for the Yogyakarta province, and so was the chief newspaper resource for my study. Newspaper evidence was gathered through manual searches (no catalogue was available) and sometimes through files of clippings kept at my Sponsor University’s library or NGOs. Where possible, I sampled newspapers around key dates of the introduction of marriage legislation (1974 Marriage Law, 1975 Marriage Law Implementing Regulations, 1983 Civil Servants’ Marriage Regulations, 1989 Religious Judicial Matters Law, 1991 Compilation of Islamic Laws).

Fiction is a tangential source for this study, which I use primarily in the final chapter of the thesis to provide a range of representations of identity. Like newspaper sources, I understand fiction to be constrained by the political climate under which it was written, but

\(^6^0\) Krishna Sen and David T Hill, *Media, Culture and Politics in Indonesia* (South Melbourne: Oxford University Press, 2000) 53. For example, 43 of the country’s 163 newspapers were banned after the 1965 coup, 12 newspapers after the January Disaster (*Malari*) riots of 1974 and a further 7 after the student protests of 1978.


also extremely valuable in terms of the depictions of dominant gender ideologies they contain.

### 3.3 Oral History

Oral history was an important source for this project, as it enabled me to garner alternative narratives to those found in the written record. I interviewed judges, NGO workers, officials from the marriage counselling organisation BP4 (*Badan Penasihat, Pembinaan dan Pelestarian Perkawinan*, Marriage Guidance, Counselling and Preservation Board)\(^{63}\) and marriage registration offices (Office of Religious Affairs, *Kantor Urusan Agama*, KUA) and divorced women. These interviews offered insight into individual interpretations of state, religious and cultural gender ideologies, as well as providing a different perspective to information found in the court record.

The practice of oral history by Western scholars in developing countries does pose ethical dilemmas. In feminist research, there has been a risk of presuming that commonality as women between researcher and subject can transcend ethnic, class, religious and power differences. This is not the case, as anthropologists Daphne Patai, Judith Stacey and Dianne Wolf argue.\(^{64}\) In particular, Wolf notes, the researcher may obtain benefits from her fieldwork (academic recognition, employment, financial remuneration) that do not accrue to her informants.\(^{65}\) They concur, however, that such challenges are not a reason to abandon cross-cultural research, but rather require feminist scholars to be self-reflexive, and aware of their partiality.\(^{66}\) Such concerns were very much a part of my own research experience, but this was mediated by a belief that a process of respectful cultural exchange contributes towards inter-cultural understanding, a benefit that extends beyond the life of the project.

---

\(^{63}\) BP4 was formerly known as *Badan Penasihat Perkawinan dan Penyelesaian Perceraian*, Marriage Counselling and Divorce Resolution Board.


Bearing these concerns in mind I felt that in a post-authoritarian context, it would be insensitive as a foreign researcher to subject individuals to an interrogative interview and record the proceedings (although many Indonesian researchers do record interviews, the power dynamic in such a situation is considerably different). I therefore deliberately eschewed the “oral history” technique, using instead the method pioneered by anthropologist Clifford Geertz, of making field notes of all encounters and quoting from these field notes.\textsuperscript{67} Quotes attributed to informants are not verbatim, but reflect my memory of these conversations, noted down immediately. This methodology in many cases yielded details that informants might otherwise have been reluctant to provide if they knew their words were being recorded. In keeping with accepted ethical standards, all names of people interviewed for this thesis have been replaced with pseudonyms, with the exception of people delivering public lectures and seminars.

4. METHODOLOGY

This thesis is a microhistorical, qualitative study which uses anthropological and historical techniques. As I have alluded in the preceding sections, the research methodology was necessarily haphazard, and impeded by the limited time allowed for the doctoral dissertation itself, compared with the large amount of time required to engage with Indonesian bureaucratic and administrative procedures. A year was spent processing visa requirements, and many more months were spent in Yogyakarta submitting research permission requests and progress reports to various government departments. An anthropological approach, in which months were spent building contacts, was pivotal to the archival aspects of the study as it was only through these contacts that I was able to set up interviews with court officials or access court records. Of course, both the records made available by court officials and the information garnered through interviews, was influenced by my identity as a relatively young, unmarried, Western woman. I am therefore self-reflexive in my analysis of oral history sources in particular, pointing out throughout my analysis how my own subject position might have shaped the interview.

My thesis uses the field of law to investigate the nexus between gender and power. “Law” in this thesis refers to legislation, the concomitant apparatus (courts, judges, court officials)

\textsuperscript{67} Clifford Geertz, \textit{The Religion of Java} (Glencoe: The Free Press, 1960) 385-86.
and users (litigants, witnesses). It can also refer to non-state legal systems, such as religious and customary legal structures. Laws regulating personal status are especially informative, because they reflect state visions of citizenship, and familial and national rights and obligations. Moreover, the manner in which such laws are interpreted (by those implementing the law and by the citizens who use it) can illustrate the ambiguities inherent in these concepts, as well as the possibilities for agency and resistance.

In describing this study as a “microhistory,” I am following the Italian historian of the Renaissance Carlo Ginzburg, who pioneered this method. Ginzburg describes this method as the examination of the minute detail of an historical event, situated within its broader social, historical and political context. The benefit of this technique is that it acknowledges that “any social structure is the result of interaction and of numerous individual strategies, a fabric that can only be reconstituted from close observation.”

Similarly, by closely examining the machinations of state apparatus, and the character of individual litigants’ interactions with the state, I am able to offer a more nuanced picture of the operation of, and resistance to, state power in Indonesia in the late-twentieth century.

My study is focused upon Java, and therefore I do not presume that Javanese divorce practices by any means reflect the practices of other indigenous communities in Indonesia. However, by comparing state discourses which emerged through national-level laws with local responses, I will contribute towards scholarly understandings of how local communities might have engaged with, and resisted, nationalising and homogenising state projects.

5. THESIS STRUCTURE
The research for this project posed particular challenges, which consequently have necessitated a creative approach towards analysis. Because I was unable (and indeed unwilling) to impose my own research frameworks and requirements upon under-paid court officials who graciously gave up their time to provide me with research material,

---

consequently I needed to take a discursive approach. This entailed identifying important concepts in Indonesian society more broadly, such as shame, rights and obligations, and identity, and exploring how these discourses were played out in the field of divorce. I use this microhistorical approach to draw wider conclusions about the operation of gender ideologies in Indonesian society, and their application to the constitution of state and social power. Because of the research methodology, and the questions I developed to approach an analytically challenging data-set, the structure of this thesis departs from a traditional history dissertation. The sources themselves are extremely complex; thus a structure in which a finite set of questions are introduced, followed by literature review, discussion of methods and sources and then a quantitative discussion of data, is not possible here. Instead, I have arranged the thesis according to six key themes which are explored in depth in each chapter. My overarching question deals with how women, men and the state responded to and used the Marriage Law. However, each chapter then explains particular literature and sources relating to the selected theme, and explores a set of sub-questions which relate to my overarching question. I have also been eclectic and multi-disciplinary in my use of secondary literature, drawing from anthropologists, legal scholars, historians, sociologists, demographers and cultural theorists, in an effort to extend the work beyond traditional disciplinary boundaries.

The thesis is divided into three parts. Part 1 outlines the legal and cultural frameworks regulating divorce in Indonesia, focusing on their connections with the maintenance of state power. I address colonial, post-colonial, religious and customary legal systems. The first chapter examines how colonial and post-colonial states have constructed women in law, seeking historical continuities in these constructions. This leads to Chapter 2, which scrutinizes the role of gender in determining access to marital property in the different legal systems. It also establishes “property” as a term which encompasses both economic and cultural capital. In both chapters, but particularly in Chapter 2, I am not attempting to provide an exhaustive history of Indonesian law, or property. These are in themselves enormous topics. Rather, I am providing an overview of issues which have not been researched in any depth with regard to women, marriage and divorce, and with reference to the Marriage Law in particular. In doing so, I also press my own arguments about how female legal subjectivity, and the general concept of property, can be used in analytically different ways if viewed through the lens of gender. Moreover, no discussion of divorce can
occur without (at the very least) a rudimentary understanding of legal frameworks, and property regulations. These two chapters therefore provide an essential conceptual basis for the subsequent chapters which analyse the state, religious and cultural discourses that were associated with divorce, how this influenced the ways in which women used different legal systems, and what tangible and intangible benefits women sought to obtain in divorce.

In Part 2, I analyse two important discursive implications of divorce: the discourses of shame, and of right and obligations. I have selected these two categories to analyse divorce for specific reasons. Shame, and its association (or not) with divorce in Indonesia is an issue that has long been debated by scholars. Fieldwork informants frequently commented on the greater shame of divorce for women. Other scholars have noted that shame and divorce is an urban phenomenon. However, for a concept that is so pivotal to the experience of divorce, its historical continuities or changes have been little analysed. The issue of rights and obligations, similarly, has long been considered key to understanding many Asian societies and is absolutely central to an Islamic understanding of marriage and gender order. Neglect of marital rights and obligations also form the basis of most Indonesian divorce cases, both Islamic and otherwise. However, as with the discourse of shame, notions of rights and obligations and how they were used by litigants or the state has not yet been greatly investigated. To address these issues, I use court records, newspaper reports and oral history. Chapter 3 investigates whether the New Order state attempted to construct divorce as an act of national shame. It also examines the influence of the state upon litigant actions, and the ability of litigants (especially women) to co-opt or subvert state discourses of shame. Chapter 4 analyses state attempts to shape concepts of rights and obligations in marriage, and asks what implications this had for women’s divorce settlements and how women and men could use these discourses to their advantage.

Finally, Part 3 explores two elements of personhood that may be affected by divorce: agency and identity. These two chapters extend upon the analysis in the preceding sections of the thesis. In particular, I aim to assess under what circumstances women can have agency in divorce, and how their identity might be affected by it. In Chapter 5, I examine women’s agency in divorce, investigating how women employ a range of strategies to achieve their goals, encompassing adherence and/or resistance to state discourses. The final chapter explores the implications of divorce for women’s and men’s constructions of
local, religious and national identity. I investigate how individual citizens defined themselves in the context of negative actions such as divorce, and suggest that their actions might have contributed towards the construction of hegemonic and counter-hegemonic national identities.

My study challenges dominant analyses of the New Order by examining how the state used gender relations to establish its legitimacy. I will argue that the ways in which individual women and men used state apparatus may reveal the degree of legitimacy that they accredited to the state, and that they may have shaped the state as much as the state attempted to shape its citizens. Throughout my study, I will also attempt to highlight key historical moments for women, and investigate whether existing historical chronologies of Indonesia are in fact gender-specific, and therefore do not adequately reflect women’s experience of social and historical change. Finally, I have remained attentive in my analysis to the possibility, as Geraldine Heng argues, that:

> rights historically granted to women by patriarchal authority in order to accomplish nationalist goals and agendas do not necessarily constitute acts of feminism, though as practices of power, the granting of such rights may function, both initially and today, to the very real advantage of women.  

In other words, as my thesis will demonstrate, the implementation of state power has not been monolithic, and women have often sought ways to use and circumvent state goals to their own benefit.

---

PART 1

Legal Contexts of Divorce
CHAPTER 1

Gender and Law: Shaping Female Legal Subjectivity

The Marriage Law was predicated upon a conservative vision of gender order. However, such a vision was not ahistorical. Using Joan Scott’s definition of gender as knowledge which establishes meaning for bodily difference (see Thesis Introduction), this chapter interrogates state constructions of gender in marriage laws from the colonial period through to 2005, focusing on female legal subjectivity. The purpose of this chapter is two-fold. Firstly, I aim to situate the Marriage Law within an historical trajectory, scrutinizing the legal history for points of continuity and change in the colonial and post-colonial state’s construction of gender order. In doing so, I will also provide a concrete legal context for my analysis of women’s divorce actions in court in subsequent chapters. Secondly, establishing the legal meanings that were attached at different historical periods to the category of gender enables me in later chapters to examine how gender operated and was used by the state and by litigants.

The chapter is divided into four major sections. In the first section I will assess the historiography of women and law, highlighting the lacunae which this chapter addresses and the methodology I will use. The second section examines restrictive definitions of female legal subjectivity in colonial and post-independence marriage laws. This leads to my discussion in the third section of constructions of gender in New Order marriage legislation, which I probe for continuities with earlier laws. In the final section, I analyse post-New Order legal developments and calls for reform to marriage laws. By charting legal constructions of female legal subjectivity across a number of state formations, I aim to uncover whether there are continuities in the way in which authoritarian states in Indonesia constructed gender, and what purpose this might have served.

1. HISTORIOGRAPHY AND METHODOLOGY

Major studies of Indonesian law have emerged primarily from the fields of comparative law and anthropology. However, as this is a highly specialised area of scholarship, the historiography is small and the Marriage Law has not yet received detailed attention. The two foremost scholars of Indonesian law, legal historian M.B Hooker and political scientist
Daniel Lev, produced a significant amount of their work in the 1970s and 1980s, both emphasising the pluralism that characterizes Indonesia’s legal system. Hooker’s broad scale studies use written legal codes to chart the development of colonial law and its continuing legacy in the post-colonial era, as well as analysing customary (adat) and Islamic legal systems and their place in the Indonesian state.¹ Lev, on the other hand, uses anthropological observation techniques combined with analysis of court records to examine the functioning of Islamic and State courts in the post-colonial period, including the application of adat law by courts.² More recently, Tim Lindsey’s edited collection has probed New Order and post-New Order courts’ application of state, customary and religious law in areas ranging from customary land rights, to labour law, extra-marital sex and inter-religious marriage.³ All of these studies provide invaluable context for my research. However, the absence thus far of detailed work on the Marriage Law, which also closely critiques the constructions of gender within that law, presents an exciting opportunity for analysis which this chapter addresses.

This chapter focuses exclusively on the ways in which the state constructed gender order and women’s place in that order through law, at different points in Indonesia’s history. As explained in the Thesis Introduction, while I use the term “the state” to refer to a central ruling authority, I also understand the state to incorporate diverging interests, the implications of which will be explored in later chapters. I use law to investigate how the colonial and postcolonial Indonesian state defined gender roles, and to analyse how such

---


definitions became integral to the establishment and maintenance of state power. Like the medieval legal historian Martha C. Howell, I am interested in the operation and dynamics of gender and “in the social and gender history the legal history can reveal, not in law itself.” This approach has enabled me to uncover previously under-explored aspects of Indonesia’s national, political, gender and legal histories.

State law in Indonesia has often incorporated elements of Islamic and customary legal systems (adat). These systems, and the understandings of gender embedded within them, operate independently of the state as well as being co-opted into state institutions. It is accepted as a given in this study that litigants may engage in the practice of “forum shopping,” choosing the legal system most suited to their case. However, my study does not focus on Islamic jurisprudence, community implementation of custom or legal activities that occur outside of the state framework, areas of study which have already received expert scholarly attention (although it must be pointed out that there are also few studies of marriage and divorce in Indonesia from these perspectives). Rather, I am interested in how and why various Indonesian state formations employed a range of discourses, which included religious and customary discourses, to construct their own version of gender order.

---


5 Haverfield, “Hak Ulayat and the State: Land Reform in Indonesia,” 43-44. In using the concept of legal systems, I follow Rachel Haverfield who argues that “a better approach to artificially dividing law from custom is to regard as ‘legal’ all factors that contribute to the maintenance of rights and obligations in a given society.”


2. COLONIAL AND POST-INDEPENDENCE MARRIAGE LAWS

2.1 The Colonial Legal System and the Civil Code (Burgerlijk Wetboek)

Under Dutch rule, separate legal codes applied to those citizens defined legally as “European,” “Foreign Oriental” or “Native.” In marriage, indigenous Indonesians were subject only to Islamic and adat law although a separate code was enacted for Christians in 1933. Religious and customary legal systems were allowed to function in a circumscribed manner that aimed to preserve racist imperial hierarchies whilst bringing all colonial subjects under Dutch control. As feminist historians have shown, the control of racial and gender orders was intertwined with the profitability of the colonial enterprise. Ann Stoler’s work on metissage (inter-racial unions) in French Indo-China and the Dutch East Indies demonstrated colonial concerns about who could be defined as European and therefore access legal, social and perceived moral benefits, for example in the case of indigenous men who attained European legal status through marriage and so were exempted from labour service. In this colonial ordering of race and gender, the European woman was deemed the most “civilized” and consequently the most deserving of codified legal protection, through the Civil Code (Burgerlijk Wetboek). As colonial laws were mined to provide the legal framework for post-colonial legislation on marriage, colonial definitions of the ideal female legal subject have some bearing on New Order legal constructions of women.

The Civil Code was enacted in 1847 and applied to Europeans, and in modified form to “Foreign Orientals” (Timur Asing) and Chinese (Golongan Tiong Hoa). It was divided into four sections, regulating personal status, property, contracts and statutory limitations on evidence. In my analysis, I refer to provisions of section one of the Code, which delineated the legal consequences of marriage and divorce. It defined marriage as monogamous,

---


located a woman’s legal domicile with her husband and required civil registration. Husbands and wives were allocated joint obligations (mutual fidelity and responsibility for children), as well as individual responsibilities; a husband was automatically the head of a marital unit and must support his wife and manage her property, and a wife was required to obey her husband and to live in a residence of his choice. Once she was married, a woman could not appear in court without the presence of her husband.

Marriage also had consequences for women’s capacity to own property, automatically vesting all property exclusively with the husband, including inheritances, pre-marital and marital debts (referred to in the law as persatuan harta kekayaan, unity of property). Even if a woman had specifically rejected these conditions at marriage (“biar ia kawin diluar persatuan harta kekayaan”) she could not make transactions regarding her own property without the permission of her husband, with the exception of routine household affairs. She could apply to the State Court for authority to manage her own property but in this instance must prove that her husband was incapable of acting in this capacity or was wasteful or negligent. In the event of the husband or wife filing for divorce, marital property was to be divided in half, regardless of who produced it.

This legal code constructed European women as the passive objects of male agency. Limiting women’s ability to own or manage property or take independent legal action both reflected and reinforced European male superiority and power within the marital unit and within colonial society. Stoler and historian Elsbeth Locher-Scholten both argue that the family was understood to be a key site for the production of loyal citizens and therefore the foundation of a strong colonial state. By extension, I contend that legal constructions of

---

12 Ibid. pasal 103-07, 10-13.
13 Ibid. pasal 108-09, 19-32, 86. The code also contained contradictory provisions regarding women’s property rights. Article 105 specified that a husband could not sell his wife’s private property without her permission, but marriage was presumed to create community of property unless otherwise agreed. Article 124 granted the husband rights to sell marital property, which might incorporate the wife’s private property, without her prior permission.
14 As defined in the Thesis Introduction, I use agency to denote an ability to act with the aim of producing a positive outcome for the agent. Chapter 5 provides a more detailed analysis of this concept.
gender order and women’s role in the reproduction of future citizens was at the heart of the colonial state’s efforts to maintain power. As will be shown in the remainder of this chapter, constructions of a subordinate female legal subjectivity have been repeated in subsequent Indonesian state formations.

2.2 The Post-Independence Legal Situation

Most colonial marriage laws were retained until 1974. For the majority of women, who fell under the jurisdiction of Islamic or adat law, no civil marriage legislation applied. Under Islamic law, men had the right to repudiate (talak) their wives, by pronouncing the divorce formula (aku talak engkau, “I divorce you”). Women, on the other hand, could divorce in a number of ways. A set of conditions (ta’lik talak) could be attached to the marriage, including rules regarding maintenance, desertion, and ill-treatment. If these conditions were contravened, the wife was entitled to apply to a Religious Court for talak to be pronounced. She could also pay compensation to her husband (iwaddl) in return for release from the marriage (khuluk, kho’lo’ or cerai tebus talak) or the court could deem the marriage to be “broken” (fasakh) due to the emergence of a condition that invalidates the marriage (such as the failure of the husband to provide maintenance, conjugal rights etc).  

Historically, Indonesian women’s access to divorce was enabled primarily through the ta’lik talak (as indicated in Chapter 3 onward, and also the work of Daniel Lev). However, the accessibility of divorce for women was also influenced by class. In particular, the primarily elite, urban-based Indonesian women’s movement had long argued that men abused their preferential access to divorce, and women found it almost impossible to obtain divorce themselves.

---


17 Lev, Islamic Courts in Indonesia.

18 Susan Blackburn, Women and the State in Modern Indonesia (Cambridge: Cambridge University Press, 2004) 114, Elizabeth Martyn, The Women's Movement in Post-Colonial Indonesia: Gender and Nation in a New Democracy, ed. Louise Edwards, Women in Asia Series (London: Routledge Curzon, 2005) 123. Existing scholarship dealing with the Marriage Law, which has drawn upon women's movement archives and interviews, has identified that urban women often found it difficult to divorce prior to 1974. However, my research suggests that not all women found it difficult to pursue divorce before the introduction of the Marriage Law. I address these nuances in Chapter 3 and 4.
The women’s movement had campaigned for a more restrictive, unified marriage law since the 1920s. At the first Indonesian Women’s conference held in Yogyakarta in 1928, activists identified child marriage, vulnerability to arbitrary polygamy or divorce, the threat of destitution after divorce, and women’s lack of legal recourse against their husbands, as some of the key issues warranting legislation. However, some Muslim women’s groups supported polygamy and favoured separate laws based upon religion, and so consensus was not obtained at this or subsequent conferences. This lack of consensus was mirrored in parliamentary inaction on the issue of marriage.

Marriage law, and more particularly the issue of divorce, was recognized as a priority by the Sukarno administration, but opinions on how to manage this issue diverged widely, resulting in only slow change. Divorce rates were as high as 50% in the 1950s, and some efforts were made to curb this trend through the establishment of marriage counselling bodies (Badan Penasihat Perkawinan dan Penyelesaian Perceraian, Marriage Counselling and Divorce Settlement Boards, known as BP4) under the auspices of the Department of Religion in 1954. A marriage registration law applying to Muslims in Madura and Java had also been enacted in 1946, and extended to all Indonesian Muslims in 1954. These laws required marriage (nikah), repudiation (talak) and reconciliation (rujuk) to be registered at the Office of Religious Affairs (Kantor Urusan Agama, KUA).

Problematically though, these laws (which still have force today) were framed exclusively in terms of a male legal subject, requiring registration to be carried out by “anyone who marries a woman” or by “a man [who] pronounces repudiation or reconciliation.” Women thus entirely lacked legal capacity in this regard, although they could apply to a Religious Court to have divorce pronounced (and therefore registered by their court on behalf of the husband). In this sense, husbands or “husband-proxies” (i.e. the court), as in the colonial period, remained the exclusive mediators between women and the state.

22 "UU22/1946," pasal 3. "barang siapa yang melakukan akad nikah atau nikah dengan seseorang perempuan"; "jika seorang laki-laki yang menjatuhkan talak atau merujuk..."
Parliamentary efforts to introduce marriage legislation met with continual opposition. A Marriage and Divorce Committee (*Nikah Talak Rujuk*, NTR Committee) was established in 1950, drafting a unified bill in 1952 that was rejected by Islamic groups. In 1958 a revision, based on Islamic Law, was put forward to the People’s Representative Council (*Dewan Perwakilan Rakyat*, DPR). By this time, a female member of parliament, Soemari, had also submitted a private member’s bill which proposed monogamy and equal rights to divorce for men and women. Soemari’s bill was strongly supported by the women’s movement, but was hugely contentious in the DPR. Debate raged around the need for male sexual desire to be accommodated by polygamy, the possibility of women misusing rights to divorce (and potentially divorcing an “innocent man”) and the impropriety of state regulation of religious matters. When the debate was halted for the Ramadan recess, the issue never reappeared on the parliamentary agenda, overtaken by political instability and Sukarno’s move towards authoritarian rule (Guided Democracy). After Suharto came to power in 1965, two further marriage bills were put forward; one in 1967 (for Muslims) and another in 1968 (applicable to all) but these also failed in the face of strong Islamic opposition.

The debates surrounding marriage law, and the limited legal development that did occur during the Sukarno regime, were indicative of the political significance of legal constructions of women to a range of interest groups. The urban-based women’s movement lobbied for the creation of a female legal subject equal in status to men, predicated in part upon the protection of women from divorce. Islamic groups, which proved to be a more powerful political force in the 1950s and 1960s, opposed the involvement of the state in the regulation of marriage. State support of the independent female legal subjectivity proposed by the women’s movement was thus politically risky for the Sukarno regime. Although no comprehensive marriage legislation was passed during the Sukarno era, the marriage registration laws of 1946 and 1954 were representative of a legal trend. In both colonial and post-independence law, women were constructed as passive participants in the marriage and divorce process, and as legally subordinate to men.

References:

23 Martyn, *The Women’s Movement in Post-Colonial Indonesia* 137-44.
analyse the significance to the state of restrictive legal definitions of women’s roles in marriage and society.

3. NEW ORDER MARRIAGE LAWS

New Order development ideology attached a high level of importance to the expansion of legal structures. Legal development was specifically targeted in the five-year plans (Repelita), including provision of legal aid (in the third five-year plan) so that “lower socio economic” groups (“golongan masyarakat kurang mampu”) could engage with the state legal system. Laws were used to articulate notions of citizenship and nationhood, which were inextricably linked to ideologies of gender, marriage and family.

3.1 The Ideal Marriage: The Marriage Law (UU1/1974) and Implementing Regulations (PP9/1975)

The importance of marriage as a tool to shape loyal citizens was identified early in the New Order’s rule. In 1966, Suharto instructed the Ministry of Justice to draft a national marriage law based on *pancasila* (state philosophy of five defining national principles, see Chapter 6). This resulted in the 1973 Marriage Law Bill, which proved to be as controversial as its predecessors. In its original form, the bill proposed to abolish polygamy, establish civil registration as the only legal signifier of a marriage, require use of a civil court only (rather than Islamic court) and allow inter-religious marriage. These proposals provoked street riots in Jakarta, and attracted accusations from Muslim leaders that the bill was an exercise in “Christianisation.” Consequently, these provisions had to be withdrawn in order for the bill to pass. The revised bill, which became the Marriage Law, allowed court-sanctioned polygamy and required marriage to be based upon religion. It also retained provisions delineating the marital obligations of husbands and wives, which elements of the women’s movement had opposed. As yet, scholars have not interrogated in any depth the significance of this legislative gender order for the consolidation of state power. Below, I will examine in detail the provisions of the Marriage Law (*Undang-Undang Perkawinan 1/1974*) and the associated Implementing Regulations (*Peraturan Pemerintah 9/1975*), and

---

then analyse the reasons for these provisions, their links with colonial legislation, and speculate on the nexus between gender order and state power.

The Marriage Law was laden with rhetoric, but provided little legal certainty to women in terms of the practicalities of divorce, even after the Implementing Regulations were passed in 1975. This was in part because the law was directed at restricting, rather than enabling, divorce. Consequently, judges were required to attempt to conciliate spouses for the duration of the divorce proceedings. If conciliation was successful, divorce could not be requested again on the same basis as the original suit. Grounds for divorce included moral failure (encompassing addiction, adultery, gambling), desertion of two years or more, imprisonment of five years or more, cruelty, a physical deformity or illness which would prevent either spouse from carrying out their responsibilities, or constant quarrelling that precluded all hope of “harmony and compatibility in the household” (“tidak ada harapan akan hidup rukun lagi dalam rumah tangga”).

Regulations dealing with the consequences of divorce were vague. The court could decide on child custody and order husbands to provide for their ex-wives, but the conditions under which this might occur were left to the discretion of judges. Similarly, no detailed directive was issued on how to dispose of marital property. It was stated merely that any property produced during the marriage (excluding individual property brought to the marriage) was deemed to be jointly owned and was to be divided according to the respective religious, customary or other laws of the spouses.

Although the practical provisions of the law were limited, it devoted considerable attention to the meanings and ideal construction of marriage. Marriage was defined as “a spiritual and physical union between a man and a woman as husband and wife for the purpose of

---

30 “Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan,” (1974), penjelasan umum (general elucidation) 4e. “As the aim of marriage is to create a happy, eternal and prosperous family, thus this law adheres to the principle of restricting the occurrences of divorce.” (“Karena tujuan perkawinan adalah untuk membentuk keluarga yang bahagia kekal dan sejahtera, maka Undang-Undang ini menganut prinsip untuk mempersukar terjadinya perceraian.”)
creating a happy and eternal family (household) based on the One and Only God.”

The preamble to the law situated it within the context of the 1945 Constitution, citing article 27 which guaranteed the right of all citizens to equal treatment in law as well as demanding universal obedience to state law and governance. However, the Marriage Law ascribed different legal rights and obligations to men and women, which I contend constituted part of the state’s effort to elicit obedience from its subjects.

The different rights (hak) and obligations (kewajiban) of spouses were defined in two articles (31 and 34) as follows: “the rights and status of a wife within the household and within the wider community are in balance with the rights and status of a husband.” As noted in the Thesis Introduction, the husband is “the head of the family” (kepala keluarga) and the wife is the “mother of the household” (ibu rumah tangga, sometimes translated as “housewife”).

Husbands were charged with protecting wives and providing all household requirements. Wives were required to manage these resources and the household to the best of their ability. Either party was allowed to file a court suit should the other spouse fail to fulfil his or her responsibilities. This aspect of the law was responsive to women’s movement claims that men frequently abandoned their marital obligations, but it also ensured that women’s divorce suits were framed in terms of the New Order’s model of domesticated femininity.

The linguistic distinction made in the law between husbands as heads of “family” rather than household, and women as managers of “household” also suggests that the creation of gendered legal subjectivities was directed at re-shaping the broader social order. In a very real sense, “family” and “household” were conflated, and understood as the nuclear model

35 Ibid., pasal 1. “Perkawinan ialah ikatan lahir bathin antara seorang pria dengan seorang wanita sebagai suami isteri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa.”
36 “Undang-Undang Dasar Negara Republik Indonesia 1945,” (1945). Article 27 states that “All citizens are in an equal position before the law and government and are obliged to respect the law and government without exception”. (“Segala warga negara bersamaan kedudukannya dalam hukum dan pemerintahan dan wajib menunjung hukum dan pemerintahan itu dengan tidak ada kecualiannya.”)
37 “UU 1/1974,” pasal 31. “(1)Hak dan kedudukan isteri adalah seimbang dengan hak dan kedudukan suami dalam kehidupan rumah tangga dan pergaulan hidup bersama dalam masyarakat...(3) Suami adalah kepala keluarga dan isteri ibu rumah tangga.”
38 Ibid., pasal 34. “(1) Suami wajib melindungi isterinya dan memberikan segala sesuatu keperluan hidup berumah tangga sesuai dengan kemampuannya. (2) Isteri wajib mengatur urusan rumah tangga sebaik-baiknya. (3) Jika suami atau isteri melalaikan kewajibannya masing-masing dapat mengajukan gugatan kepada Pengadilan.”
supported by the New Order through the organs of state-sponsored family planning programmes (*Keluarga Berencana*) and Family Welfare Guidance (*PKK; Pembinaan Kesejahteraan Keluarga*). In practice, families and households could often extend beyond the nuclear model and the confines of a single residence, thus broadening the possibilities for both “neglect of duty” and demands for rights on the part of both spouses. Moreover, the category of “family” assumed significance of national proportions under the New Order. Thus, in a symbolic reading of the Marriage Law, men’s leadership and women’s “mothering” extended beyond the immediate family and household to the nation.

I situate these discursive aspects of the Marriage Law within the New Order’s efforts to manipulate gender relations in order to establish and maintain its legitimacy. The Marriage Law was ratified on 2 January 1974, a time of civil instability. An unstable rice price, student demonstrations and general urban discontent led to massive demonstrations, looting and burning on 15 January (now known as *Malapetaka Januari 1974*, or *Malari*, the “January Disaster”), which was followed by arrests and trials.\(^39\) I interpret the Marriage Law’s prescriptions on ordered, “eternal” families characterized by a strict gender hierarchy to be symbolic of the New Order’s vision of nationhood. In this vision, obedient citizens (ordered hierarchically according to gender) were part of an eternal nation, led by Suharto as the head of the national “family.”

A domesticated and subordinate femininity was integral to the New Order vision of citizenship and nationhood. For example, the Marriage Law’s Implementing Regulations, ratified on the 1 April 1975, were publicised on 21 April, Kartini Day. Newspapers, such as the Yogyakarta daily broadsheet *Kedaulatan Rakyat*, emphasised this date: “…of course the regulations were released on Mother's Day and Kartini Day. It seems the regulations were intended as a gift to Indonesian women.”\(^40\) Raden Adjeng Kartini (1879-1904) was an aristocratic Javanese woman who became known after her death (in childbirth) for her collections of letters advocating education and freedom for women, and criticising forced marriage, polygamy and seclusion of Javanese girls. Ethnographer Jacqueline Siapno


(amongst others) argues that the figure of Kartini was appropriated by the New Order to articulate a specifically Javanese, obedient femininity. Siapno questions whether Kartini, who had ultimately acquiesced to her parents’ order for her to become a second wife, might have been selected as a national hero in the Presidential Decree 108 of 1964 if she had rebelled against her parents’ wishes. The selection of Kartini Day as the date for the publication of regulations implementing the Marriage Law is thus appropriately symbolic of the same ambiguities of language and intent surrounding the law itself, which claims to protect and liberate whilst actually circumscribing the female legal subject.

The Marriage Law also displayed resonances with provisions of the 1847 Civil Code, which I suggest illustrates continuities in the way authoritarian states conceptualised a correlation between gender order and state power. Grounds for divorce were identical in the two laws. In the Civil Code, a wife’s application for court-ordered maintenance could be jeopardised if she had left the marital home without the prior permission of the judge. Similarly, a wife’s application for maintenance under the Marriage Law was inextricable from the legal requirement for her to fulfil her wifely obligations. Monogamy (in principle, although the Marriage Law allows polygamy), registration, investiture of household leadership in the husband and the notion of joint and individual responsibilities in marriage were also present in both the Civil Code and the Marriage Law. Both laws thus consistently constructed women as legally subordinate to men. Here, I would also stress that the manner in which the state sought to exercise legal control over women is an important commonality between the two laws (even though the Civil Code regulated marriage for non-Muslims, and the Marriage Law encompassed all religious groups).

I contend that in authoritarian contexts where both female and male citizens lack obvious political power, the state discourages dissent by constructing one of those sexes (men) as powerful and superior in at least one sphere of their lives (that is, marriage). This follows from the point I made in the Thesis Introduction, that nationalism is itself a masculinist enterprise. Arguably, laws such as the Marriage Law deliberately employ contradictory

---

42 *Kitab Undang-Undang Hukum Perdata*, pasal 209, "UU 1/1974," penjelasan pasal 39
43 *Kitab Undang-Undang Hukum Perdata*, pasal 213.
provisions, which on one hand grant wives and husbands equal legal status in the household and society, and on the other delineate gender-specific rights and duties.\textsuperscript{46} This is because in the broader public domain the average male legal subject may be relatively powerless. Discourses of household leadership, equated with leading the nation into modernity, are therefore directed at placating male discontent. In this same discourse, women are constructed as “suited” to a private, household role which is deemed essential to nation-building (as opposed to nation-leading). Overtly, women are deemed to have the same power as men, the power merely differing in form. The sub-text of this discourse, which is intended only for men, is that women in fact are not as powerful as men. The uses of these discourses by litigants, and the implications for state control over its citizens will be explored in subsequent chapters. In the next section, I examine how the New Order attempted to further limit female legal subjectivity through additional legal regulation of marriage.


After the enactment of the Marriage Law, polygamy and divorce continued to be contentious issues for many Indonesian women, and the New Order state made opportunistic use of these issues to co-opt women to the state project. In the early 1980s the Indonesian Civil Servants’ Wives organisation (Dharma Wanita) campaigned, with the support of Suharto’s wife Ibu Tien, for a law that provided greater protection against divorce and polygamy for both female civil servants and wives of civil servants.\textsuperscript{47} This resulted in the enactment of Government Regulations on Permission for Marriage and Divorce for Civil Servants on Kartini Day, 21 April 1983 (known as PP10/1983, and revised in 1990, PP45/1990).\textsuperscript{48} Here, women’s demands for legal protection were granted by the state. However, I agree with Julia Suryakusuma that such protection was extended in the interests of serving the state’s own ideological goals.\textsuperscript{49}

\textsuperscript{46} Ibid., pasal 31-34.
\textsuperscript{49} Suryakusuma, "The State and Sexuality in New Order Indonesia," 118.
PP10/1983’s most publicised provision was its prohibition of polygamy, but it also placed heavy restrictions upon divorce and the private behaviour of civil servants, who risked dismissal if they failed to comply with regulations. This was because, as the law’s preamble stated, “Civil Servants are obliged to provide a good example to those below them and to become the model of good citizens in society, including in the organisation of their lives as a family.”

Thus, civil servants were forbidden from living in de facto relationships. Divorce required prior permission from superiors, who were legally bound to attempt to reconcile the couple. Requests for divorce based on the wife’s inability to fulfil her obligations due to illness or disability, possible under the Marriage Law, were not permitted for civil servants. After divorce, husbands were obliged to give two-thirds of their wage to their ex-wife and children (or half to the wife if there were no children), until such time as the wife remarried. However, female civil servants who requested divorce forfeited the right to alimony, with an exception made only if the request was due to polygamy.

Minor revisions to the law in 1990 (PP45/1990) exempted husbands from paying alimony to ex-wives who had been adulterous, cruel, had an addiction or deserted their husbands for more than two years without permission. Conversely, wives who requested divorce were granted rights to alimony if their husbands had committed any of these transgressions.

PP10/1983 and PP45/1990 did offer women greater financial security after divorce than the 1974 Marriage Law, in the form of specific provisions on maintenance. However the Civil Servants’ Marriage Laws also contained financial disincentives designed to discourage women from filing for divorce, and to penalise women who transgressed New Order models of ideal feminine behaviour. In these laws, men are presumed to file for divorce, whereas women and the state resist it. Women’s private, “traditional” role was inscribed as essential to model citizenship, and to the creation of ordered families and an ordered state. Female agency in divorce thus posed a greater threat to the state than male agency in divorce, because it risked destabilising a “natural” family order desired by the state.

Further, the normative male legal subject was allowed by the state to initiate divorce. In

---

50 “PP 10/1983,” preamble part b. “bahwa Pegawai Negeri Sipil wajib memberikan contoh yang baik kepada bawahan-nya dan menjadi teladan sebagai warganegara yang baik dalam masyarakat, termasuk dalam menyelenggarakan kehidupan berkeluarga”
51 Ibid., pasal 3, 6-8, 15, 17.
52 “PP 45/1990,” pasal I (4). This revised article 8 of the law’s predecessor, PP10/1983.
53 See Chapter 5 for more on agency.
contrast, the normative female legal subject was aligned with the state against divorce. Thus women who sued for divorce became engaged in an action that symbolically opposed the state (although this was not necessarily a conscious act).

3.3 Engaging with Muslims: Religious Jurisprudence Law (UU7/1989) and the Compilation of Islamic Laws (Inpres 1/1991)

Muslims comprised some of the fiercest opponents to the Marriage Law, and had long argued for wider juridical powers for the Religious Courts, whose decisions had to be ratified by a civil court. The enactment of the Religious Jurisprudence Law in 1989 (Undang-Undang Peradilan Agama, UU7/1989, a procedural law) was perceived as a step towards greater autonomy for Muslims. However, although Religious Courts were granted independent powers, administration of marital issues still had to comply with higher state regulations, such as the Marriage Law and various codes on civil procedure (predominantly Dutch in origin). Religious law was thus kept firmly within the control of the state. As I will demonstrate below, this law used Islamic discourses to reflect state gender ideologies.

As in other New Order laws dealing with marriage, the Religious Jurisprudence Law placed greater restrictions upon women than men in their capacity to file for divorce, and couched this in terms that ostensibly seemed beneficial to women. All divorces, whether initiated by women (cerai gugat) or men (cerai talak), were to be filed in the legal domicile of the wife. However, if the wife had left the marital home without her husband’s permission she was required to file in the court closest to her husband. No exception was made for extenuating circumstances, such as domestic violence. Similarly, provisions on wife-initiated divorce placed greater evidentiary burden upon women. A wife’s divorce suit citing impotence as a cause required medical proof, a condition not specified for husbands who wished to claim their wife’s sexual incapacity. A wife’s claim for divorce on the basis of irreconcilable conflict (syiqaq) required the witness and mediation of family members, again conditions that were not explicitly specified for men. These provisions operated from the assumption that women’s natural place was in marriage, rendering female-initiated divorce

55 Basyir, Hukum Perkawinan Islam 88, "UU 7/89," pasal 66(2), 73(1), 75-76. Basyir defines syiqaq as “a fissure in the marital relationship, lack of compatibility between husband and wife such that it is feared divorce will occur.” (“retak hubungan perkawinan, tidak ada persesuaian antara suami dan istri sehingga dikhawatirkan terjadi perceraian.”)
a legal anathema. Such a construction aligned in part with conservative male Indonesian interpretations of Islamic law. For example, legal scholar Ahmad Azhar Basyir, whose 1977 book (in its ninth reprint in 2000) on Islamic marriage law is a standard text in *Universitas Islam Indonesia*’s law faculty, argues that men have been divinely granted the right to pronounce *talak* (repudiation) because they are more rational:

> In general, men think more carefully before they make a decision, as opposed to women who usually just act on the basis of emotion. As such, it is hoped that by granting the right of *talak* to a husband, divorce will be much less likely to occur than if the right of *talak* was granted to the wife.  

I suggest that the state deliberately appropriated Islamic discourses in a law that appeared to provide greater autonomy to Muslims. This disguised a deeper intent of the law, which was to restrict women’s legal capacity, and in doing so also garner the political allegiance of conservative Muslims to the secular state.

A state-sanctioned version of Islamic law was further sought in the guise of the Compilation of Islamic Laws in 1991, promulgated through presidential instruction (*Instruksi President 1/1991 tentang Penyebarluasan Kompilasi Hukum Islam*). It was intended to address inconsistencies in courts’ administration of Islamic law. However its legal standing and provisions were, and continue to be, hotly debated by Muslims suspicious of the state’s appropriation of Islamic law, some of whom have argued that it has reduced the flexibility of Islamic law.

In fact, many aspects of the Islamic Legal Compilation either quoted directly or rephrased the provisions of the Marriage Law and the Religious Jurisprudence Law, which included

---


contradictory constructions of female legal agency.\textsuperscript{58} Marriage was defined as a religious observance (*ibadah*), the aim of which was to create a peaceful, calm and loving household (“*sakinah, makawwadah, dan rahmah*”).\textsuperscript{59} As in the Marriage Law, husbands and wives have equal rights and status in the household and community which is manifested in different forms; the husband is the family head, the wife is the mother and manager of the household.\textsuperscript{60} A husband also must be a guide and mentor (*pembimbing*) to his wife and the household, protect his wife, provide all necessities for life (*nafkah*) in accordance with his means and educate her in religious matters in order to “benefit nation, religion, and the people.” \textsuperscript{61} In contrast, “the primary responsibility of a wife is to devotedly serve her husband in all matters, physical and spiritual, within the limits allowed by Islamic law” and she must “manage and organize the daily needs of the household to the best of her ability.” Should she be disobedient (*nusyuz*) she would be ineligible to receive her rights from her husband.\textsuperscript{61} The Compilation of Islamic Laws explicitly linked religious duty, male leadership and female obedience with nation-building and thus functioned partly to simply re-consolidate subordinate female legal subjectivity that had been established in previous laws and regulations.

\section*{4. POST-NEW ORDER LAWS AND CALLS FOR REFORM: LIBERATION OR CONSTRAINT?}
In the post-New Order period, debate over marriage, its significance to the nation and the way in which it should be regulated by the state has proliferated. Women’s role in marriage and the nation has been central in such discussions, which have encompassed nationalist, feminist and conservative Islamic positions.

\textsuperscript{58} Kompilasi Hukum Islam, Seri Pustaka Yustisia (Yogyakarta: Pustaka Widyatama, 2004) articles 5, 15, 116, 32. Provisions on minimum age for marriage, grounds for divorce, registration of marriage were identical even in wording to the marriage law. Minimum age for marriage was 16 for women, 19 for men, (with parental permission required up until the age of 21), divorce was to be filed in the woman’s legal domicile, excepting if she left home without her husband’s permission.

\textsuperscript{59} Ibid. pasal 3, Khoiruddin Nasution, "Draf Undang-Undang Perkawinan Indonesia: Basis Filosofis dan Implikasinya dalam Butir-Butir UU," Unisia XXVI/II, no. 48 (2003): 130. These are Arabic terms. The definition provided by Nasution was a household “which is full of peace, calm, love and affection” (“yang penuh kedamaian, ketenteramanan, cinta dan kasih sayang (sakinah, mawaddah dan rahmah).”)

\textsuperscript{60} Kompilasi Hukum Islam, pasal 77, 79.

\textsuperscript{61} Ibid. pasal 80, 83-84. The husband’s obligations: “Suami wajib memberi pendidikan agama kepada isterinya dan memberi kesempatan belajar pengetahuan yang berguna dan bermanfaat bagi agama, nusa dan bangsa.” The wife’s obligations: “Kewajiban utama bagi seorang isteri ialah berbakti lahir dan batin kepada suami di dalam batas-batas yang dibenarkan oleh hukum Islam” [ayat (sub article) 1]; “Isteri menyelenggarakan dan mengatur keperluan rumah tanga sehari-hari dengan sebaik-baiknya.” [ayat 2].
Thus far, legislative reform that has occurred in the post-1998 period has departed from colonial and New Order notions of subordinate femininity. However, successful legislation has tended to address broader issues tangential to marriage, rather than the Marriage Law itself. During the brief administration of Abdurrahman Wahid, a Presidential Instruction was released in 2000 on the “Mainstreaming of Gender In Development.” This was essentially a policy document which instructed government departments to include gender as a factor in all future programme planning and implementation. It explicitly defined gender as a concept relating to roles and responsibilities of men and women which could be changed by social conditions and culture, and identified the importance of using “gender analysis” (analisis gender) to identify how gender might impact upon citizens’ access to development resources.\(^{62}\) This was a radical departure from the tone of New Order legislation. In this document, gender roles were identified as changeable, and therefore not integral to state function. Moreover, gender was understood as a tool for analysis necessary to improve state services to citizens, rather than a category which defined the character of a citizen’s service to the state.

Women’s groups have also been successful in lobbying against domestic violence, which resulted in the enactment of the Law for the Eradication of Domestic Violence in October 2004. This was also a radical law, its primary aim being to “eradicate all forms of domestic violence, protect the victims of domestic violence, take action against the perpetrators of domestic violence and guard the unity of harmonious and prosperous households.”\(^{63}\) Domestic violence was very broadly defined as any physical, psychological or sexual abuse (including the threat of committing such abuse), as well as economic neglect by failing to provide for the household or prohibiting women from engaging in paid work, and was punishable by fines and jail terms (of up to 15 years). Households encompassed husband, wife, children, domestic servants, and anyone of a blood, marital or

---


63. "Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," (2004), pasal 3-4. Article 3: “Penghapusan kekerasan dalam rumah tangga dilaksanakan berdasarkan asas: (a) penghormatan hak asasi manusia; (b) keadilan dan kesetaraan gender; (c) nondiskriminasi; dan (d) perlindungan korban.” Article 4: “Penghapusan kekerasan dalam rumah tangga bertujuan: (a) mencegah segala bentuk kekerasan dalam rumah tangga; (b) melindungi korban kekerasan dalam rumah tangga; (c) menindak pelaku kekerasan dalam rumah tangga; dan (d) memelihara keutuhan rumah tangga yang harmonis dan sejahtera.”
adoptive relationship living in a single residence. Its enactment was reported positively in the press, the Suara Karya (the national daily established by Suharto’s Golkar party in 1971) exclaiming that:

Women can now breathe freely. Domestic violence, whose victims are mostly women and children, is no longer a private matter but has become a public concern after the People’s Legislative Assembly ratified the Bill for the Eradication of Domestic Violence last Tuesday. This means that husbands can no longer wilfully verbally abuse, slap or punch their wives, if they don’t want to come into contact with the law.

Domestic violence has thus assumed public, national significance, framed in terms of the wellbeing of women, children and families. Given the revolutionary provisions of this law, I would argue that an emphasis on the preservation of the family unit was integral to its successful ratification. While the law is very specific about the rights of all citizens to be free from violence, it does not explicitly undermine the ideology of the family, or attack religious or cultural definitions of women’s roles. Proposals which have attempted to explicitly confront such ideologies have been vigorously protested, as will be demonstrated below.

In October 2004 the Gender Mainstreaming Team of the Department of Religion (Tim Pengarus-utamaan Gender Departemen Agama) released an alternative Compilation of Islamic Laws for public discussion (which was given a part-English title, Counter-Legal Draf Kompilasi Hukum Islam). It had been supervised by departmental gender advisor Siti Musdah Mulia, and included some extremely controversial proposals. These changes were aimed essentially at eradicating all difference in male and female legal subjectivity contained in the existing Compilation of Islamic Laws, and made some radical departures from common interpretations of Islamic law. It included proposals to allow women to

---

64 Ibid., pasal 1, 2, 4, 5, 44, 45, 49.
marry without a guardian (wali), for equal division of inheritance between male and female inheritors, inter-religious marriage, equal rights for men and women to invoke talak (a right granted only to men in Islamic law), and equal obligations for men and women to provide maintenance (nafkah) and marriage and divorce gifts to each other (mahar or maskawin; mut’ah, usually gifts from husband to wife).  

The Counter-Legal Draft was received with widespread outrage. The Head of the Indonesian Council of Ulamas (Majelis Ulama Indonesia, MUI) at the time, K.H. Ali Mustafa, expressed a fear that Indonesian Muslims who obeyed this law risked apostasy, adding that the revision was totally unnecessary because the current Compilation and Marriage Law were “already good enough, and have never caused any problems.”  

Other critics argued that the draft had taken a secular focus on the rights of women without reference to the Qur’an or Hadis (record of the words and actions of the Prophet), that it made unfounded contextual interpretations of the Qur’an, and in parts explicitly contravened Islamic law (for example in its proposals defining marriage as a civil contract rather than ibadah, or sacred duty).  

It was so controversial that the Minister for Religion, Prof Dr H Said Agil Husin Al Munawar, who had initially publicly supported the draft, withdrew it for further revision just one day after receiving a complaint from MUI. It was officially cancelled in February 2005.

The debate about the Counter-Legal Draft brought into sharp relief the sensitivities of the Muslim community towards perceived state interference with religious law. However, it also revealed a level of insularity of religious practice from the state. This notion is neatly encapsulated by the comment of an anonymous kyai (male Islamic scholar and leader) who advised Tempo journalists that although the Counter-Legal Draft was wrong, there was no

“Jika diikuti, kita bisa menjadi murtad.” “sudah cukup baik dan tak menimbulkan masalah.”  
need to protest it because “after all, future generations will reject it.” This replicates a common theme in Indonesia’s history, which I will explore in more detail in subsequent chapters, whereby state ideologies are both contested and ignored by social actors.

In recent years conservative Muslims have argued for numerous revisions to Indonesian law dealing with the regulation of marriage and morals. This was evident in a 2003 Department of Religion “Draft Law on the Inclusion of Religious Justice in Marriage” (aimed specifically at Muslim marriage), which retained provisions on male household leadership. Revisions to the Criminal Code in 2003 proposed to criminalise adultery and defacto living arrangements. More recently, the controversial Draft Law on Pornographic Material and Actions (Rancangan Undang-Undang Anti-Pornografi dan Pornoaksi) released in late 2005 included prohibitions on public kissing, erotic dancing, and displaying specified “sensual body parts” in public (bagian tubuh tertentu yang sensual), which women’s groups claimed could be used to control female sexuality.

As the debates detailed above would suggest, different interest groups (in this case the women’s movement, and Islamic groups) have a stake in inserting their values into the legal framework of the state, as this legitimises that group’s political and social leverage. Under the New Order, alternative gender ideologies were rarely publicly expressed. The collapse of that state formation opened up the possibility for other groups in society to assert their own view of gender order. I suggest that these struggles over gender order are really struggles over power. In post New-Order legislation and debate, gender order and female legal subjectivity is now far from fixed. Kathryn Robinson claims that “in post-New Order Indonesia we have seen not so much the dismantling of New Order gender

---

71 "Pembaharuan Hukum Islam: Counter-Legal Draft Kompilasi Hukum Islam." “Toh, nanti masyarakat yang bakal menolak.”
ideology as the opening up of space for a diversity of images and representations.”

This state of flux points to the devolution of power from a monolithic state to citizens, but how such power will be disseminated within Indonesian society remains to be seen.

5. Conclusion

By charting the construction of female legal subjectivity in marriage and other relevant laws across the twentieth and twenty-first centuries in Indonesia, I have demonstrated that authoritarian states (both colonial and post-colonial) attempted to establish and maintain their legitimacy through manipulating legal and social gender order. In colonial and post-colonial law, this was done primarily by constructing women as subordinate to men. I suggested firstly that this functioned to elicit obedience and loyalty to the state from both sexes by situating the male legal subject in a position of superiority, and female legal subjects in a position of inferiority that was nonetheless identified as essential to the nation-building project. Secondly, I argued that the New Order directed punitive legal measures at women who wanted to divorce, because such women betrayed their state-designated (national) mothering role, and so implicitly threatened the stability of the state.

In the final section, in which I analysed recent debates over gender, religion and law reform, I have alluded to the idea that control over gender order is also understood by other social actors as a signifier of social and political power. Throughout the twentieth century, the Indonesian state has attempted to define gender order, and women’s role in that order, through law. So too have Muslims, who protested the Marriage Law and now in the twenty-first century are making their own proposals for state marriage regulations which comply with Islamic law. However, as was hinted by the kyai referred to in section four who claimed Muslims would ultimately reject state laws they did not wish to obey, Islamic practice has retained some insularity from the state. Women therefore have historically often found themselves in a difficult position between the state and male-led religious and local communities. They have consistently sought the legal protection of the state against local patriarchal practices, but the state itself has legislated in ways that seek to circumscribe women’s capacity for legal action.

This analysis of marriage laws has demonstrated an historical continuity in Indonesia, in which political power has been perceived by the state to be contingent upon control of gender order, and female legal subjectivity. In the next chapter, I further analyse how gender order might be constructed and manipulated through state, religious and local discourses on marriage, divorce and property. This leads to my broader discussion in the remainder of the thesis on the response of Indonesian women and men to the state, and the success or otherwise of state gender ideologies and projects of control.
CHAPTER 2

Divorce, Property Relations and Power

In the previous chapter, I examined broad constructions of female legal subjectivity in state law. In this chapter, I wish to further probe the consequences of these constructions, by investigating legal definitions of marital property. Divorce has repercussions for property, which in Indonesia may be guided by customary practices (adat), religious law and state regulations. However, for many Indonesians who divorced there may have been very little, or no, tangible property at stake. Thus, the purposes of this chapter are three-fold. Firstly, I will expand the definition of property rights to encompass both rights in objects and access to “cultural” or “social” capital. Secondly, I will establish how marital property is understood and transferred in adat, Islamic and state legal systems. At the same time, using my expanded definition of property, I will analyse how the category of gender operates in the disposal of marital property in these different legal systems, seeking points of contrast and historical continuity. In doing so, I am guided by the themes of the earlier chapter, in which I sought to uncover how states, as well as other structures of authority, may attempt to manipulate and use gender relations to consolidate power. This analysis provides essential context for the remainder of the thesis which analyses divorce in practice. Further, by re-examining the legal and ethnographic record, I have been able to provide a new interpretation of the relationship of gender to property access in divorce in Indonesia.

Bearing the above aims in mind, there are three important points that I wish to stress before going any further. Firstly, this chapter is not a history of the concept of property in Indonesia, a country acknowledged to have a highly pluralist legal culture. Nor does the thesis as a whole make claims to provide a comprehensive study of women’s access to property; a topic which in itself would be worthy of a dissertation-length study. However, because concepts such as maintenance and compensation are central to Islamic understandings of divorce, and were incorporated to some degree in the Marriage Law, it is

---

1 Rachel Haverfield, "Hak Ulayat and the State: Land Reform in Indonesia," in Indonesia: Law and Society, ed. Timothy Lindsey (Leichhardt, NSW: Federation Press, 1999), 43-44. See Chapter 1, in which I use Haverfield’s definition of law as any factor which contributes to the maintenance of rights and obligations.
very important that these concepts are introduced before I analyse the case studies of divorce in subsequent chapters. Without this context, discussions of women’s and men’s divorce strategies are meaningless. Certainly, a detailed, Indonesia-specific study of Islamic and customary (adat) understandings of property would be extremely illuminating (and would also require access to Dutch and Javanese language sources). But because this is beyond the scope of this thesis, I am attempting instead to develop some more overarching, theoretical concepts of the nexus between gender and property. Thus, although Indonesia forms the backdrop to my theoretical discussions here, I conceptualise gender and property in broader, more multi-disciplinary terms.

Secondly, as detailed in the Thesis Introduction, my research is focused on formal, court-based negotiations of divorce. I am concerned here specifically with codified, legal definitions of property, as well as customary and Islamic definitions that inform the legal code and actions of the court. Consequently, in explaining customary and Islamic conceptualisations of property in this chapter, I draw upon texts that were used in the legal education system and subsequently in courts. For example, the 1930s work on adat law by Dutch colonial scholar Barend Ter Haar could not possibly be presumed to be free of error, or to definitively encompass the complexity and fluidity of the various forms of adat across the Indonesian archipelago. It is, however, a text used to teach adat law in Indonesian law faculties, reflecting the challenges associated with codifying custom for formal legal systems. The concepts of property explained in this chapter therefore encompass some of the concepts used in the court system, but cannot explain all forms and understandings of property in operation in Indonesia.

Thirdly, I note that while communally-held rights in land (hak ulayat, or usufruct rights) are common in many parts of Indonesia, codification of property rights and court-mediated property disputes have lead to a trend in the individualisation of property rights, at least in the formal legal system in Indonesia. Moreover, I am focusing specifically on property relations in marriage (which includes rights to maintenance and financial compensation) and intangible property rights (which includes cultural capital, and rights in other persons). Therefore, I do not discuss the very specific issue of communally-held land rights, and how this might be affected by divorce.
Essentially, my analysis attempts to demonstrate how property relations may reveal gender relations, and what this signifies for the creation of state power. I apply this framework to the case of Indonesia, but have developed it as a broad theoretical structure which could be tested in other cultural and historical contexts. I address the issue of the links between property relations, gender relations and state power in four parts. In the first section, I critique existing studies of property, noting the tendency to define property monolithically (in terms of rights in objects) without sufficient attention to the operation of gender. From this critique, I will posit an alternative definition of property which draws upon Pierre Bourdieu’s notion of “cultural capital.” I apply this definition to my analysis of property rights in the remaining sections of the chapter. Sections two and three address Javanese adat and Islamic conceptualisations of property. To analyse these two legal systems I use a range of sources. I investigate adat as it was defined by Dutch colonial scholars such as Barend Ter Haar in the 1930s, which influenced the work of anthropologists Hildred Geertz and Robert Jay in the 1950s and 1960s, followed by the studies of the 1970s and 1980s by Indonesian anthropologist Koentjaraningrat and lawyer Hilman Hadikusuma. I look at Islam through the work of an Indonesian Islamic legal scholar, and as it was defined by the state in the 1991 Compilation of Islamic Laws. As both Islamic and adat discourses were incorporated to varying degrees in New Order law, this analysis informs the final section of the chapter which interrogates marital property rights in state laws. Here, I examine both colonial and New Order laws, including the Civil Code, the Marriage Law UU1/1974, the Implementing Regulations PP9/1975, and Government Regulations on Civil Servants’ Marriage and Divorce PP10/1983 and PP45/1990. In doing so, I am interested in uncovering continuities in state constructions of gender and its relationship to property.

Throughout the chapter, following anthropologist Ann Whitehead (see discussion below), I work from the assumption that property relations reflect social and therefore gender relations. Thus, I understand women’s access to property (in the broad sense in which I will define it below) to be a crucial indicator of the locations of power within any given society. At this point, my analysis is focused exclusively on the constructions of gender and property rights in law. I reserve my discussions of the use of law by litigants, lawyers and

---

judges, and the success or otherwise of the gender ideologies contained within law, for Chapters 3 to 6.

1. HISTORIOGRAPHY AND REDEFINING “PROPERTY”
Existing studies that have addressed the issue of property access in Indonesia have focused largely on rights to tangible property, economic capital such as land, finance and housing. However, few studies have yet examined property rights in marriage, or the role of gender in determining property division at divorce. I have argued in Chapter 1 that marriage is an important site for the organisation of gender order and therefore social and political power. Thus, the way in which property is managed through marriage and divorce also has implications for the distribution of such power. If property access is inseparable from power, is power itself a form of property? To answer this question, I will re-assess the existing historiography on property in Indonesia before redefining property in a way that will allow a more subtle analysis of women’s actions in divorce.

1.1 Critiquing the Historiography of Property
The literature on women’s property rights in Indonesia is relatively small. However the topic has received much attention in other area studies, which have produced insights relevant to this study. Such studies have highlighted the multiple, and complex significations of women’s access to property. Annelies Moors demonstrates that in Palestine, women’s relinquishment of inheritance to sons and brothers is not necessarily a sign of subordination, but rather a deliberate tactic which ensures that male relatives will take financial responsibility for their female kin. Others have identified the tendency of modern nation-states to ignore communal property rights and privilege individual, male ownership of property over female ownership. Jonathon Ocko demonstrates that in China, marriage itself is a form of social property as it unites families, thereby creating a unit of

production. Moors’ argument, that women’s failure to access property may constitute a form of investment in their financial security, and Ocko’s concept of marriage as social property, are both extremely useful concepts. I will apply these concepts in my definition of property, which I address after reviewing the Indonesian historiography of women and property below.

Much of the scholarship on property-access in Indonesia has been, understandably, motivated by a desire to respond to the marginalisation and oppression of minority groups under the New Order. This was a process that was made possible, as Daniel Fitzpatrick notes, by subsuming so-called “universal customary principles” within the framework of national law. Scholars therefore have often focused on the impact of New Order policy on land access, and the conflict between state interests and customary (adat) claims to land or resources, sometimes overlooking the role of gender in this process.

It has also been pointed out that in communal societies access to property is contingent on group membership, thus problematising the notion of individual property rights. A number of feminist scholars have teased out the gendered implications of the conflict between communal property relations and state-sanctioned individual rights in Indonesia. Saskia Wieringa found that Minangkabau women’s customary control of inheritance (that passes matrilineally) was undermined when men registered and mortgaged property under their own names. Tania Murray Li also found in highland Sulawesi that women’s work on tree plantations, which gave them customary claims to joint marital property, was also jeopardised by men’s registration of land in the names of male household heads. The results of these studies are relevant to this thesis, but as anthropological analyses they lack

the historicity that is central to this thesis. My study builds upon such insights by interrogating both the significance of gender and marriage in mediating property relations, and the way in which these relations change over time.

It is a generally held scholarly (and cultural) tenet that Javanese women have a strong position in marriage with regard to property. This scholarly proposition has been based on Hildred Geertz’s influential study conducted in the 1950s, *The Javanese Family*, which identified women as the managers of domestic finances, who were able to own land and access most occupations. Later feminist anthropologists modified Geertz’s theory, arguing that the amounts of money controlled are usually very small, and that handling money in Javanese society is a low-status activity which reflects women’s lesser prestige and power in the world outside of the domestic sphere. Men as the more socially powerful group thus avoid concerning themselves with financial matters. In practical terms however, studies of Javanese women under the New Order have shown that their access to finance and property has been restricted. Women were generally paid less than men for their labour and their land was likely to be registered in their husband’s names, often because women lacked the time and knowledge to engage in complex land registration processes. Such trends have been attributed to the New Order’s privileging of male property rights and by some scholars to a continuation of colonial understandings of property.

---

The studies outlined above of women’s property access under the New Order, and feminist reassessments of the signification of access to finances, have some important implications for this thesis. Firstly, it indicates that the state discerned political value in limiting the access of communal groups, and women, to property. Secondly, the feminist studies imply that control of economic capital is not inherently an indication of power. Rather, the signification of power is always mediated by gender, to which control of economic capital may sometimes be (but not always), tangential. This assumption invites a careful reading of court records of divorce negotiations. For example, if bargaining over money was a low status activity, did a female claim for property reflect lesser status and social power? A reassessment of what constitutes property, and what access to property signifies in terms of social and political power is absolutely critical to understanding the subtleties of litigants’ actions in divorce. Below, I will outline how I incorporate these ideas in my definition of property, used in the remainder of the thesis.

1.2 Redefining Property

In my definition of property, I follow theorist Pierre Bourdieu’s concept of “cultural capital.” Bourdieu viewed cultural knowledge and skills (including educational attainments, and particular abilities such as playing an instrument) as a form of capital. Such knowledge and skills had, in Bourdieu’s assessment, direct implications for an individual’s accumulation of economic capital, social power and mobility.\(^\text{15}\) Whilst his work has been criticised for its lack of attention to gender, his concept has nonetheless been fruitfully employed by feminist researchers to allow a deeper understanding of the character of women’s access to “property” and the ways in which this signifies (or does not signify) social power.\(^\text{16}\)

I also employ the concepts of anthropologist and theorist Ann Whitehead, who argues in an influential 1984 article that property is “not primarily a relation between people and things, but a relation between people and people - a social relation, or a set of social relations.”\(^\text{17}\)


She further contends that the dominant mode of social relations in all societies involved limiting women’s capacity to act in relation to property (either rights in objects, or in people), regardless of the means of production or economic system.  

Divorce changes relations between people, and can include a transfer of tangible property, and an alteration of social status. In Java (as will be discussed in Chapter 3) for example, the status of the divorcee is low. The threat of a loss of both social status and economic capital may thus have influenced women’s decisions as to whether they wished to file for divorce or to claim any property. Using Bourdieu’s concept of cultural capital enables a broader analysis of the propertied consequences of divorce. This encompasses wives’ access to their husband’s marital and post-marital obligations (kewajiban) such as maintenance (nafkah) and divorce gifts (mut’ah), as well as the status of being married and divorced, and the implications this might have for financial power. Moreover, Whitehead’s notion of property as a signifier of social relations enables a deeper analysis of how social power is mediated by gender, and therefore how the category of gender can be used by various structures of authority to manipulate property relations and obtain power. Thus in my analysis of the propertied consequences of divorce, I focus on rights held in other persons, maintenance claims and issues of shame and status, as well as claims to tangible property.

In the remainder of this chapter I outline how marital property rights were conceptualized within adat, Islamic and state legal systems, in order to situate my subsequent analysis of how gender operates in these legal systems. It is not possible here to provide an exhaustive analysis of property in these systems. Rather, my review should be understood as an articulation of my thesis that gender ideologies are embedded in seemingly neutral concepts such property, a general principle which informed my reading of court documents.

2. Marital Property According to Adat

Adat legal systems vary across Indonesia, and can combine both oral and written codes (notably in Java). In many adat understandings of marital property throughout the Malay-

---

18 Ibid., 180.
19 Sullivan, Masters and Managers: A Study of Gender Relations in Urban Java 118-19. Divorcees have also often been identified as among the poorest sections of society.
Indonesian world, all property produced during the marriage is considered to be jointly owned, regardless of which spouse contributed the greater work effort. This is referred to with terms such as *harta bersama* [Indonesian], *gana-gini* or *gono-gini* [Javanese] and *harta sepencaharian* [Malay]. These terms have been employed by litigants and courts throughout the twentieth century. However, there are some analytical difficulties in referring to custom, or *adat*, in association with the state legal system, which I will discuss below before addressing *adat* conceptualisations of marital property.

It has been well established by anthropologists that *adat* is not a set of written legal codes, but rather an unwritten world view which is generally acknowledged to have some flexibility (although in Java, and court cities such as Yogyakarta, *adat* could also be found in written sources). However, colonial legislation, and later New Order policy, attempted to ossify *adat* in the interests of controlling potentially unruly indigenous citizens. Under the Dutch, this took the form of the legal codification of *adat*, referred to as *adatrecht* (customary law state), which was applied by Dutch judges in the *Landraad* (Native Court). The New Order did not make the same attempts at codification, but rather pursued a deliberate policy of “traditionalisation.” *Hukum adat* (customary law) was referred to in legislation (and obliquely referenced in the Marriage Law as *kepercayaan*, beliefs, and *hukum masing-masing*, laws [followed by] the individual) and admitted in courts, but this usage generally drew upon earlier court jurisprudence, or colonial codifications. Thus, *adat* as it has been used in courts may have differed significantly from the way it was understood by litigants. Mindful of these divergent possibilities for interpretation, throughout this thesis I use “customary law” in contexts where judges or litigants specifically reference this concept. I distinguish this from the more flexible term “custom” which I understand to reflect traditional social practices which may be accorded

---

23 John Pemberton, *On the Subject of Java* (Ithaca: Cornell University Press, 1994) 204. Pemberton analyses the traditionalisation of wedding rituals under the New Order. He understood this to be part of a broader process of cultural domestication, which could “admit potentially unruly practices only to enframe them as examples of “traditional rituals” performed for the sake of an ever more “Beautiful Indonesia.””
different meanings by different social actors, and may also change in meaning at different historical periods.

As adat is often an unwritten set of social practices, there is no definitive source base for identifying these practices (and even in places like Java where some written Javanese-language sources are available, they are not necessarily accessible to or used by ordinary people). However, both Western and Indonesian scholars, as well as courts, have relied heavily upon the work of Dutch adat scholar Barend Ter Haar. In *Adat Law in Indonesia* (originally published as *Beginselen en Stelsel van het Adatrecht* in 1939), Ter Haar provided a basic description of customary property disposition in divorce which has been upheld in its broad outline by most subsequent scholars. In this definition of Javanese adat, a distinction was made between personal property brought to the marriage (*harta bawaan, barang asal, harta gawan*, which includes property inherited before and during the marriage, marriage gifts etcetera) to which individual rights are retained, and the *gono-gini*, the joint property produced in marriage. At divorce, all *harta bawaan* returned to the individual and the *gono-gini* was divided, either equally or in a ratio of 2:1 in favour of the husband.

Subsequent studies, from those of anthropologists Hildred Geertz and Robert Jay in the 1950s to Indonesian anthropologist Koentjjaraningrat and legal scholar Hilman Hadikusuma in the 1970s and 1980s, have shown that Javanese views of joint marital property have often been beneficial to women. This is because, as Hadikusuma notes, husbands and wives “seek their fortune together” (*mencari rezeki bersama-sama*). Thus:

> It’s not a problem if in the endeavour to obtain property, the husband works whilst the wife manages the house and children, because all of the property obtained is “joint marital property,” and is the result of the efforts of both husband and wife.”

---

24 Barend ter Haar, *Adat Law in Indonesia*, ed. E. Adamson Hoebel and A. Arthur Schiller (New York: AMS Press, 1948) 182, 88-90, 93, Daniel S Lev, "The Supreme Court and Adat Inheritance Law in Indonesia," *The American Journal of Comparative Law* 11, no. 2 (1962): 206, 09, 12. Ter Haar was based in the Netherlands Indies. He was part of a group of Dutch adat scholars (also including Cornelius van Vollenhoven in the Netherlands) who from the 1920s onwards lobbied the colonial government to abandon the use of uniform codes and allow the application of adat law. Ter Haar also emphasised the adaptive nature of adat and therefore the need for flexibility in the court.

The division of this property at divorce could vary. Geertz and Jay both found that syncretist (abangan) villagers advocated the even division of marital property. Orthodox Muslim (santri) villagers maintained that husbands should receive twice the amount of the wife, a point that Geertz’s informants expressed as “segendong-sepikul” [Javanese] (an analogy based on a comparison of the one load a woman could carry in the sling on her back, with the two loads a man could carry on each end of a pole). In situations where one of the spouses was deemed to be at fault, relatives or village leaders could mediate a solution, granting all of the property to the aggrieved spouse, or vesting it with the children.

There are two relevant aspects of these studies of adat marital property which apply to this thesis. Firstly, they demonstrate a fairly long standing historical view of the strength of Javanese women’s position regarding marital property. In the versions of adat which advocate equal division of property regardless of contribution, women’s property rights are strengthened because their access to property is mediated by the act of marriage, rather than by gender. Secondly, as the work of Ter Haar and Hadikusuma are routinely listed as references in Indonesian university courses on adat law, they also demonstrate one of the frameworks employed by judges to make decisions using the discourse of customary law.

In practice, as other chapters in the thesis will show, custom may be manipulated by litigants and by courts. For example, the Yogyakarta State Court decreed in a divorce case in 2002 that a house purchased in 2000 by the wife was joint property and should be divided according to custom in half, despite the fact that the husband had deserted his wife since 1997 and it was she who had worked and paid for the property. This confirms

dan anak-anak, kesemua harta kekayaan yang didapat suami isteri itu adalah hasil pencaharian mereka yang berbentuk ‘harta bersama suami isteri.’”


27 Geertz, The Javanese Family: A Study of Kinship and Socialization 50-51. Geertz illustrated this point with an anecdote of a woman who left her husband to marry another man. Most of the property in the marriage was her own, given to her by her parents, but registered in her first husband’s name who then refused to allow her to resume possession of the property. The village head resolved this dispute by choosing not to divide the property, but rather putting it in trust for the couple’s three children who were living with neither parent but with a grandparent.

Tania Murray Li’s argument that at the point of marriage breakdown (and of the *mitra kerja*, working partnership) ideologies of joint benefit also begin to unravel. Consequently, my investigation of divorce requires analysis not only of the signification of gender within legal systems, but also of the operation of that category in the implementation of law.

3. Marital Property According to Islam

In Islamic law, both marriage and divorce are contingent upon the fulfilment of transfers of property, usually from husband to wife. However, in contrast to *adat*, Islamic law does not acknowledge the concept of joint marital property; instead vesting rights for any property brought to or produced in the marriage with the individual. Before discussing these provisions, I will outline the sources I use to analyse Islamic legal definitions of marital property in Indonesia.

Islamic law is based upon three major sources, the *Qur’an* (the word of God revealed to his Prophet, Muhammad), the *Hadis* (the written record of the Prophet’s words and deeds made by his companions) and *fikh*, the body of Islamic jurisprudence developed in response to situations where there was no clear directive found in either the *Qur’an* or *Hadis*. This latter activity led to the development of a number of schools of legal thought (*mazhab*) which is in itself a highly specialised area of study. In this thesis, I am not drawing upon these Islamic legal texts (which are a matter for expert debate). Rather, I analyse interpretations of Islamic law which held currency in courts, and the versions of Islamic law that were codified by the New Order state in the 1991 Compilation of Islamic Laws. To do this, I primarily use Kh Ahmad Azhar Basyir’s *Hukum Perkawinan Islam* (“Islamic Marriage Law”), a text used in Indonesian law faculties (see also Chapter 1). I employ this text to illustrate some of the key property obligations arising from marriage and divorce which are applied in courts, but do not assume that it is the definitive, or only Indonesian interpretation of Islamic law. I then demonstrate how the Compilation of Islamic Laws used these discourses to support conservative New Order ideologies.

---

Female property ownership is a principle that underpins Islamic marriage law. As Islamic law does not recognize joint marital property, men and women are deemed to have equal rights to own and dispose of their property, without requiring the permission of the other spouse. However, **adat** notions of joint marital property can be incorporated into Islamic practice in Indonesia, because Islamic law allows for the application of customary law (**uruf**), as long as such law does not contravene any provisions of the **Qur’an** or **Hadis**. Islamic law acknowledges partnerships (**syirkah** [Arabic], **persekutuan** [Indonesian]) so it is considered possible to conceptualise marital property produced through joint effort as partnership property.

Muslim husbands also have a number of propertied obligations to their wives. At marriage, grooms must provide a gift to the bride (**mahar**, or **maskawin**, literally “marriage gold.”) In Java, this gift has often been only a token (usually a Qur’an or set of clothing for prayer, **perlengkepan solat**). This differs from some other Muslim societies where dower is an important way for women to obtain property. During marriage, husbands are also obliged to provide wives and children with sufficient housing, clothing and food (**nafkah**, or maintenance). In the Indonesian usage of the term **nafkah**, a distinction is also made between material maintenance (**nafkah lahir**) and intangible marital obligations (that is, conjugal rights, **nafkah bathin**). Javanese husbands generally give **nafkah lahir** to their wives in the form of cash, and it is wives who decide how the money should be spent.

---

31 Agus Triyanta, "Islamic Law in Indonesia" (paper presented at the International Programme Routine Lecture Series, Fakultas Hukum, Universitas Islam Indonesia, Yogyakarta, 22 December 2004).
35 Basyir, *Hukum Perkawinan Islam* 57. Basyir cites Surat Al-Baqarah 233: “….and fathers are obliged to provide sufficient food and clothing for their wives and children, by honest means.” (“...dan ayah berkewajiban mencukupkan kebutuhan makanan dan pakaian untuk para ibu anak-anak, dengan cara yang makruf.”) In the court such obligations are sometimes also further specified as **nafkah isteri** (maintenance for wife) and **nafkah anak** (child support).
36 Husbands and wives are considered to have mutual obligations to provide conjugal access. This injunction has its basis in numerous **hadis**. A commonly cited **hadis** on this theme narrates the story of a close friend (**sahabat**) of the Prophet Muhammad who devoted himself entirely to fasting and praying. The Prophet reminded the follower that by this devotion, he was ignoring the conjugal rights of his wife who would be caused suffering by such neglect. *Shahih al-Bukkhari*, Juz IV, 157, 105 cited in Nassaruddin Umar, "Agama Dan Kekerasan Terhadap Perempuan," *Jurnal Demokrasi dan HAM* 2, no. 1 (2002): 62.
Although the term *nafkah* is Islamic in origin, it is also used in non-Islamic divorce court records, indicating the importance of this concept to marriage in general in Indonesia.

In the event of male-initiated divorce (*talak*), a husband must continue to provide maintenance to his ex-wife for three menstrual cycles or one hundred days (*nafkah iddah*), and must also give her a compensatory gift (*mut’ah*). However, if the divorce is at the instigation of the wife (*cerai gugat, khuluk*), she relinquishes the right to this gift and must instead pay compensation to her husband (*iwadl*). In Indonesia, *iwadl* is fixed by Department of Religion at a very low nominal fee (1000 Rupiah for many years, recently increased to 10 000 Rupiah).

The broad principles of Islamic marital law were incorporated within the Compilation of Islamic Laws, with some allowances made for custom. Men were obliged to pay *mut’ah* at divorce, and were reminded that it was commendable but not obligatory (*sunnat*) to pay their ex-wives *mut’ah* outside of the obligatory situations.37 As in the Marriage Law, marital property was defined as any property produced during the marriage, with men and women entitled to half of the joint marital property in the event of divorce.38 It allowed for an agreement to be made which combined individual property, either including all property brought to and produced during the marriage, or a single one of these options.39 In the absence of such an agreement the Compilation adhered to the basic Islamic principle of the individuality of ownership (that is, there is no merging of individual property as a result of marriage).40 It also specified that women’s rights to *mut’ah* and *nafkah iddah* were contingent upon their obedience to their husbands. The justifications for male claims upon female obedience have been much debated by Islamic scholars. One of the criticisms levelled at the Compilation by women activists was that the government sought the opinion of conservative *kyais* (male Islamic scholars and leaders) in drafting the law.41

38 Ibid. pasal 1(f), 97. "Harta kekayaan dalam perkawinan atau syirkah adalah harta yang diperoleh baik sendiri-sendiri atau bersama suami istri selama dalam ikatan perkawinan berlangsung dan selanjutnya disebut harta bersama, tanpa mempersoalkan terdaftar atas nama siapa pun."
39 Ibid. pasal 49.
40 Ibid. pasal 86-87.
Consequently, the gender prescriptions of the Compilation of Islamic Laws aligned with New Order gender ideologies.

Although Islamic law supports female property ownership, and directs the transfer of property (maintenance, compensation) to women at marriage and divorce, these injunctions were not always adhered to by husbands or by courts. Historically, this has led Indonesian women to attempt to use the state to safeguard their Islamic property rights. For example, from the 1920s the women’s movement campaigned for the mandatory attachment of conditions (*ta’lik talak*) to the marriage contract.\(^{42}\) Such conditions were signed by the husband, and could include agreement to provide maintenance and refrain from polygamy or cruelty. Failure to adhere to these conditions allowed the wife to file for divorce. This optional contract has been routinely appended to the marriage certificate since 1974. However, as the Compilation of Islamic Laws shows, the protection offered by authoritarian states has often been ambiguous. This is because these states may use religious or customary discourses as a vehicle to seek to limit women’s property access according to their conformity with conservative models of gender. This invites questions about the character and intent of state legal definitions of marital property, which I address in the following section.

### 4. Marital Property According to Colonial and Post-Colonial State Law

#### 4.1 Civil Code

In contrast to Islamic and customary legal systems, husbands held exclusive rights to marital property in colonial law. Below, I contrast definitions of marital property in the 1847 Civil Code with New Order law (section 4.2), noting continuities and differences.

The Civil Code vested household leadership and ownership of all property with husbands, including property brought to and produced during the marriage. Marital property also encompassed debts, gifts and inheritance. A woman required her husband’s permission to bequest, transfer or make contracts regarding her own property. She could seek court-ordered control of her property if she could demonstrate that her husband was wasteful or

---

negligent, but her appearance in court ironically also required the presence of her husband.\textsuperscript{43}

A husband’s right to manage marital property was maintained throughout divorce proceedings, but his obligation to provide maintenance during this time depended on his wife’s conduct. If a woman left the marital home without the judge’s permission during divorce proceedings, or had filed the divorce suit herself, the judge could rescind her right to receive maintenance. After divorce, marital property was to be halved without consideration of spousal contribution but this divided property also included all debts incurred during the marriage. Women could avoid this problem if they relinquished their claim to joint property, which then entitled them to leave the marriage with only personal clothes and bed-linen.\textsuperscript{44}

Because of the all-encompassing definitions of joint property and debt in the Civil Code, women would have been discouraged from claiming joint property status in marriage because it rendered them accountable for debts incurred by their husband. The Civil Code thus effectively alienated women from both jointly produced property and their own previously acquired personal property. Women were constructed therefore as a legal entity completely separate from all forms of property, reflecting more generalised colonial constructions of female inferiority.

\textbf{4.2 Post-Colonial Laws}

In the Marriage Law and supporting regulations, few clear directives were provided on any issues relating to property, including marital property (\textit{harta bersama}), maintenance or child support. The Marriage Law stated that at divorce, individual property (\textit{harta bawaan}) should be retained but marital property, defined as all property produced during marriage, should be divided according to the religious or other laws that related to the parties concerned.\textsuperscript{45} The Implementing Regulations PP9/1975 permitted, but did not oblige, courts


\textsuperscript{44} Ibid. pasal 128-32, 213-14.

\textsuperscript{45} "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," (1974), pasal 37.
to order husbands to pay alimony or child support. The Government Regulations on Civil Servants’ Marriage and Divorce (PP10/83 and PP45/90) did oblige husbands to provide maintenance for their ex-wives, excepting if the wife filed for divorce or, after the 1990 regulations were passed, was deemed by the court to be at fault in the divorce (for example through adultery, or other immorality, see Chapter 1).

Although the Marriage Law accepted the principle of female ownership of property, this was countered by the practical difficulties women faced in obtaining legal ownership of property. Some of the problems with women’s access to tangible property are rooted in the Basic Agrarian Law (Undang-Undang Pokok Agraria, UU5/1960). This law has been much criticised because it deemed all forms of tangible property to serve a social (national) function above all other functions. Adat rights were enshrined, as long as they did not conflict with the interests of the state. A person or legal body who owned land was required to use it “actively” (a condition that was not specifically defined) to retain rights to it. Rights to land had to be registered, and private ownership (hak milik) was defined as the strongest claim that could be held over land (as opposed to communal rights, or usufruct rights, which are common in many parts of Indonesia). The state retained the right to appropriate all land where necessary for the common good. Because of the primacy accorded to individual, registered rights to property, women were potentially in a weaker bargaining position in divorce cases, as they did not possess privately registered property. Application of the Marriage Law thus may have been shaped by the legal trajectory of homogenous state conceptualisations of individual, male-controlled property ownership.

As I have also demonstrated in Chapter 1, New Order laws privileged a domesticated femininity, which was implicitly linked to women’s rights in marriage. These laws employed adat and religious discourses, which were manipulated to reflect state gender

ideologies. Access to tangible property was often made contingent upon conformity to these state models of femininity. Moreover, it could be argued that the New Order state, through attempting to discourage female-initiated divorce, took advantage of existing cultural and religious concepts of marriage as a form of cultural capital. For women, loss of such cultural capital could also entail loss of economic capital, further demonstrating the link between gender, power and property.

5. CONCLUSION
In this chapter I suggested that an analysis of women’s property claims in divorce needs to encompass tangible property claims, as well as claims to “cultural capital,” such as rights in other persons, maintenance rights and social status. My chapter therefore has revised aspects of the existing literature on women and property access in Indonesia, by asserting the significance of cultural capital in divorce negotiations. In the second half of the chapter, I looked at legal definitions of marital property in religious, adat, colonial and New Order laws. I concluded that in colonial and post-colonial law, customary and Islamic discourses were co-opted into creating a single paradigm of male property ownership. I have argued further that power and social status constitute forms of property which influence access to tangible property. Consequently, as women may have lesser social power, this may have served to weaken their access to tangible property. I argue that this was a legal strategy employed by the New Order state directed towards creating a subjugated female citizen. In the following chapters, I will address whether these concepts of female subordination were implemented in practice, how women and men used such discourses, and what implications such discourses bore for women in terms of their access to cultural capital, including status, rights and obligations, maintenance and tangible property.
PART 2

Discourses of Divorce
CHAPTER 3

Constructing and Negotiating Shame

In renowned Indonesian author Nurhayati Dini’s late 1970s short story, “The Young Divorcee,” her protagonist, Warsiah, realises that “a divorced woman is considered to have a defect, or disability, and should be kept at a distance. A divorcee is of a different quality to a widow.”\(^1\) Anthropologists and demographers have frequently contended that Muslim divorce in Java for most of the twentieth century attracted little stigma, but this fictional depiction of divorce in the 1970s suggests otherwise. This chapter therefore endeavours to reassess the impact of shame upon the negotiation and outcome of divorce between 1974 and 2005. To do this, I investigate how discourses of shame were constructed and used in different ways by the state, courts and litigants, and how the category of gender operated within these constructions and uses.

This chapter has three major aims. Firstly, I wish to expand the argument made in the previous two chapters, in which I claimed that the state attempted to control women through the legal restriction of divorce. Here, I examine if and how the state employed discourses of shame in policy and public programmes in order to further limit female agency and access to divorce. Secondly, by applying the insights of anthropologists regarding Javanese cultural notions of shame and status to my analysis of divorce records, I wish to reassess the scholarly commonplace that divorce in Javanese society (roughly prior to 1974) carried little stigma. Instead, I will posit a more nuanced picture of divorce, which may change in significance according to gender, and historical context. Finally, using court records and oral history, I will interrogate how discourses of shame were used and applied by female and male litigants and judges, how gender mediated uses of shame and how shame could be used particularly by women in resistance to state projects.\(^2\) Throughout the chapter, I am also attentive to the ways in which the relationship


\(^2\) In my analysis of specific divorce cases, statements quoted from the court’s decision (compiled as a joint decision in the third person) would usually have been made by a panel of three male judges (Majelis Hakim). Where a female judge was a member of the panel, this is specified. Women have presided as judges in both
between gender and shame might have changed with time. This introduces an element of historicity to existing scholarship on divorce and shame, topics which have been scrutinized by anthropologists but have received less attention from historians. I ground the study with court material dating prior to the introduction of the Marriage Law in 1974, and also use court material dating after the fall of the New Order in 1998. This will allow some analysis of the extent to which the New Order used existing Javanese cultural frameworks of shame, or introduced its own discourses of shame, and how influential such efforts might have been in terms of the application and use of discourses of shame in the post-New Order period.

To answer the key questions of the chapter, I have divided it into six major sections. In the first section, I outline the sources utilised in this chapter. Because I argue that the New Order constructed divorce as an inherently shameful act, state-produced documents must be read cautiously and I explain here the specific advantages and limitations of the sources I employ. In section two, I explain how the term “shame” is defined. I use this definition to reinterpret existing scholarly assessments of divorce in Indonesia, and to then analyse shame and divorce from a historical perspective, using gender as a tool for analysis. One of the other aims of the chapter is to demonstrate that the state played a role in influencing the ways in which shame was employed in courts. I therefore contextualise this effort in sections three and four before examining court records in section five. Section three charts state attempts to disseminate a more individualised, gender-specific concept of shame and divorce. I have selected particular examples of these state efforts for analysis, including a Mahkamah Agung (Supreme Court, the highest court of appeal) instruction, a landmark decision and public programmes of the semi-official marriage counselling body, BP4 (Badan Penasihat Perkawinan dan Penyelesaian Perceraian). Section four examines representations of shame and divorce in the print media, reading these depictions as partly (but not wholly) reflective of state views. I then examine uses of shame in court records, highlighting litigants’ co-optation of, and resistance to, state ideologies over four decades. In the final section, in which I analyse some of the oral evidence obtained during fieldwork in 2004-2005, I assess the influence of the state on the viewpoints of women from a range

the Religious and State courts since at least the mid-1960s, although they remain in the minority. Daniel Lev noted that in the mid-1960s there was an emerging trend to recruit women as Religious Court Judges, but this was a slow process that met with some opposition. Daniel S Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (Berkeley: University of California Press, 1972) 110.
of backgrounds. Did divorce become unequivocally shameful under the New Order, or did the New Order simply build upon existing Javanese cultural understandings of shame? How have women resisted and used these stereotypes?

1. SOURCES AND METHODOLOGY

This chapter draws upon a wide range of sources, including legislation, court records, landmark decisions published in the Mahkamah Agung journal Varia Peradilan (“Various Judicial Matters”), a Mahkamah Agung instruction to lower courts, newspaper evidence, and oral evidence obtained from consultations with court staff, Non Government Organisation (NGO) activists, religious leaders and divorced women during fieldwork in 2004-2005. In particular, the divorce court records I utilise are an entirely unexamined source of evidence, which have enabled me to significantly reassess standard scholarly perceptions of divorce. Before I analyse this material, the way in which I accessed and use these and other sources in the chapter requires clarification. (I provide clarification here that relates specifically to the theme of shame, and how research obstacles have shaped existing historiography on divorce and shame, as opposed to the broader explanation of methodology and sources provided in the Thesis Introduction.)

Conducting archival research in Indonesia has always been difficult. Under a New Order system which remains in place today (albeit in laxer form), researchers are required to obtain approval from various government bodies, and report the results of their research to each of these bodies.\(^3\) Courts do not generally allow large quantities of archival material to be viewed by researchers, but rather limit the number and nature of files that will be made available.\(^4\) In general, court officials were most eager to provide me with annual statistical reports, rather than case decisions. These annual statistical reports, which reveal causes and rates of divorce and the gender of the person filing, invite research focused on how successfully the state has prevented divorce. The way in which institutions shape and release their records may thus implicitly reproduce state concerns about the shamefulness

\(^3\) Initial approval comes from the provincial-level BAPPEDA (Badan Perencanaan Daerah, Regional Planning Board), and then from the kabupaten (district) BAPPEDA, and then from its equivalent agency at the kecamatan (sub-district) and kelurahan (village) levels if fieldwork were to be conducted. Each agency requires proposals, lists of intended informants and questions before approval to conduct research is granted, and requires a research report to be submitted at the completion of the project.

\(^4\) Different courts imposed different restrictions. The Yogyakarta State Court, for example, would allow students to view a maximum of four cases. At the Sleman State Court, personal contacts enabled me to access an unlimited number of cases.
of divorce. While these statistical records may be useful for creating a broad picture of divorce trends, they are less useful in terms of revealing individual motivations or responses to the state. As it these aspects of divorce that I am interested in uncovering, I do not draw upon statistical reports in this chapter. In order to overcome the difficulty of accessing court records, I expanded my research efforts to courts across the entire Yogyakarta province, yielding a source base that demonstrates religious, class and geographic diversity.

In my use of court records I have attempted, like gender historian Patricia Crawford, to read “against the grain” in order to uncover the complexities of gender relations. Crawford notes that in early modern England, court documents reflected the recording practices of clerks, the shaping of litigants’ responses by lawyers and judges and the filtering of women’s words “through the barrier of men’s expectations.” Indonesian court cases present similar difficulties, as both recordings of proceedings (berita acara) and the judges’ decisions (salinan putusan) are summaries of evidence which have been typed and edited by the clerk of courts (panitera), rather than verbatim transcripts. I assume in my analysis that women’s and men’s testimonies may have been shaped differently by culturally assigned modes of gender behaviour, and by the context of the court. Javanese men have often had more experience in public speaking than women, and would frequently be addressing a predominantly male panel of judges. Court records, as texts produced predominantly by and for men, may be revealing of the gender ideologies underpinning notions of what constituted shame. In seeking women’s perspective in divorce, I am therefore attentive to how such ideologies may have shaped women’s presentations, and to considering the significance of silences or omissions in the court record.

I also apply this technique of “reading against the grain” to my analysis of the other sources used in the chapter. I understand legislation, departmental instructions, newspaper evidence, and published court cases to reflect state positions on divorce. The publication of

---

6 Ibid. 11.
7 Norma Sullivan, *Masters and Managers: A Study of Gender Relations in Urban Java, Women in Asia Publication Series* (St Leonards: Allen & Unwin, 1994) 84-86. Sullivan argues that Javanese boys are socialised from a young age to assume public roles in the community, which she compares to the paralysing shyness that strikes young women when they find themselves in situations involving adult male officials and dignitaries.
such documents was arguably directed towards reconfiguring citizens’ understandings of what aspects of divorce were shameful. However, I suggest that such records only come into existence in response to the counter-hegemonic, resistant views of some citizens. Court records, newspapers and oral evidence (particularly from employees of the state) also often exhibit subtle divergences from or resistances to the state discourses found in legislation. Both the content and the omissions of a particular text are therefore of equal significance in my analysis.

My use of oral history in this chapter also warrants further explanation. I use this material carefully, following historian Yvette Kopijn, who warns that the oral history interview is not homogenous in its meaning to interviewer and interviewee. For example, questions about individual experience may be answered in terms of the interviewee’s group identity, or avoided if they are considered inappropriate by the interviewee. In Kopijn’s study a Javanese informant, in answer to Kopijn’s question as to whether she had been married (unaware that her informant’s husband had died young), remarked that it was hard work making do in inflationary times. Kopijn therefore cautions that insufficiently critical or self-reflexive analyses of oral history interviews could “transform any oral narrative that is produced in a cross-cultural interview situation into a mirror that simply reflects Western assumptions, which is precisely what Briggs calls ‘communicative hegemony’.”

My own subject-position as a young, unmarried, Australian woman from a western cultural and academic background is particularly important in analysing how informants understood shame, as notions of status and shame greatly influenced what information they shared with me. In Java, emotions are usually hidden, conveyed by allusion or metaphor. Consequently, women’s narratives tended not to reveal emotions attached to the divorce, or aspects of their experience that might be considered shameful in Javanese terms. I have therefore tried to be alert to the issues that were and were not spoken of in interviews by highlighting possible meanings of silences in my analysis. On some occasions, I was able to obtain descriptions of a women’s divorce from both the woman herself and NGO workers handling the case, which overcame the obstacle of silences in one particular

---

narrative. I also tailored questions to suit different informants. Generalized questions about marriage and divorce in the abstract were posed to divorced women, which sometimes produced personal narratives. When interviewing judges and government officials, I asked positive questions about the role of the court in mediating and preventing marital conflict. There is a power differential and cultural gap inherent in the interview encounter which cannot be obliterated. However, both the responses and omissions engendered in the encounter may be fruitful for analysis, bearing in mind that the interview may have a different meaning to both interviewer and interviewee.

Finally, it should also be noted that (as stated in the Thesis Introduction) I use oral history in a qualitative, microhistorical manner. This study makes no claims to provide quantitative, empirical data on divorce. Rather, I closely analyse some women’s particular experiences of marriage and divorce, because this may offer new insights into state and litigant perceptions of gender and shame.

2. DEFINITIONS AND HISTORIOGRAPHY OF SHAME

Shame and honour are subjects that have traditionally been the province of anthropologists, rather than historians. Few historical studies have defined, charted or examined shame in Indonesia as an historical construct, in general or in the context of divorce. Rather, shame has been analysed either in anthropological and linguistic studies that concentrate on cultural constructions of shame and status, or in broader demographic and anthropological works that tangentially address the meanings attached to divorce. Below I define the term “shame” and demonstrate how I will employ this concept to address the lack of historicity in existing scholarship on this issue.

In this chapter, I use “shame” as a gloss for the Indonesian term *malu*, also expressed as *isin* in Javanese, themselves multivalent terms. I have built upon the frameworks provided by anthropological analyses of Java and other Asian societies dating from the 1960s to the mid-1990s which have shown that these terms are neither necessarily inherently negative nor individualised (although they may be). Many Asian societies place great importance on children learning how to display the appropriate level of modesty and deference, expressed in Malay and Indonesian as “having shame” (*malu*), in Javanese as “understanding shame”
(ngerti isin) and in Korea as “a sense of shame.” Displaying feelings of deference, shame or unworthiness are signs of virtue in certain situations because it indicates that one understands what is shameful, and knows how to behave properly.\textsuperscript{9} Anthropologist Ward Keeler argued in 1983 that in Java a person who behaved disrespectfully to another brought shame to themselves because they showed that they didn’t know how to behave. They also diminished the status of the recipient of their actions because it indicated to others that this person was not able to command respect or deference. Status is thus determined both by one’s own actions and the responses of others. In this context, the ability to concede defeat or give way (ngalah) is a highly valued attribute which can reclaim status for the “besieged” person.\textsuperscript{10}

I therefore understand shame to be a multi-layered concept which encompasses both positive notions of proper behaviour and the negative emotions associated with reduced status. This concept is further shaped by factors such as gender, religion, geographic location and historical time period. Applying this definition of shame to divorce is an original approach to analysing the actions of litigants, courts and the state, as I will demonstrate below in my examination of existing scholarship.

Proper ways of behaving in Java (that is, behaviours which evade shame and increase status) have been well documented. Anthropologist Clifford Geertz (who conducted fieldwork in the 1950s), and later political scientist Benedict Anderson in his famous thesis on Javanese power (based on research in the 1960s), have both explained how prestige and status are ascribed to those who exhibit halus (refined) characteristics, as opposed to kasar (coarse) attributes. Halus behaviour includes an ability to use polite, high-level Javanese, to exercise self-control over one’s emotions and physical desires (food, sex, sleep) and the ability to achieve and maintain a smooth equanimity in demeanour and actions (rukun, harmony) in oneself and within the wider community.\textsuperscript{11}


\textsuperscript{10} Keeler, "Shame and Stage Fright in Java," 156, 59-60.

Anthropological studies conducted in the 1980s, by Michael Peletz in Malaysia, and Suzanne Brenner and Ward Keeler in Java highlighted that cultural definitions of *halus* and *kasar* behaviour are shaped by gender. They argue that women are thought to be inherently less *halus* than men because they have greater passion (*nafsu*) and less reason (*akal*). Consequently, women are accorded lower social status. However, whilst dominant gender ideologies hold that women have lesser ascetic ability, self-control and power, this very lack of status sometimes enables women to speak or act in ways not open to men, which creates “communal status.” For example, Brenner shows that women’s aggressive market trading practices brings financial security and status to the family, and thus to themselves. Similarly, Keeler demonstrates that women can use gossip networks to facilitate the arrangement and refusal of a marriage offer without loss of face to the public negotiators, the fathers. However, Brenner and Peletz both also identify a counter-hegemonic gender ideology whereby women characterize men as having greater difficulty in restraining their passions. These analyses demonstrate that although high status is frequently defined and accessed by men, such definitions are not exhaustive. Rather, women may posit their own interpretations of status, in an effort to confront patriarchal definitions of shame. Therefore, in my analysis of divorce, I am attentive to the ways in which shame might be used differently by women and men, and have gender-specific significance.

Deferential behaviour (as an indicator of one’s appropriate understanding of shame) can also be understood as a strategy, which women in particular may use for their own benefit. This is an ambivalent strategy. Linguistic anthropologist Nancy Smith-Hefner argues that in domestic settings in the 1980s women often used higher-level Javanese when speaking to their husbands. Vice-versa, their husbands used lower-level Javanese in speaking to their wives. The women understood their speech behaviour as “statusful.”

---


However, their speech also helped to constitute male status which was projected into the public domain, where men, as more powerful, high-status social actors, used higher-level speech than women. Women’s use of deference therefore may achieve short-term benefits within the context of a particular life-event, such as divorce, but also serve to reinforce existing structures of power modelled on gender.

Specific analyses of divorce and its implications for shame and status have emerged primarily from the disciplines of anthropology and demography, and have highlighted a number of important facets of this issue. However, as these analyses have generally focused on the practicalities of marriage and divorce negotiation, an opportunity remains to scrutinize the role of the state in shaping Indonesian marriages, and to interrogate ways in which women’s negotiation of divorce might co-opt or resist state discourses of shame.

Studies of Java in the 1950s and 1960s also emphasise the primacy of preserving communal harmony. In this model, marital conflict posed a threat to the equanimity of the community as a whole. Divorce thus restored communal balance, hence the widespread academic view that it attracted little stigma for most Indonesians. It also functioned as a logical escape from parentally arranged marriages which some parents, as Hildred Geertz notes, actively encouraged in the interests of demonstrating that their daughter was marriageable. Consequently, demographers concur, divorce rates were as high as 50% in the 1950s.

Hildred Geertz’s classic study of the Javanese family also discerned class distinctions in attitudes towards divorce. Notably, using the much disputed tripology created by Clifford

---

Geertz, she found that *abangan* villagers (syncretic, “non-orthodox” Javanese Muslim peasantry) preferred divorce over “the ever-present danger of sickness which is seen as a consequence of internal turmoil.” *Santri* (“orthodox” Muslims, rural and urban based) considered divorce morally wrong but still had a high divorce rate. In contrast the *priyayi* (urban based, bureaucratic and aristocratic class), had more prestige and property at stake and so exhibited lower divorce rates than *abangan* and *santri*. One woman famously stated to Geertz that she would no more carry baskets on her back than consent to be divorced (divorce being an act characteristic of the lower classes, who lacked self control.)

Although Clifford Geertz’s view of Javanese social order has now been challenged, Hildred Geertz’s conclusions about the role of social position in determining behaviour, and the significance of the spiritual dimensions of personal conflict as an impetus for divorce, remain relevant to my analysis in the post-1974 period.

From the 1970s onwards, anthropologists and demographers have noted consistently decreasing rates of divorce, and an increasing stigma associated with this behaviour. Divorce rates had already declined to around 35% by 1975, independently of the Marriage Law, a change attributed to increased education, economic participation and social mobility that brought “acceptance of the negative middle-class value placed on divorce.” Micro-studies have demonstrated some diversity within this trend, which has generally been explained in classed terms. Anthropologist Patrick Guiness’ study of poor *kampung* (urban neighbourhood) residents in Yogyakarta in the 1970s found continuing high incidence of divorce, favoured in the interests of preserving familial and communal relations. In contrast, demographer Valerie Hull’s 1976 survey of a central Javanese village correlated rural middle class women’s growing reluctance to divorce with increased female education and financial dependence on husbands. In the 1980s and 1990s both officially registered

---


and unregistered incidences of divorce continued to decrease, although some have noted that higher rates of divorce continued to occur amongst the rural and urban poor.\(^{21}\)

A number of studies have examined how gender operated in the negotiation of divorce. Such studies have shown firstly that women have played an active role in seeking divorce, and secondly that state-produced statistics may not necessarily reveal the extent of women’s participation in divorce negotiations. For example, in anthropologist Hisako Nakamura’s micro-study of Muslim marriage and divorce in the Kota Gede district of Yogyakarta in the 1970s, approximately equal percentages of divorce suits were filed by men, by women or jointly. In contrast, demographer Gavin Jones’ found that court statistics in West Java between 1977 and 1989 revealed only a 5% rate of divorce suits filed by women, but suggested that this figure concealed the percentage of suits filed by men at the insistence of their wives, a common cultural practice of “female” initiated divorce.\(^{22}\)

There are few studies though which interrogate differences in social perceptions of male- and female-initiated divorce. Feminist anthropologists and sociologists such as Diane Wolf, Suzanne Brenner and Jutta Berninghausen and Birgit Kerstan have observed high levels of suspicion towards widows and divorcees and gossip about their sexual activities, but this issue has not been analysed in any depth by subsequent scholars.\(^{23}\)

This chapter interrogates a number of assumptions in existing scholarship on divorce, and addresses new questions that have rarely been examined by scholars. Both demographers and anthropologists concur that divorce rates have gradually decreased, and the stigma associated with divorce has increased, linking this to the rise of the middle classes. This scholarship has emphasised class and economic development as the primary determinants of changes in divorce behaviour. While these studies provide important context for this

---

\(^{21}\) Cammack, Young, and Heaton, "An Empirical Assessment of Divorce Law in Indonesia," 98, Jones, *Marriage and Divorce in Islamic South-East Asia* 208.

\(^{22}\) Cammack, Young, and Heaton, "The State, Religion and the Family in Indonesia: The Case of Divorce Reform," 178, Jones, Asari, and Duartika, "Divorce in West Java," 402, Hisako Nakamura, *Divorce in Java: A Study of the Dissolution of Marriage Among Javanese Muslims* (Yogyakarta: Gadjah Mada University Press, 1983) 67. In Nakamura’s study in Kota Gede, Yogyakarta, a third of cases were filed jointly, and a third each by husband or wife.

chapter, they have generally been lacking in historicity, have sometimes neglected the roles of gender in shaping divorce behaviours, and few have yet been concerned with the state’s direct involvement in stigmatising divorce. I would challenge the assumption that divorce was free of stigma in the 1950s, and ask whether women and men experienced divorce differently, and how this may have changed over time. Further, through an analysis of state policy and programmes, I also interrogate the role of the state in attaching shame to divorce. Given that the New Order regime was so paternalistic and intrusive, its success or otherwise in shaping marriage and divorce behaviours is an important issue which deserves exploration. Finally, I also approach the concept of shame itself as an historical construct, which is shaped by gender, class and time. Analysing how shame operated within divorce across an historical time period enables me to assess how successful or contested state ideologies were, and how cultural ideologies of shame may have persisted or changed.

The nature of sources employed, primarily court records of divorce and legislation, has required a creative approach towards the analysis of shame. In my research, I am focusing on the discursive uses of shame; its enshrinement in legislation by the state, its application by judges, and its strategic use in court by litigants. (A separate, ethnographic study of women’s feelings of shame associated with divorce is not possible here, but would be a fruitful site for future research.)

In my analysis, I take a microhistorical approach in order to examine individual experiences in court, an aspect of divorce which demographic studies by their very nature are unable to reveal. I apply the models of shame and status delineated by Brenner, Keeler and Peletz to analyse how discourses of shame were employed by female and male litigants, courts and the state between 1974 and 2005. In doing so, I seek to uncover how understandings of shame were shaped by the variables of gender, religion, class and location at different times. In particular, what were the consequences and meanings of women filing for divorce, and did this change over time?

3. State Regulation of Shame
Marriage and divorce in Indonesia entails the union and then separation of entire families with implications for local communal harmony and stability. Shame may arise not only
from the act of divorce, but from the conflict which marital discord brings into the community. Divorce therefore may not necessarily be assessed entirely negatively by Javanese, if it enables the restoration of the more highly valued communal harmony. In this section I will argue that the New Order state attempted to recast the act of divorce itself (as opposed to broader concepts of marital and communal discord) as inherently inappropriate or shameful, and damaging to the social fabric of the nation. In what practical ways did the state endeavour to link shame to divorce, how was this nuanced according to gender and what was the purpose of this effort? To answer these questions, I examine a Mahkamah Agung instruction, a published court case and one of the programmes of the semi-official marriage counselling body BP4. I use these sources as examples of ways in which the state could attempt to shape discourses about divorce, but do not present them as the definitive, or only, sources relevant to this topic. For example, the final case study in this section of the BP4-sponsored Model Mother Competition is used to illustrate some of the broader ways in which the state sought to entrench the notion of divorce as shameful, and shameful to women in particular.

Attaching shame exclusively to divorce required breaking the more flexible conceptual link (found within many Indonesian cultures) between shame and inappropriately managed conflict. This was attempted through a variety of informal and formal measures. In the first instance, legislative restrictions were introduced (the Marriage Law UU1/1974, Government Regulations on Civil Servants’ Marriage, PP10/1983 and PP45/1990) which valorised the nuclear family and overtly aimed to restrict access to divorce, particularly for women. This was supported by mass legal education programmes, control of the mass media and supplementary policy which attempted to guide court interpretations of the Marriage Law. Suharto’s wife, Ibu Tien, was also an active opponent of polygamy and divorce. She was supported on these issues by organisations such as the Civil Servants’ Wives Organisation, Dharma Wanita, a powerful state apparatus.

24 Wolf, Factory Daughters: Gender, Household Dynamics, and Rural Industrialization in Java 217. A number of anthropologists have noted incidences of divorces organised at the behest of the needs of the community. Wolf relates an anecdote of a husband in her field site in rural Central Java in the 1980s who was always having affairs, including when his wife was pregnant with their second child. The villagers initially threatened the husband with physical violence, but finally took him before the village head, where it was agreed that a divorce would occur after the birth.

25 For a more detailed discussion of legal education programmes, see Chapter 5.

Prior to the introduction of the Marriage Law, Islamic marriage was minimally regulated by the state. Muslim men who pronounced divorce (talak) were required simply to register this occurrence with the Office of Religious Affairs (Kantor Urusan Agama, KUA), in accordance with the Marriage Registration Laws of 1946 and 1954. Muslim women, following Islamic law, were required to seek the permission of a Religious Court Judge, frequently on the basis of a contravened ta’lik talak contract (see Thesis Introduction and Chapter 1). Consequently, Daniel Lev notes, women were the primary clientele of the Religious Courts and their claims were generally dealt with sympathetically and quickly.

Although one of the stated aims of the 1974 Marriage Law was to restrict access to divorce, this was not immediately reflected in the practices of courts, which continued to swiftly grant female requests for divorce. In 51 cases from the rural Wates Religious Court in 1965, 1967 and 1973, the divorces were granted on the day women filed the suit. Similarly, in 11 cases from the urban Yogyakarta Religious Court in 1975 and 20 cases from the Wates Religious Court in 1978, divorces were generally granted for contraventions of the ta’lik talak agreement after only one, or sometimes two or three court hearings over a period of a few weeks. By the early 1980s this had changed. Religious and State Courts took from a few months to a year to process divorce. What had caused

28 The division between Religious and State Courts was inherited from the Dutch, who established formal religious courts (priesterraad) in Indonesia in 1882. The jurisdiction of these courts was limited to marriage, divorce and inheritance and their decisions were not binding until they had been ratified by a judge in the secular court, the Landraad. Religious Courts were granted autonomous powers in 1989 after the enactment of the Religious Judicial Matters Law (Undang-Undang Peradilan Agama 7/1989). See M.B. Hooker, Indonesian Islam: Social Change Through Contemporary Fatawa, Southeast Asia Publications Series (Sydney and Honolulu: Asian Studies Association of Australia with Allen & Unwin and University of Hawai'i Press Honolulu, 2003) 13.
29 Lev, Islamic Courts in Indonesia 150.
30 "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," (1974), penjelasan umum (general elucidation) 4e.
31 For example, in a case from the Yogyakarta Religious Court in 1975, the wife filed for divorce on the basis of her husband not providing maintenance. The divorce was granted after two hearings over two weeks, and in the absence of her husband. "170/1975/PA.Yk: Ny E. v Saudara P.,” (Pengadilan Agama Yogyakarta, 1975).
this drastic increase in court processing time several years after the introduction of the Marriage Law?

Swift divorce did not align with the goals of the Marriage Law, to prevent marriage dissolution and preserve a “happy and permanent family” (“keluarga yang bahagia dan kekal”). I suggest that it was for this reason that courts across the country were instructed in 1981 on how to implement the law “properly”, through a Mahkamah Agung circular. The instruction criticised courts that had “irresponsibly” granted divorce without properly testing the claims, particularly in the case of grounds of irreconcilable conflict. Courts were commanded henceforth to follow strict investigative procedure, in particular by summoning family and close friends to provide evidence. Most serious of all, the circular noted, was that:

[the courts] have not investigated who caused the conflict; but this is a critical factor in the judge’s decision, considering that it is not possible for the person who caused the conflict to request a divorce on the grounds [provided in] article 19f of PP9/1975 [divorce on the grounds of irreconcilable conflict between husband and wife].

This clause demonstrated a new legal conceptualisation of divorce, in which fault was deemed to invalidate the right to request divorce. It simplistically re-framed the act of filing for divorce as “proper” behaviour, and so less shameful, only if the claimant was “innocent.”

The final injunction of this circular, that the person who “caused” the divorce could not request the divorce, had no legal basis in the Marriage Law or any of its supporting legislation. Instructions such as these exemplified the way in which the New Order state attempted to direct the interpretations of its laws. Indonesian statutes (Basic Laws, Undang-

33 "UU 1/1974," pasal (article) 1.
35 These grounds were detailed in "Peraturan Pemerintah Nomor 9 Tahun 1975 Tanggal 1 April 1975: Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," (1975), pasal 19f.
Undang, and Government Regulations, Peraturan Pemerintah) must be ratified by the parliament (Dewan Perwakilan Rakyat, People’s Representative Council, DPR). Where specific details of the basic law are unclear, their implementation is achieved through Presidential, Ministerial and Departmental Instructions and Circulars (termed variously Instruksi Presiden, Instruksi Menteri, Surat Keputusan Menteri, Surat Edaran).\(^\text{37}\) The advantage of this process, for the state, is that such instructions can be released immediately through the relevant department and do not have to be ratified by the DPR, an extremely lengthy process.

I therefore interpret the purpose of this internal instruction to be primarily to communicate to all courts that divorce was shameful to the state. This implicitly constructed the “perpetrator” of marital conflict as acting in opposition to the state and implied that only the “victims” of a marriage offence had a legal right to call upon state agencies (the court) for assistance.

Court cases that appeared before the Mahkamah Agung, some of which were published in its journal Varia Peradilan, also alerted lower courts and the broader legal and academic community to the ways in which the law should be interpreted. The cases selected for publication were generally atypical to some degree, illustrating appeals that had been won or rejected on unusual grounds or using new applications of the law. As Indonesia follows the civil-law system derived from continental Europe, judicial precedents are not binding. However a 1972 Mahkamah Agung instruction (Surat Edaran, or Circular Letter, No. 2) advised that published precedents (yurisprudensi) should be followed by Indonesian courts and in practice they have been used as a guide by judges and lawyers.\(^\text{38}\) The publication of these cases served as an indicator to courts of divorce judgements that were acceptable to the state. This is illustrated in a case from 1988, analysed below, which emphasised the “spirit” of the Marriage Law, at the expense of the explicit provisions of the law, and implied that divorce brought shame upon the nation.

---


In the criminal case of Bapak S versus the state, examined by the *Mahkamah Agung* in 1988, deliberations centred on whether Bapak S’ second religious marriage was recognisable under state law and therefore bigamous. The court heard that Bapak S had married Ibu M in Bandung in 1975. In 1987 Bapak S revealed that he had contracted a second unregistered Islamic (*siri*) marriage the previous year. In the ensuing uproar he divorced Ibu M (officially, through the Religious Court) and when his second wife Ibu H asked for a marriage certificate to validate their marriage, he divorced her too. Whilst divorce proceedings were underway, his first wife reported him to the police for bigamy which led to a criminal case at the West Bandung State Court. The State Court concluded that, in accordance with article 2(1) of the Marriage Law (which required a marriage to be conducted according to the religious or other beliefs of the couple), an unregistered religious marriage was legally valid. Because the husband had not obtained the permission of his first wife for polygamous marriage, as required under articles 3-5 of the Marriage Law, he had therefore contravened article 279 of the Criminal Code, which penalised anyone who married knowing that “their existing marriage or marriages poses a legal obstacle to this new marriage.” He was sentenced to five-months jail. This decision was overturned on appeal to the Bandung High Court, which deemed a marriage to be legal only if it fulfilled both religious law and the state requirements of registration. However, the state prosecution appealed to the *Mahkamah Agung*, and the jail sentence was reinstated.

In their statement of legal considerations contributing to the decision (*pertimbangan hukum*), the *Mahkamah Agung* judges declared that a marriage was valid for state purposes as long as it fulfilled religious law. They concluded that “the accused is a man who makes a hobby of marriage, which is not in accordance with the spirit and intent of the Marriage Law 1/1974. The accused has not shown any remorse.” This declaration underscored that the issue at stake for the court was not so much the legality of what constituted a valid marriage, as the symbolic significance of citizens who failed to conform to the state’s ideological prescriptions. As I suggested in Chapter 1, the Marriage Law was in part constructed in terms of protecting women and the institution of marriage from irresponsible

---


husbands. I would argue therefore that shame was invoked against Bapak S because he had transgressed the moral codes set up by the state and did not properly understand how to behave in his role as husband or as the state’s subject. As will be demonstrated in section five, these discourses of shame and protection also constrained women’s court actions, in part because a divorce-suit contravened the stereotype of a woman needing protection from male-initiated divorce.

The Mahkamah Agung’s decision that an unregistered Islamic marriage was legally valid was quite unusual, given the attention devoted by the New Order to the importance of conforming with state law generally and with the Marriage Law in particular.41 In 1983 the Yogyakarta Provincial Parliament (DPRD, Dewan Perwakilan Rakyat Daerah) conducted a special study into the implementation of the Marriage Law which found that illegal marriage practices in the Yogyakarta region, including the inner city, proliferated. This included men falsifying their marital status to the KUA as “bachelor” (jejaka) in order to marry polygamously without the court-approved permission of the first wife, falsification of marriage ages, unregistered Islamic marriage (kawin siri) and defacto living arrangements (kumpul kebo). The conclusions of the parliamentary study were judiciously publicised in the Yogyakarta daily newspaper, Kedaulatan Rakyat, noting that although “in general” the Marriage Law had been implemented as it should be (“berjalan sesuai ketentuan-ketentuan”), problems had occurred because “there are still citizens who do not understand the Marriage Law, and there are even some who consider it inconsequential”:

Due to the strictness of the Marriage Law’s rules, some negative results have emerged in the Yogyakarta Municipality, including de facto living arrangements, because the couple concerned cannot fulfil the requirements to get married. But the fact is they have already commenced a life effectively as husband and wife. There has arisen the common practice of "Kawin Kampung" ("Village Marriage"), that is, a living arrangement acknowledged and accepted as a husband and wife by the neighbours, even though they do not have a valid marriage certificate.42

41 Hadi Wahono, "Bantuan Hukum di Indonesia," Kedaulatan Rakyat, 6 August 1979. Wahono praised the inclusion of legal aid programmes in the Third Five Year Plan, noting that villagers lacked general legal knowledge and so often “took the law into their own hands” (‘main hakim sendiri’).
This latter comment, that *kawin kampung* has emerged as a common practice, re-casts long-standing customary marriage practices as a recent, shameful phenomenon and in so doing attempted to assert the legitimacy and success of the Marriage Law.

The 1988 *Mahkamah Agung* decision upheld the validity of Islamic marriage in its own right. However, in light of prevalent state discourses of the 1980s which placed primacy on adherence to state marriage law, I do not interpret this decision to be supportive of the autonomy of Islamic law. Whilst the two lower courts debated the strength of religious and state law, the *Mahkamah Agung* decision invoked the vaguely defined “spirit” of the Marriage Law. This was used to override the specific provisions of either religious or state marital law – the “spirit” being essentially a euphemism for the hegemonic power of the state.

Semi-official marriage counselling boards known most commonly by their acronym, BP4 (*Badan Penasihat Perkawinan dan Penyelesaian Perceraian*, Marriage Counselling and Divorce Resolution Board), were also used to reinforce the state’s position on the impropriety of divorce. They were established prior to the inception of the New Order state on an entirely voluntary basis in Jakarta and Bandung in 1954, and were then subsumed as a semi-government agency under the umbrella of the Department of Religion in 1961. In both of these eras these boards were headed by a male chairman, but were otherwise comprised primarily of female volunteers. The involvement of BP4 with Indonesian families became more formal after the release of a religious ministerial instruction in 1990 which made pre-marital counselling at BP4 compulsory. A lawyer interviewed for this research was under the impression that during the 1980s BP4

---

3 Pak Ahmad, Interview, 2 December 2004. The basis for the acronym changed a number of times, initially standing for “Marriage Counselling and Divorce Settlement Board” (*Badan Penasihat Perkawinan dan Penyelesaian Perceraian*), later becoming “Marriage, Dispute and Divorce Counselling Board” (*Badan Penasihat Perkawinan Perselisihan dan Perceraian*), and in its most recent incarnation, “Marriage Guidance and Preservation Counselling Board” (*Badan Penasihat Pembinaan dan Pelestarian Perkawinan*), an alteration that tellingly removed all reference to divorce.


6 "Peraturan Menteri Agama Republik Indonesia Nomor 2 Tahun 1990 Tentang Kewajiban Pegawai Pencatat Nikah," (1990), pasal 20(3).
counselling was also compulsory for those intending to divorce, although it is unclear whether this was a legal requirement or simply a situation that had arisen in response to more generalised state efforts to discourage divorce.  

BP4 also became the instrument for another New Order nation-building contest, the “Model Mother” (Ibu Teladan) competition. This was conducted initially only in Jakarta in 1972, before expanding to a national competition in 1976. The winning candidate was expected to have been married for at least 15 years (increased in 1976 to 25 years, and by 1992 to 30 years), to have children, be able to cook, sew, decorate the house, make herself beautiful for her husband, and assist in her husband’s career advancement whilst preventing him from engaging in corruption. If she had been widowed, she should have chosen not to remarry, but rather sacrificed her own desires for the sake of her children (“mengorbankan kepentingan pribadinya dengan tidak kawin lagi”). The first national prize ceremony was attended by President Suharto and his wife, and held in Taman Mini Indonesia Indah (Beautiful Indonesia Mini-Park), a theme park based on homogenised representations of ethnic housing styles around the archipelago, and a fitting location for a ceremony celebrating a domesticated, middle-class and homogenised femininity. In subsequent additions to the selection criteria made in 1992 in a Religious Ministerial Instruction, it was specified that Model Mothers should never have been divorced, must be obedient to the PKK programme (Pembinaan Kesejahteraan Keluarga, Family Welfare Guidance, which emphasised middle-class housewifely virtues), respect the husband as head of the household, keep the house clean and have a good understanding of state and Islamic marriage law. 

From its inception in 1973, the Model Mother competition promoted values that have been termed by Julia Suryakusuma in her influential thesis as “State Ibuism.” The term “Ibuism,” based on the Indonesian word Ibu, mother, was coined by Madelon Djadjadiningrat-Nieuwenhuis to symbolise a late nineteenth-century priyayi (Javanese

---

47 Pak Adnan, Personal Communication, 18 February 2005.
elite) ideology. This ideology supported the self-sacrificing actions of mothers which benefited family, community or state without accruing any power directly to the mother. Suryakusuma applied this concept to the New Order construction of femininity which she argues emphasised middle-class, bourgeois housewifeliness and was primarily urban-oriented. These values were replicated in the Model Mother Competition which linked good female citizenship explicitly with marital status. Adherence to the law was conflated with fulfilling Islamic injunctions on female marital duties; obedience to husbands reflected obedience to the state, and order and cleanliness in the home reflected order in the nation.

The state, and its apparatus, are often arenas for ideological contestation. Under the New Order, the judiciary and the bureaucracy frequently represented state interests. This is demonstrated by the Mahkamah Agung instruction of 1981, the Bapak S case of 1988 and the Model Mother Competitions that spanned from 1972 to the 1990s. These examples show that for the duration of its rule the New Order state, through its judiciary and bureaucracy, employed shame as a tool to restrict divorce. In the court rulings, and the competition, divorce was configured as an action that was anti-national, and therefore inappropriate and shameful. Such constructions of divorce implicitly underscored the obligations of the state to protect women from irresponsible men, and emphasised women’s role as moral guardians of the family and nation. I suggest that this was part of a strategy aimed at co-opting women to the state project, and exercising wider control over both female and male citizens through the vehicle of marriage and the family. Of course court instructions and state sponsored programmes were not the only methods of disseminating state ideologies. In this regard, the print media had an important role to play and I examine how shame was represented in this medium in the next section.

4. PRINT MEDIA REPRESENTATIONS OF SHAME

Under the New Order, the press was censored (see Thesis Introduction), a strategy directed at propagandising a broad cross-section of Indonesian society and retaining political power. If marriage was also employed by the state as a tool to reinforce legitimacy, it is important to understand how it was represented within the print media, in order to gain a deeper

understanding of discourses that were used by the state to exert control over citizens. In particular, did discourses of shame feature in the press coverage of marriage and divorce, and how did gender operate within this representation? How did such representations change over time, including after the demise of the New Order? To what extent did print media constructions of shame align with or resist state ideologies of shame? In my analysis I draw upon 83 newspaper articles, sourced primarily from the Yogyakarta Regional Library collection, comprising the Yogyakarta daily *Kedaulatan Rakyat*, national broadsheet *Kompas*, and smaller publications such as *Sinar Harapan* and *Pelita*. As none of these publications were indexed, I selected samples around years in which key marriage legislation or regulations were enacted (see Thesis Introduction.).

Press coverage of the Marriage Law itself frequently emphasised knowledge of law, encompassing avoidance of divorce, as the characteristics of good citizenship. Initially, in the mid-1970s, newspapers highlighted the smooth implementation of the law, possibly as a counter to the wave of protests that had surrounded the draft Marriage Law in 1973. However, by the early 1980s newspapers began to feature reports criticising the “increasing” rates of divorce, attributed to citizens’ insufficient knowledge of marriage law. An opinion piece in the Islamic daily *Pelita* in 1985, for example, noted that there were still difficulties in “popularising” the Marriage Law, proven by the continuing high numbers of “uneducated” villagers who did not register their marriages and divorces in the belief that they only needed to comply with Islamic law. This fact was correlated to “a certain social-cultural view amongst some in our society who justify divorce as something that is not disgraceful. This is no small factor in obstructing socialisation of the Marriage Law itself.” The Marriage Law regulated a range of issues pertaining to marriage. However, this article highlighted the eradication of divorce as the law’s primary goal, and characterized citizens who engaged in this practice as ignorant and disgraceful.

---

51 "UU Perkawinan di Jateng Tak Alami Hambatan," *Kedaulatan Rakyat*, 3 November 1975. The head of the Central Java provincial Department of Religion reported that there had been no obstacles to the implementation of the Marriage Law and its Implementing Regulations, enacted in October 1975.
52 Drs. Taufik Hamami, "Langkah Menuju Pemasyarakatan UU Perkawinan," *Pelita*, 7 August 1985. "dan adanya suatu pandangan nilai budaya sosial disebagian masyarakat kita, yang mewajarkan "perceraian" sebagai sesuatu hal yang tidak tercela, yang tidak kurang dominannya, dalam menghambat memasyarakatkan Undang-Undang Perkawinan itu sendiri."
In state discourse, women were deemed to have an important role to play in “socialising” state law, and this was well publicised in the print media. Ibu Tien Suharto, speaking at a KOWANI (Kongres Wanita Indonesia, Indonesian Women’s Congress) seminar in Jakarta in 1981 on the “The Role of Women in Improving Legal Awareness” criticised women’s limited knowledge of their legal rights:

Here the role of the housewife is absolutely dominant. Promoting an ordered, harmonious and peaceful life starts here. Education about the law is also rooted in and develops within the family. So if a wife and mother is too unfamiliar with the law, there is little hope that she will have an understanding of ordered life, or of mutual respect and appreciation for the achievements and dignity of other people, on the basis of law.53

This comment contrasted the ideal of national order, stability and harmony with an alternative of disorder, chaos and impropriety. This ideal was predicated upon women’s internalisation and transmission of state values to the family. The alternative, social chaos, was also linked to women’s insufficient knowledge of their civic duties, and revealed the primacy that was placed in some official circles on a subjugated form of female participation in nation-building.

Direct commentaries on the shame of divorce and the redemptive potential of the Marriage Law were balanced by morality tales that cautioned readers about the dangers of undermining the sanctity of the rumah tangga (household). The protagonist in such reports was usually female, with the male more often appearing as an outsider and figure of disruption in the family and village. This was illustrated in a salacious weekly feature, “Tragedi Keluarga dan Cinta” (Family and Love Tragedies), which appeared in the Yogyakarta daily Kedaulatan Rakyat from the late 1970s through to the 1990s. A routine set of scenarios were covered, typically involving unfaithful spouses and pregnant girls jilted at the marriage ceremony by already-married fiancés. These stories warned of the

social and legal consequences of sexual and marital disorder, and reminded readers of what constituted shame, and how it varied according to gender.

The most commonly featured stories focused on women’s shame, generally associated with sexual disgrace. For example, in 1979 a young girl was deserted at the last minute by her fiancé, an orphan from another village. Her family had repeatedly refused his constant requests for money, clothes and a bicycle, and now realized that they had been the victims of a con, “and the person who regretted it most was ‘Sm’ as she had lost her maidenhood.”

Another young woman’s wedding to a newcomer from Yogya, in the Kulon Progo district in 1989, was disrupted when a KUA official appeared and informed the gathering that the marriage could not proceed, as the man was already married:

Gin burst into tears when she heard this news, just as lightning struck in the full day light. She was not only ashamed before the village community, but what made her despair was that she was already five months pregnant. Without a husband she was disgraced. And she felt even worse when she heard that Sup, who had told her he was a civil servant, was actually just a street parking attendant in Yogyakarta.

In both reports, these men had behaved improperly but were firmly positioned as strangers, external to the village’s moral order. The focus was rather directed at the women, whose lack of sexual restraint and knowledge of legal procedure had led to their downfall. Individual shame was also shown to derive from the status of others, and to impact upon family and local community honour. “Gin,” who found herself unmarried and pregnant, felt even worse because she had selected a partner of low social status, a parking attendant. “Sm’s” whole family were ashamed, because they were duped by the young man and had allowed an extra-marital union to occur. In these scenarios, although shame accrued to men and the community, it was women who were the source of shame.

54 “Tragedi Cinta dan Keluarga,” Kedaulatan Rakyat, 17 September 1979. “dan paling menyesal adalah Sm karena ia telah kehilangan kegadisannya.” In these and other reports, people’s names were abbreviated to two or three letters, a journalistic practice to preserve anonymity.

In both the “Family and Love Tragedy” columns and other articles at this time, sexual disorder was shown to destabilise the community, demonstrated by sensationalist headlines such as “Kuningan Village: Wounded by News of Defacto Couples.” Consequently, around the later 1980s, some articles began to detail the legal action that should be taken in response to sexual misconduct. For example, a wife interviewed by the *Kedaulatan Rakyat* in 1989 had discovered that her husband was planning to marry again. She emphasised to the paper that she was aware of her legal rights, and knew that her husband needed her permission to marry again.

Les still firmly insists that she doesn't want to be a co-wife, let alone divorced, because there is no reason for the couple to separate. For the whole time she has been Tug's wife, they have always been harmonious, and in fact very rarely fight. So if her husband does marry again, then she is likely to take formal legal action and file a suit against him.

In this story, “Les” used the Marriage Law to avoid the shame of polygamy or divorce. This aligned with the state position on the purpose of the Marriage Law which was to “protect” wives from unscrupulous husbands and prevent disorderly arrangements such as “unreasonable” divorce and polygamy. In both this and the other articles, reporters focused particularly on women’s role in disgrace, either through their contribution to it or their attempts to mitigate it. In doing so, communal order was shown to be predicated upon the level of female conformity to state models of gender behaviour and shame.

In the post-New Order press, presentations of shame and divorce continue to be referenced primarily to female behaviour, which may have either negative or positive connotations. Female infidelity, for example, attracts disgrace and so was a negative form of shame. Print media portrayals of *sinetron* (television drama) actress Reza, who in 2004 divorced her husband of five years in 2004 and lost custody of her children to him, were generally unsympathetic as it was publicly known that she had committed adultery. However, the

---

positive press coverage of another celebrity divorce, between singers Dewi Yull and Ray Sahetapy, demonstrated a way in which women could manipulate discourses of shame to their advantage.

The press coverage of Dewi and Ray’s divorce focused particularly on Dewi Yull’s role in instigating the divorce after 24 years of marriage. This was because she was not willing to accommodate her husband’s desire for a second wife, choosing instead to divorce him so that he could remarry. In widely reported public comments, she maintained that she remained on good terms with Ray, and had made the decision to divorce because she was not mentally strong enough to withstand polygamy: “I don’t agree with polygamy, but even so I still respect those people who are able to do this.”  

She also underscored that she took divorce very seriously and had prayed and fasted before this decision, placing the ultimately responsibility for the outcome with God rather than in terms of her own personal agency. Her statements publicly absolved her husband of any-wrong doing, and located the reason for divorce firmly in her own inability to withstand her husband’s religiously-approved marital demands. At the same time, she emphasised the religiosiy underpinning her decision, which entailed forfeiting her own marital status in order to prevent her husband from committing adultery. An elderly female counsellor from the central Yogyakarta BP4 office commented to me that she understood Dewi Yull’s decision to be an act of self-sacrifice and a sign of refinement and gentility, “she sacrificed herself, that’s what’s known as gentle.”

This sacrifice implicitly challenged male rights to polygamy, but Dewi Yull’s public statements explicitly reinforced male status and prestige. By doing this, she was able to convert her own potential shame (regarding the divorce) into status.

---


61 Bu Mardhiyah, Interview, 28 October 2004. “dia mengorbankan diri, namanya gentle.”

Throughout the period analysed, print media depictions of shame generally aligned with state ideologies. From the early 1980s, the press consistently emphasised women’s role in implementing state law, and the importance of this effort to prevent personal, community and national shame. The “Family and Love Tragedy” columns depicted disruptive personal events, which are common enough in any community, in tragic terms. Through subtle reference to the involvement of state agencies (the KUA, the police, the courts), these regular columns consistently reinforced the view that certain behaviour was shameful to the state. Importantly, shame occurred in these stories when women transgressed moral codes, and was averted if they sought recourse with the state. In the celebrity divorce reports of 2004, the dominance of the state has receded but shame has continued to be linked with feminine transgression. This would suggest that the New Order’s gender-specific constructions of shame built upon pre-existing religious and cultural discourses. Having established that the state did make a sustained effort to link divorce with shame, I wish to examine the impact of this effort upon the negotiation of divorce, through an analysis of the ways litigants and judges used and applied discourses of shame.

5. USES OF SHAME IN COURT NEGOTIATIONS

Courts are arenas in which state laws and discourses may be both applied and contested. As such, divorce records may demonstrate not only how the state constructed shame, but also how female and male litigants used and understood these constructions in different ways. How did women and men employ discourses of shame, and how did courts respond to assertions of shame? Did courts’ application of the Marriage Law reflect or resist state definitions of shame, and did this change over time? Identifying how gender operated within litigant and court uses of shame, and at what times this changed may also enable me to posit new chronological milestones in the history of women’s interaction with the state. To analyse these questions, I use representative examples selected from a database of 151 cases collected from the Religious and State Courts in the districts of Yogyakarta, Sleman, Wonosari and Wates, dating from 1965 to 2005. The diversity of sources allows me to investigate how shame was used in a variety of contexts, in rural and urban courts, and by Muslim, Christian, upper, and lower class litigants. Time and length limitations of a doctoral-length dissertation have not permitted an ethnographic examination of individuals’ feelings of shame after divorce. Nor has it been possible to undertake a comparison between the public legal personas presented in court with the assessments of shame or
otherwise by the individual litigants themselves (both because of the period of time that has
passed after the court cases analysed, and because of my own ethical restrictions on
intrusion into the lives of individual litigants.)

5.1 Pre-Marriage Law Divorce: 1965-1973

In order to chart a trajectory of uses of shame in courts, it is important to provide a brief
overview of how this occurred before the enactment of the Marriage Law in 1974. To do
this, I analyse cases from a sample of 51 Muslim divorce records from the rural Wates
Religious Court for the years 1965, 1967 and 1973.63

Shame was a subtle, but significant, discourse in the Wates Religious Court records. As
men at this time did not require court permission to pronounce *talak*, all of the cases except
one were filed by women. The records themselves were brief (one page) and formulaic,
listing only the names of the litigants, grounds for divorce and the supporting statements of
witnesses. In all but two of the cases the grounds for divorce were “not being cared for”
(*tidak diurus*); the remaining two claimed their husband’s insanity. This claim was then
clarified with a statement of the period for which the husband had deserted his wife or
failed to provide maintenance, and sometimes further supported by an allegation of
violence or infidelity. In all cases, judges granted divorce on the grounds of the husband’s
contravention of the *ta’lik talak* (conditions attached to the marriage). I suggest that
reducing divorce claims to the impersonal language of contract also limited the more
personal aspects of attribution of fault and shame.64 Although the records are sparse, some
information can be gleaned regarding the function of shame in pre-1974 divorce.

Male passivity was an important feature of divorce in the 1960s and early 1970s. In some
cases, husbands were entirely absent from the proceedings but at other times, they would
send a letter or appear in court advising that they were willing to accept the divorce. In such
cases, this acquiescence was phrased as “*rela diputus kalah*,” that is, “willing to be
adjudged to have lost [in the question of divorce]” or “*merelakan diri*” (to submit oneself

---

63 As stated in the Thesis Introduction, this was the only court which could provide early records, and the
   years were selected on the basis of availability.

64 Case numbers consulted from the Wates Religious Court: 1965: 1-5, 10-11, 13-14, 17, 19, 20-22. 1967:45-
As Muslim husbands have the absolute right of repudiation, why would wives file for divorce if their husband was present?

Clifford Geertz explains passivity as an indication of high status, as one of his *priyayi* informants demonstrated. The informant had told Geertz that as a man of high-status he was embarrassed to divorce his wife “village style” and so instead exacerbated an existing conflict between an in-law and his wife. Sensing that her husband had withdrawn his support, she applied for the divorce herself. “The husband thus appeared to the *naib* [religious official] and to his neighbours to be the injured party and to be doing his wife a favor by divorcing her. A triumph, he said to me, of *alus* [refined] behavior.”

Thus, in Geertz’s model, agency in divorce reflects lower status. This point is reinforced in a practical manner through the exchange of property in Muslim divorce, (*mut’ah* from husband to wife in *talak*, and *iwadl* from wife to husband in *khuluk* divorce), which signifies publicly that the person pronouncing or filing for divorce accepts fault. However, unlike Geertz’s example, the Wates women and men were primarily labourers and farmers. This would suggest that marital hierarchies of status, ordered according to gender, transcended class boundaries. Although women in this sample were able to file for divorce, this did not necessarily indicate female empowerment. Rather, it served the purpose of accepting a level of shame for themselves and preserving status for their husbands.

5.2 The Early Impact of the Marriage Law: 1975-1980

Court records of divorce cases in the immediate years after 1974 display strong similarities with those prior to the enactment of the Marriage Law. In 49 Muslim cases from the urban Yogyakarta and rural Wates Religious Courts, most of the litigants were aged under 40-years and were farmers, petty traders and labourers. Although the court’s decision was framed in terms of the Marriage Law, the primary grounds for divorce continued to be men’s contravention of the *ta’lik talak*. For example, Ny S (27, student) filed for divorce in the Yogyakarta Religious Court in 1975 from her husband Saudara S (30). She claimed that he had broken his *ta’lik talak* by deserting her for the past nine months (which was the entire duration of their marriage), and had failed to provide her with obligatory...

66 Geertz, *The Religion of Java* 245.
maintenance (*nafkah wajib*) and pay her tuition fees, all of which he confirmed.\(^67\) In another example in Wates in 1978, Mbak S (21, labourer) filed for divorce from her husband Bapak Y (a 43-year-old labourer living in Yogyakarta) on the basis of his failure to provide maintenance. Bapak Y confirmed this fact, informing the court that he had another wife and could not afford to support them both and so was willing to accept the court’s decision.\(^68\) These female-initiated suits were characterized by brief marriages, emphasised the economic basis for the maintenance of a marriage and rarely referred to personal characteristics or faults of either spouse.

Thus, as in earlier records, female action in divorce contrasted with male acquiescence. All but four of the cases were filed by women, and all but two of the divorces were granted.\(^69\) This suggests a continuation of litigant and judicial practices, whereby women filed for divorce (low status) and men acknowledged defeat (high status).\(^70\) The formulaic character of both divorce claims and legal considerations also indicates that judges were concerned primarily with demonstrating that the grounds for divorce had been met, rather than preventing divorce. As I will demonstrate in the next sections, after 1980 courts began to demand a different use of shame that entailed the attribution of blame and fault.

5.3 Divorce During the Height of the New Order: 1984 – 1999

From the early 1980s, more “shameful” family affairs were included in divorce records, and the records themselves expanded from a one-page summary in the 1960s to a document of 30 pages or more.\(^71\) This change in the character of records coincided with a growing emphasis by the state on the shame of divorce (see sections three and four of this chapter), as both litigants and judges were under greater pressure to justify their actions. In my analysis below, I focus on two divorce cases which explicitly employed discourses of

---


\(^{70}\) It also raises questions regarding the extent to which men acknowledged the authority of the state in mediating divorce, a point that will be further discussed in Chapter 4.

\(^{71}\) 1999, rather than 1998, has been selected as the end point for the section dealing with the New Order, as this was when democratic elections were held to replace the interim government of B.J. Habibie. See Thesis Introduction.
shame, examining how women, men and judges used these discourses and how this differed from earlier cases. I have selected cases which reveal the operation of shame in heightened terms, from a sample of 38 cases from the Religious and State Courts in central urban Yogyakarta, and the semi urban-rural districts of Sleman and Bantul.

Divorce records from the 1980s and 1990s revealed competing dialogues of shame between husbands and wives, and between litigants and the court. Such a dichotomy was exposed in cases where requests for divorce were refused. This in fact was rare, but when suits were refused it was usually in the case of the wife’s opposition to the divorce. As I will demonstrate below, the discourses of shame employed by women and the courts to prevent divorce could differ significantly in their intent. In this section I also draw in non-Muslim cases, to demonstrate similar strategies that women of other religions also employed, and the similar discourses that were applied by both State (that is, non-Islamic) Courts and Religious Courts. I do this to highlight what I believe to be an overarching, gender-based state strategy to control women and families, that dove-tailed with pre-existing cultural and religious understandings of gender and shame.

In the divorce suit filed by Bapak P (Catholic) to the Yogyakarta State Court in 1985, it was claimed that his wife Ny P had suffered a mental illness since 1976, the year after they married. This illness manifested itself in the form of violence towards others, and sometimes breaking or burning objects. Consequently, she had been hospitalized in a psychiatric ward for the past two years, and could no longer fulfil her obligations as a wife. Bapak P advised that he would transfer all marital property to Ny C if the court would pronounce divorce. His request was vociferously opposed by Ny C, who insisted that she had been hospitalized for insomnia. She claimed to be now living with her parents, because Bapak P had remarried and had another child, with the permission of Ny C’s mother, a point that was supported by witnesses. She informed the court that despite all of these troubles, “I still yearn to live harmoniously [with my husband and child] in one household.” The judges found that Bapak P, a civil servant, had sought the permission of

73 "102/Pdt.G/1985/PN.Yk." “tetap mendambakan untuk tetap dapat hidup rukun dalam satu rumah tangga”
his superior to divorce. They claimed however that this permission was insufficient, as he should have obtained the authorization from his head office (Kantor Wilayah). Consequently, the court refused the request for divorce.

The legal justification for refusing the divorce was unconvincing, and should be understood as part of a broader state effort to impose certain versions of shame upon litigants. The Civil Servants’ Regulations (PP10/1983) simply state that a civil servant must obtain the prior permission of his or her superior in order to divorce.\textsuperscript{74} However, in light of the obvious evidence of Bapak P’s unofficial remarriage, which flouted the state’s prohibition on polygamy for civil servants, the court may have decided to expand the definition of what constituted permission. Ny C, by contrast, emphasised her desire to become a housewife again and avoid divorce, a sentiment that accorded with state constructions of femininity.

Even more interestingly, Ny C’s request to avoid divorce was granted in light of her husband’s accusations of her insanity. Historically, in Western legal contexts, male accusations of female insanity have not generally boded well for the success of female claims in court. However, in this instance, court concerns about male resistance to state regulations on polygamy and Ny C’s use of stereotypes of wifely obedience prevailed over the accusations of insanity.

There were thus two different assertions of shame within this court case. At one level, the two litigants were engaged in a dialogue between themselves about who was behaving improperly and therefore shamefully. Bapak P accused his wife of failing to fulfil her wifely obligations; Ny C accused her husband of infidelity and insisted that she was a normal “ibu rumah tangga” (housewife) who did “normal” housewifely activities at home such as reading the newspaper and listening to the radio. But at another level, the court was engaged in a dialogue with both litigants to determine whose behaviour was most shameful to the state. In this case, a man who remarried unofficially and so ignored state marriage laws was deemed to be more shameful in his behaviour (and therefore undeserving of the protection of the Marriage Law) than a woman who invoked a passive model of housewifery. In this case then, shame was used both strategically by a woman and by an

\textsuperscript{74} “Peraturan Pemerintah Nomor 10 Tahun 1983: Izin Perkawinan dan Perceraian Bagi Pegawai Negeri Sipil,” (1983), pasal 3(1).
apparatus of the state, which employed shame to emphasise the state’s power over transgressive subjects.

In the context of the state effort to reconfigure divorce as shameful and to exact conformity on this matter from its citizens, the earlier strategies used in divorce cases in the 1960s and early 1970s were no longer tenable. In particular, husbands’ public acquiescence of shame, a technique used to obtain divorce and assert higher male status (based on non-adversarial, halus, refined behaviour), lost its currency in the court. This occurred in 1989 in a Muslim case at the Bantul Religious Court. Mas D filed for divorce from his wife Ny S, whom he had married two years earlier in May 1987. He informed the court that they had never lived together, he had never provided maintenance and all reconciliation attempts by family and BP4 had failed. This was supported by Ny S who did not object to the divorce. However, the suit was rejected after just two court hearings:

The claimant cannot prove his case; rather what is proved is the exact opposite, namely that the claimant has not fulfilled his obligations as a husband by failing to provide nafkah to the defendant for the past 19 months such that in this case it is the claimant who is the main actor, so in accordance with article 19(f) of PP9/1975 the suit is refused.75

A divorce was only obtained five years later in late 1993 when the couple jointly consulted a legal aid NGO (Lembaga Konsultasi dan Bantuan Hukum-Universitas Islam Indonesia, LKBH-UII).76 They were advised to file again, using different grounds. This time, Ny S filed the second suit citing Mas D’s failure to support their child, and emphasising that she had fulfilled her wifely obligations by requesting they live together, but that her husband had refused.

Every time the claimant tries to talk to the respondent about living together in one household, for the sake of their child’s future, the respondent gives it absolutely no consideration and in fact gets angry.77

75 "256/Pdt/1989/PA.Btl: Mas D. v Ny S." "...Pemohon tidak dapat membuktikan dalilnya justru yang terbukti adalah sebaliknya, yaitu pemohon telah tidak memenuhi kewajibannya sebagai suami, dengan tidak memberi nafkah 19 bulan kepada Termohon sehingga Pemohon dalam kasus ini ada pihak yang berusaha, oleh karena itu sesuai dengan Pasal 10f PP9/1975 maka permohonan Pemohon ditolak.”
77 Ibid. “Bahwa setiap kali Penggugat datang menemui Tergugat guna membicarakan kelangsungan rumah tangganya untuk hidup bersama serta demi masa depan anaknya, Tergugat sama sekali tidak pernah menanggapinya dan justru Tergugat marah-marah.”
In the first suit, Mas D’s admission of fault was interpreted by the court as a deliberate attempt to avoid the responsibilities of marriage and abandon his wife. This challenged the ideological basis of the Marriage Law, which was to protect wives from desertion by irresponsible husbands. Therefore in the second suit, Ny S presented her claim in terms that conformed to state prescriptions on appropriate behaviour within marriage. Whilst detailing her husband’s lack of commitment to the family unit, she also underlined her own desire to leave her natal home to build a nuclear household (rumah tangga) and to remain in the marriage. Ny S’ emphasis on female domesticity and opposition to divorce (although it was she who requested it) ironically enabled her to obtain divorce, because it corresponded with state constructions of appropriate female behaviour.

Some significant details of this marriage (as recorded in the case files at LKBH-UII) were not submitted to either of the courts in 1989 or 1993. In May 1987 Ny S had found herself pregnant to an unknown father. Her parents forced a group of possible suspects to draw lots, and marry her for the sake of the child. It was agreed that after the child was born they would divorce. Thus the couple never lived together. Ny S remained in her parents’ house working as a farmer, and Mas D returned to his life as a university student in Yogyakarta. This illustrates partly the types of shame that litigants were willing to present in public forums, but also suggests some awareness on the litigants’ part that the court (and by extension the state) would not support such an agreement. The original case in 1989 also reveals further disparity between court and litigant expectations of the judicial process. Mas D’s original submission, which admitted fault, was similar to cases in earlier decades where husbands acknowledged their wife’s claims and acquiesced to divorce. By filing for the divorce, he assumed responsibility and shame for it. Both he and Ny S were unaware that openly admitting fault in court no longer signified an acceptance of responsibility for the divorce. Rather, it constituted a challenge to the state’s emphasis on the inherent disgrace of divorce itself.

In comparison to cases from the 1960s through to the early 1980s, both of these cases (one Catholic, one Muslim) demonstrated a greater level of mutual recrimination, more emphasis on who was legally culpable for the divorce, and more muted claims of mutual

78 Case notes from LKBH-UII filed with original court decision. Ibid.
willingness to divorce (even in the Mas D and Ny S case, where both parties genuinely wanted the divorce). This statement is true of many of the other cases in my sample for this time, and applied to Muslim and Christian divorce suits.\footnote{Ironically, because of the state’s emphasis on the shame of divorce and the necessity for courts to at least appear to limit the avenues for obtaining it, litigants were pressed into recriminations that revealed intimate and embarrassing details of their marital history. See for example ”79/Pdt.G/1988/PN.Yk: Ibu T. v Bapak O.,” (Pengadilan Negeri Yogyakarta, 1988). ”104/G/1989/PA.K: Mbak C. v Mas S.,” (Pengadilan Agama Kota Yogyakarta, 1989). ”152/1987/PA.Yk: Mbak T. v Mas S.,” (Pengadilan Agama Yogyakarta, 1987). In these cases the wives accused their husbands of gambling, deserting them at the birth of their child and visiting prostitutes. The husband in the second case accused his wife of being a bad mother and successfully won custody of the child, indicating the difficulties which court emphasis on recrimination and shame posed for women.} Emphasis on the husband’s household leadership and obligations to provide for the family was more drawn out. Wives’ claims, on the other hand, highlighted their desire to avoid divorce (regardless of whether or not this was in fact true), and their dedication to preserving the household and fulfilling their home-bound roles as mothers and wives. These models of behaviour accorded with a gender order supported by the state through the Marriage Law. Deviations from such models were presented by litigants in their court claims as inappropriate and shameful. Religious and State Courts, by occasionally refusing to grant divorce, also supported the use of gender-specific attributes of shame as a legal strategy. Court decisions at this time thus reflected the state position, which defined divorce as shameful, and constructed the category of “woman” as inherently opposed to divorce and therefore pro-marriage and pro-state. In the final section on court proceedings below, I will scrutinize the impact of New Order constructions of shame upon divorce after 1998, and ask whether the absence of an authoritarian state has changed the way shame is employed by litigants and judges.

5.4 Post-New Order: 2000-2005

In divorce cases from the 2000 to 2005 period, litigants and judges made explicit use of discourses of male household leadership and female domesticity, with shame shown to arise when this gender order was inverted, or subverted. These discourses were more entrenched, and employed more consistently, in the records of 2000 onwards than they had been at any previous period examined in this chapter. Did the use of shame during this period reflect continuity with the New Order state’s gender ideologies, or has the use of shame changed to reflect the assertion of religious and cultural autonomy in the wake of the New Order’s demise? If this latter hypothesis is correct, what might this reveal about
women’s place in the social order after the collapse of an authoritarian state? My analysis in this section is based upon 36 cases from the Religious and State courts of Wonosari (a mountainous rural district in the south of the province), Sleman and urban Yogyakarta. In order to highlight how gender operates in constructions of shame in different contexts, I focus below on a Muslim divorce case from rural Wonosari, and contrast this with other Christian and Muslim divorces from urban courts.

The Wonosari court is located in a more isolated and clearly rural area than the courts cited in other examples used in this chapter. Analysis of a case from the Wonosari court may illustrate whether or not there are differences in the way urban and rural dwellers negotiate divorce. It is a widely-held belief in Indonesia that urban dwellers have become increasingly “individu” whereas rural villagers are concerned with the harmony (rukun) of the local community as a whole. This is thought to influence the way in which disputes are resolved, as urban-dwellers are deemed more likely to press their own interests without compromise. A male judge interviewed at the Sleman Religious Court in 2004 summarised these differences as follows:

City people are more overt with their emotions, there’s no polite small talk, they’re not shy (malu) in front of the judge, but villagers are shy (malu) in front of the judge…..Villagers are more realistic, they just ask for divorce. City people are emotional, they will submit all the bad things about each other. That’s the difference between the village and the city.80

Below, I examine how a rural couple negotiated their divorce (selected from a sample of nine), analysing the allegations made by each spouse, how gender functioned within these allegations, and influenced the outcome of the case. In doing so, I seek to understand how and why litigants employed discourses of shame in particular ways. This will subsequently be compared to an urban divorce case.

In the Muslim divorce suit filed by Bapak S (52, civil servant) against his wife Ibu K (45, trader) in the Wonosari Religious Court in 2000, emphasis was placed on superior position of the husband within marriage. The couple had been married since 1973 and had five

children. Bapak S requested divorced on a number of grounds. He claimed that their relationship had begun to break down in 1991 when he found a love letter in Ibu K’s bag. The situation deteriorated from 1998 as Ibu K, forgetting her wifely obligations, began to sleep at her noodle stall at the market and refused to return home. Bapak S explained the basis for their conflict:

There is no compatibility between the claimant and the respondent, because the respondent is a show off who always seeks praise from others, is proud of her entrepreneurship and compares her earnings with that of the claimant. She values property more than the [wellbeing of] the household (rumah tangga), and she pays no attention to advice.81

Most recently, Ibu K had been charged with theft in 2000, a case that was under police investigation. He added that since she had been trading at the market, “she no longer has the spirit of a housewife (ibu rumah tangga) and pays no attention to the claimant as a husband.”82 Bapak S’ presentation of his wife’s transgressions drew upon both New Order and older Javanese constructions of shame. His accusations of Ibu K’s failure to recognize her husband’s household leadership corresponded with New Order notions of appropriate female behaviour, but his emphasis on her lack of modesty and unashamed pride in monetary pursuits reflected a specifically Javanese understanding of what constituted shameful behaviour (refer to section two of this chapter).

Ibu K’s response and counter-response (jawaban, duplik) justified her behaviour in terms of Bapak S’ inappropriate actions as a husband. She accused Bapak S of failing to educate her in religious matters (a primary responsibility of a Muslim husband), or to provide her with affection or maintenance (for which she made a counter claim for eight years of unpaid maintenance). Without any guidance or love she had been driven to have a relationship with another man (although she had not committed zina, adultery). Bapak S had also angered her by questioning the paternity of their child, which led to her sleeping at the market. Similarly, because Bapak S had refused to assist her to repay a seven million rupiah

82 Ibid., salinan putusan, 7. “Termohon setelah berdagang di pasar Wonosari tidak menjadi sebagai ibu rumah tangga dan tidak memperdulikan Pemohon sebagai suami.”
debt incurred for their child’s wedding in 1999, desperate had led her to steal money. This defence was founded upon both Islamic (and New Order) understandings of husbandly obligations, and Javanese cultural constructions of women as the more emotional sex who need male guidance and protection.

Despite the acrimonious nature of the accusations exchanged, the court’s decision was unremarkable. Divorce was granted, but the wife’s request for back-paid maintenance was refused. From the 1980s onwards, women frequently used the court to make counterclaims for unpaid maintenance but these claims were rarely granted. In part, this was simply practical, as only the very wealthiest of husbands were likely to be able to amass the funds to pay maintenance owing from many years or even decades. Even if courts did make such a pronouncement, they were almost impossible to enforce. Instead, Bapak S was simply ordered to make the recompense required of all Muslim husbands, which included three-months maintenance payments (nafkah iddah) of 300 000 rupiah, a divorce gift (mut’ah) of 300 000 rupiah and to cede two-thirds of his wage (which was 400 000 rupiah per month) to his ex-wife and children, in accordance with regulations on civil servants’ marriage (PP10/1983).83

Two important points may be drawn from the litigant accusations and the judges’ decision in the divorce case between Bapak S and Ibu K. Firstly, the recriminatory accusations challenge the stereotype which holds that rural litigants avoid conflict and prefer not to reveal personal or shameful details of their marriage in court. This may have been a legacy of the New Order state’s efforts to restrict divorce for divorce, which then overrode rural cultural predispositions towards minimising conflict. Secondly, the court made a fairly standard maintenance award, in spite of the accusations of disorderly and recalcitrant behaviour levelled at Ibu K by her husband. Many of the divorce cases from the late 1990s through to 2005 followed this pattern of extended accusations and property demands which ultimately concluded with a divorce and a small divorce gift to the wife (if the husband had filed the suit). If the outcome of such cases was almost pre-determined, what was the point of such a protracted legal process? This suggests that something other than economic

83 Ibid., 21.
capital is at stake in divorce proceedings, namely the prestige and status of litigants, the court and, implicitly, the state.

Insults to male prestige and status were frequent themes of men’s accusations against their wives in courts after 1998. This included suits made by Muslim and Christian husbands, in both urban and rural courts. For example, Bapak I (45, high school teacher) criticized his wife Ibu M, (38, housewife) in the rural Wonosari Religious Court in 2001 for scolding him in public and in front of his students, such that it caused him “both physical and spiritual suffering.”84 Bapak M (45, optometry shop owner) accused his wife Ibu P (35, housewife), in the urban Yogyakarta Religious Court in 2004 of being disobedient, a spendthrift and of swearing and cursing at him and revealing family secrets to their children and to other people. This was refuted by Ibu P who insisted that she had never revealed family secrets to others but rather “always held family secrets and honour in high esteem to others.”85 As Muslim husbands and wives are advised to guard the reputation of each other and not publicly disclose the failings of their spouse, an accusation that a wife has failed in this regard carries considerable cultural weight. Both of these suits were filed by men, which identified their wives as the sources of shame for their husbands. In both cases, the divorce was granted and the court awarded divorce gifts to the wives, suggesting that public recrimination partly motivated both men and women to exchange accusations.

Suits initiated by women contrasted to male divorce requests, in that women tended to place greater emphasis on their attempts to avoid divorce, in addition to detailing their husband’s failings. In a Christian example, Ibu D informed the Sleman State Court in 2003 that her husband of 34 years, Bapak L, had never provided for her or their three children and was “not reluctant to hit” her.86 He didn’t work, came home late at night, swore at her and had affairs with other women. Ibu D nonetheless concealed these problems, in the hope that divorce could be averted:

Over all these years of being treated badly by the respondent, the claimant still [thought it] better to be quiet, to give in and keep the household problems a secret from the family, in the hope that their marriage might withstand this trouble and remain intact. 87

Her hopes were misplaced as on 12 April 1995 he came to her workplace and hit her “in public, actions that made her feel very embarrassed in front of her colleagues.” 88 Following this incident, she and her children went to live with her parents and had never communicated with him again. Bapak L refused to attend the court, but sent a letter advising his willingness to divorce, which was subsequently granted by the court. In contrast to the male-initiated cases detailed above which targeted women’s behaviour, Ibu D focused on both her husband’s misdemeanours and her own attempts to avoid divorce. Significantly, her embarrassment over her marital situation led her to attempt to conceal the true situation even from her family. Her suit demonstrated that shame may be a constraining discourse for women both within and outside the court. While she used this shame to reinforce her claim to divorce, it had also functioned as a real constraint upon her ability to respond to her ill-treatment earlier, because of her fear of the responses of her family or the community.

Shame therefore was employed differently, and had a differing significance, for the court and for litigants. The state, having constructed through law the notion of divorce as shameful and destabilizing, had a vested interest in the appearance of attempting to restrict divorce. For litigants, on the other hand, the discourse of shame was used to achieve a number of goals through the divorce negotiations. Firstly, it could be used to reinforce claims for divorce or for monetary compensation. Secondly, it could also be employed to publicly address accusations made by the other spouse that might be perceived as shameful and so re-generate status (for example the disputed paternity of a child, the failure of a husband to pay for his child’s wedding, the wife’s neglect of the household). Within the limits of this study, no great variation in litigants’ use of shame was found in different religious or geographic contexts. Rather, it was gender which was a key determinant of how shame might be employed. Male litigants tended to exclusively emphasise shameful

87 "Bahwa dari sekian tahun diperlakukan dengan tidak baik oleh Tergugat, Penggugat lebih baik diam, mengalah dan menutupi persoalan rumah tangga kepada keluarga dengan harapan rumah tangga Penggugat dan Tergugat tetap bertahan dan utuh."
behaviour of their wives, which consisted of transgressions against male authority. In contrast, female litigants accused their husbands of improper actions but also needed to defend themselves against accusations of shaming their husbands. Arguably, men have less need for the court to restore status because they implicitly already have it by virtue of their gender. Women, on the other hand, are not thought to have the same status as men, and so may attempt to use courts to confront these social ascriptions of status. In this sense, women have much more both to gain and to lose in their use of the courts.

I asked earlier in the chapter whether the absence of an authoritarian state may have changed the way litigants employed discourses of shame. My analysis of post New-Order cases above would suggest that in some ways the influence of New Order ideologies of gender order have persisted. However, the collapse of that state has also opened up possibilities for the assertion of Islamic or Javanese cultural conceptualisations of gender order, which have been employed by men in ways that are not necessarily any more beneficial to women. Between the mid-1960s and 2005, the use of shame in divorce cases gradually changed from an implicit discourse, to an explicit strategy employed by both litigants and the court. It was used by both male and female litigants to attempt to obtain or prevent divorce, or by female litigants to ensure a financial settlement was reached. It was also used by the state to attempt to subtly change the way divorce was understood in society, and to change the way men and women viewed female roles in marriage. I suggest however that these changes mask an element of continuity that this history of court uses of shame has revealed. That is, that regardless of the ways in which expressions of shame might vary, behaviour which is deemed shameful is always defined as the opposite of male behaviour, and socially assessed according to its impact upon male status.

My analysis also suggests that major political milestones, such as the enactment of the Marriage Law in 1974, and the overthrow of the Suharto regime in 1998, may not necessarily signify changes in women’s social status. Indeed, an entirely differently chronology might be required to reflect women’s experience of social change. The changes in the way shame was used in divorce cases suggest that the early 1980s was a key historical moment for Indonesian women when state definitions of their roles in marriage were more rigidly applied in court. Moreover, although the post-Suharto era has been marked in some ways by positive developments for women, this is not yet the case within
the courts. In the final section below, I examine the influence of dominant state, religious and cultural constructions of shame upon women’s own perceptions of divorce, highlighting methods they use to negotiate these constructions.

6. SHAME IN WOMEN’S ORAL NARRATIVES, 2004 – 2005

In the preceding sections of the chapter I have discussed how the state constructed shame, and how this was used and applied in courts. These constructions of shame were predicated upon female transgression from a domesticated model of femininity, and positioned the ideal woman within marriage. This section uses women’s oral narratives of divorce experiences (gathered in 2004 and 2005) to interrogate how women negotiated these discourses, and asks whether they could conceptualise and use shame in a way that resisted hegemonic gender ideologies.

In discussions about divorce with informants, two major themes repeatedly surfaced: the shame associated with divorce in the past compared with present high divorce rates which were attributed to the disappearance of traditional taboos on divorce on the one hand, and society’s continued negative perception of divorced women on the other.89 I will discuss this first point in greater detail in Chapter 6, as it relates to the cultural memory of divorce and its relationship to identity. In this section, I concentrate on the second issue, how informants viewed divorce in relation to women. This section uses representative extracts from interviews conducted in Yogyakarta in 2004 and 2005 with two middle-class divorced Muslim women, and four lower-class divorced Muslim kampung (urban neighbourhood) women, 2 nyai (female Muslim religious authority) and a female BP4 volunteer.90 Because of my own status as an unmarried Australian woman, interviews with divorced men were

---

89 I acknowledge (as I have outlined earlier in the chapter) that divorce was frequent amongst the Javanese peasantry. However, the perception of the small sample of women whom I interviewed, who were from middle class and working class backgrounds, was that divorce in the past was rare and taboo. In stating this, I am not suggesting that this is empirically true. Rather, I provide these comments as an illustration of the permeability of memory, and the influence of contemporary discourses on shame upon perceptions of the past.

90 A nyai is the wife of a kyai, a male Islamic religious authority who is often a head of an Islamic school, or pesantren. Lies Marcoes argues that the nyai “owes her influence in the first place to the status of her husband (or her father, who in many cases also was a kyai), but may considerably increase her status by her own efforts.” Marcoes distinguished a nyai, who “cannot be separated from her husband’s charisma and prestige” from an ustazah, who is an independent female religious teacher in her own right. See Lies Marcoes, “The Female Preacher as a Mediator in Religion: A Case Study in Jakarta and West Java,” in Women and Mediation in Indonesia, ed. Sita van Bemmelen, et al. (Leiden: KITLV Press, 1992), 205.
more difficult to negotiate culturally and so I chose to focus exclusively on female perspectives.

The view that divorced women are stigmatised was expressed repeatedly by both men and women, and applied to both the past and present. Regardless of economic standing, informants often commented that society is suspicious of divorcees (*janda*), especially a young divorcee, as she might try to steal other women’s husbands.91 This image of the “*janda genit*” (flirtatious divorcee) is one that is strongly entrenched within the public discourse on divorcees. In Walter Williams’ collection of Javanese life narratives, one of his elderly respondents had married four times (in the 1940s and 1950s):

> After he left I was a divorcee until a *dalang* puppeteer with five children proposed to me. In fact, I did not have any courage to get married again, but being a divorcee had created big problems for me. People used to gossip a lot about me. They accused me of being a woman who liked to chase young men or entice away somebody's husband. My profession as a singer has a reputation of being cheap.92

This respondent attributed negative gossip to the poor reputation of her occupation. However, many of my informants expressed similar views of divorcees. Bu Firyal, a *nyai* at an Islamic school (*pesantren*) in central Yogyakarta explained that “people who divorce are seen to be bad, especially women – people see the wife as the bad one.”93 Similarly, lawyers at Rifka Annisa (a women’s legal aid NGO based in Yogyakarta) noted that they often had to convince their clients that they should not feel ashamed (*tidak perlu malu*) of being divorced.94 Bu Ndari, a middle-class Muslim client of LBH-Apik (also a women’s legal aid NGO) who was preparing for divorce, had consulted with a local *kyai* (male religious leader) beforehand, and was warned that she should be prepared to be viewed as “bad, crazy” ("*jelek, miring*”).95 The frequent use of such words in reference to divorcees thus necessitates women’s careful use of social notions of shame and status in their divorce negotiations.

---

91 Mas Teguh, Personal Communication, 26 August 2004.
93 Bu Firyal, Interview, 30 July 2004. “*orang yang bercerai dianggap jelek, paling wanita - menganggap buruk pada isteri.*”
94 Bu Novi, Interview, 22 October 2004.
95 Bu Ndari, Interview, 8 December 2004.
Because of the negative connotations attached to divorcees, women tended to downplay their own agency in seeking a divorce. Moreover, as emotional control is a highly valued Javanese cultural attribute, women often concealed the emotions attached to the divorce. For example, a kampung Muslim woman, Bu Trias, claimed to have been “calm, I didn’t shed a single tear” (“tenang, nggak ada titik air mata pun”) when she heard that her husband had taken a second wife. She characterized her suit for divorce as an action that she was forced into by her husband:

> Early in our marriage we made a commitment [that the marriage] would not break up as long as neither of us had another love interest. I am holding to my commitment, you see?

Bu Trias’ agency in seeking divorce was rationalised as a matter of honour, of adhering to one’s commitments. Her self-presentation as someone with spiritual strength and prestige (“mental saya kuat”) is understandable in the context of negative social constructions of divorcees. However, in my previous discussions about the case with Bu Dominika, a staff member at the women’s NGO handling the case who lived in the same kampung as Bu Trias, it had been revealed that Bu Trias had spent two days at home crying when she discovered that her husband had married again. The two versions of the same narrative, by revealing what aspect of Bu Trias’ narrative was hidden to me as an outsider, also revealed how Bu Trias attempted to maintain a level of public status and prestige. She did this by exercising control over her emotions in public and distancing herself from the emotional import of the divorce, explaining her actions in terms of commitment and obligations.

One of the few tools available to women to counter negative perceptions of divorcees was to reinforce public expectations of their roles as mothers. Divorced kampung Muslim women such as Bu Sarwendah (who had been selling iced drinks in the central Bering Harjo market since being deserted by her husband 13 years ago) agreed that “there may be village gossip if the divorcee is flirtatious” but it “depends on the person. If they are flirtatious, are seeking money, these are the people who are teased. But I just think about

---

96 Bu Trias, Interview, 7 January 2005.“Awal pernikahan ada komit, tidak berantakan selama tidak ada WIL/PIL. Saya kan menegang komit saya.”

97 Bu Ratna and Bu Dominika, Personal Communication, 3 December 2004.
my children.” 98 Another, Bu Arum, (a bakmi noodle seller who divorced her husband in 1991) insisted that there would be no problems if the divorcee was careful to “guard their reputation” (“menjaga imej”). 99 However, these two women’s separation of the self from a stereotype confirms the prevalence of that very stereotype.

Sometimes women would deny that there was any greater shame in divorce for women than for men. Mbak Trisna, a middle-class professional woman originally from East Java who had divorced twice commented on her deep feelings of shame after her second divorce, noting that it was “more respectable to be separated by death than divorce.”100 However, when I asked whether this would apply to women, or men as well, she replied “both.” She had implicitly commented on the stigma that applied to her as a divorced woman, but by insisting that both men and women bore shame from divorce she actively attempted to deconstruct the hegemonic association of shame with divorcees.

Subtle resistance to the ideology of female shame in divorce was also revealed in an interview with a state employee. Although I have argued that the state perpetuated its own discourse of shame, there are nonetheless people within the state system who might use this discourse in counter-discursive ways. An elderly female counsellor (and former judge) at the Yogyakarta BP4, Bu Mardhiyah, related the story of a couple she had forwarded onto the Religious Court because “the husband talked about love but he was verbally abusive, and that’s not love.” She followed this with the advice that “with good communication anyone at all can be reconciled, can reach an agreement.”101 Rather than characterising the wife’s request for divorce as shameful, she interpreted the husband’s behaviour as improper and warranting divorce, the husband’s actions being shameful, rather than the divorce. But in her subsequent comment on the positive potential for all conflicts to be resolved, she expressed a prevalent Javanese view which values avoidance of conflict and the preservation of the family unit. Using this discourse made her earlier comment about the husband’s failings more acceptable, and enabled her to express a differently constructed view of shame, which targeted men rather than women.

---


100 Mbak Trisna, Interview, 29 August 2004. “Lebih terhormat berpisah mati daripada cerai hidup”

101 Bu Mardhiyah. “Suami omong cinta, tapi kasar [omong kotor, kasar], itu bukan cinta.” “Dalam komunikasi yang baik siapa saja bisa didamaikan, dimusyawarah.”
Women’s explanations of shame generally explicitly defer to dominant gender ideologies, but they also often contain subtle, counter-hegemonic ideas. They do acknowledge that divorcees are stigmatised, but they also attempt to disassociate themselves personally from that shame (as did Bu Sarwendah and Bu Arum) or to associate the shame of divorce with both men and women, as Mbak Trisna attempted. And as the last example of Bu Mardhiyah suggests, state discourses are not necessarily applied uniformly by the state’s employees. Even overt conformity with dominant state or cultural gender ideologies may conceal a level of resistance, an important issue for consideration in Java where indirectness or polite dissimulation is valued. This notion was symbolised by Bu Warsito, my garrulous and extroverted boarding house owner who proudly told me many times that both of her teenage daughters were very shy (malu) and would never speak to any of the students staying in the boarding house, explicitly supporting the high value dominant cultural discourses placed upon women having more shame. Her actions however were entirely counter-discursive, as she forced her daughters to attend after-school journalism club and numerous other extra-curricular activities in the hope, she once commented, of making them less shy. This encapsulates neatly a point I have tried to suggest in the above analysis. Namely, that while women may publicly adhere to state sanctioned notions of shame, this may sometimes be simply a strategy to maintain public harmony, which enables them to achieve their own goals to whatever extent is possible.

7. CONCLUSION

In this chapter, I have shown that shame was defined and used in different ways by the state, and by male and female litigants. Shame was used by the state to restrict divorce, an effort that countered common practices of frequent divorce but built upon existing negative cultural constructions of female divorcees. It was also used as a strategy by litigants to support their own claims (such as a wife’s claims for property, or a husband’s attempts to avoid their propertied obligations). I have suggested that although expressions of shame have changed depending on the particular state formation at different historical time periods, gender was always the primary determinant of what constituted shame and how it would be used.
New Order constructions of shame, demonstrated in my analysis of state policy, the Model Mother Competition and the print media, blatantly defined female-initiated divorce as shameful. However, I have argued that this was also the case prior to the rule of the New Order. This shame was simply manifested in a different way, whereby men could preserve status by allowing women to file for divorce instead. As courts were embedded within this gender order which privileged male passivity and status, divorce hearings in the 1960s through to the late 1970s required minimal levels of personal detail. Instead, they were limited to the formulaic language of the *talik talak* contract. As the state became more paternalistic from the early 1980s and explicitly emphasised the impropriety of women attempting to escape marriage, so too did divorce records begin to reveal greater detail about the fault of each spouse. From this time, men tended to make claims about public humiliation, insults to their status as “head of the household” and wives’ infidelity, while women’s claims tended to focus on ways in which men had behaved improperly as husbands (by not providing maintenance, failing to educate their wives in religious matters, being violent). The central focus of court hearings across the period analysed was generally directed implicitly towards how marital conflict and divorce affected men’s superior social status. This trend occurred in both rural and urban courts, and in both Christian and Muslim divorce cases. Changes in divorce records between the mid-1960s and 2005 therefore reflect a change in public expressions of shame rather than a change in the underlying gender-hierarchy of shame.

My analysis has also shown that women did attempt to use discourses of shame to their benefit. Frequently, this could be done by positioning themselves as opposed to divorce, which enabled them to obtain divorce, or to support their claims to divorce gifts. As there was generally very little property at stake in divorce, I claimed that women used courts to make public statements which might justify their actions within marriage or counter their husband’s accusations. This constituted an attempt to regenerate status, which was more important for women than men, as men by virtue of their gender already had a higher social standing.

The New Order predicated its ideology of shame upon female subordination to male authority. This ideology was in part adapted from and expanded upon existing Islamic and Javanese conceptualisations of gender hierarchy. However, such conceptualisations were
not exhaustive. Extending the themes of this chapter, in the next chapter I examine how the discourse of marital rights and obligations could be interpreted and used in both hegemonic and counter-hegemonic ways.
CHAPTER 4

Constructing and Negotiating Marital Rights and Obligations

States in numerous cultural and historical milieus have frequently correlated the stability of the nation with the institution of marriage. In this paradigm, the rights and responsibilities of women within marriage are pivotal, as they are related to the reproduction and constitution of the nation-state itself. Divorced women challenge this relationship between the state and its female citizens. Consequently, the level of women’s access to their rights in divorce may reveal the dominance or otherwise of ideologies of female marital (and therefore civic) obligations. This in turn may shed light on the extent to which state, religious and cultural (male) structures of authority use gender hierarchies to reinforce male political and social power. The New Order construction of a subordinate female citizen has been well documented by feminist scholars. This invites further analysis of the critical relationship between marital rights and obligations and the legitimation of state power.

Having established in Chapter 3 that the New Order state actively sought to discourage divorce, particularly if instigated by women, this chapter seeks to uncover how the New Order constructed notions of women’s and men’s rights and obligations in marriage and divorce and what this implied both for the state’s efforts to establish legitimacy and for the broader distribution of social and political power. My study approaches this issue from an historical perspective, and as in all of the chapters of this thesis, seeks to identify whether women’s experience of historical change reveals different milestones to those used in standard political chronologies.

This chapter explores discourses of marital rights and obligations through three major themes; state and Islamic constructions of rights and obligations, and court and litigant uses of these discourses. I investigate these themes in five sections, using a range of sources including newspaper reports, legislation, court records, Islamic tracts and oral history. In the first section of the chapter, I analyse the scholarly literature that has addressed more generalised notions of civic rights and duties, and Indonesian women’s social obligations. In doing so, I wish to highlight important analyses of Indonesian women’s social rights; especially those of anthropologist Norma Sullivan and demonstrate how this can be applied fruitfully to my analysis of divorce. Secondly, I wish to understand how the New Order
state constructed and disseminated ideologies of marital rights and obligations, analysed in section two. In particular, how were women’s marital obligations related to their duties as citizens, and how did the discourses of shame discussed in Chapter 3 inform these state constructions of duty? As the state frequently located its prescriptions on gender within cultural and religious frameworks, in section three I ask how marital rights and duties have been constructed within Indonesian Islamic discourses. Here, I do not intend to engage in Qur’anic analysis, but rather am interested specifically in Indonesian interpretations of Islamic law, and how gender operated within these interpretations. This informs my subsequent analysis in sections four and five on court and litigant uses of discourses of marital rights and obligations. Section four asks how women and men used these discourses in court, and how women’s access to their rights changed over time. Specifically, were discourses of wifely obligations used against women by their husbands and by courts, or were women able to manipulate these discourses strategically? Section five uses oral history to examine how women and men from a range of socio-economic and religious backgrounds understand their marital rights and obligations, and what this might imply about the influence or otherwise of official discourses.

1. Definitions and Historiography of Rights and Obligations

Observers of Indonesia have long noted that notions of individual rights are subordinate to communal obligations.¹ In Indonesia and elsewhere, marriage has been identified as one of the major indicators of an individual’s fulfillment of their obligations to the local community.² Authoritarian states such as the New Order also invested communal obligations such as marriage with national significance, but the particular nexus between marriage and state rule has thus far been under researched. Below, I will define how I use the terms “rights” and “obligations” in this chapter before assessing existing literature that

---


has addressed this discourse, highlighting the application of these studies to my interrogation of marriage and its relationship to state legitimacy.

The Indonesian terms *hak* (right) and *kewajiban* (obligation) are derived from Arabic, and are entrenched concepts within both Islamic and indigenous discourses on the nature of the relationship between humans, and between humans and God. The terms thus carry deep moral and communal connotations. When employed in divorce suits, both men and women use these terms as much to refer to intangible rights such as conjugal access and rights to respectful treatment, as they do to request tangible property or maintenance. In this chapter, I therefore use “rights” to refer to the claims one spouse may make upon the personhood or property of the other, and “obligations” to refer to the requirements of each spouse to meet such claims. It is assumed throughout that ideologies of rights and obligations are always further defined by gender.

In societies which privilege the rights of the community, the assertion of individual rights may be particularly difficult. Indonesian legal scholar Satjipto Rahardjo contends that “to impose one's individuality is considered by some to be an offence against harmonious communal life.”3 This proposition raises questions about the significance of demands for rights in divorce cases, and the influence of gender upon a litigant’s ability to make such claims.

Feminist scholars have discerned that communal obligations are ordered according to gender, and therefore determine women’s access to social power. Sociologist Siti Kusujiarti notes, for example, that Javanese women are often referred to as *kanca wingking* (“companion in the back” – referring to women’s domestic role which locates them at the back of the house preparing food). She contends that women are constrained by this role because of “Javanese values stressing order, acceptance (*nrima*), hierarchical relations, respect, and harmony [which] serve as multiple sources of domination for Javanese women.”4 Moreover, as other anthropologists have found, there is often greater social pressure upon women than men to fulfil their obligations. German anthropologists Jutta

---


4 Siti Kusujiarti, "Hidden Power in Gender Relations Among Indonesians: A Case Study in a Javanese Village, Indonesia" (PhD, University of Kentucky, 1995) 13.
Berninghausen and Birgit Kerstan, in their study of a village in Central Java in the late 1980s, identified greater freedom accorded to men to spend money on themselves (cigarettes, alcohol, prostitutes, which sometimes led to the neglect of their familial financial obligations), compared to women who were encouraged to be modest and self-sacrificing. Diane Wolf points out that Javanese women’s much-vaunted control of domestic finances should be viewed in light of “the more likely reality that many husbands shirk or may not be able to meet financial responsibilities, leaving the question of daily income, food, and other needs to their wives.” Norma Sullivan argues even further that because of men’s superior social position, their neglect of their obligations did not necessarily attract overt community disapproval. Instead:

Most women will go to enormous trouble to avoid causing their menfolk loss of face. Even the wives of the laziest and most useless men will not talk openly about duties they themselves perform which could be seen as part of their spouses’ male responsibilities.

Thus, women’s obligations are partly a function of their inferior social status, which in turn constrains their ability to claim their individual rights, a point that has application for my analysis of divorce.

This chapter scrutinizes the historical production of discourses of rights and obligations. This has been noted in a general sense by anthropologists such as Suzanne Brenner and Norma Sullivan. Brenner, for example, views New Order public discourse on the “phenomenon” of career women (wanita karier) as part of a deliberate state strategy to construct domesticity as the “traditional” condition for women. Sullivan suggests that this state emphasis on middle-class, housebound femininity drew upon Javanese discourses

---

7 Norma Sullivan, Masters and Managers: A Study of Gender Relations in Urban Java, Women in Asia Publication Series (St Leonards: Allen & Unwin, 1994) 33, 146. Some of Sullivan’s middle class informants flatly denied their own money-making activities such as sewing, cleaning, selling home-cooked food because it was important to their own sense of identity that men be seen as providers.
of men’s and women’s different but complementary and equal roles within society.\textsuperscript{9} This ideology, Sullivan contends, functioned at both a local and state level to conceal women’s lesser social power and so reinforce a gendered social hierarchy.\textsuperscript{10} Notions of separate but equal gender roles also featured explicitly in definitions of rights and obligations in the Marriage Law, as well as in public representations of women’s social obligations and in litigant claims made in divorce cases. My chapter therefore takes Sullivan’s thesis of separate but equal gender roles as an entry point into my analysis of divorce, then explores how this ideology was used by the state, courts and litigants, and how it changed over time.

The feminist scholars discussed here have identified the significance to the state of women’s roles as wives and mothers. Such findings invite further analysis of the specific nuances of women’s rights and obligations in marriage and divorce, the ways in which these nuances changed over time and how they might have been used to reinforce male social and political power. My study therefore builds upon previous studies by examining the production and use of discourses of marital rights and obligations during and after the rule of the New Order. In doing so, I am seek to analyse what purpose this might have served for the state, how these discourses were employed by structures of authority other than the state, and how women may have subverted ideologies of female marital obligations.

2. STATE DEFINITIONS OF MARITAL RIGHTS AND OBLIGATIONS

The New Order state consistently emphasised the link between women’s general civic obligations and their roles as wives and mothers. This section specifically examines how the state constructed women’s and men’s marital rights and obligations. What purpose did this effort serve, and how were these ideologies disseminated? I approach these questions through analysis of two types of sources, print media and legislation. The first part of the section, which analyses some print media representations of women’s social obligations, does not claim to be exhaustive. Rather, I have selected examples from pre- and post-New Order print media to demonstrate similarities in the way in which the state and other structures of authority used and disseminated concepts of women’s general social rights and


\textsuperscript{10} Sullivan, \textit{Masters and Managers: A Study of Gender Relations in Urban Java} 114-15.
obligations. I use this to provide context for my specific analysis of New Order legal definitions of marital rights and obligations.

2.1 Public Representations of Women’s Social Rights and Obligations

Print media is a key tool for the dissemination of ideas, and may reflect dominant ideologies that either align or compete with the state. Below, I analyse a 1963 magazine article which reflects the rising challenge of the political left to the state, followed by two newspaper articles from 1979 and 1993 which accord with New Order ideologies. My purpose in analysing these texts is to demonstrate how gender operated in the constitution of hegemonic power. This could be in the form of a counter-state hegemony as in the example of 1963 or the hegemony of the state itself as in the 1979 and 1993 examples.

The article from 1963, an advice column, is taken from a women’s magazine, *Wanita* (“Woman”). This magazine catered to urban upper and middle class women, featuring an eclectic mix of articles ranging from advice on how to treat domestic servants properly, the life of Grace Kelly, and the role of fathers in providing balanced education to children, to the “explosion” of anti-imperialism in Brunei and the global influence of the “Indonesian Revolution.”11 These articles reflected the political climate of the early 1960s, when the Indonesian Communist Party (*Partai Komunis Indonesia*, PKI) was growing in influence and political discourses became increasingly radical. Even the article on managing domestic servants was prefaced with a warning on the difficulty of finding women willing to do domestic work. Rather, women preferred factory or construction work because “from the point of view of their honour, they consider it more respectable to work in these industries than as a domestic servant.”12 This adheres to a leftist revolutionary framework and, like the advice column analysed below, should therefore be understood as a structured, pedagogic attempt to instil values.

---


12 "Masalah Pembantu Rumah Tangga." “Dipandang dari segi penghormatan pun akan lebih terhormat dari pada babu.”
Revolutionary claims to have reinterpreted gender roles can sometimes mask conservative gender ideologies. This was the case in a response by *Wanita* magazine’s advice columnist, “Wise Grandmother,” (*Nenek Hayati*). A woman married to a *Bupati* (local district head) in West Kalimantan sought advice on whether she should work as a midwife, as despite financial need, she feared community disapproval. Wise Grandmother encouraged her to work:

> To be honest, Grandmother is astounded and expresses her amazement to hear that a human being in this era of democracy still considers that ‘I am the wife of the district head, and am unwilling to work as a midwife because I'm afraid of being laughed at.’ My God! In Jakarta, Bandung, Medan, Grandmother knows a number of wives of high level officials, levels 3, 4 and even 5, who are willing and happy to work as hard as they can to meet their daily needs. Some become teachers, some midwives (look! Once again: midwives), some are dealers…cars and houses, peddlers, ah, many different things. What's more they are not just wives of high and respected officials, but amongst them are the daughters of Provincial Governors. But there is not one of them who feels contemptible, degraded, insulted or humiliated. People in Java consider this to be perfectly normal. And if it was up to Grandmother, then I would in fact give a star or badge of loyalty to those wives. Why not? Those wives who work their fingers to the bone in reality guard their husbands from corruption. Or, in the words of *kiai* [male Islamic leaders]: they would rather work until they are half-dead than eat food and wear clothes that are the product of their husband's corruption.\(^\text{13}\)

The critical tone of the article and its reference to the modernity of Javanese working women implicitly associates the view of the letter-writer with colonialism and conservative tradition. However, the article also drew upon a common stereotype of women as a cause of corruption. In the post-revolutionary, anti-imperialist and nationalist atmosphere of the 1960s the working woman was constructed as a necessity for the modernising nation and as a self-sacrificing figure who protected the nation (men) from moral decline. But in the

above account, men remain the power-brokers, the officials and governors, whilst women support men in the proper implementation of this role. The underlying gender ideology of the letter therefore is not necessarily as revolutionary as the explicit rhetoric.

Under the New Order, women continued to be represented as essential to the success of men’s public role. However, this was now to be achieved by women remaining at home, instilling national values in their children and refraining from making exorbitant financial demands upon their husbands. This was demonstrated by a 1979 speech by President Suharto to *Dharma Wanita* (Civil Servants’ Wives Organisation), reported in the *Kedaulatan Rakyat*:

> President Soeharto called upon the women of *Dharma Wanita* to avoid or prevent actions which encourage their husband to act beyond their capabilities, especially with dishonest or prohibited methods. ‘Such actions,’ said the President, ‘not only destroy the good name and happiness of the family concerned, but also diminish the prestige and authority of the Civil Service and the Government in general.’

He urged women to understand that “a happy family life is not established from material luxury, but rather from the ability to promote a family life that is both physically (*lahir*) and spiritually (*batin*) prosperous.” Women’s domestic responsibilities were thus invested with national implications and women themselves became symbolically culpable for male failure.

Articles published in the 1980s and 1990s underlined the notion that women’s housewifely role was traditional, as well as complementary and equal to men’s public role. Consequently, women who worked outside of the home threatened this social balance. For example in 1993 the *Kedaulatan Rakyat* reported on a seminar presentation by Dr Taufiq

---


15 Ibid., 8. “President meminta agar kaum ibu menyadari bahwa kehidupan keluarga yang berbahagia jelas tidak ditentukan oleh kemevaahan hidup secara material, melainkan banyak ditentukan oleh kemampuan membina keluarga sejahtera lahir dan batin.”
Adisusilo on women’s future self image (“Penampilan yang mencerminkan citra diri wanita masa yang akan datang”). Adisusilo lamented the fact that women could now work outside the home, but were also expected to guard the home:

‘But the strange thing is,’ said Taufiq Adisusilo, ‘in fact there are many women who are proud because they have the opportunity to take on this multiple role.’ Taufiq Adisusilo said women of course have the right to demand equal rights. However, he reminded us that women are different to men. ‘It must be acknowledged that a woman is the partner of man. Because it is a partnership, then of course it’s not possible that each can be the same. Because of this, the essential character of woman must be protected. Because it is through protecting difference, that actually the world can be made compatible, harmonious and balanced,’ he added.16

This concept of harmonious social order predicated upon traditionally separate gender-roles permeated New Order-era print media, and legislation, as well as some Islamic discourses. In one sense, such reports contrast sharply with the 1963 “Wise Grandmother” letter, which encouraged women to enter the public domain. However at an ideological level the three articles are very similar, as they all underscore the supportive role women should play in symbolically “giving birth” to men’s political and community leadership (the significance of Wise Grandmother’s advice for a woman to become a midwife, and so promote her husband’s political advancement, is perhaps not a coincidence). This close of analysis of three articles from different time periods and regions of Indonesia suggests that public representations of women’s subordinate social role may have been employed by both the state and oppositional groups (in this case communism) to reinforce claims to political legitimacy.

2.2 Legal Representations of Marital Rights and Obligations

Legal codes may reveal how states constitute citizens, and their rights and responsibilities, according to gender. The 1945 constitution recognised the principle of equal citizenship rights (see Chapter 1) but New Order legislation established that women’s marital obligations, and therefore rights as citizens, differed from those of men. In this section I

analyse how marital rights and obligations were constructed in New Order policy, the 1974 Marriage Law and the state-sanctioned 1991 Islamic Compilation of Laws, and then disseminated through the marriage certificate.

The 1974 Marriage Law established a legal framework for the state ideology of different but equal marital roles. Marriage was implicitly defined as a civic duty, as husbands and wives were deemed to “have a noble obligation to build a household, which is the basic principle of social composition.” Specifically, roles were assigned to each spouse to fulfil this duty; husbands were the heads of family (kepala keluarga) and wives were mothers of the household (ibu rumah tangga). Each spouse was obliged to love, respect and assist the other, but the husband as the head of the family was required to protect and provide for his wife, while the women was expected to manage the household. These different marital roles were directed towards producing social balance based on complementarity, rather than equality:

The rights and status of the wife is in balance (seimbang) with the rights and status of the husband, in the life of the household and in the course of their joint interaction within society.\(^19\)

Such definitions of complementary rights enabled the state to position the legal category of “wife” as inferior to that of “husband.” This also laid the foundation for future New Order policy and legislation which defined marriage as a pivotal act of good citizenship for women.

National policy documents released throughout the rule of the New Order, such as the Five Year Development Plans (Repelita) and the Guidelines for the Nation (GBHN), repeatedly underscored women’s obligation to marry, and the particular significance of married women to the nation-building project.\(^20\) The Fourth Repelita (1984-1989) for example,

\(^17\) “Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan,” (1974), pasal (article) 30. “Suami isteri memikul kewajiban yang luhur untuk menegakkan rumah tangga yang menjadi sendi dasar dari sususnan masyarakat.”
\(^18\) Ibid., pasal 31-34.
\(^19\) Ibid., pasal 31(1). “Hak dan kedudukan isteri adalah seimbang dengan hak dan kedudukan suami dalam kehidupan rumah tangga dan pergaulan hidup bersama dalam masyarakat.”
\(^20\) The Five Year Development Plans (Repelita, Rencana Pembangunan Lima Tahun) were approved by the legislative parliament, the People’s Representative Council, Dewan Perwakilan Rakyat. The Guidelines for
stated that while men and women have the same social rights and obligations, women additionally have a “multiple role” (peran ganda) to play in national development. This “multiple role” entailed engaging in paid work (justified on the basis of its contribution to the development effort), raising a healthy and happy family and transmitting social values to their children, thus adhering to women’s natural biological roles (kodrat).21 The concept of women’s multiple role was also retained in the GBHN released in 1999, after the collapse of the New Order.22 Such policies provided ideological guidelines to state agencies, which served to practically reinforce women’s legally subordinate position.

The 1991 Compilation of Islamic Laws (Kompilasi Hukum Islam), released through presidential instruction, also prescribed “complementary” marital roles. The Compilation was a state-produced document which was based upon consultation with Islamic scholars across Indonesia. It has been criticised by some Indonesian women’s groups who claim that only the views of conservative scholars were taken into consideration.23 It has also been noted that Suharto courted moderate Islam from the late 1980s, but by the mid-1990s sought the support of conservatives.24 It could be argued therefore that Suharto perceived the importance of co-opting conservative religious discourses into the state framework. This served the dual purpose of legitimising existing gender ideologies embedded within other state laws, and of at least attempting to elicit the loyalty of Muslim civil servants to the secular, authoritarian New Order state.

Many of the prescriptions of the Marriage Law were simply reiterated in the Compilation of Islamic Laws, including the noble duty of husbands and wives to create a stable household and men’s and women’s “balanced” social status and roles as the head and mother of the household respectively.25 Other spousal obligations were defined in more detail in the

---

Compilation, compared to the Marriage Law. Husbands were to be the guides (pembimbing) of their wives, and to provide them with accommodation, maintenance and religious and other education that would “benefit their religion, the nation and its people.” Wives’ primary obligations were “to serve their husband devotedly in all physical and spiritual matters,” and failure to do so could result in the forfeiture of her rights in her husband (such as rights to maintenance and divorce gifts). Like other New Order legislation and policy, the Compilation linked marital obligations with service to the state and correlated women’s subordination in particular with development of the nation.

State prescriptions on marital rights and obligations were disseminated to Indonesian citizens in part through the simple mechanism of listing marital rights and obligations on the front page of marriage certificates. In this document, men were granted two rights; the right to be head of the household (kepala rumah tangga), which expanded men’s leadership beyond the Marriage Law’s definition of men as heads of families, and to retain ownership of individual property (harta bawaan). Women however were granted five rights; the right to be the “mother of the household” (ibu rumah tangga), to manage household affairs, to be protected and treated well by her husband, to have freedom of thought and action “within the limits of religious teachings and social norms” and the right to personal property. On the other hand, men were accorded five obligations while women only had three. Men were required to lead and guide the family in physical (lahir) and spiritual (batin) matters, protect their wives and children, provide maintenance, manage household problems without abusing their authority and help their wife in household affairs. Women were obliged to respect and love their husband, manage household affairs and guard the household’s reputation.

Male and female Muslim friends often commented to me that husbands have more obligations in marriage and women have more rights, a point that was reflected empirically in the number of rights and obligations listed in the marriage certificate. However, this

---

26 Ibid. pasal 80. “...bermanfaat bagi agama, nusa dan bangsa.”
27 Ibid. pasal 80 - 84. “Kewajiban utama bagi seorang isteri ialah berbakti lahir dan batin kepada suami di dalam batas-batas yang dibenarkan oleh hukum Islam.”
29 Ibid. “Mengatasi keadaan dan mencari penyelesaian secara bijaksana serta tidak bertindak sewenang-wenang.”
disguises a qualitative power differential inherent in these rights and duties. In the above list, it will be clear that one of women’s rights (to manage the household) was also an obligation, and that her right to be protected by her husband was mirrored by an obligation to respect him. While no regulation was made regarding men’s freedom of thought or action, women’s thought and actions were specifically required to conform to social and religious norms. These definitions of rights and obligations co-opted conservative Islamic discourse to the purposes of the state, and presented state constructions of women as moral guardians in the guise of immutable religious norms.

The state’s inclusion of rights and obligations in the marriage certificate has proved to be an effective method of distribution, indicated by an interview in 2004 with Bu Firyal, a young female Islamic teacher (nyai). In response to my question about Islamic marital rights and obligations, she suggested that I photocopy her 1995 marriage certificate, because all the answers I would need were contained there.  

Recently, in the context of more general public debate over state regulation of marriage, these obligations have been removed from the marriage certificate. I discovered this inadvertently in 2004 when an officer of the KUA (Kantor Urusan Agama, Office of Religious Affairs) in the central city sub-district of Umbulharjo also advised me to read the marriage certificate. Upon retrieving a blank certificate for me, he realised that these obligations were no longer included. He explained this as merely a matter of expedience: “the rights and obligations have been deleted from these new ones, so it’s more concise. The old ones still had it” and recommended I consult the Marriage Law instead. 

His comment is revealing of the enduring effects of state ideologies, which can persist beyond the life of the regime itself. Further, his comment indicates that multiple gender ideologies can prevail at any given historical time, and also be incongruent with their historical markers. Although the immediate years after 1998 were termed Reformasi (the era of reformation), and were marked by many legislative achievements for women, some employees of the state may hold views of gender order that are more consistent with New Order-era discourses.

---

30 Bu Firyal, Interview, 30 July 2004.
32 It should also be noted that marriage certificates include the ta’lik talak conditions, which if contravened by the husband enable the wife to request that talak divorce be pronounced by the Religious Court. Conditions which would enable the wife to make such an application include if she is deserted for two years in a row, if her husband fails to provide maintenance for three months, if her husband beats her, or if he fails to take care
This analysis of print media and legislation has shown that the New Order state consistently used ideologies of women’s complementary but subordinate roles in marriage to justify constructions of women’s subordinate social position. Marriage, and women’s role within marriage, was invested with national significance, a strategy directed towards harnessing the obedience of both women and men. However, this strategy was not entirely unique to the New Order. In part, the New Order drew upon Javanese and Islamic cultural ideologies of complementary marital roles, which function within a familial and communal context to maintain patriarchal power. In the next section therefore, I examine some Indonesian Islamic interpretations of marital rights and obligations, in order to contextualise the discourses used in divorce cases, and to examine similarities in the meanings attached to gender by patriarchal authorities in different contexts.

3. **ISLAMIC DEFINITIONS OF MARITAL RIGHTS AND OBLIGATIONS**

Islam has always been a powerful counter-state force in Indonesia, with Muslims forming the vast majority of the population (estimated at around 87% of Indonesia’s 220 million people in 2005). As outlined in the Thesis Introduction, the relationship between Islam and the state has often been contested. Muslims at times have been oppressed, or courted, by the state. Consequently, Islamic interpretations of marital rights and obligations may resist aspects of state ideologies, or they may also have been used by the state. In this section, I will analyse some interpretations of Islamic marital obligations. I use two Islamic books from 1977 and 2003 (the first of which is directed at an academic audience, the second a tract targeted at a general readership), and two print media reports from 1999 and 2003. This analysis aims to uncover the meanings ascribed to gender within interpretations of Islamic law that were commonly applied within the Religious Courts. It is not a textual analysis of Islamic legal sources. Moreover, it should be emphasised that the texts analysed below are neither exhaustive, nor definitive. As female Islamic scholar Asma Barlas noted in relation to Islam generally, Muslim men have often interpreted the injunctions of the Qur’an in terms of their own understandings of gender, thus obscuring its egalitarian

---


34 See the Thesis Introduction for an overview of the relationship between Islam and the state.
The sources I use should therefore be understood as texts which reflect historically and culturally specific understandings of Islam and gender.

A standard overview of Islamic marital rights and obligations is provided in Indonesian Islamic legal scholar Ahmad Azhar Basyir’s 1977 *Hukum Perkawinan Islam* (“Islamic Marriage Law,” see also Chapter 1). This is one of a number of textbooks used in university law faculties (already into its ninth printing in 2000), and its interpretations are reflected in the decisions of Religious Courts analysed later in this chapter. While husbands and wives have joint rights and duties, such as inheritance, conjugal rights and the obligation to create a harmonious household, Basyir devotes particular attention to women’s and men’s individual rights. Women’s rights relate to their personhood. They have rights to receive marriage gifts (*mahar*, or *maskawin*), maintenance (*nafkah*), to be educated by their husbands in religious and other matters, and to have their reputation guarded. Men’s rights, on the other hand, extend to their control over their wife and family. A husband has the right to be obeyed by his wife (“*hak ditaati*”) excepting if his commands contravene Islamic law (which is most often interpreted by men), to have his wife live with him, request permission to leave the house or receive guests, to educate his wife (“*hak memberi pelajaran*”) and to discipline her (first through gentle admonishment, then through a separation of the marital bed and finally by hitting her, stipulated as a last resort which was preferably avoided).

Basyir’s interpretations frequently recast obligations as rights, thus obscuring a marital hierarchy. Women’s right to have their reputation guarded masked an obligation to regulate one’s behaviour, and to have that behaviour monitored by men. Similarly, men’s right to educate their wives indicates a converse obligation for women to adhere to male religious authority. Basyir also emphasises women’s domestic role, noting that although Islamic law does not clearly instruct women to manage the household, this can be assumed because women are required to seek their husband’s permission to leave the house. Thus, a woman who works must “cleverly manage her time so as to be out of the house as little as possible, just enough to fulfil the requirements [working] permitted by her husband.” Such divisions

were deemed by Basyir to create balance within the household. Although women were required to obey their husbands, they were exempt from the “burden” to provide for the family. This household arrangement, Basyir concludes, is supported by the Marriage Law. Indeed, it reflected the Marriage Law constructions of men’s and women’s complementary marital and social roles.37

Popular Islamic tracts sold in bookstores and street-side stalls in 2004 also subscribe to the ideology of different and complementary marital roles, characterized by male leadership of the household. For example a 2003 manual for divorced men and women by Abdul Majid explained that husbands and wives “have the same responsibilities, although the form of these responsibilities is different.” 38

The Islamic household is founded upon shared rights and responsibilities. The Qur’an has already indicated the rules for organising household life: wives have equal rights, as well equal obligations which become their responsibilities. However, men are one degree higher: they are the heads of the family or leaders in the community and nation.39

Such views of women’s and men’s roles are common, as Indonesian scholar Istiadah demonstrates in her citation of 56 Islamic instruction manuals discussed at a 1991 conference, all of which supported conventional views of men’s and women’s roles.40 These discourses aligned with New Order gender ideologies, but also operated independently of the state, reinforcing male claims to religious authority as well as political power.

Although ideologies of separate and complementary marital roles may be dominant, they are not exhaustive. For example, some Muslim women and men contest the translation of

37 Ibid. 63-65. “Namun istril harus pandai menggunakan waktu di luar rumah seminimal mungkin, sekadar diperlukan untuk memenuhi keperluan-keperluan yang memang telah diizinkan suami.” Women’s obligation to obey “…disertai syarat-syarat yang tidak memberatkan istril.”
39 Ibid. 47. “Rumah tangga islam didirikan di atas dasar hak dan tanggung jawab bersama. Al-Quran telah menunjukkan aturan hidup berumah tangga, yaitu istril mempunyai hak yang sama, seperti kewajiban yang menjadi tanggung jawabnya. Namun lelaki mempunyai satu derajat lebih tinggi, yaitu menjadi pemimpin keluarga atau pemimpin dalam masyarakat dan negara.”
the standard Qur’anic justification for women’s subordinate social role. In the 1998 Department of Religion translation of Qur’anic verse 34 from Surat Annisa, it is stated that “men are the leaders of women, because God has made them greater than women, and because they (men) have provided for them according to their means.” An article by a male pesantren (Islamic school) graduate, Salahudin, which appeared in the Jakarta daily Media Indonesia in 1999 to mark International Women’s Day queried the common translation of the Arabic word qawwam into the Indonesian pemimpin, leader. Salahudin argues that qawwam denotes a person “who has responsibility for taking care of property or people.” The injunction thus “has the meaning that he [a husband] is responsible for protecting a woman. So men’s responsibility to protect women is a part of their responsibilities and this does not relate to one party being superior and the other inferior.” This comment indicates the diversity of Islamic interpretations in Indonesia. It was perhaps also possible precisely because the author was writing from a position of male religious authority.

Women’s interpretations of Islam may vary as much as men’s, but those who subscribe to hegemonic, male interpretations of rights may do so for a different reason to that of men. A 2003 article published in Islamic journal Sabili on the dangers of extra-marital affairs demonstrates this point. One of the interviewees, the ustadzah (female Islamic teacher) Lutfiah Sungkar underlined the importance of men and women understanding their correct and distinct roles, of family leadership and domestic management:

“A common problem these days is that both spouses play the same roles; that is as the breadwinner. It’s clear that this decreases the intensity of communication and attention towards other family

---

41 Departemen Agama Republik Indonesia, Al Qur’an dan Terjemahnya (Surayaba: Al-Hidayah, 1998). “Kaum laki-laki itu adalah pemimpin bagi kaum wanita, oleh karena Allah telah melebihkan sebahagian mereka (laki-laki) atas sebahagian yang lain (wanita), dan karena mereka (laki-laki) telah menafkahkan sebagian dari harta mereka.”

42 Salahudin, "Menyambut Hari Wanita Internasional: Wanita dalam Perspektif Demokrasi Islam," Media Indonesia, 8 March 1999. "bertanggung jawab untuk memelihara barang maupun orang." "Kalimat " ‘qawwam ‘ala mar’ihi” bermakna dia bertanggung jawab mengayomi seorang perempuan. Jadi laki-laki bertanggung jawab mengayomi perempuan yang menjadi bagian dari tanggung jawabnya dan tidak ada hubungannya dengan satu pihak superior dan pihak lainnya inferior.” For a more general debate on the translation of this verse, see Barlas, "Believing Women” in Islam 186-87. Barlas argued that the correct translation of the verse describes men as “those who provide a means of support.” This refers to a desired state of affairs, where only some men have been given more economic advantages than some women, and does not signify the superiority of men over women, nor does it ascribe household leadership to men.
members, particularly the husband and wife. At a critical moment, temptation arises and an affair can occur," she said accusingly.43

Men might use this discourse to excuse infidelity, “caused” by women’s absence from the home. However, Sungkar uses the ideology of separate and complementary roles to bargain for one of women’s rights (fidelity from their husband), although this might come at the expense of other secular or customary rights (for example the right to work outside the home). This co-optation of patriarchal discourse is complex. Indonesian Muslim (and non-Muslim) women’s own prioritisation of their rights and obligations should not be subject to western feminist judgements about which rights have the most importance. And as Maila Stivens has shown in Malaysia, women’s rights claims made from a religious perspective are often more effective than those made from a secular position.44 Nonetheless, the opinions women express in public may be, of necessity, responsive to and shaped by the hegemonic influence of male religious authority. Thus, men claim their rights and obligations from a position of power, but women, because they must insert their own claims within this power structure, may sometimes choose to be more pragmatic about which of their rights they demand.

In the dominant interpretations of marital rights and obligations made within Islamic circles in Indonesia in the period under investigation (1974 – 2005), women were ascribed a domestic, homely role while men were granted rights over their wife and family. These interpretations conformed to an ideology of separate and complementary gender roles, a discourse that also underpinned state marriage legislation. While such ideologies were not the only gender ideologies operating in Indonesia, they were the ones that were most commonly cited in litigants’ claims and judges’ decisions in divorce cases. The specific use and application of such discourses is the subject of the next section.

4. RIGHTS AND OBLIGATIONS IN RELIGIOUS AND STATE COURTS

Dominant state and Islamic constructions of marital rights and obligations from the 1970s onwards (if not earlier) have situated women as inferior to men. However, divorce records generated during and after the New Order’s rule may reveal a more nuanced use of such discourses, illustrating tensions and convergences between state and religious authority, and between any structure of authority and litigants. This section scrutinizes how both State and Religious Courts applied concepts of rights and obligations within divorce, how Muslim and non-Muslim women and men used these discourses and how this changed over time. In particular, what do women’s uses of discourses of rights and obligations reveal about their access to social power, and under what circumstances might their claims be constrained?

4.1 Pre-Marriage Law Divorce: 1965-1973

Women’s access to divorce was one of the key issues which mobilized the twentieth-century Indonesian women’s movement. The ground-breaking work of historians such as Susan Blackburn and Elizabeth Martyn has identified that prior to the enactment of the Marriage Law women generally found it difficult to obtain divorce and that the ta’lik talak (conditions attached to the marriage contract, which if broken by the husband enable a woman to file for divorce) was rarely used in practice, despite its widespread use in marriage contracts. As Blackburn’s and Martyn’s work is based in part upon records of the largely-urban women’s movement, their insights invite questions regarding the pre-Marriage Law experience of Indonesian women in other contexts, about which less is known.

Daniel Lev’s work on Islamic courts and divorce in the late 1960s, and also Michael Peletz’ work on Islamic courts in Malaysia in the 1980s, show that formal legal systems, and the ta’lik talak contract in particular, have enabled women’s access to divorce. However, Blackburn and Martyn’s work, both historical studies, look back at women’s movement’s claims regarding ease of divorce prior to the 1960s. Clearly, this is a point for debate, which this chapter in part addresses. (Daniel S Lev, Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions (Berkeley: University of California Press, 1972), Michael G. Peletz, Islamic Modern: Religious Courts and Cultural Politics in Malaysia (Princeton: Princeton University Press, 2002).

Wolf, Factory Daughters: Gender, Household Dynamics, and Rural Industrialization in Java 60, 214-30. Wolf’s work on rural Javanese women and household strategies in the early 1980s reveals multiple marriages, women’s occasional refusal of parental choice of spouse, and requests for divorce; in short, extremely fluid family formations. This differs somewhat from the urban context which Blackburn and Martyn write about (as they also point out). Wolf’s depiction of rural women’s choices regarding marriage and divorce in the


46 Wolf, Factory Daughters: Gender, Household Dynamics, and Rural Industrialization in Java 60, 214-30. Wolf’s work on rural Javanese women and household strategies in the early 1980s reveals multiple marriages, women’s occasional refusal of parental choice of spouse, and requests for divorce; in short, extremely fluid family formations. This differs somewhat from the urban context which Blackburn and Martyn write about (as they also point out). Wolf’s depiction of rural women’s choices regarding marriage and divorce in the
and 1973, I will briefly examine how Muslim women in a rural, non-elite context obtained divorce and what this might have signified, an issue that few scholars have yet explored. The examination below will be used to situate my subsequent analysis of divorce after 1974.\footnote{As stated in Chapter 3, the Wates Religious Court was the only court that could provide records pre-dating 1975, thus precluding an urban comparison in this section. Years were selected on the basis of availability of records.}

All of the Wates suits for divorce were successful, and filed exclusively by women, as men did not require court permission for divorce at this time (see Chapter 3). Of these cases, all except three were requested on the basis of a contravention of the \textit{ta’lik talak}, being either the husband’s desertion or failure to provide maintenance.\footnote{Of these exceptions, two were filed on the basis of the husband’s insanity, and the third suit was filed by the KUA, requesting the invalidation of the husband’s second marriage, because his second wife was the sister of his first wife, a forbidden marriage partner in Islam.} The majority of these women were young (aged 16 to 40), worked as farmers, labourers or petty traders and were suing for divorce after short marriages (six months to five years). In the 1965 and 1967 cases, judges cited Qur’anic verses as justification for the divorce, for example \textit{Al Baqorah} verse 229:

\begin{quote}
So if you are afraid that as husband and wife you can not follow the law of Allah, then it is no sin for either of you if the wife gives something as compensation.\footnote{“Maka djika kamu takut suami istri tiada akan dapat menetapi hukum Alloh, maka tiada dosa bagi kedua-dua didalam sesuatu jg telah diberikan oleh si istri sebagai tebusan.” Quoted in “60/1967/PA.Wates: Nj N. v Mas M.,” (Pengadilan Agama Wates, 1967).}
\end{quote}

In the 1973 records, judges cited specific points of the \textit{ta’lik talak} contract that had been contravened. But in all years, the fundamental legal basis for divorce was women’s claims to their unfulfilled marital rights. In the 1960s cases (as also detailed in Chapter 3), the husband was often not even present to prove these claims and the court relied only on the testimony of two male witnesses. However, in some of the 1973 cases, courts attempted to locate missing husbands before commencing proceedings. For example the court unsuccessfully summoned Saudara S three times between October 1972 and February 1973. They were finally advised by the village head that the husband was “rebellious” early 1980s would seem to demonstrate some continuity with the material I am analysing for an earlier period in Wates, the mid- to late-1960s.
(“membandel”) and would not attend.\textsuperscript{50} Although the divorce was granted, these records contrasted with the 1965 and 1967 records which accepted the wife’s claims of desertion on the basis of witnesses’ testimony alone. This suggests the beginnings of a subtle change in court practices and perceptions of female claims, with more emphasis on investigation and proof.

My brief analysis of these records reveals three important aspects of pre-1974 divorce. Firstly, it suggests that not all Muslim women necessarily found it difficult to obtain divorce prior to the Marriage Law. Rather, willingness to file for divorce may have depended on class. The Wates cases suggest that courts were receptive to claims of male failure to fulfil marital obligations. This was used to justify the divorce on an Islamic basis although, as I suggested in Chapter 3, women’s proactivity in filing for divorce did not necessarily correlated with higher social standing. Secondly, Islamic law holds that husbands and wives must fulfil their own obligations before they may demand their marital rights. However, in these cases, a husband’s failure to fulfil their obligations was not referenced in any way to his wife’s fulfilment or neglect of their marital duties. Rather, male neglect was accepted by the court in legal isolation from female behaviour. Finally, the increasing (albeit still limited) detail of the records in 1973 reveals a slight shift away from a simple acceptance of a male failure to fulfil obligations as a good reason for divorce. However, in general, male obligations were the key discourses used by the courts, which women were also able to employ to obtain divorce.

\textbf{4.2 The Early Impact of the Marriage Law: 1975-1980}

With the introduction of the Marriage Law in 1974, both litigants and courts gradually began to change the way in which they employed discourses of marital rights and obligations. This entailed a move away from the focus on husbands’ obligations, towards ideologies of complementary marital roles which emphasised women’s domestic duties. What was the purpose of these changes in terms of the state’s effort to establish legitimacy? What were the implications for women, and how did women in particular use these discourses? I answer these questions using 49 Muslim divorce cases, 11 of which were obtained for the year 1975 from the urban Yogyakarta Religious Court (comprised of an all-male panel of judges) and 38 from the rural Wates Religious Court (comprised of a male

head judge, and two female members), for the years 1978 and 1980. Litigants from both regions were primarily farmers, labourers, petty traders or office workers, aged in their early twenties and thirties (with some exceptions).  

The cohort of records revealed in general a greater effort by the courts to curtail and control litigant behaviour, a process which implicitly inserted the rights of the state into the marital relationship. This occurred in three key ways: through the occasional refusal of divorce suits, the legal justifications provided for divorce, and the time taken to process divorce.

The refusal of divorce suits was rare (see also Chapter 3), but when this did occur it was usually in response to male requests for divorce. The only two divorces refused in this sample were those applied for by men, one because the husband refused to have his wife appear in the court to answer his accusations, the other because he had filed in the incorrect legal domicile. However, the generally young age of the litigants in this sample, and the overwhelming majority of female applicants (only four cases were filed by men in this sample), suggests that older Muslims and male Muslims in general did not necessarily accept (or were unaware of) the rights of a state institution to adjudicate divorce. I interpret the refusal of male-initiated divorce as an affirmation of the state’s legal “obligation” to protect women from divorce, an obligation which was positioned as superior to men’s religious right to divorce.

Legal justifications for divorce gradually changed to incorporate state law, although women’s claims initially continued to be based upon men’s failure to fulfil marital obligations. In the 1975 cases from the Yogyakarta Religious Court only the titles of the Marriage Law (UU1/74) and Implementing Regulations (PP9/1975) were cited, alongside more detailed quotes from the Qur’an and the aspects of the ta’lik talak that had been

---


contravened. Later, in some (but not all) of the 1978 and 1980 Wates cases, judges began to include specific aspects of state law which warranted the divorce. For example, a divorce suit citing two-years desertion in the Wates Religious Court in 1980 was granted on the basis of a contravention of the *ta’lik talak*, article 34(1) of the Marriage Law (which requires husbands to provide for their wives) and article 19(b) of the 1975 Implementing Regulations (which allows divorce after two years desertion). While women’s methods of filing for divorce (predicated upon male duty-failure) had not changed from the 1960s, the court’s shift towards justifying divorce in terms of both state and Islamic law served to assert the obligations of the state in mediating divorce.

The time required for the resolution of divorce also began to increase in the years after 1974 as courts subjected litigants’ claims to a more rigorous investigation process, in accordance with the Marriage Law’s instruction to restrict divorce. Nonetheless, divorces in the Yogyakarta Religious Court in 1975 were generally resolved in less than four court hearings. For example, Ny S (20, labourer) was granted divorce from her husband of three years, Saudara T (23), in December 1975 after one court hearing. By 1978 in Wates some cases had a longer waiting period such as that of Mbak S, who waited three months for the court to approve her divorce from Mas K, who had freely admitted to the court that their six-year marriage had never been consummated and that “we can not live together, because I have not yet provided maintenance.” Another case, filed by a deserted wife in Wates in 1979, took twelve months to resolve whilst the court attempted to contact the husband. These delays could partly be attributed to the state’s construction of divorce as shameful (see Chapter 3). However, such delays also demonstrated that state legal restrictions upon divorce were in practice a legal restriction of female rights to divorce.

In spite of legal efforts to change citizens’ behaviour (that is to restrict divorce in general, attach shame to the act of divorce itself and to limit male divorce pronounced outside of court), in most cases both female litigants and courts simply adapted divorce suits to the new legal framework. Thus the majority of cases continued to be filed by women, and were

based upon male neglect of duty (which resonated with earlier cases filed in terms of male contravention of the *ta’lik talak* contract). In some cases, this neglect was acknowledged by husbands, usually through a letter to the court. For example, at the Wates Religious Court in 1978 Mbak Y (a farmer) advised that her husband Mas M (29, a peddler), whom she had married in 1969, had deserted her and their two children since 1976 after marrying a second wife without Mbak Y’s permission. Mas M refused to attend the court hearing but confirmed that he had not provided for his first family since 1976 and was willing to accept the divorce.\(^{58}\) This continued earlier patterns of divorce in which wives filed for divorce, and husbands acknowledged fault.

In some cases, husbands’ admission of fault to the court occurred in the context of women’s transgression of domesticated models of femininity. Ny S (24), an artist living in Jakarta, filed for divorce from her husband, Bapak H (35), in the Wates Religious Court in 1980, claiming desertion by her husband. They had separated in 1979 after three years of marriage, after which time Bapak H had not provided Ny S with her conjugal or material rights (“*nafkah lahir batin*”). However, in fact it was Ny S who had first left her husband. Bapak H confirmed to the court that Ny S was now working in Jakarta “and as a result I cannot fulfill my obligations. I am willing to be divorced by her.”\(^{59}\) In similar examples at the Yogyakarta Religious Court in 1975, Saudara M, although reluctant to divorce, acknowledged that he had failed to provide maintenance to his wife of 16 years, Ny Z, after she had thrown him out of the house. The court granted divorce, based on the “accusation of the claimant, strengthened by the clarification of the respondent.”\(^{60}\) In another case, Ny S, a 20-year-old labourer from the city district of Umbulharjo found herself unable to adapt to life in her husband’s village in Bantul. Six months after their marriage in 1972, she “requested permission to leave” (*minta pamit*) and returned to her own family in central Yogyakarta. Although it was she who had left her husband, Ny S also claimed desertion by


\(^{60}\) ”163/1975/PA.Yk: Ny Z. v Saudara M.,” (Pengadilan Agama Yogyakarta, 1975). “...tuntutan penggugat yang dikuatkan dengan keterangan tergugat”
her husband, which the court affirmed. This was supported by the husband’s
acknowledgement, so the court granted the divorce.\textsuperscript{61}

These three cases reveal women actively seeking to end their marriages by leaving their
husbands. However, the discourse they employed to obtain a legal dissolution was that of
male neglect, claiming in court that they were deserted by their husbands. Proving male
neglect was also the focus of the court, as the reasons for the women’s actions were not
probed. The court’s tendency to allow divorce based on male neglect, regardless of whether
this stemmed from men’s or women’s departure from the marital home, acknowledged the
necessity of a method for women to extricate themselves from marriage just as much as
men were able to do through \textit{talak}. Significantly, these cases did not reference female
obedience and were entirely lacking in moral censure, a characteristic which began to
emerge in divorce cases from around the early 1980s.

Although male obligations were used as a discourse to obtain divorce, they were rarely
used by women to enforce the fulfillment of their marital rights. One of the significant
features of the Marriage Law was that it instructed husbands to provide for their families,
and allowed either spouse to sue if the other neglected their obligations. However, in only
one case from my entire sample (151 cases ranging from 1965 to 2005) did a woman take
her husband to court exclusively to compel him to pay maintenance (that is, without also
filing for divorce). In 1975 Ny P (24, labourer) asked the Yogyakarta Religious Court to
force her husband Saudara H (26, labourer) to pay maintenance to her and their child, an
obligation he had neglected for the past 18 months. Saudara H refused, as he had another
wife, but after Ny P retracted her claim for unpaid maintenance he agreed to pay 1000
Rupiah a week from thereon. The court costs, totalling 560 Rupiah, were charged to Ny
P.\textsuperscript{62} As the comparison of the court cost and the weekly maintenance awarded might
suggest, costs of filing such suits were probably prohibitive for many women. Moreover,
there were limited legal mechanisms available to enforce court maintenance orders, apart
from another suit (called an \textit{eksekusi}, which could empower police or other relevant

\textsuperscript{62} “162/1975/PA.Yk: Ny P. v Saudara H.,” (Pengadilan Agama Yogyakarta, 1975). In Religious Courts, the
claimant always pays the court costs. In State Courts, the judges will determine who pays the costs. It is
usually the “loser” of the case, but sometimes costs are divided between the two litigants.
By 1980, some male and female litigants began to employ discourses of female obligations, particularly wifely obedience. This deviated from the previous sole emphasis on male obligations. Ibu S (24) filed for divorce in the Wates Religious Court in 1980 from her husband of three years Bapak Z (32, farmer), citing 12-months desertion. Ibu S claimed that she had contacted her husband many times, but he refused to return from his parents’ village. Bapak Z, by contrast, contended that he had invited his wife to live in his village but she had refused, “so because of this I consider my wife to be disobedient (nusyuz) and from thereon I did not provide her with maintenance.”63 The divorce was granted, so these accusations had no practical bearing on the outcome of the case. Nonetheless, it marked a subtle shift of litigant and judicial focus, which constructed women as legally culpable for their husband’s neglect of duty. This was also demonstrated in a reconciliation agreement (akta perdamaian) made between a Wates couple in 1980, who agreed to remain married under the following conditions: “the husband is prepared to change his bad attitude and will follow the requests of his wife as long as his wife is obedient to him.”64 In both cases, male marital obligations were a secondary point of focus. They did not automatically ensue from the condition of being married, but were contingent upon women fulfilling their obligations of obedience.

Despite a developing legal emphasis on female marital obedience, women could appropriate this discourse to their advantage, especially if they were opposed to the divorce. Ibu S sent a letter to the Wates Religious Court in 1980 asking the court to refuse her husband’s request for divorce. She claimed that the divorce was purely at the insistence of Bapak R’s parents. She loved her husband, had done nothing wrong (“tidak ada kesalahan dan masalah apa-apa”) and contested the divorce in the interests of the wellbeing of their child. Ultimately, the court did refuse to grant the divorce because Bapak R would not allow his wife to testify in court, a legal requirement of the Implementing Regulations

---

This decision complied with the court’s legal obligation to prevent divorce. However, the wife’s appeal to wifely obedience and motherhood also aligned with the emerging New Order discourse that characterized marriage as a female civic duty, which should not be undermined by divorce.

I have argued throughout this thesis thus far that the state aimed to restrict divorce, as part of an effort to shape and control citizens’ behaviour. As the material from the 1975 to 1980 demonstrates though, neither courts nor litigants necessarily conformed to state ideological prescriptions. For the first few years of the Marriage Law’s operation, women, men and courts continued to use the discourse of male duties primarily as an escape clause from marriage, and did not relate it to women’s obligations. State disapproval of divorce (see Chapter 3) led to divorce processes becoming lengthier and administratively more complicated. This assertion of the rights of the state to prevent divorce had, at this time, more negative implications for women who remained the primary users of the court system for the purposes of divorce. Towards the end of the period examined, discourses of female obedience came to the fore, and were increasingly prominent in subsequent cases. I have alluded to the possibility that women may have been able to subvert such discourses, a point that will be explored in greater depth in the next section.

4.3 Divorce During the Height of the New Order: 1984 – 1999

This section examines uses of discourses of rights and obligations in divorces that occurred at the height of the New Order’s power through to its demise in 1998. Consequently, I am interested in uncovering whether the New Order’s conservative gender ideologies were borne out in court decisions, or whether women were able to subvert such ideologies. Were discourses of female obedience used and if so how did they practically influence the outcome of divorce? What sort of ideal citizen did the state aim to produce through directing marital behaviours? The section makes use of 38 Muslim and non-Muslim cases obtained from the Religious and State Courts in urban Yogyakarta and the semi-urban/rural district of Sleman. This sample was more diverse than earlier records including criminal

---

67 As explained in Chapter 3 and the Thesis Introduction, 1999, the year when democratic elections were held, has been selected as the end point for my analysis of the New Order state’s regulation of marriage.
(adultery), divorce and marital property cases and appeals, and consequently defies neat generalisations. The microhistorical approach I use, detailed in the Thesis Introduction, is therefore particularly fruitful in this situation, as it allows detailed focus on the subtleties of individual cases. In this section I have selected four cases for close analysis which demonstrate some of the different ways in which discourses of rights and obligations were employed, asking how this use may have reflected or resisted state ideologies. I examine both Muslim and Christian cases, because I wish to demonstrate that certain state-sponsored discourses about male and female marital obligations bore equal currency in both court systems, and were not just restricted to Islamic divorce negotiations.

In some cases, rights and obligations continued to be used by litigants as a strategic discourse to obtain divorce. In contrast to the 1960s and 1970s in which litigants focused on men’s neglect of their marital obligations, in the post-1980 cases both spouses tended to make counter-claims of the neglect of the other. However, strategic uses of state-sanctioned discourses could conceal a level of resistance of both litigants and courts to the ideological prescriptions of the state. Bapak D (66, pensioner) filed for divorce from his wife Ibu S (57, petty trader) in the Yogyakarta Religious Court on 29 September 1987, after 12 years of marriage. He alleged that his wife was adulterous, and advised that he had already accumulated the necessary funds for her divorce compensation (50 000 Rupiah for three months maintenance, *nafkah iddah*, and a set of clothes as her divorce gift, *mut’ah*). Ibu S rejected this accusation, countering that her husband neglected her and spent most of his time at his first wife’s house. Consequently, she was willing to accept the divorce on the terms submitted by Bapak D. The panel of judges (a male head, and two women) granted the divorce just two days later, on 1 October 1987. The wife’s immediate acceptance of her husband’s offer suggests that the divorce and property settlement had already been negotiated outside of court. Therefore, the exchange of accusations of adultery and neglect served only to provide legal grounds for divorce, which was accepted without question by the panel of judges. Significantly, the wife’s alleged sexual transgressions had no bearing on her access to her divorce rights (*nafkah iddah, mut’ah*), nor did the judges attempt to change the amount awarded to her, as sometimes occurred in later cases.

---

The strategic use of marital obligations occurred in both Muslim and Christian divorces. In a Christian divorce case at the Sleman State Court in 1998, Ibu H cited fighting, desertion and possible insanity of her husband Bapak L as grounds for divorce. Bapak L added to her claim that he was no longer able to provide his wife with her conjugal rights (nafkah bathin). He agreed to the divorce, and offered 300 000 Rupiah per month for child support, which Ibu H accepted. This divorce was also granted relatively quickly, within two months of being filed. I have argued in Chapter 3 and in earlier parts of this chapter that by the 1980s courts sometimes did not condone male litigants’ acknowledgement of fault, and also took longer to approve divorce. This was part of a state strategy directed towards restricting divorce, constructing it as shameful and ensuring that women fulfilled their civic duty by remaining married. However, as this and the case above illustrate, both Religious and State Courts and litigants may have maintained some insularity from the state. In these cases, the courts swiftly sanctioned divorces that had probably already been negotiated outside of court, including the financial settlements. Litigants made expedient use of New Order expressions of neglect of obligations, but neither the litigants nor the courts actually conformed to state ideologies that encouraged obedient femininity and avoidance of divorce.

When wives filed for divorce in the absence of their husband, they could attempt to strengthen their claim by emphasising their own obedience in the face of their husband’s neglect. Ibu T sued for divorce in the Yogyakarta State Court in 1988 from her husband Bapak O, whom she had married in 1963 in a Confucian ceremony (the couple were ethnic Chinese). She accused her husband, who refused to appear in court, of gambling, swearing at her (he called her anjing, dog and babi, pig), hitting her and failing to provide for his family:

Currently, the respondent is no longer fulfilling his obligations as a husband towards his wife and child, that is he does not provide for their daily living expenses. Alongside not providing for his wife and child, the respondent has instead become a heavy burden for the claimant because he often comes home late at night and then immediately leaves, and is rarely at home. The claimant has repeatedly

Ibu T’s accusations were predicated upon an inversion of marital obligations, in which the wife was forced to assume the burden of providing for the household. The questions directed by the judges (a male head, and a male and female member judge) to both Ibu T and the four witnesses closely followed this theme. They asked whether the couple still lived together (they did), whether Bapak O worked (he did not), who had provided for the needs of the household (the wife) and whether Ibu T prepared food for her husband. Importantly, Ibu T had insisted that assuming the role of breadwinner was burdensome. This claim was supported by witness testimony that she had also endeavoured to adhere to her correct gender role by continuing to provide her husband with food. The divorce was granted on the basis of constant conflict. However, the nature of questioning from the judges indicates that the ideology of female obedience was essential both to Ibu T’s claim and to the decision-making process of the court.

Thus far I have argued that both men and women employed discourses of female obedience strategically, in ways that conformed to New Order gender ideologies. While court records may reflect a strategy and public persona which litigants thought would best serve their claims, they do not necessarily reveal the motivations behind such presentations. In the final case study for this period, I analyse a case file obtained through LKBH-UII, a legal aid Non-Government Organisation (NGO). The NGO supplementary material reveals the different factors and desired outcomes which may have prompted men and women to

---


71 Ibid., berita acara (court proceedings), 6 September 1988.

72 This case was listed on a register of “research cases” as an example of “Chinese divorce” (“Perceraian Tionghoa”). The register is routinely provided to students conducting research for their final year thesis at the busy central Yogyakarta State Court. As such projects are frequently empirical and quantitative in focus, I suspect it was included as a stereotypical illustration of the contributing factors to Chinese divorce, particularly gambling. Ironically, the case reveals the same uses of discourses of rights and obligations which appear in Muslim and Christian divorce cases during the same period.

73 Lembaga Konsultasi dan Bantuan Hukum, Universitas Islam Indonesia, Legal Aid and Consultation Institute.
reference female obedience in their divorce suits, and also casts the court’s decision in a
different light (compared to an analysis based solely on the court’s decision).

In the divorce suit filed by Bapak A (43, civil servant) against his wife Ibu T (37, office worker) in the Yogyakarta Religious Court in 1999, both spouses heavily emphasised notions of female obedience. Bapak A claimed that the lack of children in their 13-year marriage caused constant fighting, characterized by Ibu T’s words and actions that were “unsuitable for a wife” (yang tidak semestinya dilakukan oleh isteri). Moreover he was suspicious of her fidelity, as not only had she refused sexual relations since 1998, but he had witnessed a male friend enter her bedroom. They had separated six months earlier, and Bapak A no longer provided Ibu T with maintenance. These accusations struck at the heart of cultural and state ideologies of female obligations; she was infertile, immodest, possibly adulterous and disobedient, refusing to acquiesce to her husband’s sexual demands. Consequently, Ibu T’s response underscored both her own efforts to fulfil her role as wife, and her husband’s failure to meet his spousal obligations. Firstly, she insisted that she was opposed to the divorce. She refuted the allegation of infertility, producing medical records of three miscarriages to support her claim. Rather, it was Bapak A who was infertile, and he was accusing Ibu T of infertility simply to obtain divorce. This was because he had already begun living with another woman, and discontinued maintenance payments to Ibu T, his legal wife. Ibu T concluded her response by detailing her efforts to prevent divorce. Knowing that divorce was hated by Allah, she had offered her husband polygamy as an alternative to ending the marriage:

…the respondent has attempted to put aside her instincts and feelings as a woman and a wife, and has sincerely allowed the claimant to marry again as long as their own marriage remains intact. This [action] represents a deep and great sacrifice from a wife to her husband in an effort to preserve the household….75

75 “…Termohon telah berusaha mengesampingkan naluri dan perasaannya sebagai seorang wanita dan seorang isteri yang dengan rasa ikhlas telah memperbolehkan Pemohon untuk menikah lagi asalkan pernikahan antara Pemohon dengan Termohon tetap utuh, hal tersebut merupakan suatu pengorbanan yang teramat besar dan mendalam dari seorang isteri kepada suaminya dalam usahanya untuk mempertahankan rumah tangganya…”
Her response appealed to Islamic models of wifely obedience, and also aligned with Marriage Law emphasis on the importance of the preservation of the household. In the event of divorce however, she asked the court to equally divide their joint property (a car), and order Bapak A to pay her 200 000 Rupiah in *mut’ah* (divorce gift) and 3 million rupiah in unpaid maintenance (at a rate of 300 000 rupiah per month for the past ten months).

Despite Ibu T’s objections, the court granted the divorce and her property requests were only partially met. The couple were advised to resolve the division of the car between themselves outside of court. Bapak A was ordered to pay 200 000 Rupiah *mut’ah* as requested by Ibu T, 450 000 Rupiah for *nafkah iddah* (maintenance for the three month waiting period after divorce, which Ibu T had neglected to apply for) and only six months of unpaid maintenance at a rate of 150 000 Rupiah per month, half of what Ibu T had requested. This reduction was justified by the court on the basis of electricity receipts produced by Bapak A, evidence of Ibu T’s own income from office work, and Ibu T’s refusal to allow Bapak A to visit her during this time, which constituted wifely disobedience (*nusyuz*) and invalidated her right to maintenance. From the court records alone, this decision suggests that Bapak A’s claims of his wife’s disobedience carried greater weight with the all-male panel of judges than Ibu T’s rebuttal, and that the court therefore reduced her divorce settlement as a financial penalty for her transgression.

Two documents contained in the NGO case file demonstrate nuances in the litigants’ claims and the court’s decision which were not evident in the decision summary. Bapak A was a civil servant, and under regulations introduction in 1983 (PP10/1983), civil servants and their spouse were required to attend an investigative hearing conducted by their employer which would ascertain whether a suit for divorce was warranted. The first document records the hearing conducted between Ibu T and the investigative panel, comprised of a senior investigating officer (*Pejabat Pemeriksa*) and eight panel members (*Anggota Tim Pemeriksa*). The panel questioned Ibu T in detail about her marriage, in particular the reasons for her failure to have children after 13 years of marriage. Ibu T informed the panel that her doctor had advised that Bapak A should be examined, but he had refused. Even in the face of a nine-person panel, she maintained her opposition to divorce, stating that “I am not prepared to be divorced for any reason whatsoever,” that she had taken parental advice and wanted to “repair the condition of the household until the family is harmonious again”
and “my principles are to marry only once.” Although the panel approved the request for divorce, Ibu T’s intransigent position would have indicated to Bapak A that she would not meekly accept the divorce. This arguably motivated him to employ discourses in his court suit that countered Ibu T’s public persona of a good and obedient wife, so as to maximise his chances of obtaining the divorce.

The second document was a letter from Bapak A to Ibu T, dated 28 October 1999, approximately two months after court proceedings had commenced. In the letter, Bapak A requested that the couple resolve their conflict peaceably; “let us resolve [this problem] through consensus, so that we can conclude this matter without the occurrence of any conflict that we wouldn’t want to happen.” He offered a division of joint property in which Ibu T kept the house and Bapak A took the car, and also agreed to pay her 500 000 Rupiah (in lieu of unpaid nafkah for the previous ten months, at a rate of 50 000 Rupiah per month). Ibu T presumably accepted the offer of the house, as this was not introduced into court proceedings. However, as detailed above, she continued to press for division of the car and for higher maintenance payments (a rate of 300 000 Rupiah per month, compared to Bapak A’s offer of 50 000 Rupiah per month). The court’s final award, 150 000 Rupiah per month, although less than Ibu T had requested, was also more than she was offered by Bapak A in her out-of-court settlement.

The court’s decision, combined with documents detailing the external negotiations, would suggest that Ibu T used the forum of the court and discourses of wifely obedience to improve her property settlement. Bapak A’s approach in court was similarly strategic. His negotiation letter, understandably, took a conciliatory tone. This contrasted to his strident courtroom criticisms of Ibu T’s failure as a wife, which I suggest were used in part to strengthen his claim to divorce. The court had access to these documents and its decision reflects a compromise between the two spouses’ claims, which is not apparent if only the court decision is consulted. Both spouses used discourses of female obedience to further their claim but, significantly, accusations of female disobedience did not disadvantage the wife’s claims.


77 Ibid., Letter from Bapak A to Ibu T, 28 October 1999.
The cases analysed for the height of New Order period demonstrate some surprising features. In contrast to earlier cases which emphasised male neglect of obligations, these cases referred to the neglect of both spouses. Within these accusations, female obedience was a particularly strong discourse, which was employed by both male and female litigants to obtain, or prevent, divorce and accepted by courts as part of the proof of grounds for divorce. However, courts did not necessarily apply this ideology to women’s detriment. Rather, within the limits of this microhistorical examination, courts and litigants sometimes merely outwardly conformed to the New Order ideology of feminine subservience. Certainly this also produced difficulties; court processing times and expenses increased, and male and female litigants were subjected to intrusive and prolonged questioning by judges. Moreover, a dominant discourse which privileges female obedience over any other female behaviour is also a threatening and constraining ideology, which other cases in this thesis demonstrate. Nonetheless, the cases selected here show that even at the height of an authoritarian state’s power, women could use constraining discourses to their advantage, and courts could contradict state prescriptions directed towards creating subservient, married Indonesian citizens. These conclusions are true for Muslim divorces, and, to the extent that it was possible to analyse a limited number of non-Muslim divorce cases, apply to the State Courts as well. In the next section, I wish to examine how ideas of female obedience have been applied in courts in the absence of the authoritarian New Order state.

4.4 Post-New Order: 2000-2005
Divorce cases in the period after the overthrow of Suharto were characterized by an emphasis on female disobedience. What were the implications of this for women, and what did this signify regarding the role of the state in mediating divorce? In this section, I base my analysis upon 36 Muslim and non-Muslim cases obtained from the rural Wonosari Religious Court and the Religious and State Courts of Sleman and Yogyakarta. Many of the judges and male litigants in these cases referenced notions of male household leadership. I have selected two representative examples of this trend for analysis; one Muslim case from Wonosari and one Muslim-case from Yogyakarta. I have chosen Muslim cases here because I am particularly interested in the judicial application of the concept of wifely disobedience (nusyuz). While this could also occur in non-Muslim cases, the legal framework surrounding non-Muslim female disobedience was less formal. The cases I
have selected are particularly important, because they demonstrate judges making subjective decisions about female behaviour, without a formal request from husbands to do so.

In both urban and rural Religious Courts in this period, many of the male litigants and judges invoked the discourse of male household leadership which was contrasted with claims of wives failing to properly fulfil their obligations. This included accusations of women failing to accord the proper level of respect to the husband as the head of the household, of refusing conjugal demands or of failing to manage domestic finances properly (an attribute valued in Javanese wives). These failings were sometimes described by Religious Court judges using the Islamic term *nusyuz* (wifely disobedience). This was a term that was rarely used in any of the samples from earlier periods. According to the interpretation in the Compilation of Islamic Law applied in Religious Courts at this time, if a wife had left the marital home without her husband’s permission, or refused to fulfil her obligations (such as serving her husband’s sexual needs) she might be deemed *nusyuz*. This invalidated the wife’s right to a divorce gift (*mut’ah*) and to her post-divorce three-months maintenance (*nafkah iddah*).

The category of *nusyuz* has been applied in some cases in very conservative ways. For example, in a 2001 suit filed by Bapak S (36, civil servant) against his wife Ibu S (35), the Wonosari Religious Court found that Ibu S had been *nusyuz*. Bapak S claimed in his suit that his wife had been unfaithful. She had advised him in 2000 that she would never have sexual relations with him again, and this neglect of his sexual needs had caused him to suffer both mentally and physically (“*menderita lahir bathin*”). Ibu S’ account of the marital situation, supported by witnesses, differed considerably. She testified that her husband was frequently drunk and violent, and had been dealt with on a number of occasions by the village head. She denied having an affair, and justified ceasing sexual relations with her husband because she was afraid for her life. She posed the question to the court:

---

…the respondent has left his wife and child since 2 January 1996, and has since forgotten his obligations as a husband, in terms of maintenance, school fees, health expenses and other living costs. In the situation whereby the claimant and respondent are not living together, if the claimant came to the respondent’s house just to be “served” [sexually] and the respondent is expected to “serve” him, is it just that the claimant who has not been fulfilling his obligations should ask to be “served”? Is that not excessive?  

The court did not accept her argument that a husband must fulfill his obligations in order for a wife to fulfill hers. Rather, the judges concluded that:

The court considers that the primary obligation of a wife is to devotedly serve her husband's emotional, material and physical needs within the limits prescribed by Islamic law, her reluctance to serve her husband's sexual needs is not supported by law and moreover she can be categorised as "disobedient" (nusyuz), which nullifies her rights to receive maintenance (nafkah) from her husband.)

Consequently, while the court did order Bapak S to pay a divorce gift (mut'ah) of 1.5 million Rupiah, he was exempted from paying Ibu S any ongoing maintenance. As a civil servant, Bapak S would usually be required to pay his ex-wife and child two-thirds of his wage (according to PP10/1983). However, this rule did not apply if a wife had been found to be nusyuz, and so Bapak S was ordered only to pay child support, constituting one-third of his salary. The court justified this decision on the basis of Ibu S' failure to fulfil her conjugal obligations, but she had in fact informed the court that she would be willing to have sexual relations with her husband as long as they were “normal” ("wajar-wajar saja") and he was not drunk or intimidating. Moreover, she had opposed the divorce and asked the court to refuse it because she claimed to still love her husband. This was not considered by the court as evidence of devotedly serving her husband. The evidence required to prove her loyalty to her husband hinged solely on her sexual service.

80 Ibid., salinan putusan, 16. "Menimbang bahwa kewajiban utama bagi seorang isteri adalah berbakti lahir dan batin kepada suami dalam batas-batas yang dibenarkan oleh hukum islam, keengganan Termohon dalam melayani kebutuhan batin Pemohon merupakan tindakan yang tidak dibenarkan oleh hukum bahkan Termohon termasuk kategori nusyuz yang menggugurkan haknya untuk menerima nafkah dari suami;"  
81 Ibid., salinan putusan, 5.
Citations of *nusyuz* in urban courts occur for similar reasons to those used by rural court judges. An all-male panel of judges at the Yogyakarta Religious Court in 2004 found that in the divorce suit of Bapak D (31, salesperson) against his wife Ibu N (27, waitress), his wife had been *nusyuz*. This was because after Bapak D had returned from a three-year working contract in Korea, Ibu N had refused sexual relations. The judges granted divorce but refused *mut’ah* or *nafkah iddah* because:

The court considers, that if the wife had good intentions to try and solve their marriage problems after the claimant returned home from Korea (and that return was even to the respondent's own house), then the respondent would certainly have negotiated with the claimant to the best of her abilities and probably would have found common ground, however small, between the two of them and then would have been able to build a happy and harmonious household. However, the facts indicates that when the claimant returned home from Korea the respondent did not want to engage in sexual relations and even left her husband in her house and rented a house in Jalan Wonosari. This fact indicates that the respondent did not have the good intentions of repairing their marriage, and because of that the respondent is a disobedient wife (*nusyuz*);  

Significantly, in both this and the Wonosari case, the judges applied the category of *nusyuz* without any request from the husbands who had filed the suits. Although both husbands made claims of their wives’ failures, neither explicitly stated that they wished to avoid the standard financial obligations Muslim husbands must fulfil when they divorce their wives. Rather, this was imposed upon divorcing couples by the Religious Courts. Although women attempted to demonstrate their obedience in court, this strategy was not as effective as it was in earlier cases analysed in this chapter. These changes would seem to demonstrate the assertion of an Islamic-based patriarchal authority in court, made possible by the collapse of the New Order.

---

Litigants and courts consistently referenced marital rights and obligations throughout the 40-year period analysed here. However, the focus of such discourses gradually shifted from male to female obligations. In the 1960s up until the late 1970s, divorce cases were predicated upon male neglect of obligations, although this did not necessarily entail a concomitant emphasis on women’s access to marital rights. By the 1980s, discourses of male household leadership and female obedience became central features of divorce cases. I have suggested that the use of these discourses by female and male litigants and courts was responsive to New Order constructions of subservient femininity which were circulated through state policy, programmes and print media. However, while the conduct of these cases might reflect the influence of the state, the outcomes of the cases analysed here reveal some level of resistance of litigants and courts to state hegemony. Men’s allegations of female disobedience, and women’s counter-claims of obedience were in part strategic, and neither Religious nor State courts withheld financial settlements from “disobedient” wives. Divorce cases prosecuted in the post-New Order era are a different matter. In these cases, judges have financially penalised women accused of disobedience, and women’s counter-claims of obedience have carried little weight. The use of discourses of female obedience by both the New Order state and post-New Order Islamic judges partly demonstrates the perceived significance of women to the establishment and maintenance of political and social power for any given interest group. In the absence of an authoritarian state, some conservative Islamic sections of society have been able to assert interpretations of women’s marital roles which, ironically, may prove to have more negative implications for women than New Order constructions of femininity.

5. RIGHTS AND OBLIGATIONS IN WOMEN’S ORAL NARRATIVES, 2004 - 2005
In the chapter thus far, I have argued that both New Order and Islamic constructions of marital rights and obligations were predicated upon notions of separate but complementary gender roles. In divorce cases, these discourses could be used strategically by women, but could also be used by husbands and judges against women’s interests. In the final section of the chapter I wish to analyse alternative ways in which women interpreted their rights and obligations, beyond the evidence provided by court records. Here, I use oral history to investigate whether Muslim women subscribed to notions of separate and complementary marital roles, and how they used their interpretations to negotiate patriarchy.
In my analysis, I draw upon interviews conducted with middle-class and *kampung* (urban neighbourhood) divorced women, a female Islamic leader (*nyai*), and female Religious Court and State Court judges. While I am specifically interested in women’s perspectives on dominant patriarchal ideologies, my focus on women was also practically motivated. In general, my own subject-position as an unmarried, Western and female researcher made it easier to speak to women than men about personal aspects of marriage and divorce. The male officials I interviewed at courts, the KUAs (Office of Religious Affairs) and BP4s (Marriage and Divorce Counselling Board) tended to posit more reserved responses, in keeping with their higher social and official status. This applied particularly to the interviews conducted with judges. My method of questioning was fairly obtuse, focusing on the benefits of the Marriage Law and the role of the court in mediating divorce. The male judges interviewed at the Yogyakarta Religious High Court and Sleman Religious Court did not deviate in their responses from this framework of questions. However, the two female judges (one from the Yogyakarta Religious Court and one from the Yogyakarta State Court) were far more free-ranging in their responses, highlighting what they believed to be the misinterpretations made by many Muslims regarding women’s rights. Moreover, of the men I did interview, their interpretations of rights and obligations did not differ greatly from those already outlined in earlier sections of this chapter.83 Women’s interpretations of their obligations are less prominent in public discourse, and have not been the focus of detailed scholarly examination. My use of oral history to investigate this issue therefore provides insight into a hidden, potentially counter-hegemonic gender ideology.

Many of the women interviewed publicly affirmed the dominant cultural-religious discourse of separate and complementary gender roles. However, I believe that this was frequently a strategic and euphemistic use of that ideology, which disguised considerable resistance to it. Public expressions of conformity with hegemonic gender ideologies may have enabled women to make implicit and non-confrontational criticisms of such ideologies. For divorced women whose lives clearly differed from New Order and conservative Islamic family models of marital roles, conformity to the discourse of female obedience also served to defend a socially precarious position.

---

83 For example, a male *kyai* in central Yogya explained that men’s obligations were to protect, provide for and lead the family, and women’s role was to guard the family’s reputation, care for children and wash the clothes. Pak Hamid, Interview, 30 July 2004.
The four kampung women interviewed for this project (all Muslim and aged in their 40s) described women’s and men’s marital obligations in similar ways. Wives should “serve their husband, take responsibility as a housewife, the husband has to provide for the family,” 84 as one woman observed. The reality of women’s lives often diverged greatly from this ideal. Bu Sarwendah, an iced-drink seller, had raised her four children alone after her husband had deserted the family 13 years earlier (although she was only now filing for an official divorce). This had entailed meeting heavy financial obligations, such as one of her daughter’s hospital bills, with which her ex-husband refused to assist. Bu Sarwendah defined a husband’s obligations as “maintenance, responsibility” ("nafkah, tanggung jawab"), but pointed out somewhat acerbically that “children need more than just food” ("kebutuhan anak bukan hanya makan"). 85 Adding that she always reminded her children how much she loved them, calling them “sweeti-ku” (my sweetie), she implicitly contrasted her husband’s material and spiritual neglect of the family with her own dedication to all aspects of the family’s wellbeing. Although Bu Sarwendah explicitly agreed with the concept of men as providers, her own life experience negated this stereotype. As she had effectively been a divorcee for the past 13 years, she justified the lack of a male-provider in her household by emphasising the importance of the emotional care she had provided to her children. In doing so, she obliquely criticised narrow cultural emphasis on the significance of male financial obligations, and posited the equally significant role that both men and women had to play in fulfilling emotional obligations to their families.

More educated Muslim women explained marital roles in terms of the primacy of the wellbeing of the household. These women frequently employed the term “mitra kerja,” a working partnership. This partnership adapted to the changing needs of the household and so was not necessarily predicated upon fixed gender roles. This is apparent in the following explanation of marital rights and obligations by Bu Firyal, a young female Islamic teacher in central Yogyakarta:

Many people misunderstand rights and obligations. The image is that women are just responsible for the house, and cannot go outside. But it’s not like that. [Men and women] walk together. A lot of

84 Bu Arum, Interview, 11 December 2004. "Mengabdi suami, tanggung jawab sebagai ibu rumah tangga, suami harus menafkahi keluarga."
85 Bu Sarwendah, Interview, 11 December 2004.
women suffer because of this misunderstanding. They think the husband works, the wife stays at home. But the husband has to help with the children, the wife has to help the husband get money, husband and wife are a working partnership (mitra kerja).  

Bu Firyal went on to explain that such misunderstandings were rooted in culture, rather than Islam itself. Positioning her comments in terms of their religious veracity thus enabled her to counter patriarchal cultural “traditions.”

Some women even interpreted household leadership to be transferable, dependant on the circumstances of the household. This was the case for Bu Ndari, a family planning counsellor in her late 40s, who was organising a divorce from her husband of 20 years. She viewed rights and obligations to be “the same, the husband seeks a livelihood, I have to help. The husband has to understand [his wife], and take responsibility in material matters and give affection.” Throughout her own marriage, her husband had gambled away much of his income and she had been forced to be the primary provider for the family, a point which she justified in part by reference to her own family history:

My own mother was in business in the market. From when I was small, [I had an] example of an independent mother. She raised six children and worked because my father was now no longer productive, so it switched to my mother…..I personally have to be like that.

In Bu Ndari’s interpretation, marital roles were fluid and each spouse had to contribute to the best of their ability to building the household. Household leadership was not permanently invested in the husband, but could transfer between spouses as circumstances changed. Of course Bu Ndari was also in some ways obliged to find an alternative framework for marital roles as her own life (and that of her mother) clearly did not conform to prevalent gender ideologies.

---


87 Bu Ndari, Interview, 8 December 2004. "sama-sama, suami mencari nafkah, saya harus membantu. Suami harus mengerti, memberikan tangung jawab dalam hal materi dan kasih sayang."

Some women’s explanations of rights and obligations, whilst challenging the dominant discourse, also demonstrated an awareness of the limitations surrounding the public expression of their interpretations. Mbak Trisna, a middle-class Muslim woman in her mid-30s who had recently concluded her divorce with the assistance of a legal aid NGO (LBH-Apik), felt that marital rights and obligations were often misinterpreted:

The husband is the leader, but is only responsible for his wife’s religion. So if his wife doesn’t haven’t sufficient (kurang) knowledge, that is because her husband hasn’t met his responsibilities. The wife has to be obedient in all things, no. The main thing is, it’s a partnership (mitra). And if the husband cannot [educate his wife in religious matters] then he must find someone who can.  

Mbak Trisna’s explanation of marital obligations inverted the prevalent ideology which blames women for men’s moral failings, instead claiming that men have only themselves to blame if women’s religious knowledge (which impacts upon their behaviour) is kurang, insufficient. However, in organising her divorce, Mbak Trisna had sought the assistance of an NGO. This was because she had left the marital home first, with her two-year-old daughter. Although her husband had told her to proceed with a divorce suit, she was afraid that the court would consider her to have “abandoned my obligations as a wife, that is nusyuz” and so award custody of the child to her husband. In seeking legal assistance (which successfully enabled her to retain custody of her child), Mbak Trisna implicitly acknowledged that her interpretation of rights and obligations was unlikely to be shared by judges.

Some of the court cases analysed in this chapter demonstrated conservative interpretations of wifely obligations made by male judges. However, the two female judges interviewed for this research took a more equitable view of rights and obligations. The two women, one a judge at the Yogyakarta Religious High Court (Bu Widya) and the other a judge at Yogyakarta State Court (Bu Nur), located the suppression of women’s rights within incorrect interpretations of Islam. Bu Widya observed that in her three decades of serving as a Religious Court Judge, many litigants were ignorant of the protections Islam offered for women:

90 Mbak Trisna, Interview, 30 September 2004. “meninggalkan kewajiban sebagai isteri, nusyuz.”
Neither [husband or wife] know the wife’s rights in Islam. [They think women have to] accept whatever. For example violence, emotional or physical, [the wife] can’t leave [the house], the wife believes she must be obedient to her husband.\(^9\)

Bu Widya’s interpretation differed from the decisions of male judges detailed in section 4, who demanded female obedience even under violent circumstances.

The State Court judge, Bu Nur, was even more outspoken in her criticisms of the gender ideologies embedded within state law. She branded the male household leadership provision of the Marriage Law “an extreme clause” (“pasal yang ekstrim”) that was “inequitable” (“suatu ketidaksetaraan”). The problem with this clause, she argued, was that “sometimes it is understood incorrectly” (“kadang keliru dalam pengertian”) so the husband would make absolutely every decision. This should not be the case. Softening her radical statement with a reminder that “I am not a feminist” (“Saya bukan feminis”) she cited her own marriage as an ideal situation, whereby both spouses participated in making decisions, which were reached through a process of consensus (musyawarah). She also questioned the ideology of the “ibu rumah tangga” (housewife, literally mother of the household), suggesting that there should also be “a father of the household (bapak rumah tangga), why not? Mothers and fathers have the same obligations.”\(^2\) Bu Nur’s emphasis on parenthood (as opposed to motherhood) and the importance of negotiation within a marriage appealed to Javanese cultural values which privileged family, group identities and avoidance of conflict. However, this only barely concealed a radical reassessment of gender order which contrasted with the ideologies of the Marriage Law and of more conservative male judges.

All of the women interviewed either implicitly or explicitly challenged hegemonic ideologies of separate and complementary marital roles. However, most were quite aware that their perspectives were indeed counter-hegemonic, and as such modified these views in their public behaviour and discourse (for example Mbak Trisna engaging legal assistance to


avoid being categorised by the court as disobedient, or Bu Ndari justifying her working life as a family tradition). Thus, women’s negotiation of divorce frequently relies on dominant gender discourses, and their practical experience of their obligations within marriage and society continues to be difficult. This was neatly encapsulated by the comment of a female lawyer at the Rifka Annisa women’s crisis centre in Yogyakarta: “a woman’s obligation is to not talk about her difficulties.”\textsuperscript{93} The impact of this female obligation was reflected in a collection of client experiences published by Rifka Annisa, Derita Di Balik Harmoni (“The Suffering Behind the Harmony”) in which one woman, warned by marriage counsellors and a psychologist about the effect of a divorce on her children ultimately decided to endure a violent marriage rather than expose her children to ridicule or psychological damage. She recalled the words of the psychologist: “As a wife I must be prepared to sacrifice my self-esteem” and decided, “let me be ruined, but never my children.”\textsuperscript{94} Women’s marital obligations in practice are impossible to extricate from their web of obligations to children and community, making demands for their rights potentially threatening.

6. CONCLUSION
This chapter has demonstrated that state, religious and cultural structures of authority deemed women’s role within marriage to be an essential tool for maintaining masculine state and social power. In Indonesian public discourse in the mid- to late twentieth century, this has taken the form of an ideology of separate but complementary marital roles. As my analysis of changes in the character of divorce suits between 1965 and 2005 has shown, different aspects of this ideology have been highlighted at different historical time periods. I suggest that times when divorce suits exhibited greater emphasis of female obligations reflected times when male-dominated state, cultural or religious interests were in ascendancy and attempting to legitimate political and social power. This occurred at a national and local level. In divorce suits in the 1960s through to the late 1970s, litigants and judges focused on the neglect of male obligations, which functioned primarily as a discourse to enable women to obtain divorce. As the New Order state attempted to extend the reach of its control over Indonesian citizens, so too did divorce suits exhibit a more conservative emphasis upon male household leadership and female obedience. After the

\textsuperscript{93} Bu Novi and Bu Utari, Interview, 2 June 2004. “Kewajiban perempuan – tak ceritkan kesulitan”
\textsuperscript{94} Derita di Balik Harmoni, (Yogyakarta: Rifka Annisa Women’s Crisis Centre, c. 1999) 46. “saya memang harus mengalahkan harga diri saya sendiri sebagai seorang isteri...biarlah saya yang hancur tetapi jangan anak-anak saya yang hancur.”
collapse of the New Order, judicial treatments of female obedience have become, surprisingly, even more conservative, which I suggest is symptomatic of an assertion of the political autonomy of a largely male-based Islamic authority.

I have also argued that women negotiate divorce by aligning themselves with prevailing gender ideologies. Thus women in the 1960s and 1970s referred primarily to their husband’s duty failures (desertion, or failure to provide maintenance) whilst women from the 1980s onwards tended to construct themselves as obedient wives, which they contrasted with their husband’s failures. Here, the outcomes of women’s strategies may be key indicators of the level of their social power. Women’s use of discourses of rights and obligations in the 1960s and 1970s functioned to obtain divorce, although it did not necessarily enable them to obtain their marital rights (maintenance, property divisions). In the 1980s and 1990s, women were sometimes able to use New Order discourses to confront male cultural and religious authority and improve maintenance settlements. However, in the context of this microhistorical study, women’s use of discourses of obedience have not been particularly effective in the period after the New Order. My analysis of women’s interpretations of rights and obligations demonstrates that hegemonic gender ideologies are not exhaustive, but court records show that male-sanctioned ideologies are frequently more powerful.

The increasing judicial emphasis on female obedience in the post-New Order period also shows that the experience of social change is gendered. The 1980s seems to be a key chronological marker for a change in women’s experiences of court-mediated divorce. At this time, Religious and State Courts began to use more conservative discourses and both male and female litigants were forced to change the ways in which they presented their claims. However, the rise of state authoritarianism was countered by the possibility for some women to manipulate these discourses. In contrast, the fall of the Suharto regime in 1998 has not necessarily marked the beginning of any dramatic liberation for women’s use of the court system.

1998 is clearly a political milestone of immense significance for all Indonesians, which has ushered in increased political freedoms, but for women it has also marked an increase in conservative judicial decisions focused on women’s obedience. Nonetheless, as the
evidence of female informants from a range of classes suggested, dominant gender ideologies are not unquestioningly accepted by all women (or all men). The ways in which women have been resistant to these ideologies in the context of divorce is the subject of the next chapter.
PART 3

Implications of Divorce
Dominant gender ideologies are invariably understood and used in divergent ways by different social actors. This chapter focuses on women’s agency in negotiating the gender ideologies embedded within the divorce process. In previous chapters I have interrogated state constructions of gender, two of the discourses (shame, rights and obligations) the state sought to apply to divorce and the ways in which female and male litigants and judges used such discourses. Here, I provide a more detailed analysis of the specific contexts in which women in particular have been able to behave agentively. I am interested in this question because, as alluded to in Chapter 3, passivity has long been posited by scholars as an indicator of power in Javanese society. I have thus far argued that men’s and women’s actions in marriage and divorce also reveal the gender ordering of social power, and that the regulation of marriage was harnessed by the state to constitute its own power. Building upon this central proposition, the question of agency and passivity in divorce, and what this might indicate about social (and therefore state) power, becomes an extremely important one. In this chapter, I explore this issue through a number of key questions. What constituted agency? What factors constrained or facilitated women’s agency in divorce? How did women’s expressions of agency vary in different geographic and religious contexts, and change over time? Agency is an important concept for feminist scholars, and there have been some excellent studies of this topic as it relates to Indonesian women. However, none as yet have examined women’s actions in divorce and its implications for the concept of agency.

The chapter is guided by two key aims, both relating to the nature of women’s relationship with the state. My first aim is to understand how women engaged with the state through the use of state law and the court system, to achieve a level of personal (or familial) benefit or self-determination. Such benefits or self-determination could include obtaining divorce, property, child custody, or protecting status. In pursuing these goals, women’s actions may at different times have constituted an acceptance of or resistance to state, religious and
cultural gender ideologies. In the Thesis Introduction, I asked whether and how the state used the institution of marriage to consolidate power and shape its citizens, especially female citizens. This chapter examines in detail the corollary of that question. Namely, how did women resist, co-opt or acquiesce to the state’s efforts to transform or direct gender relations and were they able to subvert the state’s ideological prescriptions in order to challenge other constraining gender ideologies within their local community? Examining women’s responses to the state project, in this case the outcomes of specific legal negotiations, enables a deeper understanding of the gendered nuances of the penetration of state ideology.

The second aim, inextricable from the first, is to scrutinize the extent to which an apparatus of the state (the court) was an effective forum for women to challenge gender ideologies. In public discourse, the Marriage Law was presented in terms of the legal agency it vested with women. I have already argued that oppressive states such as the New Order attempt to co-opt women to the state project through ostensibly emancipatory discourses and legislation. This conceals the deeper intent of control over women and families, which enables broader state control over citizens. In practice, therefore, was the legal agency the Marriage Law bestowed upon women a “guided agency” that was only effective when it was employed in the interests of the state? And if so, what were the legal consequences of agency that might be considered “anti-state?”

This chapter takes a slightly different methodological approach to that used in earlier chapters. In previous chapters I have analysed historical changes in the ways in which litigants presented cases, noting how the meanings and operation of gender within these cases changed. Clearly, women’s actions in divorce were influenced to varying degrees not only by the state gender ideology embedded in the Marriage Law, but also the religious and cultural values of particular places and times, and the power dynamics of their particular marriage. Acquiescence, co-optation and resistance are not necessarily mutually exclusive strategies, and nor do they necessarily appear in court records as distinct, or measurable

1 By this, I do not mean that women have identified a particular gender ideology and made a conscious decision to publicly accept or reject that ideology in the court. That is clearly too deterministic. Rather, I am suggesting that certain gender ideologies were accorded currency by the state, or by male religious or community leaders. Women’s actions in seeking divorce (which were of course necessarily self-interested), and the discourses they employed in the court, can be analysed in light of these gender hegemonies in order to understand which strategies were most effective.
historical milestones. For this reason, rather than attempt to chronologically and definitively chart forms of women’s agency across time, I have chosen to examine in detail selected examples of women’s agency. In doing so, I intend to provide a deeper understanding of women’s practices of engagement with, and resistance to, the Indonesian state.

I have structured the chapter around three different ways in which women exercised agency in the context of divorce, primarily within the court, but also using examples outside the court system. I understand agency to be broad-ranging in its potential meanings (explained below). Therefore, I have broken this category down into some of its specific aspects, and use the terms of acquiescence, co-optation and resistance as organising headings in the chapter. As a prior assumption, I contend that no action can be categorised as entirely acquiescent, agentive or resistant but may at times incorporate aspects of some or all of these categories. However, for the purposes of heuristic analysis, I have selected representative examples that seem to demonstrate aspects of acquiescence, co-optation or resistance most prominently. I will explain the reasoning behind the use of these terms in the first section, dealing with definitions and the historiography of women and agency in Indonesia. In the second section, I will discuss women’s responses to divorce that could be deemed acquiescent. This is followed by an analysis in the third section of circumstances in which women might have been said to co-opt the Marriage Law and patriarchal legal structures to their benefit, which might encompass actions that are either resistant or non-resistant to state, cultural or religious structures of authority. In the final section, I examine responses to divorce and the Marriage Law which clearly demonstrate resistance to state intent. As has been the case with all other chapters, I do not present my case studies as definitive or comprehensive analyses of divorce, but rather use them to investigate the diversity of women’s strategies and responses to the Marriage Law, in an effort to present a qualitative analysis on a complex and under-researched topic.

In each of these sections, I base my analysis upon divorce court records, newspaper reports and oral history sources. As I have suggested in earlier chapters, whilst court records might reveal the institutionalised facets of women’s agency and the character of their interaction with the state, the motivations and actions of litigants outside the ambit of the court are concealed. Oral history can partly address this gap, although as I have explained earlier in
the thesis (see Chapter 3, and Thesis Introduction), the positionality of both interviewer and interviewee can never allow an exchange that is completely transparent in meaning. By selecting this broad range of sources, I intend to illustrate the variety of ways in which women’s actions might be interpreted as agentive as well as the contexts in which they were and were not able to achieve their own goals.

1. DEFINITIONS AND HISTORIOGRAPHY
In this chapter I analyse women’s actions according to the categories of “acquiescence,” “co-optation” and “resistance.” I have selected these terms in order to convey some of the nuances of women’s actions. In the section below, I will discuss the historiography of agency and resistance, examining whether the frameworks developed by other scholars apply to the specific case of women in Indonesia. In doing so, I will demonstrate why terms more specific than “agency” are required to analyse women’s actions in divorce in Indonesia.

In the past two decades, the concepts of agency and resistance have been much favoured by feminist scholars, as alternatives to earlier analyses of women which positioned them as passive victims of patriarchally-driven historical change. I agree, however, with anthropologist Lyn Parker’s criticism that agency in particular has sometimes been overused as a monolithic category, employed uncritically to denote female power in situations in which female choice may have been severely constrained. For example, a study by Shahin Gerami and Melodye Lehnerer on women’s agency in the Islamic Republic of Iran after the 1979 revolution identified four distinct methods of female agency: collaboration (defined as actively supporting state policies, ensuring benefit from the state); acquiescence (submitting to state policies, in contexts where no other possibility for ensuring survival is present); co-optation (manipulating state policies for one’s own purposes); and subversion (undermining state policies). “Acquiescent agency” was exemplified by the case of an Iranian war widow with no financial support and a child who was forced by the Iranian State War Martyrs board to accept an arranged marriage to another war veteran (in accordance with state policy at that time). Gerami and Lehnerer

understood this as a severely constrained choice necessary for the woman’s survival. Whilst accepting that in such a situation failure to acquiesce might be a dangerous or even life-threatening alternative, the use of the term “agency” here seems to defy common-sense. I understand agency to imply at least some level of independent choice, which would seem not to fit this situation. I do, however, find that Gerami and Lehnerer’s terminologies are useful. I have applied “co-optation” and “acquiescence” to describe some of the ways in which Indonesian women negotiate court processes but use “acquiescence” in a less agentive sense than Gerami and Lehnerer. However, as I will explain below, active and passive modes of behaviour bear a different significance in Javanese culture compared to Western thinking, necessitating careful analysis of the circumstances under which acquiescence is used.

Clifford Geertz and Benedict Anderson famously argued, in separate works, that inaction and silence (frequently male attributes) signified power in Java.\(^4\) In a thoughtful edited collection of articles on women’s agency in Asia, Lyn Parker notes that early scholarship emphasizing Indonesian women’s activity, although valuable, reflected Western ways of thinking about agency. In Indonesia, not only does action not necessarily equate with power, but actions by both men and women may not be individually motivated, but rather are enacted at the behest of the needs of a family, or wider community.\(^5\) She highlighted the ambivalences that characterize women’s agency, requiring nuanced scholarship:

> We have to learn to talk about different ways of being in the world that avoid implying that women in Asia are susceptible to bullying by patriarchal “tradition” or “religion”, or that women's religious faith or spirit possession is simply their way of manipulating a subordinate position, and we have to acknowledge that with primary responsibility for reproduction and powerful gender ideologies they are also “unequal”.\(^6\)

Other essays in this collection, particularly Lauren Bain’s study of Indonesian theatre, make the important point that women’s agency may not necessarily be oppositional to dominant gender discourses, nor is it always resistant in intent. This “non-resistant agency,” as Bain

---


\(^5\) Parker, "Introduction," 9, 12.

\(^6\) Ibid., 13-14.
termed it, can play a role “in both perpetuating patriarchy and opening up small spaces which, in the long term, might enable other women to change some aspects of dominant gender ideologies.” The observations of Bain and Parker on the character of agency in Indonesia have some application for an analysis of divorce. Firstly, it should not be assumed that women’s initiative in seeking divorce necessarily signifies agency. Secondly, such actions should be, where possible, located within the wider context of familial structures of power (for example where women appeal against divorce in the interests of children, or file for divorce at the insistence of parents). Thirdly, women’s (and for that matter men’s) actions rarely fit into single categories of “resistance” “co-optation” or “agency” but rather may incorporate aspects of more than one of these categories, and vary according to the religious, cultural and historical context.

Resistance, inextricable from agency, was famously analysed in anthropologist James Scott’s seminal *Weapons of the Weak: Everyday forms of Peasant Resistance*. Scott argues that the behavioural and symbolic/ritual compliance of the Malay peasantry often masked anonymous acts of material and ideological resistance. Scott did not tease out the ways in which resistance was linked to gender relations, but the notion that overt conformity with hegemonic structures and ideologies may actually serve a purpose of implicit resistance against such structures has had wide-ranging implications for feminist scholarship. For example Arlene Macleod, in her analysis of voluntary veiling in Cairo, notes that some women chose to veil enabling them to leave the home to enter the public space of the workforce without criticism. However MacLeod finds that this was an ambiguous resistance which also reinforced public perceptions that women in fact should not work. She termed this resistance, which both subverted and reinforced patriarchal gender discourses, an “accommodating protest.” Lila Abu-Lughod’s influential work on Bedouin women cautioned against romantic interpretations of resistance in feminist scholarship, which in its efforts to ascribe sufficient weight to the minute ways in which women might resist patriarchal domination, risks failing to sufficiently interrogate the operation of power. Instead, she argued that resistance should be used as an indicator or “diagnostic of

---

I apply the feminist frameworks of MacLeod and Abu-Lughod to my analysis of Indonesian women and divorce. Frequently, women did make claims in court that explicitly complied with dominant ideologies, which enabled them to access divorce gifts or other property. However, following Abu-Lughod, the process of making claims in this way serves to indicate who holds power, which in many cases may have been husbands and/or the state.

Resistance and agency are of course embedded within the gender, class and other power relations operating within any given cultural context, and may have a variety of meanings within that culture. Some theorists have nonetheless attempted to develop broad frameworks that enable cross-cultural analysis of ways in which women negotiate structures of power. Feminist theorist Deniz Kandiyoti, for example, argued influentially in 1988 that “women strategize within a set of concrete constraints” which constitutes a “patriarchal bargain.” In societies such as the Middle East, India or China, characterized by Kandiyoti as “classic” patriarchies, such bargains could entail women’s internalization of patriarchal ideologies, in which women received “protection [from men] in exchange for submissiveness and propriety.” Alternatively, in the polygynous context of Sub-Saharan Africa where women nonetheless had some degree of autonomy in the determination of the proceeds of their labour, attempts by governments to deliver funding to male household heads were perceived as a threat to women’s greater autonomy within the existing male-dominated customary system and so resulted in open female resistance. Kandiyoti perceives therefore that women’s actions, agency, and passive or active resistance are influenced powerfully by the “patriarchal bargain” of any given society, and that such bargains vary according to class, ethnicity and “are not timeless or immutable entities, but are susceptible to historical transformations that open up new areas of struggle and renegotiation of the relations between genders.”

Kandiyoti’s theory of a patriarchal bargain, denoting a gender order which is constantly contested and even renegotiated, provides a useful way of examining Indonesian women’s

---

12 Ibid.: 278.
13 Ibid.: 275.
strategies in court. The period of time I have selected for analysis (1974-2005) was characterized by changes in gender relations in terms of the increasing emphasis by the New Order state on middle-class housewifeliness as the feminine ideal. However, women may also have used the state to attempt to challenge culturally or religiously defined gender hierarchies. An analysis of women’s strategies in divorce to achieve personal benefit may therefore provide a particularly fruitful snapshot of how the relationship between women and the state, or the “patriarchal bargain,” changed.

As I have outlined above, agency is broad-ranging and ambiguous in its manifestations. Thus I have employed the more specific categories of “acquiescence,” “co-optation” and “resistance” to analyse women’s actions in divorce. I define “acquiescence” as an acceptance of the existing power structures, and at times of the demands of others. However, I use this term to encapsulate both the methods of operation in court that are agentive (in the sense that it might best protect women’s interests in accordance with Javanese cultural norms), and those constrained responses to an oppressive situation in which there is no genuine opportunity for choice. I define “co-optation” as a strategy whereby women use either the Marriage Law or other hegemonic gender discourses to act in their own (or their family’s) interests. Following Bain, I attempt to point out circumstances where this might, or might not be, “resistant in intent.” It will become apparent that the section on “co-optation” is far longer than the other two sections, primarily because so many of the examples do seem to fit Bain’s concept of “non-resistant agency,” as discussed in detail further on. While I do use the term agency throughout this chapter, I use it to signify women’s capacity to act as subjects, to have some degree of choice that is in their own or the group’s interests. The chapter is underpinned by Kandiyoti’s concept of the “patriarchal bargain” and Abu-Lughod’s idea of resistance as a “diagnostic of power,” which I use to examine how women’s actions in divorce suits might reveal the distribution of power within state, religious and cultural gender orders. I do this bearing in mind that the meanings of the sorts of actions I refer to (acquiescence, co-optation and resistance) may differ according to class, gender and religion, and that they may be further obscured by my own subject position as a foreign researcher.

My analysis of women’s strategies and actions is qualitative, and has deliberately eschewed including rates of women’s use of courts as an indicator of agency. This is because I do not
believe that legal participation automatically indicates agency, or social power, a point that has in part been alluded to in Chapter 3. Anthropologist Michael Peletz has reported that across the Muslim world women have historically had a greater level of involvement with religious courts than men, because Islamic regulations on female-initiated divorce require judicial intervention.\textsuperscript{14} Certainly, in comparison to twentieth-century Western legal systems (prior to reforms from the 1960s onwards), this has allowed women faster and easier access to divorce and has been considered by scholars to be relatively advantageous for women. However, I would add to Peletz’ point that, in many cultural contexts, male religious authority or cultural gender orders invest male actions with an authority or power that does not necessitate legal intervention. Women’s use of formal legal systems in contexts where such forums are not culturally valued therefore requires close examination. In particular, while individual cases may exhibit women’s passivity, or agentive, resistant or subversive strategies, the rate of legal participation in itself does not necessarily provide answers to questions about women’s social power and their place in the gender order.

In the Indonesian context, as Parker’s thought provoking collection implies, agency and resistance and its implications for gender relations and the constitution of state and social power requires greater evaluation. The operation of gender in the social and legal practice of marriage and divorce in particular has been under-theorised and under-researched. I contend that marriage, and women’s place in this institution, is an important locus for the delivery of state, community and religious gender ideologies. The nature of women’s actions in the context of marriage and divorce, and whether it is passive, agentive or resistant, therefore has profound implications for the maintenance or dismantling of power relations predicated upon a hierarchical gender order.

2. ACQUIESCENCE: AN INDICATOR OF FEMALE AGENCY OR OPPRESSION?

Female passivity, or acquiescence, in the context of divorce may have had a range of meanings, some of which I wish to explore in this section. The questions I am concerned with in my analysis include: what did women acquiesce to? How has this changed over time? How were acquiescent strategies shaped by gender and have there been occasions when women’s acquiescence could be deemed agentive? To answer these questions, I

examine the overall cohort of 51 Muslim cases from the rural Wates Religious Court, followed by a closer analysis of three Muslim examples from the Wates Religious Court in 1967 and 1973 (just prior to the introduction of the Marriage Law), and one Muslim example from the urban Yogyakarta Religious Court in 1975 (the year after the law was passed). I then contrast the court material with three narratives of Muslim divorce obtained during fieldwork in 2004-2005. In the first narrative the woman decided to divorce, but in the other two accounts the women decided to avoid divorce. I consider here the differing manifestations and significance of acquiescence. Because the details of some of the early records are very sparse, I pose some of my analysis as speculation.

A well-known authority on the Indonesian legal system, Daniel Lev, argued in 1972 that Islamic courts in Indonesia were generally sympathetic to women’s divorce claims:

By and large, Islamic judges seem to recognize the social prose of their role. Occasionally, strict judges will pursue inconsistencies in testimony and make sessions uncomfortable for wives. And it is by no means rare for a wife's pleas to be rejected. But confronted so frequently by women who have suffered from unhappy marriages, religious judges tend to be sympathetic and quick to justify divorce, even at times when the plaintiff wife is clearly dissembling or at fault. This characteristic stands out in contested cases as well as those in which husbands do not appear, usually indeed because they have deserted. Popular impressions have it that Islamic courts favor husbands, undoubtedly because Islamic legal rules do so, but in general the opposite bias is more common. The essential reason for this bias is that the clientele and social function of Islamic courts elicit judicial attitudes favorable to wives.¹⁵

He noted further that “most *ta’lik talak* cases go through the courts with amazing speed; in one court session I observed, the average time per *ta’lik-talak* was about ten minutes.”¹⁶ This might suggest that the majority of divorce cases filed by women could be understood as an example of female agency. However, there may also have been finer nuances to such agency, as the following examples illustrate.

It could be argued that in some instances, filing for divorce was not agentive, but rather acquiescent to familial, social and political pressures and/or constraints. Clifford Geertz’s vignette (referred to previously in chapter 3) from the 1950s of the wife who filed for

---


¹⁶ Ibid. 163.
divorce provides a classic illustration of action that is not agentive, but rather is made in response to male pressure. In Geertz’s account, the wife realised that her husband wanted to end the marriage and was deliberately exacerbating a family conflict. This forced the wife to deal with the court, and enabled the husband to preserve status by appearing to be the “wronged” party, an arrangement he described to Geertz as “halus,” refined.17

Some of the Wates cases raise similar questions as to whether women’s suits for divorce were inherently powerful or unfettered choices. Of 51 cases obtained from the Wates Religious Court for the years 1965, 1967 and 1973 (a random sample, as discussed in the Thesis Introduction), all except one were filed by women. In 10 of the cases, the husbands had either appeared in court or sent a letter advising that they acquiesced to the divorce or had previously already pronounced divorce at the KUA (Kantor Urusan Agama, Religious Affairs Office).18 As I have argued in Chapter 3, some men’s public acquiescence to divorce, which from a Western perspective might be seen as a lack of agency, could in Javanese thinking have been interpreted as a high-status action, signifying more powerful control and reserve.19 For example Saudara S (27, farmer) was called three times by the Wates Religious Court in 1973 to answer his wife Ny R’s (26, farmer) claim of seven-years desertion, but refused to appear and was branded “membandel” (rebellious) by the village head.20 The motivations for both parties’ actions are hidden by the minimalist court records but it could be argued that Ny R took the initiative and filed for divorce because her husband had failed to provide for her for many years. In another interpretation, Saudara S’ actions could be viewed as an assertion of a superior male passivity, which forced his wife to acquiesce to the situation and take action. This second possibility illustrates the ambiguity that marks actions in Java, which do not inherently signify agency or power. Action ironically might indicate acquiescence to the other person’s passivity, and thus be an expression of disempowerment.

17 Geertz, The Religion of Java 245.
18 These cases were 1965: 7; 1967: 48, 50, 53, 56; 1973: 3-5, 9, 19.
19 I argued in Chapter 3 that this was expressed through the phrase “rela diputus kalah,” that is “willing to be adjudged to have lost” or “sudah merelakan diri,” “has submitted oneself [to the court].” For example, “7/1965/PA.Wates: Nj W. v Mas K.,” (Pengadilan Agama Wates, 1965).
The notion of passivity as a form of agency, and action as a form of acquiescence, could also be argued in cases where the husband had already pronounced *talak*, and then the wife filed for divorce at the Religious Court, citing this pronouncement. Nj A (21, farmer) filed for divorce from her husband Bapak S (30, farmer) in the Wates Religious Court on July 6, 1967, on the grounds that he had failed to take care of her for four years. However, Bapak S had already pronounced divorce on June 12 and so the court simply ratified the divorce.\(^{21}\)

Why would the wife have gone to the trouble to file this suit in court, when her husband could have simply registered the *talak* at the KUA? As Michael Peletz found in his study of the use of Religious Courts in the Negeri Sembilan region of Malaysia in the late 1980s to 2000, women frequently filed such suits in court because they wanted to clarify their marital status, and ascertain whether they were in fact divorced.\(^{22}\) Possibly Bapak S refused to register the divorce and his wife wanted legal proof. This interpretation encompasses a level of female agency, but an agency that was primarily acquiescent and in response to the more powerful, and agentive, male inactivity.

In some cases, long periods of time elapsed between the breakdown of the marital relationship and the woman’s suit for divorce. What was the significance of these delays, which were a common feature of many of the Wates cases? In 41 instances in the sample between 1965 and 1973, husbands were listed as missing (*ghoib*) or failing to attend court, with the period of desertion ranging from months to many years. Women may have chosen to delay divorce for a range of reasons; perhaps to “resist” the status of divorcée or to avoid the costs of filing a court case (incurring both court costs and the *iwadl* divorce gift to their husbands). However, particular political circumstances may at times have elicited (or enforced) women’s deliberate passivity. In a case that appeared before the Wates Religious Court in 1973, Ny P (28) claimed that her husband Saudara P (35) had deserted her eight years ago, since 1965.\(^{23}\) There are no details contained in the one-page record to explain this lengthy delay. Her husband may have been caught up in the violent anti-communist purge of that year that resulted in an estimated half a million people dead, and thousands imprisoned. Similarly, Ny S (29) only filed for divorce in the Yogyakarta Religious Court in 1975, ten years after she claimed to be deserted by her husband Saudara S, who was in


\(^{22}\) Peletz, *Islamic Modern* 130.

jail. The date of their wedding, 21 August 1965, was only a month before the alleged coup of 30 September that led to the communist purges, and his imprisonment for ten years strongly suggests that Saudara S may have been a political prisoner. After 1965, any suspicion of association with the Indonesian Communist Party (Partai Komunis Indonesia, PKI) was extremely dangerous, and could have caused women to delay contact with a state institution.

Court records enable analysis of public modes of interaction between litigants and the state, but there may also be many instances in which familial, social or financial constraints preclude divorce altogether. Here, oral history is a useful tool for analysing other possible meanings and outcomes of female passivity, or acquiescence. Some women’s experience of the negative consequences of agency might lead them to counsel other women to remain in difficult marriages, rather than exercising an agency that resists male religious authority or domination. This was illustrated by an anecdote relayed by Bu Firyal, a nyai (female religious leader) at an Islamic religious school (pondok pesantren) in central Yogyakarta:

I heard of a santri [member of the Islamic community] here, she had a household problem. Went to the nyai, Bu Nazihah. The man was too extreme in how he educated his wife, his child. His wife couldn’t leave the house, wasn’t allowed to work. The husband wouldn’t accept advice from anyone, including his wife. Wife was afraid. The husband also knew more about religion, so she was afraid to challenge him. They didn’t communicate well, and then the husband wanted to marry again. So, this santri went to the nyai. She said she wanted to divorce. “I want to be like Bu Nazihah.” Bu Nazihah said, “don’t be in a hurry to divorce, being a divorcee is not a happy matter.” The nyai said accept the second wife, the important thing is to look at the child. If a man wants to marry again, that’s not something you have to make a big deal of. “As women, we have to accept.”

I interpret this woman’s acceptance of her situation as one driven by her fear of social stigma and the pressure of a collectivist culture, which is unreceptive to the notion of

individual rights. Her acquiescence to the polygamous marriage and her decision not to divorce was a choice that indicated little or no agency.\textsuperscript{26}

There may also be instances in which women acquiesce to remain in a difficult marriage for strategic reasons, and I interpret this as an agentive acquiescence. This was the case for Bu Dominika, a Catholic woman in her mid-40s who lived in a kampung (urban neighbourhood) in central Yogyakarta. Bu Dominika had converted to Islam to marry her husband, although she remained a practising Catholic. In mid-2004 her husband had moved without explanation to the other side of the city to live, she suspected, with a girlfriend. Outraged, she sought the advice of a legal aid Non-Government Organisation (Lembaga Bantuan Hukum: Asosiasi Perempuan Untuk Keadilan, Legal Aid Institute: Indonesian Women for Justice, LBH Apik) as to whether she had grounds for a divorce. However, the lawyers advised her that while she could indeed have grounds for a divorce, she might find herself better positioned if she waited for her husband to file the suit. This, they explained, would allow her to counter-sue for financial compensation, including the mut’ah divorce gift and the obligatory three-months maintenance (nafkah iddah) that Muslim husbands must provide their ex-wives. If she filed the suit in the Religious Court, she would have to pay court costs and a divorce gift (iwadl) to her husband. Bu Dominika faced additional family pressure because her teenage daughter was very close to her father. Her daughter blamed Bu Dominika for her father’s departure and angrily told Bu Dominika not to divorce him, “don’t leave my father” (“jangan tinggal Bapak saya”). Finally, Bu Dominika was also the “Ibu RT” (Ibu Rukun Tetangga, administrative head of the neighbourhood association of about 30 households, and generally a position held by men during the New Order era, referred to as Pak RT), and so had some level of status in her community.

Bu Dominika decided to take the advice of the lawyer and simply wait for her husband to act. This was an acquiescence that was agentive in a number of ways. It increased the possibility that she might receive a fairer financial settlement from a divorce should it eventuate, it reduced the appearance of fault in the eyes of both her family and the community as she would be the “victim” rather than the perpetrator of the divorce, and it

\textsuperscript{26}Polygamy, and its role in influencing women’s decision to divorce, is an extremely important issue which is beyond the scope of this thesis. This is an area which would benefit from further research.
protected her position as a community leader and role model. Of course, the very necessity for her acquiescence at all also indicated her lesser social power as a woman, but nonetheless suggests that not all acquiescence is completely devoid of choice or strategic benefit.27

In Bu Dominika’s case, acquiescence masked agency. In another case, that of Mbak Trisna, action masked acquiescence and a lack of choice. Mbak Trisna, a Muslim professional woman in her 30s from East Java who had lived in Yogyakarta for 15 years, had been divorced twice. Her first divorce reveals the operation of familial structures of power that restricted her capacity to act, and which were just as influential as the state power vested in the court. Her first marriage, in the early 1990s to a man from an aristocratic family from West Sumatra, had been against the wishes of his parents who had already selected a spouse for him:

The marriage wasn’t easy. My parents consented, because they were afraid of sin [that they would engage in pre-marital sex] but my husband’s parents didn’t consent. My husband was from West Sumatra, aristocratic [family]. To marry someone else [outside that class], customary rights, inheritance, everything lost. But because we loved each other, we got married. A year after marriage we had a son. It turned out getting married without parental consent wasn’t easy. My husband’s parents liked magic. His mother was clever [at this]. From early on, [I was] often sick, skin was sick, my body. It was my husband who told me actually his mother did that, she was clever in those matters. [Our] Son was to head the family [the heir to the clan leadership, calon datuk], [she] wanted to separate me from him, because he was the successor. My husband was often called home because his father was sick, two, three months [at a time]. The last time he went home, he never came back. But we were still communicating at that time. About the divorce, [my] husband said ‘It’s not good how I am splitting us up, but I am not strong enough to oppose mother’ and it’s better if you file for divorce.28

There are two aspects of Mbak Trisna’s behaviour that are relevant here. Firstly, the actions of both her husband and Mbak Trisna were in the interest of the group, indicating the multiple layers of power that can influence agency. Secondly, although Mbak Trisna filed for the divorce, this was not an indicator either of agency or resistance against patriarchy, as she herself did not want the divorce. This also confirms that court records should be read with caution, as there may often be negotiations occurring outside the court that are hidden from the written record.

I asked at the start of this section what situations or ideologies women might have acquiesced to, whether this has changed over time, in what ways this process was gendered and whether it had the potential to be agentive. Using examples from the Yogya and Wates Courts in 1967, 1973 and 1975 as well as oral testimony from 2004, I have argued that in some cases, women’s suits for divorce are not agentive. Rather, they are in response to familial pressures (as in the case of Mbak Trisna) or political circumstances (the 1965 communist purges) or express the more powerful passivity of their husbands (as was possibly the case in the 1973 Wates case, “Nj A v Saudara S.”) This type of response would appear, at least within the microhistorical limits of this study, to have maintained currency over the last four decades. These examples would also indicate that the operation of acquiescence is determined by gender. Male passivity is powerful, and elicits positive outcomes for men in divorce: women must file the suit; men avoid court costs and payment of divorce gifts. Female passivity, on the other hand, as in the case of the pesantren member who accepted polygamy rather than divorce, is often a response to superior male power. Similarly, female action in filing for divorce is sometimes in fact caused by men’s unwillingness to file for divorce. In this sense, it could be argued that the long-standing scholarly view of passivity in Java as powerful perhaps needs to be revised. Male passivity is indeed often powerful, but female passivity and acquiescence, at least in the context of divorce, responds to that male power. It is not, therefore, passivity itself that is powerful but the practice of it by men.

3. WOMEN CO-OPTING THE STATE: CONFORMITY OR SUBVERSION?
Although the New Order state constructed women as legally and socially subordinate, at times women may have been able to co-opt such constructions, and the legal frameworks
provided by the state, to advance their own (or their family’s) interests. This may also have enabled them to contest religious and cultural gender ideologies. In this section, I ask what particular aspects of Indonesian state policy or discourses women co-opted, how did this change over time and could women’s actions be characterized (as Bain has described some Indonesian women’s actions in the context of theatre) as a form of non-resistant agency? I approach these questions from two angles. In the first part of the section, I look at the ways in which women garnered legal knowledge in order to resolve marital conflict, through the use of legal education programmes and newspaper legal advice columns. I base this analysis upon informant testimony from judges and NGO activists as well as newspaper and NGO records. By examining the questions women posed before they entered the court, I wish to demonstrate what expectations women might have had of the legal system, and how the impetus for legal action may be rooted in women’s lesser marital and social power. In the second part, I scrutinize a selection of case studies from various Religious and State Courts, examining the discourses women employed in court, their demands, the success or otherwise of these demands and their convergences with state gender ideologies. I have selected both Muslim and non-Muslim cases in order to demonstrate the similarity of strategies employed in formal legal forums, which I believe demonstrate the transcendence of particular gender ideologies over the specificities of religious doctrine.

3.1 Preparing to Engage with the State: Legal Education and Advice

Women’s use of state legal frameworks to pursue divorce settlements, especially in the early years after the enactment of the Marriage Law, should be understood as a deliberate decision (although not always voluntary, as section 2 demonstrates), to engage with the state. I say this because engaging with state legal and institutional structures was just one of the methods Indonesian women could use to manage conflict and negotiate divorce. In many cases it may have been a last resort after familial and community or religious-mediated negotiations had already failed. In a plural legal context where courts were not the first point of contact for disputants, part of the process of engaging with state structures entailed ascertaining how this could be done. Below I will discuss in general women’s efforts to familiarise themselves with the legal system through state legal education programmes, and then will analyse some specific examples of this process as it occurred in women’s letters to legal advice columns. Examining the questions women posed to legal advice columns over a period of time offers some insights into the factors that led women
to use the court system. Firstly, continuities or changes in the nature of their questions may reveal in part whether the conduct of men and women in marriage and divorce was changing in response to the state’s efforts to direct marital behaviour. Secondly, the scenarios outlined by women, and the responses given by lawyers, may demonstrate how gender operates within the distribution of familial and community power.

When the Marriage Law was promulgated in 1974 formal legal processes were not necessarily widely understood, especially in rural areas and amongst non-elite groups in general. The state identified legal aid and the dissemination of an awareness of state-law as one of its goals in the Third Five-Year Plan. Legal education programmes (penyuluhan hukum, legal counselling) were established by the National Legal Development Board (Badan Pembinaan Hukum Nasional, BPHN) in 1983 and administered with the assistance of Religious and State Courts.

Goals of the legal education programme (as stated in 2005) were “the creation of knowledge within society about law” and “the realisation of a society that acts according to the law.” Vehicles to achieve these goals included the establishment of voluntary study groups called Keluarga Sadar Hukum (KADARKUM, Legally Aware Families) which met with the aim of competing in national competitions each year (Lomba KADARKUM). Villages which met the three criteria of payment of land taxes by 90% or more of the village land owners, no incidence of under-age marriage and zero or low rates of crime were eligible to be declared a “Legally Aware Village” (Desa Sadar Hukum). Although such programmes could be viewed as one of a number of indexes under the New Order that registered levels of community obedience to the state, they could also have had community support and been used by community members to their own benefit.

According to a female judge from the Yogyakarta Religious High Court who had been involved in village legal education programmes since joining the judiciary in the early 1970s (an informal programme at that stage), women were the most eager participants, who generally wanted to learn about their legal rights in marriage and inheritance.\textsuperscript{32} Lawyers from a women’s legal aid organisation in Yogyakarta, \textit{Rijka Annisa}, also noted this trend in free seminars they offered to villagers.\textsuperscript{33} While the state legal structures may have been discriminatory, women’s attempts to understand these structures may have enabled them to circumvent or confront the discrimination they also faced in religious and social practice. This co-optation could have been either resistant to state intent, or non-resistant. Such ambiguities will be discussed in further detail in the discussion below on legal advice columns, followed by court case studies.

The Yogyakarta daily \textit{Kedaulatan Rakyat}, throughout the period analysed in this study ran regular legal advice columns, addressing a variety of legal issues. The legalities of marriage and divorce were common themes of both male and female letter-writers. However the majority of letters I obtained were written by women, and so I primarily analyse these, as the agency of women is the focus of this chapter overall (although I do draw upon letters from men where they provide a useful point of comparison with women’s letters). I analyse a selection of requests for legal advice sent to the \textit{Kedaulatan Rakyat} in the mid-1970s and 1980s (to a male columnist, Maharban Zainun, in the 1970s and to an anonymous columnist in the 1980s) and those sent to a column written by female lawyers from a women’s legal aid NGO LBH-Apik in the 2000s (obtained from LBH-Apik archives). In the case of the earlier letters, the responses aligned with state ideologies that attached a negative value to divorce and emphasised the primacy of state law over Islamic or customary legal practices. The later letters, from LBH-Apik also reflect a particular bias; namely the explicitly feminist political agenda of LBH-Apik to increase women’s legal knowledge and therefore empowerment in society (in the western feminist meaning of the word, implying equality of access to employment, legal rights, education, the alteration

\textsuperscript{32} Bu Widya, Interview, 10 August 2004.
\textsuperscript{33} Bu Novi, Interview, 22 October 2004. \textit{Rijka Annisa} was established in Yogyakarta in 1993. Its primary aim is to assist women who are victims of domestic violence (which is defined by the organisation as including psychological and “financial” abuse as well as physical and sexual abuse.) It has broadened its outreach since 1993, providing legal aid to any woman who requests it, as well as counselling services and setting up a community education centre in the Gunung Kidul district, south of Yogyakarta city. For details see Rijka Annisa, \textit{Profil} (2003 [cited 2 February 2006]); available from http://www.rifka-annisa.or.id/profil.php.
of the gendered distribution of social power and so on). However, the problems presented by the women over the course of the 30 year period remain strikingly similar.

Women’s questions to legal advice columns revolved around a typical range of scenarios. They wanted to know on what grounds they could obtain a divorce, what legal redress they had in the event of their husband committing adultery or marrying another woman without their permission, and what rights they had with regard to marital property. In letters submitted during the New Order’s rule, advice recommending against divorce was sometimes offered to both women and men, even in contexts where such advice was not requested. For example, a man who enquired in 1975 regarding the process of marital property division was counselled by Marhaban Zainun that “as far as possible, you should attempt to avoid divorce. Your divorce will impact greatly on your five children.”

Similarly, a 1989 enquiry (to an anonymous columnist) from a woman who claimed that her husband was violent towards her and wanted to establish grounds for divorce received an unsympathetic response:

“It’s for the best if the Editorial Staff first of all advise you. Nyonya, husband and wife already have a child; it’s for the best if you don’t take a step that goes too far. Speak reasonably with your husband; how can you approach him so that he will change his character and nature? Divorce is not good according to any religion. Pity the children, Nyonya. Also, how [will things be] if those children

---

34 I use the term feminist here advisedly, acknowledging that while feminism is most certainly not monolithic, and is a term not palatable to all groups in Indonesian society, there are NGOs, of which LBH-Apik is one, which characterise themselves in terms that do align with some of the ideologies of Western feminism. The organisation, which was founded in 1995 by seven female lawyers including the well-known Nursyahbani Katjasungkana, states its aims as follows: "LBH APIK Jakarta is an institution that aims to create a fair, prosperous and democratic society, along with creating equality between men and women in all aspects of life, whether that be political, economic, social or cultural. We aim to achieve this goal by creating a legal system that has a female perspective, that is a fair legal system that can be seen from the relationships of power in society - especially female-male relationships - by constantly working to eradicate gender inequality and injustice in all its forms." ("LBH APIK Jakarta adalah lembaga yang bertujuan mewujudkan masyarakat yang adil, makmur dan demokratis, serta menciptakan kondisi yang setara antara perempuan dan laki-laki dalam segala aspek kehidupan, baik politik, ekonomi, sosial maupun budaya. Tujuan ini hendak dicapai dengan mewujudkan sistem hukum yang berperspektif perempuan yaitu sistem hukum yang adil dipandang dari pola hubungan kekuasaan dalam masyarakat, —khususnya hubungan perempuan - laki-laki—, dengan terus menerus berupaya menghapuskan ketidaksetaraan dan ketidakadilan jender dalam berbagai bentuknya.”). LBH APIK, Profil LBH APIK (LBH Apik Jakarta, 2006 [cited 8 June 2006]); available from http://www.lbh-apik.or.id/profil.htm.


eventually have a stepfather? It’s possible that the stepfather may have a good character and nature. In the Editorial Staff’s opinion, it’s not certain that a stepmother or stepfather isn’t good. However sometimes it is the opposite. Just try first; don’t be in a hurry to take a certain attitude or make a particular decision. But if your efforts fail and divorce is the best [option], the Editorial Staff cannot do anything [to stop you].

In this instance, the woman was attempting to use state law to extricate herself from a bad marital situation. The lengthy response, emphasising the primacy of her children’s well-being and the religious immorality of divorce, contrasts to the early response in 1975 which simply advised the man to avoid divorce. The 1989 response aligns with the language and practical impact of the Marriage Law, which ostensibly sought to limit divorce for men and women but in reality was more concerned with control of the female legal subject. The response of the lawyer further supports my contention that women’s agentic use of law to seek divorce was less acceptable to the state than when it was used to protect themselves from men’s divorce actions.

Property access was (and is) an issue on which women might choose to engage with the state legal system to achieve a better outcome (however this might be culturally defined) for themselves. Nonetheless, as the following example illustrates, legal advice was not always entirely adherent to the law itself, but rather was shaped by cultural understandings of gender, divorce and fault. In 1979, a daughter wrote to the Kedaulatan Rakyat on behalf of her father. She explained that after seven years of marriage, and despite his best efforts to prevent divorce, her father had finally acquiesced to the demands of his wife (the young woman’s stepmother) and pronounced talak. He was called into the village head’s office a few days later, where his ex-wife demanded that he sign a letter which agreed to divide all property produced during the marriage in half. In a “state of shock” (“dalam keadaan ’shock’ [sic]”) he signed the letter, which was witnessed by the village head, but he and

---

his daughter agreed afterwards that this was unfair. The daughter now enquired whether there was any legal redress:

1. According to law, how should property be divided if is the wife requests the divorce? Whereas my stepmother didn’t participate in seeking [property, i.e. didn’t contribute any work towards producing the marital wealth]? 
2. Is the action of my stepmother in making a letter of agreement without my father's knowledge justified legally? 
3. Does the Village Head have the right to get involved in the problem of this letter of agreement, because he was the one who validated it? 
4. What about the fact that the letter of agreement was made without the knowledge of BP4 (the Court)? Is that agreement valid? 
5. Can I (or my father) file a suit at the Religious Court regarding the case above? 

The daughter’s story emphasised the reluctance of her father to divorce, the laziness of her stepmother and her stepmother’s pro-active role in dissolving the marriage and circumventing the family in making a property agreement. Javanese social practice tended to advocate the equal division of joint marital property produced during the marriage (gono-gini) regardless of the nature of each spouse’s contribution. The stepmother clearly had attempted to shore up this claim with the use of a quasi-formal contract, witnessed by the village head. This was a common Javanese practice identified by anthropologist Robert Jay in the 1960s, in which villagers would bind a verbal agreement by making it in public or in front of village officials. 

The response of the columnist was intriguing. He advised the daughter that the contract was invalid because it required the genuine consent of both parties, which her father had not given. More importantly, he stated that the stepmother had no right to joint property unless she had contributed to the work effort. This advice was contrary to the Marriage Law which provided for marital property to be divided according 

---

“1. Bagaimana cara membagi kekayaan menurut hukum jika isteri yang memaksa minta cerai. Sedangkan ibu tiri saya tidak turut mencarinya?
2. Apakah dibenarkan oleh hukum tindakan ibu tiri saya yang membuat surat perjanjian tanpa sepengertahuan ayah?
3. Apakah Kepala Desa berhak turut campur dalam masalah surat perjanjian ini karena dia yang mengesahkannya?
4. Bagaimana mengenai surat perjanjian yang pembuatannya tanpa diketahui BP4 (Pengadilan)? Apakah perjanjian itu sah?
5. Apakah saya (atau ayah saya) bisa mengajukan tuntuan ke Pengadilan Agama mengenai kasus di atas?”

to local religious or customary law, and to Javanese social practice. However, it did conform to other cultural understandings, which the New Order built upon, of the importance of the degree of women’s culpability in divorce, which invalidated other rights (such as property rights). Both the query and response illustrate that although women might co-opt a variety of legal discourses, this always occurred in the context of constraining gender ideologies.

Enquiries sent by women to the LBH-Apik advice column in the *Kedaulatan Rakyat* between 2002 and 2004 also demonstrate how a gendered hierarchical distribution of social and familial power may constrain women’s attempts to co-opt law. In the problems outlined in these letters, men exploit both Islamic and civil legal processes and women then seek legal responses to this exploitation. Nonya Shinta (35, housewife) wrote that she had agreed to divorce under duress, after her husband wrote a contract in which he promised to give her the house if she did not obstruct the divorce proceedings. Once the divorce was granted, he refused to give her the house and hired a lawyer to argue that a contract that contains an agreement to divorce is invalid. Ibu Susilowati, a mother of three children, found a certificate registering the marriage between her husband and another woman two years previously, and wanted to know whether she could apply to the court to have that marriage cancelled. In another case, Lies had run away from her unfaithful, violent husband. She asked LBH-Apik whether she was eligible for a divorce, as when she had enquired at the Religious Court the official told her “not every request for divorce will be granted.”

LBH-Apik’s answers to the women’s questions were constrained both by the limits of civil law, and the reality of male power in marriage. They offered legal responses that in practice were likely to be expensive and unsuccessful. Nonya Shinta was advised to sue for breach of contract. Ibu Susilowati was told that after six months she could not longer apply

---

40 These letters were retyped by staff at LBH-Apik and filed, undated, with the responses. As they did not retain the original clippings, I cannot reference the newspaper issue in which they appeared, but rather have referenced them as an unpublished collection.
for annulments but could sue her husband for illegal polygamy. In numerous similar cases, women whose husbands were unfaithful were advised to report their husbands to the police for adultery. Women who wanted to claim property from recalcitrant husbands were advised to seek an order of execution from the court, an expensive and uncertain process. But as the question posed by Lies shows, courts in the post-New Order period are not always receptive to women’s attempts to divorce, but rather may sometimes treat them in a punitive manner, creating another circle of male power beyond the family which women must negotiate.

In these scenarios from 2002-2004, men seem to be adept at using Islamic and civil law selectively, making contracts which they later claim are not binding, or falsifying identities to access their perceived divinely-sanctioned rights to polygamy. Women’s desire to use the court to prevent divorce, annul polygamous marriages or access property suggests they do seek out avenues to resist male domination, although it may not always be successful. The response of the columnists in 2002-2004 (who were female lawyers) also differs greatly to the examples selected from 1975 and 1989, in that they offer direct answers to the women’s questions, without the moral censure of divorce contained in the earlier letters (commensurate with the broader goals of LBH-Apik to empower women, in a Western sense of the word, as alluded to above). These letters show that over time, women’s marital questions remained largely the same. However, after the demise of the New Order, legal advice became less conservative and more concerned with enabling women to access their legal rights. This raises the question of whether the tone of published legal advice reflects court practices, or rather reflects historically specific political ideologies and climates. In other words, was the advice of the 1970s and 1980s, which exhorted women not to divorce and to preserve families for the benefit of children (and community and nation), borne out in court decisions? Similarly, does the more proactive and non-judgemental advice from women’s NGOs in the 2000s reflect a change in court practices, or the specific pro-emancipatory ethos of the Reformasi era, or are the NGOs responding to increasing conservatism in the Religious Courts?

I have already argued in Chapter 4 that Religious Courts in the post-New Order period have begun to place a greater emphasis on the obedience of women. I have located this change within the assertion of patriarchal Islamic identity made possible by the absence of the paternalistic state. In the next part, I will examine the contexts in which women could, and could not, co-opt or manipulate state ideologies in both Religious and State Courts, speculating as to what political and historical circumstances might enable women’s co-optive strategies.

3.2 Co-opting State Legal Frameworks: Women’s Strategies in Court

In the period analysed in this thesis (1965 to 2005), the legal possibilities for women’s use of both the Religious and State courts for the purposes of divorce expanded greatly. However, these legal possibilities have always been mediated by the changing state, social and historical contexts. Below, I examine what women attempted to use courts for, and what factors influenced the legal outcomes, at different points in the last four decades of Indonesia’s history.

In a cultural context in which early and arranged marriages were common and divorce was prevalent, women in the 1960s were able to use the Religious Courts relatively easily to dissolve their marriages. For example, Mbak N (16, farmer) had married Mas D (26, farmer) in November 1963 but the marriage had never been consummated. She successfully filed for divorce in the Wates Religious Court in April 1965 on the basis of seven-months’ desertion. 46 Nonya S (20, labourer) was granted a divorce from her husband Saudara T (23, labourer) after one hearing at the Yogyakarta Religious Court in 1975, on the basis of lack of maintenance. 47 In the records of Religious Courts both before and immediately after the enactment of the Marriage Law, there was little sense that judges understood their role to be to restrict divorce by limiting the legal agency of either male or female litigants. This conforms to the model proposed by Daniel Lev (outlined earlier) based on his work in the 1950s and 1960s, that courts responded to the needs of their primary clientele which, in this case, was women.

The Marriage Law created new legal possibilities for women with regard to access to their marital rights, as it compelled husbands to support their families. Should men fail to fulfill this obligation, women were empowered to sue. However, in my entire sample of Muslim and non-Muslim cases between 1965 and 2005, only one woman made use of these provisions (as also discussed in Chapter 4) outside the context of a divorce suit. A Muslim woman, Ny P (24, labourer), sued in the Yogyakarta Religious Court in 1975 for maintenance from her husband Saudara H (26, labourer). Saudara H acknowledged that he had neglected Ny P and their child, because he had another wife. During the course of two court sessions, Ny P eventually agreed to withdraw her demand for back-payment of one and a half years maintenance, but Saudara H agreed from thereon to divide his wage equally between each of the wives.48 Research by other scholars working in Indonesia also suggests that the maintenance provisions of the Marriage Law have been infrequently applied by the courts. There may have been a number of reasons for this, including the prohibitive cost for women (and men) of filing court suits, a cultural preference for resolving disputes outside of the court system and a stigma attached to women who sue both for divorce and for property.49

Since the downfall of the Suharto regime, Indonesian legal scholars and practitioners have begun to criticise the inadequacies of the Marriage Law, particularly its lack of provisions which allow the enforcement of judges’ pronouncements on child support and maintenance. For example, scholars from the Faculty of Law at Universitas Atma Jaya, E. Sundari and M.G. Sumiarni, found that in 80 Muslim and non-Muslim cases obtained from two State and Religious courts in Yogyakarta dating from the late 1980s to late 1990s, maintenance (nafkah) for ex-wives and children was granted in only 26% of cases. In 39% of the 80 cases, neither did the wife apply for maintenance nor did the court make an unsolicited order for payment.50 This general point was confirmed by NGO lawyers in 2004, who

49 This was noted by a female State Court judge. Women who sued for divorce and also requested a property settlement often met with community disapproval and were deemed presumptuous, a sentiment encapsulated in the phrase “udah dicerai, masak minta-minta,” “[she is] already divorced, how can [she] dare to ask [for more]?” Bu Tuti, Interview, 24 February 2005.
50 E Sundari and M.G Sumiarni, "Perlindungan dalam Pelaksanaan Hukum Terhadap Posisi Wanita dalam Perceraian di Daerah Istimewa Yogyakarta," Justitia Et Pax 20, no. 12 (2000): 67-68, 70-71. The Marriage Law simply states that “the Court may compel an ex-husband” to pay maintenance (“Pengadilan dapat mewajibkan kepada bekas suami”). The exact date range for this study was not explicated. The authors noted at one point that they had selected some cases from 1988 and 1997 from each court. Universitas Atma Jaya is a prominent private Catholic university in Yogyakarta.
noted the difficulty of obtaining child support orders made by the court, which were often only “victories on paper” (menang di atas kertas).\(^{51}\)

Women’s difficulty in accessing maintenance orders was demonstrated by a Muslim divorce case handled by the legal aid NGO LKBH-UII (Lembaga Konsultasi dan Bantuan Hukum, Universitas Islam Indonesia, Legal Aid and Consultation Institute) in 2004. Although the Sleman Religious Court ordered the husband to pay ongoing maintenance for his child, these payments trickled away after a few months.\(^{52}\) The ex-wife, Mbak S, lived with the child in Yogyakarta but the husband, Mas E, was from Bangka in Sumatra. Mbak S’ only legal avenue for redress was to file a suit for the execution (eksekusi) of the court order, which civil procedural law requires to be filed in the legal domicile of the defendant.\(^{53}\) However, the cost of filing charges at such a distance from Yogyakarta was prohibitive. As this case demonstrates, the extent to which women could be successful in co-opting state law to their advantage (even in cases such as this one where they were supported by the court) has always been severely limited by the greater social power of men generally who can effectively choose whether or not they wish to fulfil the injunctions of the court. Moreover, as suggested in analysis earlier in this section, a woman may not even want to file a suit for maintenance, because of cultural gender ideologies which discourage women’s assertion of individual property rights.

Even if women’s use of courts could not guarantee access to property or maintenance, they could also use the court process to protect their status as wives, which I have argued in Chapter 2 is a form of social property. Women could delay their social categorisation as a divorcée, (janda) by launching a legal appeal against the divorce. Such an action ensured that the decision by the lower court would not take legal effect until the appeals process was exhausted. This action might have a number of motivations, including resistance against male authority to divorce women, the desire to avoid becoming a divorcée, and the desire to prevent their husband from marrying again.\(^{54}\) Below, I analyse a case which

---

\(^{51}\) Bu Novi, Mas Bambang, Personal Communication, 14 October 2004.


\(^{53}\) R. Soesilo, RIB/HIR Dengan Penjelasan (Bogor: Politeia, 1995) article 118.

\(^{54}\) Abdul Jamil, “Strategi Penangan Perkara Perceraian Dan Harta Bersama Di Pengadilan Agama" (Lembaga Konsultasi dan Bantuan Hukum, UII, Yogyakarta, 18 February 2005). A Yogyakarta lawyer and academic, Abdul Jamil, noted in this public seminar that this strategy is employed by both men and women, sometimes
displayed this strategy in heightened terms. The Muslim divorce suit filed by Drs S in the Yogyakarta Religious Court in December 1993 was opposed by his wife Dra T. This resulted in a protracted court case (in which divorce was not granted until September 1994), followed by unsuccessful appeals by Dra T through to the Mahkamah Agung, when the divorce was finally ratified in March 1997.

Dra T and Drs S married in June 1975 in Bantul (a district in the south of the Yogyakarta province). In Drs S’ suit, he accused Dra T of pressuring him for a divorce since the birth of their child in September 1976. He claimed that his wife was materialistic, complained about his low wage as a factory worker, was jealous of his friendships with other women and fought with his family. She forced him to ask for his share of his inheritance in advance from his mother, which, although granted, led to him being ostracized from his family since eight years ago. She had spat on his head in public, hit him with a piece of wood, and in 1983 assaulted him with a garden spray gun, resulting in hospitalisation. After this incident, Drs S (who by this time was a high school teacher, a civil service position) had asked his superior at the High School to advise Dra T on her obligations to respect her husband’s position as household head. Dra T acknowledged her failure in front of the superior, but according to Drs S, this was mere “lip service.”

Drs S concluded his request with the assertion that despite his best efforts to prevent divorce, the marriage had completely broken down. Therefore, he had left the civil service so as to simplify the divorce process (civil servants require the permission of their superiors under state regulations, PP10/1983 and PP45/1990).

Dra T’s response (jawaban) and counter claim (rekonpensi) denied all of her husband’s accusations. She insisted that as a simple “village girl,” she had been proud to marry Drs S and had been loyal to him throughout their marriage, even when he was expelled from his

---

55 Drs and Dra are abbreviations of Dokterandus (for men) and Dokteranda (for women) respectively, indicating that the title-bearer has obtained a postgraduate degree roughly equivalent to a Masters.
57 "251/Pdt.G/1993/PA.Yk," permohonan talak (request for talak divorce), 6. “That the respondent’s regret as detailed in point 18 turned out to be just lip service, rather the respondent’s bad disposition got worse.” ("Bahwa penyesalan Termohon seperti dalam point 18 tersebut ternyata hanya di bibir saja dan perangai buruk Termohon ternyata malah menjadi berkembang.")
family. She alleged that he was concocting his claims so that he could obtain divorce and marry another woman. “It’s clear that he is not satisfied with slandering me, treating me as if I am a totally contemptible woman and have no self worth,” and now he wanted to divorce her in order to remarry.

The one who can not tolerate this marriage any longer should be me, however because I am just a simple wife I have sincerely sacrificed myself and served my husband and children.

In her submission Dra T also quoted the Qur’anic verse (Surat An-Nisa 34) which designates men as the leaders of women, who must advise their wives if they are disobedient but “if they obey you, then you must not look for ways to make their life more difficult,” implying that she, as an obedient wife, should not be divorced. Dra T concluded her counter claim with the rhetorical question, “should a wife who has sacrificed emotionally and materially like this and loyally guarded the unity of the household, be as easily divorced as this just because her husband is bored and entranced by another woman?”

The district level court granted the divorce, ordering Drs S to pay nafkah iddah (three-months’ maintenance required by Muslim husbands at divorce) of 150 000 Rupiah, unpaid nafkah from the previous two years of 1.75 million Rupiah and mut’ah of 100 000 Rupiah. At the appeal brought by Dra T in 1994, the Religious High Court in Yogyakarta increased the unpaid maintenance award to 2.88 million rupiah but upheld the decision to divorce, as did the Mahkamah Agung in Jakarta in 1997. Dra T’s construction of herself as a loyal and obedient wife possibly strengthened her claim to unpaid maintenance, and her use of the appeals process significantly delayed her husband’s planned second marriage. However, it was her husband who most successfully manipulated state legislation. As a

---

58 Ibid., jawaban atas permohonan cerai (response to divorce request), 5. "bahwa ternyata Pemohon belum puas dalam memfitnah Termohon, seolah-olah Termohon adalah wanita yang serba hina dan tidak punya harga diri sama sekali..."
59 Ibid., jawaban atas permohonan cerai, 6. "Bahwa seharusnya yang tidak tahan hidup adalah Termohon, namun berhubung Termohon adalah seorang istri yang sederhana maka dengan rasa ikhlas berkorban dan mengabdi kepada suami dan anak."
60 Ibid., jawaban atas permohonan cerai, 7. "Kemudian jika mereka mentaatimu, maka jangalah kamu mencari-cari jalan untuk menyusahkannya."
61 Ibid., jawaban atas permohonan cerai, 8. "Apakah seorang istri yang telah begitu berkorban baik lahir maupun batin dengan setia menjaga keutuhan rumah tangga, harus dengan begitu mudah diceraikan hanya karena suami bosan dan terlena dengan wanita lain."
civil servant, he was able to request an official work-based mediation, which was later used as proof that the marriage had broken down but not through lack of effort by him. Secondly, before filing the divorce suit he quit his job. This ensured that he would not be within the jurisdiction of PP10/1983, the civil servants’ marriage regulations, which would have required him to pay an ongoing two-thirds of his wage to his wife and child, until such time as his wife remarried and the child reached adulthood. This point was vociferously debated in court, as Dra T unsuccessfully attempted to prove that her husband had not officially terminated his employment and so should still pay maintenance. Although Dra T’s appeal against the divorce could be seen as agentive, an effort to protect status, this was a non-resistant agency which was presented within the framework of state and cultural conceptualisations of women’s biological role as wives and mothers.

Under the New Order, women arguably were most successful at co-opting state law when their attempts aligned with state goals, such as the prevention of divorce, or modernising efforts such as the eradication of customary practices deemed by the state to be unfair. A case published in the *Mahkamah Agung* journal *Varia Peradilan* in 1992 further demonstrates some of the circumstances under which courts were keen to prevent divorce. A Muslim couple in Kalimantan, Bapak T and Ibu L, had married in 1984 and then divorced a year later. Both the marriage and the divorce were conducted “*dibawah tangan*” (unofficially, literally “below the hand”) and never registered with the KUA or the Religious Court. However, when Ibu L discovered that Bapak T had remarried his secretary using the full state registration process, she filed a suit with the Religious Court in Banjarmasin to have her marriage to Bapak T retrospectively validated. This allowed her to file a criminal case in the State Court against Bapak T for adultery, on the basis that his new marriage was contracted illegally. Bapak T was sentenced to six-months jail by the district-level State Court, which was reduced to four months by the High Court but finally overturned by the *Mahkamah Agung*, which found Ibu L’s retrospective claim to be legally unsound.63 Although the final appeal failed, the success at the district and High Court levels is indicative of how favourably a number of judges had viewed this sort of case.

Such decisions (as also outlined in Chapter 3) may have been made as part of a contribution to limiting men’s irresponsible marriage and divorce practices.64

Women who filed for the division of marital property under the New Order could also benefit under certain circumstances. This was because courts were often unable to definitively distinguish individual property from marital property, and so tended to uniformly divide any disputed property in half. For example in 1987 the Sleman State Court granted a wife’s suit for half of an orchard despite the fact that her ex-husband insisted that he had inherited the land from his parents. Citing Javanese custom (adat), he argued that this property was harta bawaan (personal property brought to the marriage) to which his wife had no claim. Despite this, the court decreed that the trees had been planted during the marriage, and followed a precedent set by the Mahkamah Agung in 1976 decreeing that all property producing in marriage (regardless of the source) was joint and therefore divisible in half at divorce.65 In both this case, and the Kalimantan example above, the women’s suits conformed to state discourses on the need for women to be protected from male exploitation, which partly contributed to their successful co-optation of state law. However, in the property case, the wife was also in a stronger position because she was claiming property, rather than resisting division of her own property (a more problematic situation which will be demonstrated in section 4). This demonstrates that the success of a legal claim could also depend not only on gender, but whether that claim aligned with existing court precedents and trends.

In contrast, in the post-New Order period there are numerous examples of women failing in their attempts to use the Marriage Law and associated regulations to obtain financial and property settlements after divorce. At the Religious Court in Wonosari in 2004, an all-male panel of judges refused the wife’s request for one-third of her husband’s wage, despite the fact that this was obligatory for civil servants under PP10/1983:

64 This case also illustrates how the Islamic Religious Court system and the civil State Court system overlap, even for Muslims. Although adultery is also regulated by Islamic law, there are no state legal frameworks which allow for such a case to be pursued in the Religious Courts. However, adultery is regulated by the Criminal Code (article 279), enabling both Muslims and non-Muslims to press charges against adulterous spouses in the State Courts (which deal with criminal matters, as well as civil law which encompasses non-Muslim marital issues). Such an overlap necessitates a macro-analysis of state gender ideologies as they apply to all religions. This is an enormous task and this thesis has only attempted to make a preliminary contribution.

The court considers that, concerning the request from the wife for a portion of the husband’s wage for the period until she remarries, because in Islamic law there is no obligation for a former husband to provide living costs for his ex-wife for this period, moreover the stipulation that a civil servant gives his ex-wife a third of his salary is within the authority of that civil servant’s superior, therefore this request must be ignored.  

Here, the judges’ decision clearly posited the superiority of Islamic law over state law, which in this case worked to the disadvantage of the wife.

Constraints upon women’s access to property have not only been imposed by Religious Courts, but by State Courts as well. In 2002, the Yogyakarta State Court granted a husband’s suit for the equal division of a house owned by his wife. The husband, Bapak S, had lived apart from his wife Ibu T and their children since 1996. In December 2000 Ibu T had purchased the house and the couple had divorced in November of 2001. Ibu T argued to the court that Bapak S had stolen her motorbike and then sold it, and had not provided any financial support for the family for the past five years. However, the court concluded that as the house had been purchased during the time in which the couple were still married, it constituted joint marital property and so should be divided in half. Such decisions are far more conservative than any of my sample from the New Order period, and are contrary to some of the very ideologies that women were previously able to use to their advantage in court; namely notions that women should not work so needed financial support from husbands, and that in general women needed protection from unscrupulous men. In this and other instances, it would seem that the absence of a very powerful and paternalistic state has opened up new possibilities for some judges and husbands, both Muslim and non-Muslim to use the court system to women’s disadvantage.

In this section, I asked under what circumstances women could co-opt law to their advantage and how this has changed over time. Women have chosen to use the Religious

---

27. “Menimbang, bahwa mengenai tuntutan sebagian gaji dari Tergugat Rekonpensi untuk Penggugat Rekonpensi selama menjadi janda, karena dalam hukum Islam tidak ada kewajiban seorang suami memberikan naftkah kepada bekas isteri selama menjadi, lagi pula ketentuan seperti gaji dari seorang PNS kepada bekas isterinya adalah kewenangan dari atasan PNS yang bersangkutan maka tuntuan ini dikesampingkan.”
and State courts to protect a range of interests, including marital property, maintenance settlements and status. Under the New Order, although the state propagated very conservative notions of women’s place in marriage and their need to be protected, women could often use this to their advantage if their claims fitted such specific protectionist discourses. In contrast, while the post New-Order era has seen the enactment of a Presidential Instruction on Gender Prioritisation and radical reform proposals such as the Counter-Legal Draft on the Islamic Legal Compilation (see Chapter 1), this has masked emerging conservative trends in both Religious and State court decisions. In contexts where the state exerts a powerful control over many details of daily life, women’s ability to co-opt the law is influenced by the extent to which they conform to state ideologies. However, when that state collapses, women’s ability to co-opt law is compromised because the outcomes of women’s actions become more dependent upon cultural norms.

4. WOMEN’S RESISTANCE AS A DIAGNOSTIC OF STATE AND SOCIAL POWER

In the previous two sections I have analysed women’s strategies of acquiescence and co-optation, which I have characterised as largely unchallenging of patriarchal power structures. However, there might also be contexts in which women specifically confronted these power structures. This section interrogates in what contexts women could resist state, religious or cultural gender ideologies, and whether these strategies changed over time. I analyse two Muslim divorce cases along with a Muslim female informant’s narrative of her divorce negotiations. Following Abu-Lughod, I analyse resistance in terms of what it might reveal about the operation of power.

Marital property disputes were an area where the state attempted to exert an homogenising influence over citizens. Under the New Order, courts supported a concept of equality of ownership of marital property. This concept was rooted in Javanese and other indigenous social practices, which influenced the Marriage Law, and were also supported by judicial precedent. Until 1989, all marital property cases, whether Muslim or non-Muslim, were dealt with by the State Court (the enactment of the Religious Judicial Matters Law UU7/1989 shifted authority for Muslim marital property disputes to Religious Courts).

State Court rulings on marital property were bound by the Marriage Law, whereby property produced during the marriage was jointly owned (harta bersama [I], gono-gini [J]), and property brought into the marriage (harta bawaan [I], harta gawan [J]) was retained by the individual owner. In the event of divorce, the Marriage Law decreed that joint property was to be divided “according to the laws of the respective parties” (menurut hukumnya masing-masing). This clause was intended to accommodate the variety of customary legal systems present throughout Indonesia. In practice, State Court judges were guided by a 1976 Mahkamah Agung decision which defined an adat division of marital property to be an equal division. Courts applied this rule in a range of different ethnic and religious contexts, sometimes to women’s advantage. However, the principle of equal division of property could also be used against women, and lead to court cases in which women publicly resisted both male authority and state judicial power to define custom, as occurred in the case analysed below.

A Muslim marital property settlement case filed by Bapak S (69) in the Sleman State Court in 1986 against his ex-wife Ny M (61, trader) occurred as a result of the ex-wife’s resistance to her husband’s property claims. The couple had divorced in the Sleman Religious Court in January 1986, after 22 years of marriage (1964 – 1986). However, after the divorce was concluded, Ny M had refused to leave a house and plot of land (215m²) which Bapak S claimed was joint marital property (gono-gini). Thus, shortly after the divorce, Bapak S filed another suit in the State Court to have the property divided in half. Ny M insisted that the house and land had been purchased with money from the sale of land given to her by her parents before she married, rendering the new land individual property (harta gawan). In addition to defending her exclusive claim to the land, she also countersued for seven years of unpaid maintenance (totalling 4.2 million Rupiah). Although Nonya M produced witnesses who validated her claims, the village land register showed

---

71 See for example “1448 K/Sip/1974: Bapak H. v Ibu L.,” in Himpunan Yurisprudensi Tentang Hukum Perdata, ed. Soedharyo Soimin (Jakarta: Sinar Grafika, 1996). In this case concluded in 1976, the husband claimed that according to Batak (North Sumatran ethnic group) adat, divorced wives have no claim to marital property. The Mahkamah Agung found that the Marriage Law allows an equal division of marital property and granted half of the property to the wife. Moreover, there was written evidence of a church ceremony, but no written proof of an adat ceremony. The judges claimed that as a customary marriage could not be proven, the husband’s denial of the wife’s property claims on a customary basis could not be admitted.
that this new purchase had occurred in 1974, during the marriage. The male judge (in this case there was only one presiding judge, instead of the usual panel of three) rejected Ny M’s request for unpaid maintenance, accepting Bapak S’ verbal testimony that he had always paid maintenance in accordance with his abilities. The judge also decreed that the property should be divided in two, based on a definition of marital property as “objects produced by both husband and wife for as long as they are [bound] in marriage although the money to buy the objects may originate from whichever [party].”

Nonya M unsuccessfully appealed the decision to the High Court, disputing in particular the judge’s definition of what constituted marital property. Her appeal drew upon customary understandings of property ownership, but she cast this in terms of male household leadership and its bearing on the way in which married couples would interact with the New Order bureaucracy. She argued firstly that:

This opinion [of the State Court regarding the definition of marital property] is absolutely incorrect; because it’s not unlikely the parents would give objects or capital to their child at the time when that child has a household (is married) with their son-in-law, and the objects/capital constitutes the personal property [barang gawan] of the recipient from their parents. It’s also not unlikely that that personal property would be sold and [the money used] to buy something she wanted more, so that the objects purchased from the proceeds of the sale of the personal property still [themselves] have the status of personal property [barang gawan]. This is the customary law [hukum adat] which applies. Even if this personal property came into [one’s possession] whilst the owner of the personal property was married to their husband or wife.

She supported her customary claim to her property with reference to New Order gender ideologies, which she also depicted as “customary”:

---

73 Ibid., salinan putusan, 9. “...barang gono-gini adalah barang yang diperoleh kedua belah pihak suami-isteri selama dalam Perkawinan walaupun uang pembelinya berasal dari mana.”
This has to be related to the usual [way of doing things] that occurs in the Yogyakarta region particularly and in Indonesia in general, a husband will certainly be the head of the household [rumah tangga] and all things produced together in that household will certainly be claimed and [put] in the name of the head of the household, the husband (sang kepala rumah tangga suami). Personal property is excepted, that is mostly put in the name of the owner of that personal property. Such as the issue of the disputed land in this case, if that object was produced by husband and wife, it would certainly have been placed in the name of the claimant [the husband]. Furthermore it should be remembered that the claimant has two wives and [I] the respondent do not have children. So without a strong reason, it’s impossible that this disputed land would be in my name.\footnote{Ibid. “Disamping itu harus dihubungkan dengan kebiasaan yang terjadi di daerah Yogyakarta khususnya atau di Indonesia pada umumnya, seorang suami pasti sebagai kepala rumah tangga dan segala hal yang diperoleh bersama dalam rumah tangga itu pasti daku dan atas nama sang kepala rumah tangga suami. Terkecuali barang gawan, itu kebanyakan di atas namakan pemilik/pembawa barang gawan itu. Seperti halnya tanah sengketa dalam perkara ini, apabila barang itu diperoleh suami-isteri, pasti disetatkan/diatasnamakan Penggugat-konpensi. Apalagi apabila diingat bahwa Penggugat-konpensi beristeri dua orang dan Tergugat-konpensi ini tidak mempunyai keturunan anak. Jadi tanpa alasan yang kuat, tidak mungkin tanah sengketa itu disatatkan kepada Tergugat-konpensi.”}

Nonya M attempted to frame her customary claims to individual property in terms that nonetheless acknowledged superior male claims to register and have public ownership of joint marital property. Her husband, in contrast, used notions of equality of ownership. He dismissed the fact that the property was recorded in the village land registry under Ny M’s name, asserting that this “is not proof that the land is the private property of the respondent. This matter is in accordance with principle of unity of property in a marriage. According to the current laws regulating marriage, there is no separation of property so that it is possible that joint property could be registered in the name of the husband or wife.”\footnote{Ibid. “bukan berarti bahwa tanah tersebut milik Tergugat. Hal ini sesuai dengan azas "Kesatuan Harta" dalam sesuatu perkawinan. Menurut hukum perkawinan yang berlaku, antara suami isteri tidak akan pemisahan harta sehingga bisa saja barang gono-gini ditulis atas nama suami (Penggugat) atau isteri (Tergugat).”} Both litigants related their claims to state law. Bapak S implicitly suggested that state law obliterated customary property claims whilst Nonya M attempted to resist state judicial interpretations of custom by claiming that her version of customary practices were aligned with state processes. It was the husband’s claim which was successful however, because it also fulfilled state requirements for written evidence which supported his suit.

Resistance to state definitions of custom was thus a problematic strategy for women to use in order to access property. This was in part because customary claims were often based upon verbal evidence. In this case, the court accepted the husband’s written evidence of
land ownership over the wife’s and witness verbal testimony. In other aspects of the case, the court also accorded greater weight to male verbal testimony in comparison to female verbal testimony. For example the wife requested unpaid maintenance, but this was rejected by the court on the basis of the husband’s testimony to the contrary. The division of property thus appeared to conform to an ideology of equality of property ownership, but the rejection of maintenance claims indicated women’s inferior legal position which this legal ideology concealed.

The principle of equal property ownership created possibilities for the state to oppress citizens, but it also produced opportunities for both male and female litigants to use state frameworks to resist cultural norms, as was the case for Bapak S. When women were the recipients of male co-optation of state frameworks, they could often find themselves in an ambiguous position, attempting to resist male authority and state judicial power, whilst also positioning their own version of “culture” in terms of its legitimation by the state. In Chapter 2, I argued that one of the intentions of the Marriage Law and the range of legal developments pertaining to marriage was to weaken women’s capacity to access economic capital. Women’s attempts to protect their property rights could therefore be understood to be in some way resistant to state ideologies, and to cultural ideologies (outlined earlier in this chapter) which discouraged the assertion of individual rights, which Ny M had done both inside and outside the forum of the court. Moreover, her claim to be the exclusive property-holder in itself countered the New Order emphasis on male household and community leadership, which was supported in practice by directing agricultural and government subsidies to male household heads, and encouraging the registration of households in male names. However, as the case demonstrated, while the legal suit itself may have been resistant to state and cultural gender ideologies, some of the discourses employed by Ny M did not necessarily challenge those ideologies.

As I suggested in the previous section on co-optation, the post-New Order period has witnessed the emergence of increasingly conservative decisions, with emphasis placed by judges on male household leadership, and female subservience and modesty. In this

---

changed political and legal context, women’s resistance is not so much to the state directly as to their husbands, judges and religious and cultural ideologies of female roles (which all may have been shaped by the ongoing propagandising on gender relations carried out throughout the New Order period). However, not all judges subscribe to such ideologies, and nor do all women choose to rely upon notions of male household leadership to support their claims. Rather, some women choose to explicitly reject concepts of inherent male superiority. However, such confrontational statements may be softened by reference to motherhood which may enable a resistant strategy to be successful.

A Muslim case which appeared before the Sleman Religious Court in 2002 (names withheld by the court) illustrates a woman’s successful resistance against her husband’s property and child custody claims, which occurred despite her unequivocal dismissal of male claims to household leadership. The divorce suit was filed by the husband, who claimed that their 20-year marriage was besieged with constant fights and arguments, due to the “respondent’s attitude, putting down the claimant, harassing and insulting him.” He claimed his wife had been unfaithful and that he suffered embarrassment due to disparate social status. His wife was a university lecturer (at Universitas Gadjah Mada in Yogyakarta, one of the most prestigious state universities in Indonesia) and he had only graduated from a technical college. He declared that he had been forced to leave their marital home to live with his parents and requested a divorce, equal division of their gono-gini (200m² of land, 2 motorbikes and various household items) and custody of their three children (aged 19, 15 and 12), because “the children have been poisoned by their mother’s disparaging attitude towards their own father.”

The wife directly confronted her husband’s emphasis on the primacy of gendered hierarchies in marriage. She argued that they fought because her husband believed that he was of higher status than her, simply because he was a man and so should be “accorded prestige and respect” (“dihargai dan dihormati”). She elaborated on this statement, clarifying why respect and prestige was unwarranted. Her husband had been violent from early on in their marriage, he was jealous and suspicious without grounds, he refused to

---

79 Ibid., salinan putusan, 5. “anak-anak telah teracuni sikap ibunya yang meremehkan Bapaknya.”
apologise, he was disobedient to God and visited prostitutes, and was now living not with his parents but with his siri wife (married according to Islamic rites only, without any registration process). She had once been hospitalized for three days after he beat her and in 1999 he gave her a sexually transmitted disease. She opposed his request for child custody as she said her children wanted to stay with her, and she was prepared to care for them “as an independent woman of good standing” (“sebagai wanita yang mandiri dan berprestasi”). Furthermore, the divorce was at her husband’s request, who had given her an ultimatum of divorce or polygamy (“dimadu”) and the property had been purchased on credit and paid for only by her. In her counter claim (in rekonpensi), the wife requested divorce, custody of her children, nafkah iddah of 600 000 Rupiah and child support of 300 000 Rupiah per child per month until they reached adulthood, and asked that the court reject her husband’s demand for division of property. Although the wife agreed to the divorce in her claim, she highlighted two important points: that it was not at her request; and that it was in response to the threat of polygamy.

In its summation, the all-male panel of judges found that the violence in the house was probably caused by the husband’s shame about his lower social status, which caused his low self-esteem and left him unable to guard himself against the temptation of an affair (“tidak dapat menjaga diri dan malah mempunyai WIL”). During the course of the hearings, the couple agreed to allow the children to choose custody arrangements and for property to be placed in the children’s names. The court therefore accepted these arrangements, granted the divorce and ordered the husband to pay 600 000Rp in nafkah iddah (consistent with the wife’s request) and mut’ah of 1 million rupiah (which the wife had not even requested), but rejected both the wife’s request for child support and the husband’s request for division of property.

In her claims, the wife publicly resisted the notions of male superiority, by insisting that her husband did not deserve respect by virtue of his gender and made quite a radical assertion of her own independence and prestige which she linked to her mothering abilities. Culturally valued feminine discourses of religiosity, modesty and motherhood softened both her claims to independence, and her suggestion that men do not have status by virtue

---

80 Ibid., salinan putusan, 8-16.
81 Ibid., salinan putusan, 23.
of being men. Her appeal to softer “female” qualities thus may have played a significant role in the success of her resistance strategy. Nonetheless, the court itself did not fully support the alternative gender ideology she was proposing as the judges publicly rebuked the wife, implying that she may have been the cause of domestic violence because she had wounded her husband’s pride. I interpret the court’s declaration that the husband had a valid excuse for his violence as a subtle reminder that male status should not be publicly attacked.

Fear of a disadvantageous court decision may lead some women to seek to resist both their husbands and the courts by minimising, or avoiding contact, with the legal system. Women’s decision to divorce is in itself resistant to New Order and social norms regarding the propriety of women filing for divorce, and so their decision-making process may also reflect an effort to resist negative constructions of divorcees. In resisting cultural, state and even parental injunctions, women may use positive stereotypes of female religiosity to justify their actions. I will analyse these strategies below in the following 2004 narrative of a working-class kampung (urban neighbourhood) Muslim woman who was organising her divorce.

Religion was an important discourse and guiding life principle in the narrative of Bu Sarwendah, a Muslim kampung woman in her mid-40s who sold ice drinks at the central city market. Bu Sarwendah’s father was Catholic, her mother Muslim and she claimed Javanese aristocratic descent (ningrat). Bu Sarwendah’s parents had opposed her marriage in 1980, ostensibly on the grounds of differences of religion (her intended husband was Catholic), but also because they had already selected a husband for her. When she rejected their choice of spouse, they told her that she must proceed with her choice at her own risk (“risiko, ditanggung sendiri”), and should the marriage fail she would be unable to call upon them for financial or other assistance. Ten years later, around 1990, her husband abandoned her and moved to Semarang (the capital of Central Java, located on the north coast). The reasons and circumstances of this abandonment were not clearly articulated by Bu Sarwendah, who commented only that he did not take responsibility for the children and

---

she had brought them up alone. At some point after they had separated, Bu Sarwendah undertook a programme of prayer to attempt to bring her husband back to her. This entailed praying the optional night prayers (in addition to the obligatory five daily Muslim prayers), *sholat malam*, for three nights in a row. She explained the logic behind this prayer as follows:

I prayed, that he become good, but after three times [if he hadn’t reformed], then all material and spiritual connection is lost, [the marriage is] *hambar* [flat, insipid, null and void].

This action signified the powerful efforts made by Bu Sarwendah to attempt to salvage the marriage, as well as the divinely granted spiritual bond that is essential to maintaining the marriage. In using prayer to mediate between the human marital bond and the divine, Bu Sarwendah privately, and publicly (by telling this account to other members of the community), acknowledged the limits of human agency. The “failure” of her prayers demonstrated to her and others that divine agency had effectively dissolved the marriage, thus limiting the retribution that might have been attached to her own failure to exercise sufficient human agency to save the marriage.

Bu Sarwendah’s unofficial separation was maintained until 2004, when one of her daughters required hospital care, costing seven million rupiah. Her husband refused to contribute to these expenses, forcing her to borrow money from neighbours. At this point, she sought the advice of the women’s legal aid organisation LBH-Apik to sue for divorce, and unpaid child support for the past 15 years (of which she hoped the judges would grant at least 25% of her request). Again, she explained her actions in terms of prayer. She prayed *sholat malam* many nights in a row during which at times the Virgin Mary had appeared to her and, on another occasion, Nyai Loro Kidul (the mythical Javanese Queen of the South Seas). Nyai Loro Kidul had offered help to Bu Sarwendah, who politely refused, saying that she had a more powerful protector, Allah. She proved this by taking a piece of paper and folding it into the shape of a bird, blowing on it and watching it fly away. This account established her position as an obedient Muslim, but one who was clearly ascetically powerful, demonstrated by her ability to connect to other divine and supernatural beings.

---

83 Bu Sarwendah, Interview, 11 December 2004. “Sholat, dia akan menjadi baik, tapi kalau habis tiga kali, akan hilang lahir batin apa pun, hambar.”
However, while she understood her own agency through prayer as powerful, it remained firmly subordinate to divine agency.

Bu Sarwendah understood the dissolution of marriage as a spiritual matter, which she mediated herself through prayerful communication with the divine. This position was essentially resistant to more negative constructions of divorcees as flirtatious husband-stealers, situating her decision in terms of fate and a divine plan. The need for any intervention on the part of state institutions was seen as almost irrelevant, because her marriage was already invalidated, “hambar” (void). Her complete avoidance of state processes therefore also constituted a form of resistance to the state’s right to mediate marriage and divorce, as well as a calculation that she didn’t need the aid of the state. She only sought the intervention of the state when she wanted assistance to obtain financial support from her husband, and this was in the interests of her children, rather than herself.

Bu Sarwendah’s case illustrates that while religious and cultural gender ideologies, as well as patriarchal legal structures, can constrain women’s agency, religion is also a tool that enables women’s agency. Further, while the state may have attempted to increase the stigma attached to divorce, state ideologies do not necessarily feature in women’s decision to divorce. Rather, in this case, the decision to divorce was made in the context of deeply held religious beliefs. As other court cases demonstrate, women’s appeals to their religiosity can be beneficial in terms of resisting negative constructions of divorcees, or defending their interests in court.

If resistance in these three examples is analysed in Abu-Lughod’s terms of a “diagnostic of power,” it could be argued that they reveal merely a variety of forms of resistance which were responding to the same modes of patriarchal power. Nonya M was resisting a state-sanctioned view of property relations that privileged male property rights. The wife in the second case in Sleman publicly criticised her husband for patronising prostitutes and thus resisted more generalised religious and cultural notions of male superiority. Bu Sarwendah resisted the involvement of the patriarchal state altogether in her marriage and divorce (although she ultimately co-opted state processes.) The outcomes of each case were different. Nonya M failed to prevent the division of property in the State court in 1986, the Muslim wife in the Sleman case in 2002 retained child custody but was publicly rebuked by
religious court judges for being the indirect cause of her husband’s low self esteem and infidelity, and Bu Sarwendah mediated the dissolution of her spiritual bond with her husband in 1991 but could not control his financial neglect of his children in 2004. Despite the different locations and legal systems framing each case, these women’s claims were generally posited in resistance to a form of male authority. In this sense, their resistance shows that while the forums in which power might be expressed can change according to historical and political context (within the family, and court, using discourses that align with state or religious norms), the gendered ordering of power does not.

5. Conclusion
I have argued in this chapter that women’s responses to divorce could employ a range of strategies that encompassed acquiescence, co-optation and resistance. Under the New Order, such strategies were more likely to succeed if they did not directly confront the state ideologies of female subordination. In large part, this statement remains true for the post-New Order period, as many courts have tended to make conservative decisions based on notions of women’s role as housewives and mothers, and using legalistic interpretations of the law which minimise women’s rights to property.

In the first part of the chapter, I argued that acquiescence was a strategy that is sometimes used agentively (as in the case of Bu Dominika who refused to file for divorce so that her husband would be forced to do so, and therefore be obliged to pay her *mut’ah* and *nafkah iddah* divorce gifts). More often though, I suggested that acquiescence was a response to more powerful male passivity, as in cases where men refused to divorce their wives. Such non-agentive action by women is demonstrated in cases from the 1960s through to 2005 (as in the case of Mbak Trisna, who was forced to file for divorce at the behest of her parents-in-law).

In the second part of the chapter, I analysed women’s co-optive strategies. I suggested that in some instances, the presence of a paternalistic state enabled women to co-opt state ideologies that characterised women as financially helpless. Women used such discourses in court to access financial support from their ex-husbands or obtain divorce from husbands who neglected them financially (for example the swift divorces of the 1960s and 70s based on male financial neglect, and the example from 1975 in which a woman sued her husband
for financial support). I also demonstrated, using a number of post-New Order examples, that these co-optive strategies are becoming less successful, with judges asserting Islamic law as a superior form of law over state laws such as the Civil Servants Regulations PP10/83. The collapse of a paternalistic state has thus facilitated the assertion of religious and cultural patriarchal discourses in the court system, at the expense of the limited benefits available under conservative New Order law.

Finally, in the third section of the chapter, I suggested that an analysis of women’s resistance across time shows that women’s resistance is generally exercised against male authority, although the forums through which this authority is expressed may change (through institutions, legislation, cultural and religious discourses).

This analysis of some of the different forms and applications of women’s agency has demonstrated a number of key points. Firstly, women did often use courts to confront cultural and religious norms regarding the distribution of property or maintenance settlements, although their claims would often be adapted in terms of state constructions of gender. Secondly, not all women (or men) internalised state gender ideologies, but rather could use them selectively to suit their own particular circumstances. But thirdly, and most importantly, because the courts themselves were embedded within the cultural and religious gender ideologies that women were attempting to confront, courts were not always a more effective forum for women to attain their goals. This has become especially true after the collapse of the New Order. Finally, given that I have argued that women have consistently been negotiating male authority within the context of marriage and divorce, this also suggests that male social and political power has never been significantly challenged. Thus, neither the introduction of the Marriage Law nor the end of the New Order are necessarily significant historical markers of women’s social experience of agency, because the distribution of power between the genders has remained essentially the same from 1974 to 2005.

In this chapter, I examined the local aspects of women’s engagement with the state and how they attempted to use state institutions, apparatus and laws to their advantage. In the process of using law and court systems to negotiate divorce, women and men sought to define themselves in a range of different ways, as members of a community, ethnic and
religious group, according to gender and sometimes as Indonesians. In the following and final chapter of the thesis, I examine how women’s and men’s engagement with or avoidance of the court system in their divorce negotiations also served to constitute particular local and national identities.
CHAPTER 6

Modernity, Religion, and Nation: Divorce and the Production of Gendered Identities

The institution of marriage in many societies plays a fundamental role in individual, cultural and religious identity formation, and consequently is often viewed by states as integral to the process of national identity formation (demonstrated, in Indonesia’s case, by the state’s efforts to legally define male and female marital roles through the Marriage Law, which were explicitly related to the well-being of the nation). Divorce therefore may redefine an individual’s identity in a number of contexts. This final chapter, following recurrent issues raised in earlier chapters, examines in greater depth how marriage and divorce shaped women’s and men’s identities, in the contexts of religion, modernity and the nation. In particular, I scrutinize the identities presented by women and men in marriage and divorce negotiations, the identities associated with different types of marriage and divorce in public discourse (print media, fiction) and the state’s efforts to shape gendered national identities through the regulation of marriage. Throughout the chapter, I am attentive to the ways in which the production of identities by different social actors (litigants, the state, religious authority) is influenced by gender. In doing so, I seek to answer a question that requires greater evaluation in the context of the New Order and post-New Order era. Namely, to what extent and in what ways did women’s and men’s actions in marriage and divorce contribute to or resist the construction of a national identity?

This chapter is divided into four sections. The first section outlines my reasoning for analysing identity through the case study of divorce, and explains why religion and modernity are particularly important discourses for such an analysis. This leads to the next section in which I define how I will use some of the key concepts in this chapter, including nation, state, community and modernity and review the literature on these subjects. In the third section, I examine the role of religion in producing identities in marriage and divorce and ask how religious beliefs may have influenced women’s and men’s understandings and presentations of national identity differently. I analyse this issue in two specific contexts: inter-religious marriage, and unregistered marriage. In the fourth section, I investigate how
the discourse of modernity has informed public representations of divorce and been used in litigants’ presentations of their cases.

Because I am interested in public representations of national identity, as well as individual negotiations of identity and its relationship to nation, I use a broad range of sources. In addition to court records from the Yogyakarta province, I also draw upon published court cases, fiction, newspaper reports, oral history and Ministerial and Mahkamah Agung (Supreme Court) instructions, remaining attentive to the different presentations of identity that occur within different sources. I am especially interested in how men’s and women’s actions in divorce enacted particular identities, in terms of their religion and their perceptions of modernity, and how (or if) this intersected with or resisted state-sanctioned identities. From this central question, broader questions arise. Were women’s and men’s actions in divorce constructed in terms of a national Indonesian identity? How did women’s and men’s presentation of identity change over time? How were litigants’ understandings of religion and modernity gendered and did their presentation of these specific aspects of identity contribute towards the shaping of particular national identities?

1. APPROACHES TO ANALYSING DIVORCE AND IDENTITY

Marriage is crucial to the production of identity. In Java, marriage constitutes men and women as fully adult members of their local community, redefines their status within families and fulfils the requirement for all Muslims, where possible, to marry (which is said to half perfect an individual’s duty to God). Marriage, requiring the consent and blessing of both parents, cements the relationship between two families and binds the individual into a web of familial and community relationships. Equally, marital breakdown impinges upon communal harmony, requiring the mediation of family, community and religious leaders. Divorce ultimately ruptures familial and community links and so redefines an individual’s identity in relation to family, community and religion. The New Order state further interpreted divorce as redefining an individual’s identity in relation to the nation, although it was not historically unique in viewing divorce as an anathema to nationalising projects. The colonial state, the post-independence Sukarno regime and the New Order state have all, in various ways, understood marriage to be the foundation of family, community and
therefore nation, and attempted to regulate marriage in order to create a particular type of nation and national identity.¹

The New Order regime in particular generated an enormous amount of legislation and propaganda regarding women, marriage and divorce. This renders a close examination of a broad range of sources including legislation, fiction, court records and newspaper evidence particularly useful for a study of nation and identity in two respects. Firstly, it may reveal how the state attempted to shape national identities, which differed according to gender and marital status. Secondly, it may reveal the range of ways in which men and women understood and chose to present their identities in the context of marriage and divorce, and in what ways this contributed to or resisted state discourses on national identity.

Court-mediated divorce especially illustrates some of the tensions and contradictions in the way men and women defined themselves in relation to their community, religion and nation. This is partly because modern courts themselves occupy an ambivalent position in regard to the nation, and the shaping of national identity. On one hand, courts play an integral role in implementing state legislation (although the application of law by the judiciary is certainly not uniform). In doing so, such institutions are participating in a project of shaping individual, familial and communal identities in gendered, cultural and religious terms that accord with state prescriptions. On the other hand, men and women who use (or choose not to use) state institutions are themselves actively engaged in a process of (re)shaping their own gender, cultural and religious identities in terms that may either accord with or diverge from position of the state.

Male and female litigants who used the courts after 1974 to leave a marriage that may have been arranged by parents, or to request divorce in protest over a husband’s demand for

¹ Elsbeth Locher-Scholten, "Marriage, Morality and Modernity: The 1937 Debate on Monogamy," in Women and the Colonial State: Essays on Gender and Modernity in the Netherlands Indies, 1900-1942, ed. Elsbeth Locher-Scholten (Amsterdam: Amsterdam University Press, 2000), 196. Locher-Scholten discusses the unsuccessful 1937 Marriage Ordinance bill, withdrawn due to Islamic opposition. It was to allow voluntary registration of a monogamous marriage (for any religious group including Muslims), with divorce only able to obtained through court order. This registration was compulsory for European women (i.e those women legally defined as European) married to Indonesian men. Locher-Scholten describes this push to legislate for monogamy, with special focus on European women, as "part of a civilising offensive, which drew elite women and men more firmly into the sphere of Western family life. The expansion of modernity implied the Westernisation of the Indonesian elite, which would strengthen the colonial state, with the family as its cornerstone."
polygamy, or to challenge a divorce that was perceived to be unwarranted, used them in part to resist parental, cultural, or religious structures of power. In doing so, they participated in a dialogue with the state, defining and redefining what it might have meant to be male or female, Muslim, Christian, Javanese or indeed Indonesian. Equally, those individuals who chose not to use state institutions to negotiate marriage and divorce asserted the integrity of an identity predicated upon a different legal and moral framework (Islamic or customary) to that of the state. I contend that courts, charged as they are with regulating marriage and families, are also therefore integral to nationalising projects and the creation of national identities. However, men and women inevitably use (or do not use) courts in a variety of ways, as do the judges applying legislation, and these uses and applications of the law can be either supportive of or resistant to the nationalising project. A close analysis of the different ways in which litigants negotiate divorce and engage with the court system can therefore also illustrate the success or otherwise of the state’s attempt to produce gendered national identities.

As I have argued in earlier chapters, the New Order state promoted gendered national identities as part of a broader project of social control to be achieved through mediating gender relations. Men were to be kepala keluarga (head of the family) which was extrapolated to a pro-active, nation-building role. Women on the other hand were ibu rumah tangga, housewives and mothers of the household, a role which was invested with national significance. This can be seen in an advertisement that appeared in the Yogyakarta daily Kedaulatan Rakyat in 1986 on behalf of the state programme for family planning (Keluarga Berencana), picturing a smiling husband and wife, the state-recommended two children and the caption (which I interpret to be directed implicitly at the wife): “You’re a hero of the family. You’re a hero of development.” This image and caption neatly encapsulates some of the discourses the New Order state drew upon to define a national identity, including modernity, domesticated femininity and ideologies of civic duty. As the contract underpinning the religiously and legally sanctioned creation of families, marriage assumed major significance in the New Order configuration of national identity. I have established in earlier chapters that divorce was understood by the New Order state as destabilising and threatening to the nation, and by implication to the construction of

---

national identity. If marriage has been constructed as the ideal, how did men and women who were engaged in dissolving their marriage define themselves in the public arena of the courts?

This chapter works from the assumption that identity is multiple (encompassing gender, religion, culture and class amongst myriad identifiers), and that self-presentation of identity varies according to particular circumstances and will also be recorded in different ways in different historical sources. Clearly women’s and men’s self-presentation in court will be radically different to their self-definition and presentation with their family, and will differ again in an interview with a foreign researcher. Further, discussing individual identity in societies such as Indonesia is somewhat problematic, as an individual is invariably defined significantly by their membership of local, religious and regional collectives. Bearing these constraints in mind, in this chapter I will analyse two major discourses which influenced the ways in which the state and individual men and women defined their identities in marriage and divorce; namely, religion (with a focus on Islam), and modernity. These two discourses are of course neither mutually exclusive nor exhaustive, and occur simultaneously in many of my sources. Modernity especially was (and is) often understood in public forums as an individualist and secular discourse that operated in opposition to religious morality and the rights of the collective, but as some of my divorce cases will show, religious identity could also be negotiated positively in terms of modernity.³

I have selected the discourses of religion and modernity for analysis firstly because Muslims were amongst some of the fiercest opponents of the Marriage Law, and have sometimes posited their religious identity in opposition to the state (see Thesis Introduction). Analysing presentations of identity in marriage and divorce from a religious perspective thus provides an insight into the levels of resistance to the nationalising project that may have been exercised by some social actors. Secondly, since 1974, public representations of divorce frequently characterised it as a negative by-product of modernity, a characterisation that contradicted Indonesia’s history of very high divorce rates. In Islam, divorce is understood as a permissible action that is nevertheless “hated by Allah” and so

should be avoided at all costs. However, in Java for much of the twentieth century, this Qur’anic injunction did not translate to a low divorce rate as it was countered by Javanese beliefs regarding the potentially fatal effects of emotional turmoil (identified by Hildred Geertz), as well as Islamic beliefs in the sinfulness of remaining in a marriage that was producing more disadvantage than benefit. In my analysis of divorce identities in the context of religion, modernity and nation, I also pay special attention to how these identities are shaped by gender. The social significance of divorce changes depending on gender and even during times of high divorce such as the 1960s, a divorced woman was perceived as socially threatening in ways that that did not apply to divorced men (see Chapter 3). As a logical extension, the way in which divorced men and women justify and present their identities as members of familial, local, religious and national communities also may vary.

2. DEFINITIONS AND HISTORIOGRAPHY

Scholarly discussions about nationhood, and by extension national identity, invariably draw upon Benedict Anderson’s famous definition of the nation as an “imagined political community,” which I also use as the starting point of my analysis in this chapter (see also Thesis Introduction.)

Anderson understood the spread of standardised education and language (through trade, education and print media) as central to the growth of nationalist movements and therefore to the “people’s” (as he termed it) conceptualisations of themselves as having a particular national identity. In Indonesia, this development was fostered by the Dutch state schools that were set up throughout the Netherlands Indies after the turn of the twentieth century for inlanders, “natives.” Dutch-educated young men formed nationalist organisations in the late 1920s and 30s and adopted a localised version of Malay, Bahasa Indonesia, as the national language. Anderson’s general thesis remains useful today, but his arguments

---

5 Hildred Geertz, The Javanese Family: A Study of Kinship and Socialization (New York: Free Press of Glencoe, 1961) 135-37. At a 2005 seminar at the legal aid NGO, LKBH-UII, the speaker noted that if one his clients was opposed to divorce he would ask them the following question: “What is better? To divorce without sin? Or to withstand a household that constantly sins because the husband and wife’s obligations are not fulfilled?” (“Apa yang lebih baik? Cerai tanpa dosa? Atau rumah tangga dipertahankan berdosa terus karena kewajiban suami-isteri tidak dipenuhi?”). Pak Adnan, Personal Communication, 18 February 2005.
7 Ibid. 110-12, 20-21.
particularly regarding the role of education in forming national identity were inevitably based upon the experiences of a select group of society, primarily elite men. It is unclear from Anderson’s thesis alone how nuances of gender, ethnicity and class might have influenced different groups’ perceptions of and participation in nationalising projects.

As the example of Kartini, and her (much championed by the colonial and postcolonial states) struggle for female education at the turn of the century shows, if standardised education was producing an Indonesian identity, women may not have been part of this process, or at the very least may have experienced this process differently, or at alternate historical periods to men.

In using the term “citizen” in this chapter, I am aware of a multiplicity of meanings inherent in this word. For many Indonesians, the notion of being a citizen of a nation-state was a contested ideology, as illustrated by the Islamic rebellions of the 1950s and 1960s (in West Java and Aceh) as well the strength of *adat* in many other parts of the country. Moreover, while the state attempted to exert totalizing control over all residents of Indonesia, it applied an exclusionary version of citizenship to Indonesians of Chinese descent (even those born in Indonesia) who from the 1960s were required to register with immigration departments as foreign residents. As I have argued throughout this thesis, the New Order state also made a distinction between the obligations of its male and female citizens. Bearing in mind these factors, I use the term “citizen” in this chapter to refer to all residents of Indonesia, who were all subjected to the control of the state, even if some were partially or fully excluded from the benefits of formal membership of that polity.

Traditional political analyses (not just of Indonesia) of the rise of modern nation-states and the construction of national identities through this nationalising process have often neglected to address the ways in which nation-building projects are gendered, and in which national subjects are accorded gendered identities by the modern state. This scholarly oversight has occurred because, as Nira Yuval-Davis commented, “nationalism and nations have usually been discussed as part of the public political sphere, [thus] the exclusion of

---

9 See also my discussion of this concept in the Thesis Introduction.
women from that arena has affected their exclusion from that discourse as well."\(^{10}\) Since
the 1980s, feminist scholars have been increasingly concerned with how nationalist
processes gender national subjects, and how women in particular have contributed to, benefited from, and been constrained by, nationalist efforts. Further, nationalising projects
are frequently framed in terms of tradition and modernity, which has particular implications
for women. For example, historian Elizabeth Martyn, in her study of Indonesian women’s
movements in the 1950s, highlighted the ambiguity that discourses of modernity and
nationalism hold for women when she observed that whilst the existence of the nation is
justified with appeals to pre-modern traditions, national progress is often measured by
levels of development and modernization:

The inherent contradiction, whereby the nation seeks to be modern yet appeals to tradition, has
particular implications for women who are often the symbols of tradition and thus excluded from the
modernist project.\(^ {11}\)

There is a growing literature that has examined the centrality of gender relations to the
development of national identity, as well as the gendered character of national identity
itself. It has been noted that nation-building projects generally designate women’s role in
the project as the biological reproducers of the nation, the transmitters of culture and
identity, and guardians of tradition.\(^ {12}\) The constitution of gendered national identities
through marriage in the Indonesian context remains an area of scholarship requiring further
analysis. By addressing this topic, this chapter builds upon existing feminist studies of
nationalism, and adds to our specific knowledge of nationalist processes in Indonesia.

In using the term modernity, I am aware that this term is not transparent, but rather is a
culturally loaded term understood differently in Western modes of thinking as opposed to

---


non-Western cultures. As the range of trajectories of development in post-colonial countries has also shown, modernity is not played out or experienced in the same way in all places and times. Moreover, women and men may interpret the effects of modernity differently. For example Sutan Alisjahbana Takdir, an Indonesian intellectual influential in the 1920s and 1930s who encouraged westernisation, speculated in 1966 that although women’s status had greatly improved, modernity nonetheless posed greater challenges to them than to men:

The tragedy of the contemporary world lies precisely in the changing status of its women. The advances that women have made towards their own emancipation, towards equality with men, have also tended to oust them from their central position in the household. And changes in the structure of modern living have gradually undermined the traditional role of the family itself as the focus of the child's education, of economic organisation, of religion, in fact of society itself, in the largest sense.13

This ambivalent male view of women’s place in the modernisation project contrasted with views emerging from the women’s movement in the 1920s. Some women’s groups viewed modernity as a platform on which to base claims for improvement to their social status, co-opting nationalist arguments for kemadjoean (progress) to argue for women’s rights to education and legal equality.14

Modernity is therefore a discourse that is manipulated and used by various social actors as well as a lived experience. I find useful for this chapter Suzanne Brenner’s explanation of modernity as a discourse that is as much a subjective as objective condition, “defined by its perceived relationship to the past in a given social and historical setting as well as by other, more tangible criteria”:

I consider this overlap essential, in fact, because I want to capture a sense of the modern as something experienced subjectively by individuals through their awareness of becoming part of a new age and a new way of life, but which also reflects the objective changes in social institutions and social relations that have everywhere been associated with modernity, such as the rise of capitalism, industrialization,

---


and global markets; growing bureaucratization and the expansion of the state into everyday life; and increasingly complex divisions of labor and social classes.\textsuperscript{15}

Numerous other scholars have engaged with the operation of the discourses of tradition and modernity in Indonesia. John Pemberton’s famous study, \textit{On the Subject of Java}, argues that tradition was manipulated and reinvented by the New Order state in matters ranging from marriage ceremonies to the construction of \textit{Taman Mini Indonesia Indah} (Beautiful Indonesia Miniature Park, a theme-park representing homogenised versions of Indonesian ethnic groups) and electioneering tactics, in the project of state legitimation.\textsuperscript{16} In his anthropological study of a Classicist Muslim community in East Java, Ronald Lukens-Bull argues that whilst the community (which in this case referred to the male \textit{kyais} and male boarding school inhabitants) were critical of what they understood as negative aspects of modernity (individualism, materialism, social injustice), they also appropriated some of the non-discursive elements of modernity (for example, tertiary education) and reinvented the meaning of modernity to suit local conditions. In this sense, Lukens-Bull contends, modernity was just as much an imagined and invented condition as nationalism.\textsuperscript{17}

There is also a gendered distinction to be made in an analysis of modernity, not drawn out in Lukens-Bull’s study (which focuses on male interpretations), which I wish to investigate further in this chapter. By this, I mean simply that women and men may interpret the meanings and consequences of modernity differently. Lukens-Bull’s study is extremely illuminating, but women’s understandings of modernity should not be automatically deduced from it. Accepting Lukens-Bull’s proposition that discourses of modernity and tradition are invented and reinvented, it is important to understand how these discourses are gendered, and how men and women interpret and use these discourses. Geraldine Heng has observed that both the discourse of modernity and actions perceived to be modern are problematic for Third World women, as the condition of modernity can be conflated with the foreign and Western and can consequently delegitimise feminist actions.\textsuperscript{18} I therefore

\textsuperscript{17} Lukens-Bull, \textit{A Peaceful Jihad} 7-9.
\textsuperscript{18} Heng, "'A Great Way to Fly': Nationalism, the State, and the Varieties of Third-World Feminism," 33. Heng argues that accusations of Westernization and/or modernization have been frequently employed against Third World feminist movements by male nationalists. Anxieties about modernity, Westernisation and the
approach my analysis assuming that the experience of modernity and its relationship to national identity differs between women and men.

In the following analysis, I use Benedict Anderson’s definition of nation as an ideological and political construct, distinct from the state which I have defined throughout the thesis, following Yuval-Davis, as “a body of institutions which are centrally organized around the intentionality of control with a given apparatus of enforcement (juridical and repressive) at its command and basis.” In referring to community, I am speaking about civil society, which Yuval-Davis distinguishes from the state to include “those institutions, collectivities, groupings and social agencies which lie outside the formal rubric of state parameters outlined but which both inform and are informed by them.”

I understand modernity to be both a stage of development and a discourse. It refers to the tangible by-products of the development of capitalist social relations and the lived experience of social actors who negotiate social change and development and define themselves against it. It is also an ideology which is defined and used in different ways by the state and a range of interest groups within society.

In Indonesian studies, whilst issues of nationalism, modernity, religion and identity have been widely analysed, the gendered dimensions of these issues are extremely complex, and remain to some extent under-researched. Building upon the work of feminist scholars such as Suzanne Brenner, Susan Blackburn, Julia Suryakusuma and Elizabeth Martyn (amongst others), this chapter analyses the influence of gender upon the formation of national identities. In particular, it looks at how such identities are forged in the context of marriage and divorce. Identities are inevitably shaped by personal experiences within the family and community, and it is widely accepted that the New Order state used the category of the nuclear family to assist in the implementation of state goals. However, my research suggests that the influence of marriage upon identity, and the ways in which men and women negotiated identity when they engaged in an activity which carried anti-state implications, such as divorce, still requires greater evaluation. This chapter, through an

concomitant social change have therefore historically been inextricable from fears about changing gender roles, in both the Western and developing world.

analysis of specific divorce cases and broader social commentary on the issues of nation, religion, modernity and gender, will make a contribution to this debate.

3. RELIGION

Indonesia is characterised by a vast diversity of religious beliefs. Whilst the majority of the population is Muslim, there are also sizeable minorities of Christians, Hindus Buddhists, Confucians and local belief systems, including localised variants of Islam. However, in Indonesian, a distinction is made between *agama* (implying a scripturally-based theistic religion) and *kepercayaan* or “beliefs,” (implying a non-theistic, local belief system). Ian Chalmers has observed that after independence:

*agama* came to imply progress, modernisation, and participation in the nation-state, and was commonly distinguished from *kepercayaan*, a non-theistic belief system. Those who do not subscribe to one of the recognised religions came to be called *orang yang belum beragama*, people who do not yet have a religion, implying that they would need to adopt an *agama* if they were to become full participants in the modern nation-state. This discourse still dominates religious life today.  

Although I discuss religious identity separately in this section, it intersects with the discourses of modernity and nationality which are the subjects of this chapter as a whole.

In the post-colonial era religion has formed an integral part of Indonesian social identity. Its role in the nation-state was the subject of intense debate in the months leading up to the proclamation of independence in August 1945. In June that year, Sukarno had proclaimed *pancasila* as the state philosophy, a set of five principles intended to define the Indonesian nation, including belief in one God, national unity, democracy, humanitarianism and social justice. Article 29 of the 1945 Constitution guarantees freedom of religion but the original draft included an obligation for Muslims to follow *syariah* law (this version of the Constitution was known as the Jakarta Charter). This met with such opposition from non-Muslim and moderate-Muslim nationalists that it was removed in the interests of reaching an agreement that enabled the declaration of independence. When Suharto came to power in 1965-66, he drew upon *pancasila*, in an effort to legitimise the new regime as well as to

---

20 Chalmers, *Indonesia: An Introduction to Contemporary Traditions* 125. See chapter four of this volume for an overview of religious diversity, as well as the state pressure exerted upon adherents of local religions to convert to a world religion.
shape a new national identity. The attempt to exert control over Indonesian identity extended to religious life, with the influential Muslim organisations such Muhammadiyah and Nahdlatul Ulama perceived as a potential threat to state power. In 1969 Suharto had called for all religious, social and political organisations to accept pancasila as their sole governing principle (asas tunggal). This aim was achieved in the highly-controversial Law on Social Organisations (Undang-Undang Organisasi Masyarakat, or ORMAS) in 1984, which effectively brought religious organisations under state control.\(^{21}\) Religious activities were sponsored by the state, and schools were required to teach religious education, linking good citizenship with religious devotion and religiosity with modernity.\(^{22}\) Since the communist purges of 1965, an affiliation with an officially recognised religion (that is, one accepted by the Department of Religion as a religion which meets the criteria of belief in one God and having a scriptural basis) assumed greater significance, as a lack of religion implied atheism and, by association, communism.\(^{23}\)

The question of where religious identity intersects with the national has thus been a point of ongoing debate and negotiation throughout the history of the modern Indonesian state. Religion mediates one of the key public enactments of an individual’s social identity and entry into the community, marriage. If community membership is accepted as a building block of national membership, then the way in which religion shapes social identity clearly has immense significance for the state in its nationalising project. The New Order state did take a high level of interest in producing citizens with homogenized religious identities. Consequently, “unorthodox” uses of religion to build heterogenous religious familial identities or to create families outside the ambit of the state also assumed significance for the state in its nation-building project. In this section of the chapter, I am interested in ways in which men and women enacted religious identities that resisted the homogenising imperative of the state. I look at two ways in which this occurred; inter-religious marriage and unregistered Islamic marriage (kawin siri). Accepting that men and women assert a

\(^{21}\) Ibid. 5-6, 16-19, 135.


\(^{23}\) Kipp and Rodgers, "Introduction: Indonesian Religions in Society," 23.
religious identity through marriage, under what circumstances did this assertion constitute resistance to the hegemonic intentions of the state? How did the assertion of a religious identity through marriage differ for men and women and in what ways did the enactment of religious identities intersect with the production of national identity? I also ask whether this demonstrated change or continuity from 1974 through to 2005.

The sources used in this section of the chapter include court cases, newspaper reports, Ministerial and Mahkamah Agung circulars and oral history, which provide a more nuanced picture of how religion and its role in producing identities was understood by women, men and the state. The sources primarily deal with Muslim identity (although Christian identity also arises in the inter-religious marriage section), reflecting the religion of the majority in Java. I examine these sources in two parts. In the first part I investigate inter-religious marriage through newspaper reports, court records of divorce cases and oral history. In the second part I analyse the public representations of unregistered Islamic marriage in legislation, academic writing and print media, and its perceived impact upon national identity, and compare this briefly with presentations of unregistered marriage in court.

It needs to be stated from the outset that religious identity is also shaped by the position of that identity within the social hierarchy. Muslims have always constituted the majority religious group in modern Indonesia (especially in Java) and the sources I use reflect this particular dynamic. While the state is concerned to harness and control a majority group, by weight of numbers that group is also in a position of some political leverage and so is able to bargain with the state (or avoid the state’s intentions) on key points of identity such as marriage. This is not to suggest that bargaining and resistance does not occur with other religious groups; it most certainly does. However, I do contend that the assertion and negotiation of religious identity can at times be radically different for minorities. This is demonstrated, for example, in a landmark case in 1996, in which a couple who had married according to Confucian rites successfully appealed to the Mahkamah Agung to have their marriage recognised and registered by the state.24 For Chinese Indonesians, the quest to have one’s religion accepted by the state linked to concerns about the legitimacy of their identity within the national framework. Some Muslims, by contrast, actively attempted to

avoid the involvement of the state in any aspect of their religious identity and particularly with regards to marriage. The limitations of this chapter prevent me from delving into the nuances of different religious groups’ experience of identity and nation. However, I wish to highlight that my ensuing discussion of Muslim identity and nation is not exhaustive for that particular religious group; nor does it necessarily predict how other groups might have negotiated their religious and national identity in marriage and divorce. This remains a topic which requires further research.

3.1 Inter-Religious Marriage

Marriage is defined in the 1974 law as a contract carried out according to the religion and beliefs of both parties. The generally accepted legal position was (and is) that this clause precludes marriage between religions. This was further reinforced by an instruction released to KUA marriage registration officials (Kantor Urusan Agama, Office of Religious Affairs, which registers Muslim marriage) by the Ministry of Religion in 1984, stating that only marriages between two Muslims could be registered by KUA officials. The 1991 Islamic Legal Compilation also decreed that a Muslim woman was prohibited from marrying a non-Muslim man (a widely accepted aspect of Islamic legal doctrine). People intending to marry must produce their identity card to obtain the relevant documentation to register their marriage, and their religious affiliation is recorded on this card (which for administrative purposes, may be one of five officially recognised world religions; Islam, Hinduism, Protestant Christianity, Catholicism or Buddhism).

Despite the legislative and administrative obstacles to inter-religious marriage, it did occur reasonably often in Java (usually between Muslims and Christians) both before and after the Marriage Law, because of pre-marital pregnancy or as a personal choice. In order to marry, one of the spouses converted to the religion of the other, entailing a nominal conversion on paper, or sometimes a falsification of documents. Conversion to Islam was generally a simpler process, as the convert was only required to pronounce the Muslim confession of faith (accepting belief in Allah as the only God, and Mohammad as his

27 Chalmers, Indonesia: An Introduction to Contemporary Traditions 112, 40. Buddhism was recognised as an official religion in 1983. Confucianism was originally accepted as an official religion in 1965, but this recognition was revoked in 1979.
In court records of divorces arising from inter-religious marriages, religious identity was sharply pronounced. The sincerity of the religious conversion was brought into question by the other spouse and the religious identity of children from the marriage was debated. Such divorces thus offer a heightened picture of ways in which litigants' presented their religious identity to the court, including whether litigants cast this identity in national terms. I am concerned here to uncover some of the public identities that were produced through litigant’s actions in court, but I acknowledge that such presentations of identity have conscious and unconscious dimensions. In some cases, litigants may have consciously considered the public or communal significance of their statements in court and were using religious identities to attempt to achieve the best outcome in the case. At other times litigants may have been sincerely representing a religious identity, which nonetheless might also have been unconsciously influenced by nationalist state discourses.

My examination below is based upon a newspaper report, divorce cases from the Religious and State Courts in Sleman and Yogyakarta and informant testimony. I obtained six divorce cases that explicitly cited religious difference, dating from 1987 to 2003. I am particularly interested in how identity in inter-religious marriage and divorce was mediated by gender, how this process reflected the power dynamics of gender relations, and how the constitution of gendered identities reinforced local and national structures of power.

The act of inter-religious marriage itself, which sometimes entailed a level of deception, served to draw out the identity politics of the couple concerned as well as those of their parents. It also positioned the religious identities of all the parties in terms of their relationship with the state, which could include resistance, alignment and an ambiguous position between these two points. This can be seen in a marriage reported in the *Kedaulatan Rakyat* in 1989, between a Muslim woman and Christian man who had married...
without parental permission using falsified documents which stated that they were both Christian. The paper reported that the difference in religion was “a chasm between them that in their parents' opinion was too deep.” When the marriage was discovered (after their daughter had a child), the young woman’s parents filed for the divorce of the couple in the Magelang State Court in Central Java, as well as compensation, claiming that they had been “disadvantaged, embarrassed and belittled” (“dirugikan, dipermalukan dan remehkan”).

The actions of both the young couple and the parents indicate differing understandings of how religious identity fits into the discourse of the nation. For the young couple, state institutions (the KUA) could be used to circumvent parental and local authority, validating at a national level the concept of marriage for love, as opposed to marriage within religiously prescribed boundaries. However, their deception of state institutions, using falsified documents, also indicated a level of resistance to the homogenised religious identities sanctioned by the state. The parents were placed in a similarly indeterminate relationship to the state. They understood religious identity as paramount, but by using a state institution to arbitrate this matter, they also lent support to the state’s position that it could mediate religious identity, and that religious identity therefore was a matter of significance to the nation.

Inter-religious marriage testifies not only to the resistance of some individuals to homogenised state views of religious identity, but also to the resistance of whole communities. Whilst marriage patterns in Southeast Asia have changed radically in the past fifty years, with trends towards later marriage and individual choice of spouse, the family and the community still maintain a much higher level of involvement in the marriage than is the case in Western societies. This was evident in the divorce suit of Mas E, a 29-year-old Muslim student against his wife Mbak E (27, shop employee), submitted to the Yogyakarta Religious Court in March 2000, just six months after their marriage in September of the previous year. Mas E claimed that his wife had apostatised

---

30 Gavin W. Jones, Marriage and Divorce in Islamic South-East Asia (Kuala Lumpur; Melbourne: Oxford University Press, 1994). Jones provides a detailed survey of these changes.
31 "67/Pdt.G/2000/PA.Yk."
from Islam (*murtad*) and returned to Christianity, grounds for divorce under Islamic law. The neighbourhood head (*Ketua RW*), Pak N, testified that he had brokered the marriage after concerned residents informed him that Mbak E was seven months pregnant and unmarried. Mas E was called to discuss this with Pak N, but refused to marry Mbak E because she had not been a virgin when they slept together. Finally, he agreed to marry Mbak E “purely to cover up the disgrace” ("*hanya untuk menutupi aib*"), on the condition that he could immediately file for divorce afterwards.

The agreement for a swift marriage followed by divorce was put in writing and signed by Pak N, Mas E, Mbak E, and both couples’ parents, in the presence of witnesses from the neighbourhood. This aspect of the case demonstrates in part the significance for the community of maintaining the harmony of the collective, which took precedence over the preservation of religious identities of individuals. The community sanction of an inter-religious marriage and an agreement to divorce also opposed the national model favoured by the state of single, intra-religious marriage (as opposed to social practices of multiple marriage prevalent prior to the Marriage Law, and still in existence amongst some socio-economic groups after the Marriage Law). State, individual or familial preferences regarding religious identity in this case were subservient to the desire of the community to achieve a harmonious outcome.

It is also important to note that in the case above it was Mbak E who converted from Christianity to Islam. In the cases analysed here, women’s experience of conversion and the criticisms levelled at them in court by their husbands, as well as out of court by the families, suggest a profound social unease with the concept of women changing religion. This points to a more deep-seated cultural understanding of what femaleness signifies, including chastity (therefore precluding change of religion) and obedience to family (encompassing familial religious identification). In the case of Mbak and Mas E, minute attention was paid by witnesses appearing for both parties as to whether Mbak E had truly become Muslim or was continuing to attend church. Mas E accused her of being an irresponsible person who treated religion like a game, changing at whim, and (unsuccessfully) requested custody so that he could bring the child up to be a pious Muslim.
identified as "anak yang shaleh"). Although the agreement to marry and divorce was brokered to preserve community harmony, the enactment of the agreement demonstrated an internal marital power structure ordered according to gender. The avoidance of disgrace was contingent upon the woman, rather than the man, altering her religious identity, indicating the woman’s subordinate position in this agreement. The woman, by falling pregnant outside of marriage, had departed from cultural models of ideal femininity and so it was she who was burdened with the responsibility to change religions in order to maintain community harmony. Conversion thus publicly signified, in part, the transgression that had led to her conversion, and so indicated the threat she had posed to male-dominated social and religious structures of authority. This case illustrates the way in which conversion placed women in a double-bind, in which they were required to convert to prevent personal, familial and community disgrace, but in the process of converting were accused of failing to respect the sanctity of religion (and implicitly male religious authority).

Women’s conversion was sometimes publicly depicted by men as a fickle manipulation of sacrosanct religious institutions and so in some ways a subversion of a gendered ordering of familial and social power. Consequently, women’s presentations of conversion often attempted to counter these constructions by using discourses of obedient femininity. Their marriage sometimes entailed a split of their identity from natal family to husband, as opposed to an ideal union which would build familial networks. At divorce hearings, women narrated experiences of distress, confusion and familial conflict which had arisen from conversions undertaken out of shame, familial or community pressure or obedience or love for their husband. Dra N (30), in her suit for divorce against her husband Bapak H in the Yogyakarta Religious Court in 1993, testified that she had converted from Islam to Christianity (Kristen Jawa, Javanese Christianity) at her husband’s request, and given birth to a daughter three months after their February 1985 wedding. It was her conversion however that had caused her significant emotional distress, as she said she was often ridiculed by her family for apostatising from Islam. Similarly, in a suit at the Sleman State Court in 2003 brought by the husband Bapak Y, his wife Ibu S detailed the sacrifice she had made to marry her husband:

32 Ibid.
33 "117/Pdt/G/1992/PN.Yk."
My parents were very angry at me for deserting my religion (I am Muslim and converted to Catholicism) but I was drawn to follow [the religion of] my husband rather than my parents because of my love for my husband.\footnote{11/Pdt.G/2003/PN.Slmn. “orang tua sangat marah dikarenakan saya murtad dari agama saya (saya Islam pindah Katholik) dan saya lebih berat mengikuti suami daripada orang tua, dikarenakan cinta saya terhadap suami.”}

This action had resulted in her parents expelling the couple from their house, and temporarily ceasing contact with her. Both of these conversions, made under different circumstances, entailed the women choosing obedience to their husband over the parents. This was depicted as a difficult choice, but one that had positive connotations of loyalty and dedication to the ideal of marital service to one’s husband. As they were now engaged in divorce, both of the women’s religious identities were exposed to criticism.

In the case above, the husband Bapak Y also attempted to make light of Ibu S’ conversion (similar to the way Mas E had dismissed Mbak E’s conversion in the case discussed earlier). He told the court that their marriage in the Catholic Church was “just a blessing (she was still Muslim)” and that the “the legal ties of ‘husband and wife’ clearly are absolutely incapable of ‘binding’ our hearts.”\footnote{Ibid., berita acara (court proceedings), 25 February 2003. “hanya pemberkatan (masih Islam).” “Bahwa ikatan hukum ‘suami isteri’ ternyata sama sekali tidak mampu ”mengikat” hati keduanya.”} This statement simultaneously suggested that his wife had manipulated religious identity, and also revealed the centrality of his own Catholic identity. While the Catholic Church’s position on divorce has no bearing on the Indonesian State Court’s decision, clearly this remained an important issue to Bapak Y, for which he devised a logical escape by constructing their marriage as state, rather than religiously, sanctified. This was in turn strongly refuted by Ibu S, as she took this statement to imply that she did not respect the sanctity of marriage:

Yes, I got a dispensation from the Church so I could marry in church. I don't understand what is meant [by my husband] saying that the marriage in the church was just a blessing, because for me marriage is sacred and not just a symbol.\footnote{Ibid., berita acara, 10 March 2003. “Ya, saya mendapatkan dispensasi dari Gereja sehingga bisa menikah di Gereja. Saya kurang paham apakah yang dimaksud dengan Pernikahan di gereja hanya pemberkatan saja, karena bagi saya pernikahan itu ”sakral” bukan cuma symbol saja.”}

These arguments about religious identification were central to the court’s decision only in so far as they were accepted as evidence of irreconcilable conflict. For litigants in these
cases, assertions of sincerity or otherwise in their own or their spouse’s conversion were integral not only to their religious identity, but to their conceptualisations of the gender order. Men therefore constructed female conversion as fickle, insincere and symptomatic of a generalised unruly femininity. Women, on the other hand, constructed their own conversion as the product of loyalty and wifely obedience. Both of these identification strategies aligned with New Order gender discourses, which privileged what Suzanne Brenner has called a domesticated femininity, and demonised female transgressions of that model. Women’s testimony about their difficult experiences with their families after they converted confirms the broader significance to the community (and to men) of controlling female religious identification, and the centrality of this control with regards to the production of national male and female identities.

The nexus between male control and female religious identity is made clear in examples of male religious conversion, in particular when the marriage produced children. The religious identity of children became a site for the signification of spousal power, and a way to inscribe the religious identity of the family unit. In contrast to women’s conversion experiences, in the cases analysed here men appear to have been able to convert nominally, and then resume their own religious practices and impose these upon their children. In a 2002 case at the central Yogyakarta Religious Court for example, the court heard that Ibu T (31, Muslim) had married Bapak E (32, Muslim) in April 1998, when she was two months pregnant, necessitating her husband Bapak E’s conversion from Catholicism to Islam. However, witnesses testified that Bapak E had continued to attend church after the marriage, and Ibu T cited disagreement over the religious upbringing of the child as one of the causes of conflict (in addition to his imprisonment for eighteen months in early 2002 for embezzlement from his employer). On his release from jail, Bapak E had taken their son to visit Bapak E’s parents, and then never returned him to Ibu T, and had himself left for Jakarta (and did not attend divorce proceedings). From this point onwards, the son attended a Catholic kindergarten and even refused to stay with his mother on Saturday nights because he was going to church.

In an attempt to convince the court of her worthiness as a parent, Ibu T’s sister appeared as a witness to tell the court “that after he converted to Islam it turned out that the respondent [Bapak E] did not undertake any Muslim activities, but neither did he undertake any Catholic activities,” the implication being that a person without any religion at all was unfit for parenthood. As the child was under 12, the court granted custody to Ibu T without difficulty (as provided for in the Islamic Legal Compilation). This case demonstrates that despite the obvious social and cultural power of the husband, state definitions of religious behaviour (in this case regarding custody arrangements) empowered the woman, and granted her custody of the child against her husband’s wishes. However, the events leading up to the divorce indicated that outside the forum of the court, power lay with men, and not women, to determine the religious identity of children and families. Although the marriage was registered as Muslim, the husband exhibited greater power by establishing the familial religious identity as Catholic.

Husbands might have greater power to determine familial religious identity, but this role could be limited to the length of the marriage. Divorce or separation, while it posed many difficulties for women in terms of transgressing acceptable female boundaries, also offered an opportunity for women to assert their own and their children’s religious identity, and in doing so recover some of the status lost from abandoning their religion in the first place. Bu Sarwendah, a Muslim kampung woman referred to in earlier chapters, had married in 1980 when she was 19 to her 25-year-old Catholic husband. Her parents did not agree to the marriage so she falsified her age to 21 (the age at which parental permission is no longer required for men and women to marry under the marriage law). Her husband temporarily converted to Islam and, with the assistance of his Catholic parents, they married in Jakarta. She was afraid at this time of being reported to the police, because her parents had already engaged her to a policeman in Yogyakarta. “My husband became Muslim for the marriage and then went straight back [to Catholicism].” The children were also Christian, but after her husband left the family in 1990 “I returned them to Islam”.

---


The actions of Bu Sarwendah’s husband and parents-in-law in organising the marriage suggest an attitude of considerable flexibility towards the meaning of marriage, which differed from the state emphasis on marriage as a nation-building tool. Clearly, the main significance for them lay not in the paperwork that defined her husband as Muslim for the purposes of marriage, but the actions that occurred after the marriage, in which he resumed Catholic practice and educated the children into the doctrines of Catholic faith. However, once her husband had abandoned all responsibility for the family, Bu Sarwendah was able to reassert her Muslim identity through her children. Thus, as the case of Bu Sarwendah’s family demonstrates, outward adherence to state requirements did not necessarily indicate commitment to the ideologies embedded within state institutional processes. Rather, religious identity remained an issue of intense personal significance that evaded totalising state control.

The sources for this section applied only from 1986 onwards, and there were only six inter-religious cases in my entire data-set (out of a total of 151 unpublished court records) that explicitly stated a religious difference between the couple, so this prevented a broader assessment of continuity and change that has been possible in other sections of the thesis. However, within the context of the cases obtained, there are three important conclusions to be drawn. Firstly, as some of the disputes over the religious affiliation of children demonstrated, religion was central to many men and women’s social identity and this was often understood and negotiated outside the framework of the court and the ideology of the nation. Secondly, religious identity was inseparable from a collective identity. As inter-religious marriages sanctioned by the community (such as that of Mas E and Mbak E) shows, state discourses on the importance of religious homogeneity in marriage did not necessarily penetrate to the local community level. This rejection of a state discourse asserted the significance of communal harmony and identity over that of a national model of behaviour.

Finally, although women and men’s behaviour outside of court may have resisted an homogenised religious identity, their presentations of religious identity aligned with state gender discourses. Both men’s and women’s presentations of their religious identities drew upon notions of femininity and masculinity which reflected, and contributed to a gender order that was also supported by the New Order state. Women who changed their religion
cast their conversion in terms of obedience to their husbands, but nonetheless suffered criticism from their family, community and spouse. Men who converted neither had to justify this conversion, nor retain allegiance to it. A woman who was filing for divorce, rejecting the authority of her husband and changing religions “at whim” contradicted both cultural and state models of ideal national womanhood, and so found it necessary to appeal to those very models in order to improve their appearance in court. Women’s presentations of the conversion process thus both reflected and reinforced the ideology of the superior position of men in the marital contract, despite also garnering the short-term benefit within the context of the case of demonstrating a woman’s religious piety and loyalty.

3.2 Unregistered Marriage and Divorce

In terms of eliciting obedience from citizens, unregistered marriage and divorce posed a greater challenge for the state than inter-religious marriage. The issue particularly of whether a Muslim marriage should be registered at all was one of the many controversies surrounding the enactment of the Marriage Law, as this requirement was understood to challenge the inherent and divine validity of a contract that already fulfilled Islamic law. It has persisted as an issue in public discourse through to the present, and strikes at the heart of what it means to be Muslim in a modern nation-state. In this section I examine how Muslim identity, and its relationship to the nation, was expressed through the act of unregistered marriage. This action, by its nature, falls outside the ambit of state institutions and thus from archival record of divorce. Therefore, I primarily examine newspaper reports and legislation from the 1980s to 2000s to gauge whether state and public perceptions of this issue changed, and what impact it was perceived to have upon the Indonesian nation. I also ask how the relationship of unregistered marriage with religious and national identity differed between men and women, and whether it changed over time. Towards the conclusion of this section I compare these public discussions of unregistered marriage with a brief example of one of the ways men and women presented unregistered marriage in court.

A variety of terms are used in Indonesian to describe unregistered marriage. This includes kawin di bawah tangan (“underhand” marriage), kawin liar (“wild” marriage), kawin kampung (“village” marriage, indicating that the marriage has the sanction of the community, but not of the state) and for unregistered Islamic marriages, kawin siri (derived
from Arabic, meaning secret marriage). In this section, I am primarily concerned with the public discussion and enactment of *kawin siri*. In a strictly Islamic legal definition, *kawin siri* refers to a marriage conducted in secret which has not been publicised, thus rendering it invalid.\(^{40}\) However, in Indonesian public discourse as well as in court records, *kawin siri* has been used to refer to a marriage conducted according to Islam, with the requisite witnesses and often made public to the community, but which has not been registered with the KUA.\(^{41}\) Public debates about *kawin siri*, therefore, are closely related to questions of Muslim identity in the modern nation-state, and the validity or otherwise of secular law.

*Kawin siri*, like divorce, was consistently constructed in the press from the 1980s onwards as a “phenomenon” which was increasing in incidence. It was characterised as a male action of which women were the victims, and a result of Indonesian citizens’ ignorance of the Marriage Law, particularly an incorrect assumption that state law contradicted Islamic Law.\(^{42}\) Such reports supported state techniques, aimed at eliciting female support, whereby the state constructed itself as the protectors of women (through legislation). Much was and still is made in the print media and by NGO advocates of the dangers *kawin siri* posed to women, as it excluded them from the legal protections of the state. Without a marriage certificate, women could not call upon the court to mediate marital property disputes (unless they first requested the court to ratify the marriage), and could not register their children as legitimate issue from the marriage, thus potentially excluding both themselves and their children from inheritance (in the event of a dispute arising and the court being called to mediate this). Nonetheless, it has continued to occur, for a range of reasons. Sometimes it has involved a genuine deception by husbands who wish to remarry

---

\(^{40}\) Iin Fluor Widianty, "Tinjauan Hukum Terhadap Perkawinan di Bawah Tangan di Kalangan Mahasiswa Menurut Undang-Undang No. 1 Tahun 1974 di Daerah Istimewa Yogyakarta" (Undergraduate Thesis, Universitas Islam Indonesia, 2000) 51. In this thesis Widianty uses “*kawin dibawah tangan*” (“underhand marriage”) to refer to a marriage that was publicised and legal according to Islam but not registered at the KUA, and “*kawin siri*” to refer to a secret marriage that was therefore invalid in Islamic terms.

\(^{41}\) Pak Mohammad, Interview, 10 August 2004. A judge at the Yogyakarta Religious High Court explained that there are two meanings to the term *kawin siri*. In Islamic terms, it means that the marriage was not attended by witnesses and so is invalid. In legal terms (used for the purposes of Religious Courts in Indonesia), it refers to a marriage that was not registered with the KUA.

\(^{42}\) "Pelaksanaan UU Perkawinan Perlu Penanganan Cermat," *Kedaulatan Rakyat*, 17 March 1983. The Yogyakarta Regional Parliament’s Special Commission E on Social Welfare (*KESRA, Kesejahteraan Rakyat*) found in 1983 that unregistered marriage was rampant in the Yogyakarta region, and that this threatened to “emerge as the norm” (*akan timbulnya kebiasaan kawin kampung*). See Chapter 3 for a more detailed discussion of the findings of this commission and the reporting on this issue. Drs. Taufik Hamami, "Langkah Menuju Pemasyarakatan UU Perkawinan," *Pelita*, 7 August 1985. Hamami reported that villagers frequently married according to Islamic law only, because they thought that the Marriage Law contravened divine law.
polygamously without the inconvenience of obtaining court permission, and sometimes it was (and is) carried out with the full sanction of both families, in order to prevent the occurrence of pre-marital sex.

Unregistered marriage carried a different significance for male and female religious identity. Women often experienced unregistered marriage as a threat, in the form of a husband’s polygamous marriage. A woman who wrote to an advice column in the Islamic daily *Pelita* in 1986 explained that she had discovered that her civil servant husband had remarried, when she received a phone call from his superior. The superior had received a letter from “Nonya X” requesting that she and her child be included on the family register maintained by the civil service on all of its employees. When she confronted her husband, she found that he had a genuine marriage certificate with Nonya X, obtained by falsifying his status as unmarried. The columnist advised her that the marriage was indeed invalid, as it contravened the Marriage Law and the Civil Servants’ Marriage Regulations (PP10/83), attracting possible criminal sanctions for making false documents and committing adultery. By manipulating the bureaucratic process of marriage, the husband asserted his own interpretation of Islam and his right to have a second wife under Islamic law. Women who were already in a registered marriage had the option of using the state legal system to confront male interpretations of Islam and protect their status as a wife (although it is not known whether in this case the wife did decide to pursue that option). From a state perspective, as evidenced by the active intervention of the husband’s work colleague, *kawin siri* delegitimised state power. While it was in women’s interests to assert their view of female Muslim identity through the use state laws to avoid polygamy, the same legal protection was not available to first wives in unregistered marriages. State protection against polygamy thus was contingent upon conformity with the state, namely women fulfilling a state-defined aspect of national female identity (that is, being in a state-registered marriage).

Since the enactment of the Marriage Law in 1974 there has arguably been ongoing conflict between the state and some male Muslims in terms of the interpretation of Muslim identity and autonomy. Scenarios such as the one described above were (and continue to be) very

common, and often occurred with the assistance of state employees. In the press, the flouting of marriage laws by both men and marriage registration officials was presented as a threat to national stability. The *Kedaulatan Rakyat* reported in 1989 that a village secretary in Klaten (a district north of Yogya) had been arrested for falsifying documents stating that a married villager was unmarried, thus allowing the man to take a second wife. The villagers, tired of the secretary’s corrupt actions, felt that this final action was causing anxiety and chaos in the community (“menimbulkan kegelisahan...menimbulkan keracuhan”) and when he failed to heed their objections, had reported him to the police.\(^{44}\) Such media presentations tied in with a plethora of legislation attempting to regulate the occurrence of unregistered marriage, and corrupt registration of polygamous marriage which was passed during the 1980s, indicating the concern the state felt about bringing religious and marital practices under its control.

Legislation dealing with corruption, falsified marriage and polygamy explicated the link between unruly marital practices and an unruly nation. For example, a 1985 Religious Ministerial Instruction claimed that corruption amongst marriage registration officials in West Java was rampant, including the acceptance of bribes to falsify marriage and divorce certificates and conduct inter-religious marriages.\(^{45}\) The West Java provincial and district government Islamic authorities who had contributed to the instruction blamed the state of affairs on unscrupulous officials who were likened to “mafia” and on the “limited knowledge of the majority of society regarding the Marriage Law 1/1974.”\(^{46}\) To combat this problem, they recommended a programme of police surveillance and legal education (which was forwarded to all relevant agencies of the Department of Religion, including village heads and Islamic marriage officials), arguing that:


\(^{46}\) Ibid., 412-13. “Bahwa cara mereka (oknum-oknum) beroperasi hampir menyamai cara kerja 'mafia.'” "masih kurangnya pengetahuan sebagian besar anggota masyarakat tentang Undang-Undang Nomor 1 Tahun 1974.”
this situation cannot be allowed to continue, because if it is ignored then there will most certainly be negative effects, both in the form of instability in the household and through disruption to the peace and security of society, and even further, the disruption of national stability.\textsuperscript{47}

Misuse of the Marriage Law, it was further argued, had chaotic implications for the unity of families, and families constituted “the smallest unit of society which is fundamental to, and has an important meaning and role for, the successful development of all humankind.”\textsuperscript{48} This instruction demonstrated clearly the level of importance the state attached to controlling the structure of families, as well as the ongoing resistance of state officials and some men to this control. Subsequent instructions released from the Department of Religion in 1987, 1988 and 1992 (reminding officials that only heads of the KUA could certify marriage certificates, and that marriage and divorce certificates must be completed and examined carefully to check for and avoid falsification) might suggest that these instructions had limited success in overcoming such resistance.\textsuperscript{49}

The newspaper articles and legislation analysed above suggest that in the 1980s men and women had very different relationships with the state, and this altered the character of male and female religious and national identities. The state attempted to curtail male rights to arbitrary divorce and polygamy through legislation, so male Muslim identity expressed through unregistered marriage was an alternative national identity posited in resistance to the state.\textsuperscript{50} In contrast, women’s resistance to arbitrary divorce and polygamy through

\textsuperscript{47}Ibid., 412, 15. “Keadaan seperti itu tidak dapat dibiarakan terus, sebab apabila didiamkan tentu akan menimbulkan dampak negatif, baik berupa kelabilan rumah tangga maupun terganggunya ketenteraman dan keamanan masyarakat, bahkan lebih jauhnya stabilitias nasional akan terganggu.”

\textsuperscript{48}Ibid., 412. “kedudukan keluarga sebagai unit terkecil dari masyarakat yang sangat fundamental dan mempunyai arti serta peranan penting bagi keberhasilan pembangunan manusia seutuhnya.”


\textsuperscript{50}In making this statement, I am of course aware that unregistered marriage is also a function of poverty, and/or a lack of knowledge of state requirements. However, the cases I discussed here were of men who had registered their first marriages and then refused to register subsequent marriages in order to avoid state restrictions on polygamy. Furthermore, the legislation released on this issue refers to men and women paying bribes to engage in polygamy, or inter-religious marriage, or in order to obtain divorce. In other words, some citizens actively attempted to manipulate state regulations on marriage, in manners that were quite contrary to
recourse to the state redefined female religious identity and religious understandings of women’s position within marriage at a national level, but this entailed aligning themselves with the same institutions which were charged with controlling women.

In the period after the New Order, unregistered marriage (kawin siri) remains a topic of concern in print media, academic and public discourse. Frequently, unregistered marriage is characterised as a threat to women, constituting an avoidance of one’s responsibilities as an Indonesian citizen, and as a Muslim. In a 2003 interview the head of the Indonesian Council of Ulamas (Majelis Ulama Indonesia), H. Amidhan, noted the “increasing” incidence of kawin siri and encouraged those who knew about such marriages to report them to the police so that the guilty parties could be punished. When questioned over whether this could cause a conflict between religious and national law, he elaborated:

People can of course choose to follow only the religious process. But we live together as a nation. We have laws which regulate our nation. Because, whatever happens, later it will be the woman who suffers. In the [marriage] law there are no regulations covering kawin mut’ah (contract marriage) or kawin siri (unregistered marriage). And in Indonesia, marriage of those types clearly contravene [the law].

The head of the Merganangsan KUA in Yogyakarta, paraphrased in a law undergraduate thesis by Iin Widianty in 2000, characterised the tendency for some students to engage in unregistered marriage as an avoidance of the full responsibilities of marriage and “a sort of social engineering that was attempting to legitimize human desire ‘free of charge.’”

Both of these comments are indicative of a Muslim identity that sees itself as inextricable from the broader needs of the nation and the demands of the state. A legal scholar based at Universitas Islam Indonesia, Abdul Jamil, argued this very point at a conference at UII in 2004, claiming that the Marriage Law and its associated regulations had the status of state intent. It is this sort of behaviour that I am referring to when I say that some unregistered marriage constituted a resistance to the state.


52 Widianty, "Tinjauan Hukum Terhadap Perkawinan di Bawah Tangan di Kalangan Mahasiswa" 45. "Kepala Kantor Urusan Agama Kecamatan Merganangsan mengungkapkan bahwa tendensi para mahasiswa melakukan praktek perkawinan adalah suatu rekayasa untuk menghalalkan hasrat kemanusiaan secara gratis."
Islamic law because they were inspired by the Qur’an and hadis (reported sayings and actions of the Prophet Muhammad) and so should be adhered to by all Muslims.  

The use of male religious identity in the 2000s, in the context of divorce, can differ from the assertion of Muslim identity through unregistered marriage. Sometimes, men strategically redefined their religious identity as carrying lesser significance than a national, legally sanctioned marital identity. Ibu Z (52, civil servant) accused her husband Bapak M (50, entrepreneur) in the Sleman Religious Court in 2000 of mistreating her, failing to provide maintenance (nakfah) and secretly marrying a second wife two years previously without her prior permission. Bapak M acknowledged this to the court, but defended himself by saying that the marriage was “masih siri” (still unregistered). This was partly a strategic use of this religious identity by Bapak M, but nonetheless demonstrates the way in which male religious identity continued to be used in opposition to the state, whilst women attempted to align their religious identity with the state.

Over the 30-year period analysed, there appears to be considerable continuity in the reasons for which some men and women contract siri marriage, as well as the way in which these decisions enact differently gendered (and classed) religious identities. The famed dangdut singer Rhoma Irama told Forum Keadilan (Justice Forum) magazine in 2003, in response to a question as to whether he had requested the permission of his first wife to marry an unspecified number of other secret wives, that “the important thing for me is that marriage is sanctified by religion” and that the issue of the first wife’s permission for polygamy “is a requirement of Regulation (PP) number 10, not Regulation Allah (PP Allah). I’m using the Statute of Allah (Undang-Undang Allah).” Kawin siri functioned for Irama as an expression of his identity as a Muslim, and the superior power to marry and divorce, which derived from his role as a husband.

---

55 "Rhoma Irama: "Saya Memakai Undang-Undang Allah”," Forum Keadilan XII, no. 5 (2003). "Yang penting bagi saya, perkawinan itu halal secara agama." "Itu kan ketentuan Peraturan Pemerintah (PP) Nomor 10, bukan PP Allah. Saya memakai Undang-Undang Allah." Irama, in his reference to PP10 is erroneously citing PP10/1983, the Civil Servants’ Marriage Regulation which requires civil servants to obtain the permission of their superiors to engage in a polygamous marriage. The Marriage Law UU1/74 also requires all men to obtain the permission of their first wife and the Religious Court before they may marry polygamosly.
For women however, (as well as poorer men), *kawin siri* may be less an issue of asserting religious autonomy, and more a matter of status and economy. *Jurnal Perempuan* (Journal of Women) reported in 2002 on the occurrence of unregistered marriage (*kawin di bawah tangan*) amongst poor, marginalised women in Jakarta. They summarised this as a problem of lack of funds to pay for the registration as well as the lack of an identity card (*Kartu Tanda Pengenal*, KTP). For itinerant and poor workers, they were likely only to have a KTP *musiman* (seasonal identity card) and could not afford to buy a permanent KTP (costing at the time of the article’s publication 300 000 to 500 000 rupiah, the equivalent of an office worker’s monthly wage and beyond the reach of the subjects of the article). This meant also that they could not register their marriage.\(^{56}\) Women also commented to the interviewer that as divorcees, they often suffered harassment and it didn’t matter to them whether they were first or second wife; the status of wife was the most important attainment. Yulah, a small goods stall operator (*penjual bahan pokok*) from Yogyakarta, told the interviewer that “she was even prepared to be a second wife without claiming maintenance or conjugal rights from her husband, because the status of wife was the only thing she needed.”\(^{57}\) Religious identity played a role in determining how the marriage ceremony was conducted, but poverty precluded these women from choosing whether or not they wished this religious identity to be validated by the state.

In this section I selected two examples of marriage, inter-religious and unregistered Islamic marriage, which countered the ideological prescriptions of the Marriage Law and the New Order state. Both types of marriages continued to occur throughout the 30 year period analysed. Through analysis of New Order legislative response to these marriages, print media presentations and litigant constructions of their religious identity in the context of divorces from such marriages, I argued that the state and citizens constructed different and gendered national religious identities. The state emphasised homogenous religious identity, male leadership, female domesticity, and generalised subordination to the state, as the characteristics of a gendered Indonesian citizen. However, the cases analysed here of men’s unregistered polygamous marriage, as well as husbands nominally converting to

---


\(^{57}\) Ibid.: 24. “*Ia bahkan bersedia menjadi isteri kedua tanpa menuntut pemberian nafkah lahir batin pada suami, karena yang ia butuhkan hanya status sebagai isteri.*”
Islam but inscribing Catholic identity upon their children, suggests that these men understood and used their religious identities as oppositional and superior to the state. This is distinct from the relationship male religious identity was perceived to have to the ideology of nationhood. Both the state (as a governing entity expressing its goals through legislation and its institutions) and male citizens were in agreement regarding the centrality of religious identity to the stability of the nation, but differed in their views of how this religious identity should be enacted. The notion of religious identity employed in the interests of nation-building has had currency in Indonesia since the early twentieth century, seen in nationalist male-dominated Muslim organisations such as Sarekat Islam (Islamic Alliance). Inter-religious and unregistered polygamous marriage represents a continuity of such an ideology, positing a counter-discursive male religious identity which nonetheless has a national dimension.

By contrast, women have had a greater interest in constructing their religious identity in terms of both nation and state. Women’s use of state legislation (which was concerned both to domesticate women and to prevent men from engaging in polygamy and divorce) enabled them to challenge men’s interpretation of female religious identity, and to present this in public forums such as court and newspaper advice columns. This was an ambivalent process, as while it entailed confronting male religious authority and disputing men’s right to divorce or polygamy, it also required constructing themselves as obedient and subservient. Men’s use of religion was self-referential and emphasised the autonomy of their own moral framework, whereas women’s was linked to community and state. These radically different expressions of identity both reflected and reinforced the ordering of social and political power according to gender. Men’s and women’s actions in marriage and divorce constructed differently gendered national identities which partly intersected with the state vision, and partly resisted it. Thus, it could be argued, if the nation is indeed an imagined community, men and women may have inhabited differently imagined places.

4. Modernity

Modernity has been a key discourse in nation-building projects in many countries, and Indonesia is no exception to this trend. The discourse of modernity is often said to have taken root in Indonesia in the 1890s, and was employed by nationalist associations such as Budi Utomo (Noble Endeavour, a Javanese nationalist organisation founded in 1908). The
meanings of modernity however were much debated in Indonesia throughout the early twentieth century, and often were linked with exclusivist racial models of nationhood.\textsuperscript{58} Under the New Order, development (pembangunan) became a catchword and an ideology (pembangunanisme, “developmentalism”) from the early 1970s.\textsuperscript{59} This concept encompassed the expansion of legal mechanisms and knowledge, and women in particular were charged with transmitting this knowledge to families. However, as Elizabeth Martyn has argued (see introduction of this chapter), women occupy an ambiguous position in the modernising process. Whilst Javanese women in the past had generally worked in and outside the home, the New Order “re-traditionalised” women’s roles and then characterised this “traditional” role (middle class housewife and mother) as essential to modernisation. In the context of a deeply conservative state social engineering project, how did various men and women understand the condition of modernity? Did it contribute to their sense of a national identity and how did they use this discourse in divorce? Scholarly discussions of modernity in the context of the ideology of the nation frequently have focused (necessarily, by the nature of the sources) on how this discourse was used and understood by male-dominated organisations.\textsuperscript{60} My chapter addresses the corollary of those foci, by providing a contrasting analysis of how both women and men understood, negotiated and used discourses of modernity, and how this might (or might not) have informed the creation of a national identity.

I address these questions in two distinct parts of this section of the chapter. Firstly, I explore how public representations of modernity changed over time, and how these discourses were gendered. To do this, I examine fictional representations of divorce and newspaper reports. Secondly, I analyse individual understandings of modernity presented in divorce cases and oral history sources in order to understand how (or whether) this

\textsuperscript{58} R.E Elson, "Constructing the Nation: Ethnicity, Race, Modernity and Citizenship in Early Indonesian Thought," \textit{Asian Ethnicity} 6, no. 3 (2005). Elson details the debates of early Indonesian nationalists, including Sukarno, Hatta, and the \textit{Budi Utomo} and \textit{Sarekat Islam} organisations, regarding what should constitute an “Indonesian” citizen and state. With few exceptions, this was often deemed to be based upon a Malay-Muslim identity, and excluded Chinese and Arabic residents, as well as those of mixed-race.

\textsuperscript{59} Chalmers, \textit{Indonesia: An Introduction to Contemporary Traditions} 23.

\textsuperscript{60} Feminist scholars have, however, provided some incisive analyses of the operation and use of gender within the male-dominated nationalist movement. See particularly Frances Gouda’s insightful examination of male nationalists’ attempts to create a gender-neutral nationalist rhetoric, which was used to subvert Dutch metaphors of colonial parental control of indigenous subjects. Frances Gouda, "Good Mothers, Medeas, or Jezebels: Feminine Imagery in Colonial and Anticolonial Rhetoric in the Dutch East Indies, 1900 - 1942," in \textit{Domesticating the Empire: Race, Gender, and Family Life in French and Dutch Colonialism}, ed. Frances Gouda and Julia Clancy-Smith (Charlottesville: University Press of Virginia, 1998).
public discourse of modernity permeated the court process. How did litigants’ use of the court construct new identities in the context of modernity, and what was the role of gender in this process? I also ask how courts applied ideas of modernity, how this changed over time, and how litigants used the discourse of modernity as a strategy. I have selected representative cases from the Yogyakarta provincial courts, as well as a published case in order to draw out some of the contexts in which discourses of modernity featured. As such, it constitutes a microhistorical study rather than an exhaustive overview. It is assumed in my analysis that modernity is interpreted and used in different ways by the state, men and women, and is further mediated by class, religious and ethnic difference.

4.1 The Public Representations of Modernity

There are often major differences between the interpretation and use of the discourse of modernity by the state, and by its citizens. However, the state can also exert a powerful influence over ostensibly non-government entities such as print media, through censorship and private pressure. In a persuasive discussion on media representations of Indonesian “career women” (wanita karier) Suzanne Brenner contended that media reports (often critically) detailing the exodus of Indonesian women from the private household domain into the world of paid employment were responsive to the New Order emphasis on the category of ibu rumah tangga, housewife. Indonesian women (especially amongst the female-headed Javanese batik producing families in Solo in central Java where Brenner conducted her fieldwork) have generally always worked both in and outside the home. As Brenner understood it:

the idea of the “career woman” becomes a problem precisely the moment when such a category is recognized and opposed to another imported category, that of “housewife.” Ideologies of domesticity in the New Order present the concept of housewife as if this were the traditional status of all Indonesian women. The career woman then becomes a modern, and potentially risky, alternative to women's default position as housewife - thereby reproducing in Indonesian society the same debates that have historically occurred in Western, middle-class society over women's work outside the home.61

Maila Stivens has also observed this trend in Asia generally, whereby women’s entry into work outside the home has been countered by what she termed nostalgic public

representations of femininity. A similarly nostalgic mode of representing gender and sexuality can be observed in media presentations of marriage and divorce during the New Order period, in which all examples of non state-sanctioned unions (whether they were adultery, polygamy or unregistered marriages) were presented as sexually promiscuous conduct ushered in by modernity and leading to the breakdown of the institution of marriage. Such presentations of course function in the interests of the state, which sought the compliance of its citizens through state-sanctioned registered marriage and the reduction and restriction of divorce. Below, I will analyse some examples of fiction, and newspaper reports, considering what sorts of social changes modernity was understood to produce, what kinds of behaviours were categorized as “modern” and how this also contributed to the construction of gendered national identities.

Before going any further, my selection of literary sources and use of textual analysis in this section of the chapter warrants some explanation. Prior to the 1960s when literacy programmes began to take effect, the reading public in Indonesia was limited to a small number of urban-based elites. Later novels would have had a wider readership, but one that was nonetheless directed at an educated section of Indonesian society. The ideologies contained within fiction therefore do not represent all Indonesians, nor could such fiction be said to have a broad-ranging impact upon society as a whole. Nevertheless, it does represent a section of society (middle-class, urban, educated) which was grappling with the concept of modernity, and as such is worthy of analysis. The sources I have used are based upon a search of the catalogue of KITLV (the Royal Netherlands Institute for Southeast Asian and Caribbean studies, one of the largest repositories of printed material produced both in and about Indonesia) for any books containing the word “cerai” (divorce), “janda” (divorcee) or “duda” (divorced man) in the subject, title or keyword headings. This search revealed 33 works of fiction published from 1924 through to 2003, of which all but four were published after 1950. I selected three titles from this list; one published in the 1950s


63 Jones, Marriage and Divorce in Islamic South-East Asia 24. Jones notes that literacy rates in Indonesia rose from 27% in 1960 to 66% in 1980. When these statistics were further analysed according to gender and age, older women exhibited lower literacy rates than men, and young people in general benefited from compulsory primary school education from the mid-1970s and so demonstrated higher literacy rates.
and two in the late 1970s. Clearly, this is not an exhaustive review of all literature produced in Indonesia. Therefore, I use these sources as one of many examples of ways in which discourses of modernity were presented in print media. I do not present them as representative of a broader literary trend but rather as a complement to the other sources used in this chapter.

A novel published in the 1950s demonstrates that ideologies characterising divorce as a by-product of modernity and excessive female independence emerged well before the New Order (indeed, probably in the nineteenth century). In *Djanda Muda Haus Tjinta*, (“The Young Divorcee Thirsty for Love,” by M.D. Sutojo, presumably a male author) Jenny, a flirtatious young woman orders her husbands around, initiates two divorces and breaks off an engagement, before finally receiving her come-uppance when she herself is deserted by her third husband. The book is set in Java, and references specifically Javanese concepts of femininity, but in its use of rhetoric of modernity and the nation it also makes a claim to extrapolate its concepts to Indonesia.

The cover of the book bears the illustration of a voluptuous young woman dressed in a *kebaya* (traditional Javanese sarong and figure-hugging long sleeved shirt), with a hardened expression of disdain on her face, and a cigarette dangling from her lips. She is surrounded by three pictures of kindly men. The contrast between her clothes, signifying traditional Javanese femininity, modesty and submission, and her facial expression and cigarette-smoking, signifying modernity, hedonism and implicitly disrespect for the institution of marriage, is unmistakeable. As the book progresses, it becomes clear that Jenny aspires to be a “modern wife” (*istri modern*), and has taken it upon herself to educate her family and

---

64 *KITLV (Royal Netherlands Institute of Southeast Asian and Caribbean Studies)* (2006 [cited 19 July 2006]); available from http://www.kitlv.nl/. Photocopies of these books were obtained from KITLV. I conducted a similar search of the online catalogue of the National Library of Indonesia, which revealed 27 titles, all of which were academic or Islamic texts. This absence of fiction dealing with these topics does not imply that such novels do not exist. Rather, it is a reflection of the difficult issues facing developing countries gathering and maintaining literary collections.

65 Clearly this thesis is not a literary study, and it was not possible to read all examples of fiction on women and divorce. The examples I chose to read are necessarily selective, and intended to enrich and support the focus of the thesis, that is, court records. A systematic examination of all literature on divorce would necessitate a separate study.

66 M.D. Sutojo, *Djanda Muda Haus Tjinta* (Tasikmalaja: c. 1950). Javanese names ending in “o” are generally male names. However, this could also be a pseudonym or a woman taking on the name of her husband. Although Javanese traditionally only have one name, some women after marriage are referred to in public using their husband’s name as, for example, Ibu Widodo, Mrs Widodo, the wife of Widodo.
friends about how one should enact this identity. Before her first divorce from Bambang Setiadi (the surname a play on the root word, setia, loyal or faithful), Jenny’s mother gently attempts to dissuade her from abandoning her marriage. Jenny dismisses her mother completely:

“Whether life is bitter or sweet, I’m the one who must experience it. Not my parents! You object to my request for divorce because you’re an old fashioned person (orang kolot) who measures whether a husband is good or bad only according to what’s on the outside. You are from the past, and I am a person of today (djaman sekarang). The era of progress! (Djaman kemadjuan) How can your teachings be used by people of today!” Thus Jenny lectured, as if her mother was her student.67

Later in the novel, Jenny berates her second husband Muchtar, a lawyer, because he does not bring his work home to discuss with her:

Have you forgotten your own promise, to treat me as a wife in the modern sense (dalam pengertian modern)? And not according to old fashioned ideas (konsepsi kuno), where the wife’s world is the household, limited to the world of the kitchen and the bedroom!68

Muchtar later accuses her of being a “dictator” (diktator) and they divorce.69 Unlike her previous husbands, her third spouse, Djamaludin, is a stronger character. Minutes after the wedding, Jenny begins to nag and yell at her husband. He refuses to tolerate her harassment and immediately deserts her, at which point the novel ends.

The character of Jenny, in the moral framework of the book, transgresses all the norms of good Javanese femininity. She is disrespectful to her parents and husbands, lacks control over her emotions and attempts to insert herself into her second husband Muchtar’s work environment instead of maintaining properly separate spheres. This resonates with later New Order constructions of female domesticity. Given that Javanese society did not necessarily divide men and women into distinctly separate spheres, the latter criticism that


68 Ibid. 28. “Lupakan engkau akan djandjimu sendiri, untuk memperlakukan aku sebagai isteri dalam pengertian modern? Tidak menurut konsepsi kuno, dimana dunia seorang isteri dalam rumah tangga hanja terbatas dari lingkungan sumur dapur dan kamar tidur!”

69 Ibid. 32.
the novel levels at Jenny is a telling comment on the way in which men and male-dominated power structures soften the impact of radical social change and modernising processes (for themselves) by inventing a tradition of female behaviour.\(^{70}\) Once this domestic and privately-located female behaviour has been cast as traditional, the social change and upheaval associated with modernisation becomes in part the fault of women, who by embracing modernity may be accused of abandoning their “traditional” responsibilities. The men in the novel, who are lawyers, office workers, leave for work in the morning and return home in the evening to Jenny. They experience modernity, but say little about it. Jenny, by contrast, speaks all the time about modernity but is shown to have misunderstood what it means, using the discourse for purely selfish purposes. The overt message of the novel is that the modernising process leads to female subversion of the basic moral infrastructure of society. The sub-text of the novel is that the discourse of modernity, properly interpreted, should not entail female liberation but rather subordination.

A later novel produced during the New Order period made a more explicit claim that modernity was a trap for women which could entice them away from their proper roles. In the 1979 novel *Janda Binal* (“The Untamed Divorcee”, which bore the subtitle *Khusus Bacaan Dewasa*, “for adults only,” by a male author, Yanto) the protagonist Mintar leaves her boring husband in their quiet village in West Java for the “thrills” of a life of prostitution in Jakarta. The bulk of the novel is taken up with salacious descriptions of Mintar’s encounters with her clients. Ultimately however she grows bored of her life of debauchery and returns to beg forgiveness from her devout and magnanimous husband. In doing so, she “finds her true path in life. Thanks be to God!”\(^{71}\) Her true path, it is clear from the trajectory of the story, entails rejecting the immorality of the modern city and returning to her village, husband and religion. Both *Janda Binal* and *Djanda Muda Haus Tjinta* represent a male interpretation of modernity, in which women are tempted to stray from traditional roles. However, if they are fortunate like Mintar, women are able to reject modernity in time to re-embrace tradition. Modernity for women, in these literary constructions, means becoming “traditional.”


\(^{71}\) Yanto, *Janda Binal* (Bandung: Gemini, 1979) 78. “Aeh...sekarang Mintar telah menemui jalan hidup yang sesungguhnya. Sjukurlah!!”
Some women’s understandings of the discourse of modernity differed to that of men, but it may have been more difficult for them to express this publicly in fiction (or to have it published). The construction of “modern women” as traditional in the texts by male authors analysed above was similar to the way in which the New Order manipulated the discourse of modernity, including for example in censored translations of Kartini’s letters. Sylvia Tiwon’s analysis of these translations suggests that this was a deliberate strategy on the part of the state. The New Order’s appropriation of Kartini constructed her as a modern woman ahead of her time, who promoted female education and liberation. In her original letters in Dutch, Tiwon notes, she raged against the institution of marriage, insisting she wished never to marry. In the Indonesian translations released during the New Order, her words were changed to express a wish to never be forced to marry. The potential for public expressions of women’s own interpretation of modernity was thus quashed, with Kartini’s words altered by translators working to the behest of the state.

A short story, Janda Muda (“The Young Divorcee”) written in the late 1970s by Nurhayati Dini also offers an alternative view of modernity and how women negotiated this discourse. Dini, one of Indonesia’s established women writers who wrote prodigiously from the 1950s onwards was herself divorced (although not at the time she wrote this story). She famously (and bravely) told a women’s magazine in September 1983, when asked whether she would marry again, “Marry, and tie myself down, for what?” Her public dissent from state-sanctioned models of female behaviour also arose in her fiction. In

---

72 Sylvia Tiwon, "Models and Maniacs: Articulating the Female in Indonesia," in Fantasizing the Feminine in Indonesia, ed. Laurie J. Sears (Durham: Duke University Press, 1996), 55. State co-optation of the figure of Kartini dates to the colonial period. Colonial progressives edited and published her letters in 1911 in an ultimately unsuccessful attempt to demonstrate that nationalist and colonial reformist goals were compatible. See Joost Cote, "Introduction," in On Feminism and Nationalism: Kartini’s Letters to Stella Zeehandelaar 1899-1903, ed. Joost Cote, Monash Papers on Southeast Asia, number 60 (Clayton: Monash Asia Institute, 2005), 13.


75 Apa dan Siapa: Nurhayati Dini ([cited]. “Menikah, dan mengikat diri, untuk apa?”
the introduction to a collection of her short stories in 2003, she stated that “I wrote the short story *The Young Divorcee* in the 1970s in order to record just how generalised the view of divorcees is within society.”

In the story the protagonist, Warsiah, is an obedient, modest and studious village girl who becomes the first person to leave her village to study primary school teaching. Upon graduation, she makes plans to move to another city to teach, but her parents insist she returns home and marries. Warsiah does not wish to disobey her parents and so agrees to their request. This is despite her own misgivings over her future husband, who takes her to the cinema and kisses her against her will. She sees that he is “too knowledgeable of the complications of city life” and suspects he kisses other women. When it becomes apparent after the marriage that her husband has another wife and child in a different town, she divorces him. Her parents try to convince her to accept her position, in order to avoid the taunts and insults of the villagers but she refuses, only to find that she becomes a social pariah, ignored by her peers and treated coarsely by men. The story concludes with Warsiah preparing to go to school, considering her slim hopes for a better future.

Dini’s sympathetic portrayal of Warsiah identifies the gender-specific character of a state-defined modernity. Modernisation provided Warsiah with the opportunity for education, but does not empower her to reject the demands of her parents, nor does it mitigate social sanctions exercised against her for transgressing cultural norms of feminine behaviour. Her husband, however, is able to abuse the possibilities of modernity (living in the city, kissing other women, disobeying his parents by refusing to answer their letters when he is away with his other wife) without social consequence. Dini’s presentation of modernity thus differed from the stories of Jenny and Mintar described earlier, in that she understood it partly as a discourse which further enabled men to exploit women, rather than a force which corrupted women. This was a view which had little public expression under the New Order.

---


Presentations of modernity in the media during the Suharto-era invariably linked social change with permissive sexual conduct, and identified the need for new laws to manage the changed social conditions. An article in the *Kedaulatan Rakyat* in 1979, for example, exhorted the government to introduce more sweeping laws to punish adultery (as the existing regulations in the criminal code could only apply if one of the parties to adultery was already married):

> Although adultery very much depends on the morals of each person, there must nonetheless be laws that regulate it. This can more or less decrease the boldness of people to do such reckless deeds. Although the protection offered is very small, nonetheless such protection of family tranquility is very much required.\(^78\)

Similarly, an article that appeared in the *Sinar Harapan* in 1986, entitled “Sex with Your Ex: The Modern Way of Defacto Living” (*Sex dengan Ex: Kumpul Kebo Gaya Modern*) identified the increasing incidence of defacto living arrangements amongst all sections of society.\(^79\) This included an actress who divorced from her husband but continued sexual relations with him, because although he had remarried she had to fulfill her “biological needs” (*kebutuhan biologis*), and a rural village woman who divorced from her husband, but then subsequently resumed living with him without remarriage. The article concluded that:

> Even our society these days is no longer so sensitive about these matters. It’s already considered a normal thing, a part of the changing times, and it doesn't need to be argued about any more. In general, people consider it a private matter, that shouldn't be subject to interference from outside parties, as long as their own actions do not cause a commotion or upset the tranquillity of the neighbourhood. Also, if a commotion did occur with regard to an unofficial relationship, even that can usually be reconciled between the families, with the assistance of the authority of the neighbourhood

---


\(^79\) Ny Dar Adyasaputra, "'Sex Dengan Ex,' Kumpul Kebo Gaya Modern," *Sinar Harapan*, 10 May 1986. The English translation of this title doesn’t fully convey the sense of the Indonesian phrase *kumpul kebo*, which means literally “living together like buffaloes,” a socially-disapproved but not unheard of practice.
or hamlet leaders. The matter is usually resolved through “caught marriage” [i.e. catching the couple in the act of having pre-marital sex and forcing them to get married].

Modernity featured implicitly in the first article as a condition which placed pressures upon society (in the form of unsanctified sexual relations). This imposed obligations upon the state, in the logic of the article, to protect the community from the excesses of modernity. In the second article, the probably not-uncommon scenario of spouses reconciling without an official marriage ceremony (especially in rural Java) was characterised as adultery, a modern development, “a part of the changing times.” However, such behaviour was still cast in terms of its impact on the wider community and “the tranquillity of the neighbourhood.” Significantly, the article concludes by citing marriage as the resolution to any community disruption arising from an “unofficial relationship” thus affirming marriage over unregistered or unsanctified unions.

In the post New-Order print media, themes of the disruptive effects of modernisation leading to promiscuity, spiralling divorce rates and the breakdown of marriage continue. Celebrities in particular are criticised in articles such as “String of Celebrities Divorce” and “The Desacralisation of Marriage.” Such people, journalist Priyono Sumbogo argues in the latter article, were treating marriage as a “hobby” ("suatu kegemaran"), in direct opposition to the goals of the Marriage Law. H. Amidhin, the head of the Indonesian Council of Ulamas quoted in *Forum Keadilan* (Justice Forum) in 2003, suggested that this happened because “they [celebrities] are just imitating westerners, and for westerners that is considered normal.” Psychiatrist Dr Dadang Hawari claimed in the Islamic journal *Sabili* in 2003 that divorce was increasing because people made a minimal effort to resolve conflict before going straight to the court, when really they should first consult a doctor, psychiatrist or the marriage counselling body BP4: “The current of globalisation and

80 Ibid. “Masyarakat kitapun sekarang sudah tidak begitu peka lagi dengan hal-hal yang demikian. Sudah dianggap biasa, merupakan pembawaan zaman, yang tidak perlu lagi diributkan. Umumnya orang menganggap sebagai urusan pribadi, yang tidak perlu dicampuri fihak luar, selama tidak sampai menimbulkan heboh dan merusak ketenteraman lingkungan. Juga apabila kemudian terjadi kehebohan di sekitar hubungan yang tidak resmi itupun biasanya dapat didamaikan secara kekeluargaan, dengan ikut serta kewenangan pengurus RT, atau RW. Dalam hal ini, biasanya dapat dibereskan dengan jalan ‘kawin tangkapan’."  
82 “H. Amidhan: “Mut’ah dan Siri Melanggar Undang-Undang”.” “Itu karena mereka meniru orang barat, dan bagi orang barat itu dianggap biasa saja.”
modernisation unaccompanied by religious values has also become one of the triggers for divorce, and people must be on their guard against this (*diwaspadai*) this." Immoral and outside influences are perceived in such texts to originate from the cultural space of “the West” (*Barat*), and Westernisation and globalisation are often perceived as one and the same. In these reports, modernity is equated with globalisation (conflated with Westernisation), necessitating a return to religious values as well as the use of secular state bureaucratic mechanisms such as the Marriage Law and BP4.

As this overview of fictional and media depictions of marriage, divorce and female sexuality in general demonstrates, public representations of modernity with few exceptions frequently cast modernity in terms of its impact upon male control of female sexuality. However, there was also an element of incongruity in these representations. On the one hand, modernity was depicted as the cause of “modern” behaviours such as pre-marital sex and multiple divorce, as is demonstrated in the fictional examples of Jenny and Mintar and in the numerous newspaper articles bemoaning the moral decline of the nation. In other articles, Indonesian citizens were exhorted to report adulterers to the police and spouses were encouraged to consult modern institutions such as psychiatrists and marriage counselling bodies to prevent divorce. In this perspective, in both New Order and post-New Order Indonesia, individuals who embraced modernity were those who behaved “traditionally” and married and did not divorce. Across the range of sources analysed in this section, from the 1950s onwards, women bore the brunt of the blame for perceived negative developments emerging from social change, as well as shouldering the burden for enacting “traditional” behaviours that the New Order characterised as modern (i.e. inhabiting the private space of the home, and excluding themselves from public life, a theory that of course did not occur in practice).

The discourse of modernity was thus gendered, both before and after the rule of the New Order. If this process was occurring even before the New Order rose to power, this also suggests something broader about how the tangible experiences of modernity (in terms of

---

the rise of capitalism, bureaucratization) are interpreted by societies. Arguably, female marital behaviour and sexual conduct become points of anxiety and focus at times when national stability and identity are perceived to be in a flux. If modernity is publicly represented and measured in terms of the levels of men’s control over women in marriage, in what ways do men and women negotiate this discourse when they divorce? This question will be addressed in the next section.

4.2 Individual Negotiations of Modernity: Court Cases and Women’s Oral Narratives

This final section of the chapter is concerned with the expressions and negotiations of an abstract discourse, modernity, by litigants and judges, and fieldwork informants, not all of whom may have been conscious that they were using this discourse. How can such analysis therefore be undertaken? I follow the example of Michael Peletz who, in his anthropological study of Islamic religious courts in Malaysia, argues that the use of modern religious courts by litigants to obtain a divorce which might be against the wishes of parents constitutes an active engagement with modernity. Courts, rather than the community or parents, were “according sanctified legitimacy to the exercise of theoretically un-coerced judgements and decision-making processes of the sort that are essential to modernity and civil society alike.”

This argument also applies very well to the Indonesian case. In the paragraphs below, I examine three separate divorce cases; one from the rural Wates Religious Court in 1980, one published case from the Semarang High Court in 1988, and one from the Sleman State Court in 2002. In doing so, I wish to draw out how men and women’s use of the court contributed to the construction of an identity informed by modernity, how courts understood modernity and how the use of modernity was gendered. I conclude by contrasting the historical trajectory of the use of modernity in courts with a brief analysis of women’s views of the status of divorcees in 2004, highlighting whether this endpoint of my investigation shows continuity with the gendered national identities promulgated during New Order.

The enactment of marriage laws which allowed self-determination in marriage contrasted to traditional Javanese understandings of marriage, which entailed negotiation between families. Consequently, some people used these laws to act against the desires of parents or

---

community. In 1980 for example, Mbak S (21, farmer) filed for divorce from her husband of two years Mas R (22, farmer) in the rural Wates Religious Court. Mbak S claimed that the marriage had never been consummated and her husband had never provided her with her financial or conjugal rights (nafkah lahir bathin). Mas R told the court that the marriage had been at the insistence of his parents but “actually, I did not yet wish to set up a household”. If his wife was unwilling to accept this situation, he would pronounce divorce.\textsuperscript{85} Similar to Peletz, I interpret the use of the court by Mas R to act against parental authority as constitutive of a new identity, responsive to the legal structures that are a product of modernisation. However, this enactment of a modern identity also retained elements of earlier social practice and gendered patterns of shame and status (see Chapter 3). Although Mas R did not wish to be married, it was his wife, Mbak S, who was forced to file for divorce. In this instance, modernity enabled men to act outside the realms of parental authority. However, as it was the woman who had to publicly assume fault for the divorce (by filing for it), modernity in this case did not operate in her favour.

The discourse of modernity could have also have benefits for women, sometimes in terms of property settlements. A 1976 decision by the Mahkamah Agung decreed that “traditional” marital property division entailed an equal division between husband and wife.\textsuperscript{86} I have detailed in the previous chapter how this could produce negative results for women but this was not always the case. In the process of attempting to produce “modern” citizens who rejected “primitive” “traditional” practices (particularly in patrilineal regions where, unlike in Java, women might receive very little or no property from a divorce), the courts invented “tradition.” This enabled some women to file property suits which ostensibly embraced “tradition,” but in the “modern” terms set out by the court, and in doing so enacted an identity that straddled the discourses of both modernity and tradition.

Court applications of “modernised tradition” could produce some surprisingly progressive results. For example, in 1988 the Semarang High Court (the capital of central Java) rejected the appeal of the husband, Bapak I, and upheld the lower Boyolali State Court’s ruling on the division of marital property. In their decision, the High Court judges


supported the lower court’s findings that land obtained in the late 1950s by Bapak I. under a distribution scheme (of *bumi hangusan*, scorched earth) instituted by the local government for landless villagers, was joint marital property (*gono-gini*) with his first wife, Bok I. Bok I had later run away with another man, and the couple had divorced in 1963. Bapak I had subsequently remarried, and registered the land as *hak milik* (private property) with the village land registry in 1966. The court rejected the husband’s claim that because his wife was living with another man at the time he obtained land, she had no right to it, arguing that: “there is nothing in *adat* law which states that if a woman runs away from her husband, that she loses rights to the joint property with the husband.” The judges concluded that if Bapak I hadn’t been married to Bok I, he never would have been able to obtain the land in the first place, or subsequently register it as private property. Moreover, the land, house, and yard had all been obtained before they divorced in 1963:

Therefore, it is not fair that after only three years of marriage between the respondent [Bapak I] and his second wife (that is since 1966), the land, yard and house are no longer considered joint property between the claimant [Bok I] and the respondent [Pak I], simply because the people who paid the compensation for [the registration of] the land were the husband and his second wife...

The application of modernity by the court to achieve such a beneficial outcome for the wife seems surprising, given that it was pronounced at the height of the New Order, and even more so because of the proof of Bok I’s infidelity during her marriage to Bapak I. Despite this evidence, the court’s decision and comments above were tantamount to decreeing that female sexual behaviour had no bearing on a woman’s access to marital property. Rather, the judges adhered strictly to the legalistic boundaries prescribed by the *Mahkamah Agung* on this issue. This case illustrates that despite public constructions of the negative relationship between women and modernity, other constructions of the value of modernity over tradition could function to women’s advantage.

---


88 Ibid., 19. “Maka tidak adil bila setelah Tergugat baru tiga tahun kawin dengan isteri kedua yaitu tahun 1966 maka tanah tegal, perkarangan dan rumah dianggap bukan barang gono gini Penguggat Tergugat karena alasan yang menganti rugi Tergugat sudah dengan isteri kedua...”
The complex interplay between discourses of modernity and tradition, and its relationship to women’s marital role, has become more pronounced in post New-Order court cases. Some women used the discourse of modernity as a strategy in divorce, whilst at the same time positioning themselves as a “traditional” wife in the New Order sense of the term. This can be seen clearly in a case that appeared before the Sleman State Court in 2002, in which the wife successfully argued against her husband’s divorce suit. Bapak FX (Catholic) brought a case for divorce against his wife of 34 years, Ibu J. Bapak FX claimed that the marriage had been marked by constant conflict since the birth of the first of their five children in 1971. Nonetheless “in facing this household ‘storm’ the claimant [the husband] always attempted to withstand the conditions and act as a responsible household head, so that they had four more children.” Despite his attempts to prevent household disorder “it transpired that the respondent became more and more bold and insulting towards the claimant, the respondent was very egoistic and arrogant and considered the claimant to be a degraded person/family.”

She had embarrassed him by expelling him from the house, insulted him in the presence of witnesses, including calling his mother a “disreputable woman” (perempuan tidak terhormat). Bapak FX’s submission portrayed his wife as the source of familial chaos, which had emerged primarily from her lack of proper respect for the authority of her husband and her elders.

Ibu J responded strongly to these accusations, constructing herself as an obedient modern wife, who was forced into this “boldness” (an unfeminine characteristic in Javanese cultural and New Order terms) by her husband. She claimed that Bapak FX had engaged in black magic practices (by consulting a dukun, Javanese shaman), giving one of the children a magic bath which was supposed to improve his grades but made the child confused and think he was deaf. This condition was proven by psychiatric tests to be psychosomatic. Her accusation that Bapak FX consulted a dukun implied that he was a primitive animist, who had failed to engage as she had done with modern medical practices such as psychiatry. Further, whilst the consultation of dukuns remains a very common practice in Java, those who engage in such practices are sometimes understood by more “orthodox” adherents of


90 Ibid., berita acara, 16 June 2003.
both Islam and other religions to be imperfectly following their religion, a mark of non-modernity. In addition to depicting her husband as primitive and herself as modern, Ibu J also cited her commitment to her "traditional" role of mother:

I do not want to be divorced, in the interests of the children, so that the children can have a good and appropriate life, because they will still have a father and mother. Should my husband does not want to live in the same house with me, I do not object.

In her conclusions, she made a powerful statement that echoed the rhetoric of the women’s movement’s campaign for a marriage law to prevent arbitrary divorce:

My husband considers me to be a weak woman, someone to meet his needs and once I’m old to be tossed aside just like that.

Ibu J’s presentation of her case was successful. The court found that on the basis of the couple having five children, it was impossible to claim that they had experienced constant conflict in the household and thus there were no grounds to justify a divorce. Her claim was successful in part because it appealed to inherited New Order ideologies regarding modern applications of law, which entailed protecting women from divorce from irresponsible husbands.

In contrast to the model of development in Western countries, where modernisation has ushered in no-fault divorce and a generalised belief in the importance of accessible divorce, in Indonesia modernity has come to be signified by the attribution of fault for divorce, and its prevention where possible. This understanding of modernity, like its Western counterpart (where women still shoulder the burden for housework and childcare in addition to paid employment, and which has not necessarily brought about equality of the

---

91 The enactment of religious identity has become a key marker of one’s level of modernity in contemporary Java. This sometimes produces unusual results. A young kyai who conducted exorcisms of Javanese spirits in Yogyakarta informed me that before he agreed to cast out the spirits, he would always seek an assurance from his clients that they would abandon such Javanist beliefs and henceforth follow a “pure” (murni) form of Islam, before proceeding to exercise the same supernatural creatures (mahkluk halus) that he had exhorted his clients to reject all belief in. Mas Adi, Personal Communication, 7 June 2004.

92 “52/Pdt.G/2003/PN.Slmn,” salinan putusan, 5. “Saya tidak bersedia dicerai dengan alasan untuk kepentingan anak-anak, agar anak-anak tersebut dapat hidup baik dan wajar, karena masih mempunyai ayah dan ibu; Adapun suami saya tidak mau kumpul serumah dengan saya, saya tidak berkeberatan.”

93 Ibid., berita acara, 15 July 2003. “Saya sebagai wanita yang dianggap lemah oleh suami saya hanya untuk tambal butuh, setelah tua saya dicampakkan begitu saja (di buang begitu saja).”
sexes), has both negative and positive aspects. Certainly the way in which modernity was presented in the press and in New Order legislation and manipulated by men in court contained the potential intent to subjugate women. However, it should also be remembered that for many (especially poor) Indonesian women, marriage has economic, familial and communal significance. The dissolution of this bond has wide-reaching repercussions for women’s status, financial stability and familial relationships, which was what led to the women’s movement campaign to restrict divorce in the first place. In the latter two cases analysed, women obtained property and retained their status as a wife. This demonstrates that they were able to use gendered discourses of modernity to achieve their own aims. As would be true of any culture, these aims and goals are circumscribed by power relations between the sexes within that society. Thus in Ibu J’s case, remaining married but living apart from her husband retained greater cultural value than being divorced, even though her successful use of modernity did not constitute a challenge to gendered stereotypes of divorcees.

The middle class Muslim men and women interviewed for this research in 2004 and 2005 invariably held the view that divorce was a rarity in the past and was now increasing as a result of modernisation, a contention not borne out by the statistics. However, the manner in which these men and women evaluated such changes differed significantly from the bleak presentations in the print media analysed earlier in this chapter.

Educated women often linked increased divorce to changes they perceived had occurred in women’s educational and economic situation. Bu Mawar, a nyai (female religious teacher) in her late twenties at an Islamic school (pondok pesantren) in Krapyak (a Nahdlatul Ulama enclave to the south of the sultan’s palace in Yogyakarta) explained the changes that had occurred in the following way:

In the past, there wasn’t any divorce. Women had an unfortunate fate. After marriage, they were powerless. If they divorced, their status was far less than what it was before. The status [of being

divorced] was extremely taboo. Now, lots of women have their own economic power, so they are more prepared to divorce, but the status is very low, the status of divorcee is always avoided.  

Similarly, Bu Nur, a judge at the Yogyakarta State Court commented that “in the past, people got married only once” and would stay married for the children, but now with the “empowerment of women” (pemberdayaan perempuan) and increased education levels women “don’t depend [on their husband] anymore, they are more prepared than if everything depends on the husband.” There are two sides to such comments. While both women’s assessments of increased female empowerment are positive, they also assume that women are the cause of divorce, and this falls into the same negative categorization of proactive female behaviour in divorce that was promulgated under the New Order. (The fact that divorce rates have in fact decreased also raises questions about the informant’s assumptions that modernization has empowered women, but this is a speculation for further quantitative analysis).

Regardless of quantitative realities, it remains significant that these women understand modernity to produce models of feminine behaviour which are not traditional, maternal and wifely roles but are nonetheless evaluated positively. This points to the existence of counter-hegemonic understandings of modernity during and after the New Order period. That some Indonesians practiced a conscious insularity to the state’s attempts to intrude into the most intimate aspects of their lives, and refused to internalize state discourses regarding the best way to be a modern Indonesian citizen, is neatly illustrated by a comment made by a middle-class Muslim friend in his 40s. Upon hearing that I planned to conduct research at the state marriage counselling board, BP4, he said, “well, everyone who gets married goes there because they have to, but they always say the same thing, it’s just like a broken record.”

My analysis of fiction, newspaper records and divorce cases shows that state constructions of modernity contributed towards ideologies of a household-leader male citizen, and

---


97 Pak Wibowo, Personal communication, 29 May 2004. This conversation was in English.
housewife female citizen. I have argued that such constructions predated the New Order, but were capitalized upon by that regime. But I have also shown that women could use this hegemonic definition of modernity to their advantage, to obtain property or maintain a marriage. This in itself contributed to a sort of hybrid female national identity. Such women drew upon state constructions of “traditional” female roles, but in their very use of the courts to pursue their goals, rejected an entirely passive femininity privileged by the state. The interview data included at the end of this section further suggest that the influence of even the most paternalistic state upon its subjects’ conceptualizations of modernity, gender and identity is never totalizing, but rather constantly contested.

5. CONCLUSION

At the start of the chapter, I asked what sorts of identities men and women presented in the process of marriage and divorce, and whether this contributed to a national identity. In the first section, through an examination of inter-religious and unregistered marriage, I argued that religion is central to the social identity of both men and women, but it is expressed in dissimilar ways and with different significance for the discourse of the nation. Men often asserted a religious identity that was oppositional to the state, whereas women’s religious identity was posited in terms of their obedience to their husbands and to state gender ideologies that constructed women as submissive. In the second section, I argued that the discourse of modernity has come to be associated with protecting women from divorce, rather than enabling them to obtain it. Women could however make public representations of themselves which drew upon male- and state-defined versions of religiosity and modernity. Although this served to reinforce stereotypes of female inferiority, women’s use of courts to achieve their own aims also subtly posited alternative definitions of religion, modernity and nation in which women were not subservient to men.

I also claimed that the New Order state constructed gendered national identities which positioned women in a subordinate place to men. Despite some levels of resistance detailed above, to a large degree both women’s and men’s presentation of their cases in court reinforced such identities. This of course encompassed degrees of willingness and unwillingness. Litigants (and especially less powerful social actors, such as women) can always only use the social tools that are available to them, and if they do wish to challenge societal power structures they may only be able to do so with limited effectiveness. Further
if the use of these discourses produced gendered identities before, during and after the
existence of a paternalistic state, this points to a societal ordering of power according to
gender that the state has been able to co-opt, rather than a gender hierarchy invented by the
state. While I do not wish at all to understate the influence of the New Order state and its
role in solidifying notions of a gendered national citizen, I do contend that such processes
do not occur in a vacuum, but rather require the active participation of those citizens. Men
and women’s presentations of their identity in divorce constituted one such participation in
national identity formation. Although men and women used concepts such as religion,
gender, modernity and nation in a range of ways, it was men who were able to use it most
effectively. This in turn constrained and guided women’s presentations of identity, and
perpetuated a gendered hierarchy of power that has endured beyond the demise of the New
Order.
CONCLUSION

The enactment of the 1974 Marriage Law has long been considered by Western scholars, Indonesian legal practitioners and women’s groups as a milestone in Indonesian legal history. However, its practical and discursive implications have thus far received little scholarly attention. The ramifications of the Marriage Law for a study of modern Indonesian history in general are enormous, and much work remains to be done. As a starting point to this hitherto under-researched topic, in this thesis I have focused on the implications of the Marriage Law for the negotiation of divorce, and its subsequent impact upon gender relations, women’s and men’s access to social power, the shaping of Indonesian identities and the consolidation of state power. In doing so, I have suggested that Indonesia’s national, political, gender and legal histories cannot be fully appreciated without an understanding of women’s and men’s experience of marriage and divorce.

1. REINTERPRETING NATIONAL AND POLITICAL HISTORIES: MARRIAGE, GENDER AND STATE POWER

The New Order state regulated marriage with the aim of producing an obedient, married, female citizen. Such regulation was deemed to be crucial to building and maintaining authoritarian state power in Indonesia. In marriage legislation from 1974 onwards, the state consistently emphasised women’s subordinate role in marriage, household and nation, in contrast to men’s leadership role in the family and state. This was one of a number of efforts by the New Order state throughout its rule to vest social and political power exclusively with men, and in doing so shape gendered forms of citizenship which would consolidate state power.

Despite these intensive state efforts, until now there has been relatively little scholarship which interrogates either the critical importance of marriage or the Marriage Law in shaping female citizens, or the significance that the New Order state attached to this form of moral regulation. Only two studies, those of Daniel Lev and Hisako Nakamura (published a decade after 1974), have analysed women’s experience of marriage and divorce in any depth, and these are both based upon research conducted prior to the
More recent analyses of the Indonesian legal system have been broad (and specifically legal) in focus, and have not been concerned with the Marriage Law or its impact upon national identity, gender relations and state power. I have addressed this scholarly lacuna, arguing, firstly, that the way in which gender roles were constructed in the Marriage Law was crucial to the New Order’s attempts to constitute its power. Secondly, I have contended that transgressions against state law (such as divorce) are extremely important historical sources, because they may reveal the different ways in which women and men either used or resisted state gender ideologies, and thus the broader significance of gender in terms of the access women and men had to social and political power. Importantly, this finding also suggests that the state should be understood as an arena for contesting social forces, with differently gendered interpretations of how social and political power should be distributed.

Because marriage and the family were targeted by the New Order as key sites for the production of Indonesian citizens, divorce automatically posed a threat to this state project. Consequently, divorce was publicly and legally constructed as a menace to local and national stability. National stability was thus predicated upon monogamous families, in which women were located within the private sphere of the household, with men as leaders of family and nation. Such constructions were aimed at eliciting the support of both female and male citizens, but in very different ways. The adherence of otherwise politically disempowered male citizens to the state project was sought by according them superior legal power in the family and in their imagining of the nation. By contrast, women’s alignment with the state was sought through their subordination to husbands and nation, which was correlated in legislation with the protection the state offered women from divorce and polygamy. As a consequence, women who divorced (whether that was by choice or not) were placed in symbolic opposition to the state and the authority of male-headed families and nation. The broader notion that women are both essential and a threat to the preservation of state authority is one that has been replicated in many different

---

historical and cultural contexts, including Indonesia. Miscegeny, polygamy and the control of female sexuality were targeted by the colonial regime. ³ New Order prescriptions on women were a logical consequence of such earlier patterns of state control. ⁴

Developments in women’s divorce negotiations in the post-Suharto era however provoke some intriguing questions about the nexus between gender and state power. Despite the enactment of increasingly egalitarian legislation on women and family, including the 2004 Anti-Domestic Violence Law and the 2000 Presidential Instruction on the Prioritisation of Gender, court decisions in divorce cases after the fall of the New Order have become more disadvantageous to women, focusing increasingly on issues such as the importance of female sexual obedience to husbands. At the same time, legislative proposals directed at the control of female sexuality, such as the 2004 bill for a Revised Criminal Code, and the 2006 Anti-Pornography bill, have received the support of conservative Islamic groups. With the Indonesian state now concertedly implementing the decentralisation of political authority and the regions becoming more autonomous, some Islamic groups (mostly men, but also some women) are attempting to assert legitimacy and power at a local, regional and national level through the regulation of female sexuality. This points to a transition, in which religious groups rather than the state exert greater public control over the regulation of women’s behaviour in marriage. This is not to say that religious groups did not always have such control in private, but rather that during the New Order period the state had established itself as the primary arbitrator of familial matters and so was concerned for this to be borne out publicly. How women experience divorce in the future, and which interest groups are most successful in regulating this experience may serve as one useful indicator of where social and political power is concentrated and therefore how state power will be constituted.

The regulation of marriage and divorce was understood by the New Order state to be pivotal to its legitimacy and maintenance of power. Therefore, a national or political history


⁴ As I have argued in the Thesis Introduction and throughout this study, state control is an extremely complex phenomenon, and there are many ways in which it is exercised (for example, through family, marriage, education, access to land, citizenship and taxation). This thesis has attempted to demonstrate how the particular case of marriage was harnessed by the state.
of Indonesia is incomplete if attention is not paid to this aspect of the state’s rule. My thesis has demonstrated that points in time when the state has chosen to construct legally circumscribed definitions of femininity should rank as equally historically significant as other standard historical milestones such as the crippling of student resistance movements (1978) or of political opposition parties (at a number of times during the New Order’s rule). Thus, in a history of state power, 1974 (the introduction of the Marriage Law), 1983 (Civil Servants Marriage Regulations) and 1991 (Compilation of Islamic Laws) might be counted as important moments in Indonesia’s history when the state attempted to further restrict female agency and so reinforce its own power.

This thesis has also shown that New Order state power was not hegemonic but rather both contested, and co-opted by citizens. A broader history of a particular nation therefore must be understood as a series of sometimes contradictory trajectories. In making this claim, I am arguing for a more multi-layered and nuanced conceptualisation of history than has generally been employed in existing studies of Indonesia’s national and political history.

2. ALTERNATIVE HISTORICAL CHRONOLOGIES: WAS 1974 A WATERSHED MOMENT IN INDONESIA’S HISTORY?

In the introduction to this thesis, I asked whether an analysis of women’s experience of marriage and divorce since 1974 could posit alternative or additional chronological markers to those generally accepted by historians and political scientists. My analysis has demonstrated that gender ideologies were and continue to be manipulated by male-dominated state, religious and cultural authority structures to obtain and maintain social and political power. Women also attempted to manipulate gender ideologies, but with less success than men. Consequently, there may be a number of historical trajectories operating simultaneously which need to be teased out in order to adequately reflect the nuances of historical change in Indonesia.

My study of legislative and judicial restrictions upon divorce during and after the New Order rule has uncovered new milestones in the history of the constitution of state power, and also indicated that existing milestones should be reinterpreted. As all citizens are first of all shaped by their family, their future participation in a polity is also influenced by family structure, and by the gender ideologies circulating within that family. 1974 does
mark the beginning of a concerted state effort to control women and families. In this sense, it was a watershed moment in Indonesian history. Moreover, it predates the generally accepted date of the 1980s, when historians and political scientists claim that New Order projects of social control began in earnest. The early 1980s, perhaps from around 1983 (when the Civil Servants’ Marriage Regulations were enacted) was a point when courts and litigants began to make more explicit use of conservative state discourses regarding divorce. However, by the terms of my study, in many cases this was an outward conformity that, as James Scott suggests, masked resistance to state hegemony. 1998, the year Suharto was overthrown, denotes the beginning of the devolution of centralised state power. However, there is now an increasing divergence between conservative decisions of courts post-1998, and the democratisation (and decreased paternalism) of the state, now under mounting pressure from more mobilised social forces. In short, although 1998 might signify democratisation and increased political freedoms for men, for some women it might indicate restriction of personal freedom, and a decreased ability to use state structures to challenge cultural and religious male authority.

Political, national, gender and legal histories therefore may be explained using different chronologies, which sometimes intersect, and sometimes diverge. A trajectory of political change in Indonesia over the last six decades, for example, shows liberation from colonial rule, followed by the rise of authoritarianism under Sukarno’s Guided Democracy and Suharto’s New Order, and now an emergent democracy. A trajectory of women’s experience within this same chronology may not, however, follow the same pattern of liberation, state oppression and democracy. Independence from colonial rule was matched by women’s groups’ thwarted hopes of achieving marriage reform. During the New Order period, women used courts creatively to counter discriminatory cultural or religious gender ideologies in spite of the restrictive impulses of the state at this time. Despite positive legislative developments that have occurred after the New Order, there are signs of State and Religious Court judges making more conservative interpretations of women’s role as housewives, and penalising their access to financial settlements accordingly. Because women are embedded within a range of relationships in society, not limited to the state, their experience of social change in Indonesia has not always mirrored changes in state formation. Thus, in the historical trajectory of the gendered distribution of social and
political power charted within my analysis of divorce, there has been little or no change at all in women’s favour.

I find that 1974 was a moment of ambiguous significance for both women and the state. It did indeed mark the attempts of the state to control women and families, but it also created a legislative context which women were sometimes able to co-opt to their advantage. Prior to my study, feminist scholarship has generally held that although the Marriage Law’s construction of gender roles was conservative, it nonetheless marked a turning point in women’s legal position. My study has challenged this contention, suggesting that because women’s co-optation of the law did not radically alter the gendered distribution of social and political power, it therefore also did not mark a turning point in women’s social position or legal experience of divorce.

3. UNCOVERING GENDER HISTORIES THROUGH LEGAL HISTORIES: WOMEN AND SOCIAL POWER

The New Order state attempted to restrict divorce and shape gendered national identities, but neither women nor men were docile recipients of state prescriptions on gender roles. If divorce was constructed as an anti-state activity, and the female citizen was idealised as married, divorce could be viewed as a micro-contestation of state ideological prescriptions. In my analysis of divorce between 1974 and 2005, the character of such contestation differed between men and women, producing different outcomes and demonstrating the different social power accorded to men and women.

Men’s actions in and out of court throughout the period of this study demonstrated their superior social position, and indicated a certain degree of autonomy from the state. When it suited them, they used the courts to obtain divorce, most frequently by highlighting the failure of their wives to respect them as heads of household. At other times, they refused to pay state-ordered child support, and engaged in secret polygamy, unofficial divorce and unregistered marriage by using falsified documents, or by ignoring state processes altogether. At various times during and after the New Order’s rule, courts have attempted to impose criminal sanctions upon men for divorcing or marrying polygamously without court permission, in an effort to draw male marital behaviour into line with state conceptualisations of a good male citizen. Despite such efforts, my close examination of
divorce cases has shown that in general men have consistently been able to circumvent such prescriptions, without legal consequence. This demonstrates a long standing historical continuity in terms of the concentration of social power with men.

Women, on the other hand, rarely openly contested the state’s power in the way that men did. They also used state structures for their benefit, but from and in terms of a subordinate social position. Their activities in filing for and defending their claims in court may not have been as powerful as men’s efforts. However, they nonetheless constitute a counter-hegemonic attempt to construct alternative identities in terms of their rights and obligations as wives and citizens. For example, women’s attempts from 1974 onwards to use courts to protect their status as wives actively confronted male claims to sole authority to divorce and so constituted an act of social change. Similarly, women’s claims to obedient wifehood didn’t undermine that concept, but by using it to convince courts to order husbands to pay child support and divorce gifts they were attempting to reshape historical patterns of male abandonment and financial neglect of wives. While there was a more powerful ideology of female subordination constructed in law, women use of courts to pursue their own interests entailed actively co-opting such an ideology and so asserting alternative visions of female membership in a local and national polity.

Despite the achievements women may have made in court, such achievements were ambiguous, because it was done consistently from 1974 to 2005 primarily by appealing to their fulfilment of the roles of obedient wife and self-sacrificing mother. As I have outlined throughout the thesis, a number of scholars have identified alternative gender ideologies in Java (and Malaysia) which contrasted women’s domestic, trading and ascetic power with men’s financial and spiritual weakness. However, women could only employ these ideologies in court in a circumscribed fashion. Wives often presented their husbands as weak, failing in their marital obligations or engaged in extra-marital affairs. However, they rarely presented themselves as the household leader or controller of finances in the absence of their husband’s care, but rather dwelt upon their own religious morality and dedication to

---

their husband and families. Significantly, especially in cases after 1998, men’s failings and extra-marital dalliances were often attributed by courts to stress, low self-esteem or the inattention of their wife. This same latitude was not afforded to women. My work on divorce confirms claims made by earlier scholars (primarily Norma Sullivan), that Javanese cultural notions of female power are limited to the domestic sphere. In public forums, such as a divorce court, women could not and did not make claims to alternative gender ideologies which referenced women’s domestic or ascetic superiority to men. Ironically, while this strategy assisted women to obtain divorce or protect their claims to financial and custodial settlements, it also confirmed women’s consistent position of lesser social power in comparison to men.

Women’s use of the court system and the discourses of the Marriage Law constituted a subtle confrontation of the male power-base of state and society, but it also confirmed the dominance of male domestic, social, and political power. By demonstrating that the state, husbands, and male religious and cultural authority structures attempted to control women through marriage and divorce, I have also shown that state power and social power are, in fact, inextricable. I commenced the thesis by asking how state power was constituted through the control of women. However, consistent litigant and court resistances to, and divergences from, state ideological prescriptions on marriage and divorce from 1974 onwards demonstrates clearly that the state is an arena for the contestation of different social forces. Therefore, I contend that a state formation always expresses the ascendency of a particular social force. In short, the state is only ever the sum of its citizens and women’s experience of divorce in Indonesia since 1974 demonstrates that male authority, whether that has been based upon secular, cultural or religious factors, has always been in the ascendency. Consequently, if a citizen is understood as a social actor who has the capacity to shape the state, it could be argued that at least since 1974 the Indonesian state has always sought to effectively position women as subjects. Despite this consistent state effort, Indonesian women’s pursuit of their goals in divorce constituted an attempt to redefine the terms by which they could participate in the Indonesian state, and so to reclaim their citizenship within that polity.
APPENDIX I

Glossary of Foreign Terms

Linguistic origin of foreign terms used in the thesis are denoted below as Indonesian [I], Dutch [D], Arabic [A], Javanese [J]. Where terms have a specific legal connotation which differs from everyday usage of Indonesian, this is also indicated [L].

**abangan**: [J] Syncretist Javanese Muslims who also adhere to pre-Muslim Hindu-Buddhist beliefs.

**adat**: [I] Customary laws, rules and practices found across Indonesia.

**agama**: [I] Religion (usually refers to a recognised world religion).

**akad nikah**: [I], [A] Muslim marriage ceremony.

**akal**: [I] Intellect, reason.

**akta perdamaian**: [L] Reconciliation Certificate. Legal document that was drawn up by courts during the 1980s when divorce was avoided, outlining the conditions under which the couple would reconcile.

**ayat**: [A], [L] Sub-article. Can refer to a verse in the Qur’an, or an article in a law.

**banding**: [L] First appeal, to the High Court.

**bab**: [L] Section, of a law.

**Bapak**: [I] Respectful term of address for older man, or man of higher status.

**batin**: [I] Inner, spiritual dimension.

**berita acara**: [L] Record of court proceedings, sometimes verbatim and sometimes paraphrased.

**Bu**: See Ibu.


**bupati**: [I] Government officer in charge of district (kabupaten).

**cerai gugat**: [L] State legal term for Muslim divorce instigated by the wife. Introduced through UU7/89 Law on Religious Judicial Matters in 1989, as an umbrella term to encompass khuluk and fasakh.

**cerai hidup**: [I] Divorce (dissolution of marriage whilst both spouses still alive)

**cerai mati**: [I] Dissolution of marriage due to death of one of spouses.

**cerai talak**: [L] Legal term for Muslim divorce instigated by husband.

**Dharma Wanita**: [I] Official Civil Servants’ Wives Organisation established by the New Order, literally meaning “Women’s Path” or “Women’s Way.”

**Dokteranda**: [D] Female holder of a postgraduate degree, roughly equivalent to Masters.

**Dokterandus**: [D] Male holder of a postgraduate degree, roughly equivalent to Masters.

**duda**: [I] Divorced or widowed man.

**duplik**: [L] Second response of the respondent in court proceedings, made after hearing the claimant’s second response (replik)

**eksekusi**: [L] Enforcement of court decision.

**fasakh**: [A] Dissolution of marriage by a judge, because of a condition which invalidates it (for example a forbidden blood relationship between husband and wife, illness of the husband, or desertion).

**fiqh**: [A] Islamic jurisprudence based on interpretation of the Qur’an and Hadis.

**ghoib**: [I] (also ghaib, gaib) Absent (used in court records in the 1960s to described missing husbands).
Golkar: [I] Suharto’s political party, Golongan Karya (Functional Groups).
gono-gini: [J] (also gana-gini) Property acquired during marriage, jointly owned by the marital unit (without attention to the work effort of either spouse. Excludes inheritance, marriage gifts and personal property brought to the marriage).
gugatan: [L] First presentation of a claimant’s (penggugat) demands or accusations in court proceedings.

Hadis: [A] (also Hadits, Hadith) Written record of the words and deeds of the Prophet Muhammad.
hak milik: [L] Right of private ownership of property.
hak: [I], [A] Right.
hakim: [I] Judge.
halus: [I] Refined, cultivated.
harta bawaan: [I], [L] Personal property brought into a marriage (which cannot be claimed by the other spouse. Also includes any property inherited before or during the marriage).
harta bersama: [I], [L] see gono-gini.
harta gawan: [J] see harta bawaan.
hukum: [I] Law.
ibadah: [I] Religious observance (Muslim).
Ibu: [I] Respectful term of address for older woman, or woman of higher status.
iddah: [A] 100-day (or three menstrual cycles) waiting period for a widowed or divorced woman. During this time she may not marry another man, but is permitted to reconcile with her husband.

Instruksi Presiden: [L] Presidential Instruction.
iwadl: [A] (also iwad) Compensatory divorce gift payable by wife to husband upon dissolution of the marriage by a judge (khuluk divorce).
janda: [I] Divorced or widowed woman.
jawaban: [L] Respondent’s (tergugat) reply to the demands (gugatan) of the claimant.
kabupaten: [I] District.
kampung: [I] Urban neighbourhood.
Kantor Catatan Sipil: [I] Civil Registration Office. State body which registers all non-Muslim marriages.
Kantor Urusan Agama: [I] Office of Religious Affairs (within the Department of Religion). State body which registers all Muslim marriage and divorce.
Kasar
kasasi: [L] Second appeal, to the Supreme Court.
kawin: [I] Married, to marry.
kawin di bawah tangan: [I] Marriage that has not been registered with the appropriate state agency, literally “underhand marriage.”
kawin kampung: [I] Unregistered marriage, that has nonetheless been recognised by the local community, literally “village marriage.”
kawin liar: [I] Unregistered marriage, literally “wild marriage.”
kawin mut’ah: [I], [A] Contract marriage, which dissolves after the expiry of the time period detailed in the contract. Not generally accepted as a legal form of marriage in Indonesian Islamic practices.
kawin siri: [A] (also sirri, sirrih) 1. Islamic marriage that has been conducted in secret, without the correct number of witnesses or publicity. 2. In current public discourse, refers to marriage conducted correctly according to Islamic law, but not registered with the KUA (thus rendering it unrecognised by the state).
kacamat: [I] Sub-district.
keluarga berencana: [I] Family planning.
kopala desa: [I] Village head.
kewajiban: [I] Obligation.
Ki: [I] Title of respect for men learned in religious matters.
Khong Hucu: [I] (also Konghucu) Confucius. Also used to refer to adherents of Confucianism.
khuluk: [A] (also talak tebus) Divorce pronounced by the husband at the wife’s request, after she has returned her marriage gifts (maskawin) to her husband.
kia: [I] Male Islamic leader, often also the head of an Islamic school (pesantren).
kodrat wanita: [I] Women’s role, biological destiny, path.
klaton: [I] Sultan’s palace.
kumpul kebo: [I] Defacto living arrangements (literally, “living together like water buffaloes.”)
kyai: see kiai.
lahir: [I] Physical, tangible matters.
mazhab: [A] (also madhab) School of Islamic legal thought.
mahar: [A] Obligatory gift from Muslim husband to wife at marriage, required for the marriage to be valid.
Mahkamah Agung: [I] Supreme Court, court of last appeal
malu: [I] Shy, embarrassed, shame.
Mas: [J] Term of address for contemporary males, or male of slightly higher status (literally “older brother.”)
maskawin: [I] see mahar.
Mbak: [J] Term of address for contemporary females, or female of slightly higher status (literally “older sister.”)
Muhammadiyah: [A] Modernist Islamic association, established in Java 1912.
murtad: [A] To apostatise from Islam.
mut’ah: [A] Compensatory divorce gift payable by husband to his wife upon his repudiation of her (talak).
Nahdlatul Ulama: [A] Traditionalist Islamic association, established in 1926.
nafkah anak: [I] Child support.
nafkah batin: [I] Conjugal rights.
nafkah iddah: [I], [L] Maintenance which husband must continue to provide for his ex-wife for 100 days after the divorce.
nafkah lahir: [I] Basic necessities provided by a husband to his wife (shopping money, food, clothing, housing).
nafkah terhutang: [I] Maintenance owing to the wife from the period of their marriage
nafkah: [I], [L] Obligatory maintenance a Muslim husband must provide for his wife, according to his financial capabilities (including food, clothing, place of residence and other daily needs). Also used to denote maintenance in non-Islamic divorce cases.
nikah: [I] Marry, marriage
nusyuz: [A] (also nusyus) Disobedient behaviour of a Muslim wife towards her husband, often with regard to sexual matters.
nyai: [I] Female Islamic leader, by virtue of her marriage to a kyai, but often involved independently in leadership and teaching activities.
Nonya: [I] Mrs.
Nyonya: [I] Mrs.
Pak: See Bapak.

Pancasila: [J] Five principles declared to be the state philosophy by Sukarno in 1945 (belief in God, sovereignty of the people, national unity, social justice, humanitarianism).

panitera: [L] Clerk of the court.

pasal: [L] Article (of a law).

Pegawai Negeri Sipil: [I] Civil servant.

pembimbing: [I] Mentor, guide, supervisor.

Pembinaan Kesejahteraan Keluarga: [I] Family Welfare Association, set up at village-level in the 1950s and expanded under the New Order.

Pengadilan Agama: [I] District-level Religious Court.

Pengadilan Negeri: [I] District-level State Court, court of first instance.

Pengadilan Tinggi Agama: [I] Religious High Court, court of first appeal.

Pengadilan Tinggi: [I] High Court, court of first appeal

pengajian: [I] Religious (Islamic) talk, usually including recitation of the Qur’an.

penggugat: [L] Claimant or plaintiff in a court case.

penjelasan: [L] Elucidation. An attachment to a law which clarifies terminology and meaning of each article of the Basic Law.

penjelasan umum: [L] General elucidation. An attachment to a law clarifying general aspects of the legislation, relating to its broader principles and intent.

Peraturan Pemerintah: [I] Government Regulation. Supports a Basic Law (Undang-Undang), usually providing greater detail regarding the manner in which the Basic Law is to be implemented.

perempuan: [I] Woman, female.

perkawinan: [I] Marriage.

pernikahan: [I] Marriage.

pesantren: [I] Islamic boarding school.

pondok pesantren: [I] see pesantren.

priyayi: [J] Javanese aristocrat, also sometimes government official.

propinsi: [I] Province.

Raden: [J] Title for Javanese man of noble descent.

reformasi: [I] Reformation, political slogan for the pro-democracy movement that led to the deposition of Suharto.

replik: [L] Claimant’s second response in court (made in reply to the respondent’s first answer, jawaban).

rujuk: [I], [A] Reconciliation of husband and wife (this can involve remarriage through a new marriage ceremony if the iddah period has passed, or if it is still during the iddah period it means the divorce is rendered void and no new marriage ceremony is required.)

rukan: [I] Harmony.

salinan putusan: [L] Statement of the court’s verdict, including summary of legal considerations underpinning the decision.

santri: [I] Devout Muslim. Also an attendee/resident of a pesantren.

Saudara: [I] Formal term of address, for official situations. Applies to both men and women but in court records analysed in this study it was applied only to male litigants.

sinetron: [I] Indonesian television serials, dramas.

solat: [I], [A] (also sholat, shalat) Five obligatory daily Muslim prayers.

surat: [I] Letter.


syariah: [A] (also shariah, syariat) Islamic law.
syiqaq: [A], [L] Islamic term referring to a dispute, or breakdown in the marital relationship that is so serious that divorce is likely to occur. The Religious Judicial Matters Law UU7/89 accepts syiqaq as a valid ground for divorce (article 76).

ta’lik talak: [I], [A] (also taklik talak) Conditions attached at the time of contracting the marriage, which must be fulfilled by the husband (for example agreeing not to desert her for more than six months without maintenance). If these conditions are broken, it allows the wife to apply to the religious court for a divorce.

talak liar: [I] A divorce pronounced by a Muslim husband without prior permission from a religious court, literally “wild divorce.” This divorce is not recognised by the Indonesian state, but is valid according to Islamic law.

talak: [I], [A] Divorce, whereby the wife is repudiated by her husband.

talak tebus: See khuluk.

tergugat: [L] Respondent (defendant) in a court case.

tidak diurus: [L] Term used in court records of divorces prior to the introduction of the Marriage Law, denoting that the husband had not looked after his wife (usually because he had deserted her, or not provided maintenance).

ulama: [I] Islamic scholar.

Undang-Undang: [I] Basic Law, statute.

wali: [I], [A] Male relative legally responsible for giving a woman in marriage, usually her father.

wali hakim: [I], [A] Person who acts on a behalf of a father, in giving a woman in marriage.

wanita karier: [I] Career woman.

wanita: [I] Woman.

APPENDIX II

Abbreviations and Acronyms

BP4: Badan Penasihat Perkawinan dan Penyelesaian Perceraian [I] (Marriage Counselling and Divorce Resolution Board), now Badan Penasihat, Pembinaan dan Pelestarian Perkawinan [I] (Marriage Counselling, Guidance and Preservation Board).

BPHN: Badan Pembinaan Hukum Nasional [I] (National Legal Development Board).

KADARKUM: Keluarga Sadar Hukum [I] (Legally Aware Families, legal education programme developed in the 1980s by BPHN).

BW: Burgerlijk Wetboek [D], Kitab Undang-Undang Hukum Perdata [I] (Civil Law Code).

CLD KHI: Counter Legal Draf Kompilasi Hukum Islam [I] (Proposed Revisions to the Compilation of Islamic Laws).

DEPAG: Departemen Agama [I] (Department of Religion).


DPRD: Dewan Perwakilan Rakyat Daerah [I] (Regional People’s Representative Council).

Dra: Dokteranda [D] (Female holder of a postgraduate degree, roughly equivalent to Masters).

Drs: Dokterandus [D] (Male holder of a postgraduate degree, roughly equivalent to Masters).

GBHN: Garis Besar Haluan Negara [I] (Broad Guidelines to State Policy, drawn up by the MPR every five years).

KHI: Kompilasi Hukum Islam [I] (Compilation of Islamic Laws).

KTP: Karta Tanda Pengenal [I] (National Identity Card).

KUA: Kantor Urusan Agama [I] (Office of Religious Affairs, Marriage and Divorce Registration Office for Muslims).

KUHP: Kitab Undang Undang Hukum Pidana [I] (Criminal Law Code).

LBH APIK: Lembaga Bantuan Hukum, Asosiasi Perempuan Indonesia Untuk Keadilan [I] (Legal Aid Institute of the Association of Indonesian Women for Justice).

LKBH UI: Lembaga Konsultasi dan Bantuan Hukum, Universitas Islam Indonesia [I] (Legal Consultation and Aid Institute of the Islamic University of Indonesia).

MPR: Majelis Permusyawaratan Rakyat [I] (People’s Deliberative Assembly, plenary parliament).

MUI: Majelis Ulama Indonesia [I] (Council of Indonesian Islamic Scholars).

NTR: Nikah Talak Rujuk [I] (Marriage, Divorce, Reconciliation).

Ny: Nyonya [I] (Mrs.)

PKI: Partai Komunis Indonesia [I] (Indonesian Communist Party).

PKK: Pembinaan Kesejahteraan Keluarga [I] (Family Welfare Association).

PNS: Pegawai Negeri Sipil [I] (Civil Servant).

PP: Peraturan Pemerintah [I] (Implementing Regulations).

PPN: Pegawai Pencatat Nikah [I] (Marriage Registration Official).

R: Raden [J] (Title for Javanese man of noble descent)

REPELITA: Rencana Pembangunan Lima Tahun [I] (Five Year Development Plan).

RIB/HIR: Reglemen Indonesia yang Diperbaharui [I], Herzien Inlandsch Reglement [D], (Criminal Procedural Law Code).

RT: Rukun Tetangga [I] (Neighbourhood Administrative Unit).
**RW:** *Rukun Warga* [I] (Sub-Neighbourhood Administrative Unit, within the RT).

**SEMA:** *Surat Edaran Mahkamah Agung* [I] (Supreme Court Circular).

**UII:** *Universitas Islam Indonesia* [I] (Islamic University of Indonesia).

**UU KDRT:** *Undang-Undang tentang Penghapusan Kekerasan Dalam Rumah Tangga* [I] (Law for the Eradication of Domestic Violence).

**UU:** *Undang Undang* [I] (Basic Law).

**UUD:** *Undang Undang Dasar* [I] (Indonesian Constitution).
APPENDIX III

Organisations Consulted in Yogyakarta

COURTS
Pengadilan Agama Sleman
Jalan Candi Gerban
Beran, Tridadi
Sleman

Pengadilan Agama Wates
Jalan Wates Km 22
Wates

Pengadilan Agama Wonosari
Jalan Alun-Alun Barat
Wonosari

Pengadilan Agama Yogyakarta
Jalan Wijilan
Yogyakarta

Pengadilan Negeri Sleman
Jalan Merapi
Tridadi, Beran
Sleman

Pengadilan Negeri Yogyakarta
Jalan Kapas
Yogyakarta

GOVERNMENT DEPARTMENTS
BP4 Sleman (Badan Penasihatan Pembinaan dan Pelestarian Perkawinan)
Departemen Agama Sleman
Beran, Tridadi
Sleman

BP4 Yogyakarta (Badan Penasihatan Pembinaan dan Pelestarian Perkawinan)
Gedung Walikota
Jl Timoho
Yogyakarta

Departemen Agama Yogakarta (Kota)
Gedung Walikota
Jl Timoho
Yogyakarta
Departemen Agama Sleman  
Beran, Tridadi  
Sleman

Kantor Urusan Agama Umbulharjo  
Jl Glaghasari  
Umbulharjo  
Yogyakarta

NON GOVERNMENT ORGANISATIONS
Lembaga Bantuan Hukum – Asosiasi Perempuan Indonesia Untuk Keadilan (LBH Apik Yogy)  
PKBI level 3  
Jalan Tentara Rakyat Mataram  
Badran  
Yogyakarta

Lembaga Konsultasi dan Bantuan Hukum – Universitas Islam Indonesia (LKBH UII)  
Jalan Lawu No. 3  
Kota Baru  
Yogyakarta

Rifka Annisa  
Jalan Jambon IV  
Kompleks Jatimulyo  
Jalan Magelang  
Yogyakarta

UNIVERSITIES
Fakultas Hukum  
Universitas Islam Indonesia  
Jalan Tamansiswa No. 158  
Yogyakarta

(The law campus sustained structural damage in the May 2006 earthquake, and has now been temporarily relocated to two other campuses:  
Kampus Terpadu  
Jalan Kaliurang Km 14.4

Kampus Demangan  
Jalan Demangan Baru 24)

LIBRARIES
Perpustakaan Nasional Provinsi Daerah Istimewa Yogyakarta  
Jalan Malioboro 175  
(The National Library of Indonesia estimates that 60% of the Yogyakarta provincial library suffered serious damage in the May 2006 earthquake, see:  
...

Perpustakaan Fakultas Hukum
Universitas Islam Indonesia
Jalan Tamansiswa No. 158
Yogyakarta

Perpustakaan Pusat
Universitas Islam Indonesia
Jalan Kaliurang Km 14.4
Besi
Sleman
Yogyakarta
Guide to the Bibliography

PRIMARY SOURCES
Court Records – Unpublished
Court Records – Published
Legislation
Print Media
Electronic Sources
Fiction
Ephemera

SECONDARY SOURCES
PRIMARY SOURCES

Guide to Indonesian Court Case Numbers and Abbreviations
Indonesian courts assign case numbers using the following general pattern:

Case Number/Case type/Year in which case was filed/Court.Abbreviation of Locality

Abbreviations used in case numbers signify the following:
“Pdt,” perdata, civil case.
“Pid,” pidana, criminal case.
“TUN,” tata usaha negara, constitutional law case.
“K,” kasasi, Supreme Court appeal.
“PA,” Pengadilan Agama, Religious Court.
“PN,” Pengadilan Negeri, State Court.
“PT,” Pengadilan Tinggi, High Court.
“PTA,” Pengadilan Tinggi Agama, Religious High Court.

COURT RECORDS - UNPUBLISHED

Pengadilan Agama Bantul
256/Pdt/1989/PA.Btl.
379/Pdt/G/1993/PA.Btl.

Pengadilan Agama Sleman
324/Pdt.G/2001/PA.Smn.

Pengadilan Agama Wates
1-5, 7, 10-11, 13-14, 17, 19-22/1965/PA.Wates.
3-4, 6-10, 12, 21, 24, 27-29, 41, 45-47, 60/1980/PA.Wates.

Pengadilan Agama Wonosari
26, 275, 650/Pdt.G/2000/PA.Wno.
177, 299/Pdt.G/2001/PA.Wno.
175, 619/Pdt.G/2003/PA.Wno.

Pengadilan Agama Yogyakarta
Some cases from the Yogyakarta Religious Court are marked “K” which in this instance signifies “kota,” city.
162-172/1975/PA.Yk.
104, 141/G/1989/PA.K.
251/Pdt.G/1993/PA.Yk.
164/Pdt.G/1999/PA.Yk.
67/Pdt.G/2000/PA.Yk.
349/Pdt.G/2001/PA.Yk.
136, 279, 301/Pdt.G/2002/PA.Yk.
121/Pdt.G/2003/PA.Yk.

Pengadilan Negeri Sleman
20, 65/Pdt.G/1984/PN.Slmn.
73/Pdt.G/1987/PN.Slmn.
61/Pdt.G/2001/PN.Slmn.
6, 11, 52, 59/Pdt.G/2003/PN.Slmn.

Pengadilan Negeri Yogyakarta
69, 102/Pdt.G/1985/PN.Yk.
79/Pdt.G/1988/PN.Yk.
103/Pdt.G/1988/PN.Yk.
93/Pdt.G/2002/PN.Yk.

Pengadilan Tinggi Yogyakarta
4/Pdt./1986/PTY.
77/Pdt/1985/PTY.
78/Pdt/1985/PTY.
5/Pdt/1987/PTY.
76/Pdt/1987/PTY.

Pengadilan Tinggi Agama Yogyakarta
17/Pdt.G/1994/PTA.Yk.
29/Pdt.G/2001/PTA.Yk.

Mahkamah Agung
1165/K/Pdt/1987.

COURT RECORDS – PUBLISHED


**LEGISLATION**


Rancangan Undang-Undang Tentang Anti Pornografi dan Pornoaksi LBH Apik Jakarta,
apik.or.id/ruu-pornografi.htm.

"Surat Edaran Direktorat Jenderal Bimbingan Masyarakat Islam dan Urusan Haji Nomor
D/2/ED/PW.01/02/1987 Tentang Legalisasi Surat-Surat Buksi NTCR." In Pedoman
Pegawai Pencatat Nikah, 459-62. Jakarta: Badan Kesejahteraan Masjid (BKM)
"Surat Edaran Direktorat Jenderal Bimbingan Masyarakat Islam dan Urusan Haji Nomor
D/ED/KEP.00.2/02/1990 Tentang Pelaksanaan Peraturan Menteri Agama R.I.
Nomor 2 Tahun 1989 Tentang Pembantu Pegawai Pencatat Nikah (Pembantu
PPN)." In Pedoman Pegawai Pencatat Nikah, 466-69. Jakarta: Badan Kesejahteraan
"Surat Edaran Direktorat Jenderal Bimbingan Masyarakat Islam dan Urusan Haji Nomor
D/ED/PW.01/01/1988 Tentang Cara Meneliti Surat NTCR Palsu." In Pedoman
Pegawai Pencatat Nikah, 457-58. Jakarta: Badan Kesejahteraan Masjid (BKM)
"Surat Edaran Direktorat Jenderal Bimbingan Masyarakat Islam dan Urusan Haji Nomor
D/ED/PW.01/03/1992 Tentang Petunjuk Pengisian Formulir NTCR." In Pedoman
Pegawai Pencatat Nikah, 479-98. Jakarta: Badan Kesejahteraan Masjid (BKM)
"Surat Edaran Mahkamah Agung No. 8 Tahun 1980." In Himpunan Surat Edaran
Mahkamah Agung (SEMA) Tahun 1979-1985, 77-83. Jakarta: Direktorat Hukum
"Undang-Undang Dasar Negara Republik Indonesia 1945." 1945.
"Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." 1974.
"Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk." 1946.
"Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah
"Undang-Undang Nomor 32 Tahun 1954 Tentang Penetapan Berlakunya Undang-Undang
Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak dan Rujuk di Seluruh

PRINT MEDIA
"60 Perkara Cerai Di Kebumen Sejak Berlakunya Uu Perkawinan." Kedaulatan Rakyat, 1
November 1975, 2.
Adyasaputra, Ny Dar. "Sex Dengan Ex,' Kumpul Kebo Gaya Modern." Sinar Harapan, 10
May 1986, VI.
1986, 4.
Anshor, Maria Ulfah. "Swara: Pro-Kontra "Counter Legal Draft" KHI Harus Dijembatani."


"President Sahkan RUUPA Menjadi Undang-Undang." Kedaulatan Rakyat, 31 December 1989, 1.
ELECTRONIC SOURCES


FICTION


**EPHEMERA**


**SECONDARY SOURCES**


———. "The State, Religion and the Family in Indonesia: The Case of Divorce Reform."


Elson, R.E. "Constructing the Nation: Ethnicity, Race, Modernity and Citizenship in Early Indonesian Thought." *Asian Ethnicity* 6, no. 3 (2005).


Haverfield, Rachel. "Hak Ulayat and the State: Land Reform in Indonesia." In *Indonesia:


Krier, Jennifer. "Narrating Herself: Power and Gender in a Minangkabau Woman's Tale of


Warren, Carol. Adat and Dinas: Balinese Communities in the Indonesian State. Kuala