

Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce

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Abstract

The 1974 Marriage Law and the Compilation of Islamic Law in Indonesia stipulate that permission of the religious court (*Pengadilan Agama*) is required for all divorces regardless of which party initiates the divorce. Thus, a man wishing to divorce is required to obtain permission to pronounce the divorce formula, and a woman wishing to divorce is required to go to court to initiate a *khul'* divorce. However, while both men and women must obtain permission from the court to divorce, women come to the courts to resolve their marital problems more often than men do. In recent years, the percentage of divorces initiated by women has been increasing. In 2001 57.5 percent of all divorces nation-wide were initiated by women while 42.5 percent were initiated by men. By 2009 66.4 percent of divorces were initiated by women and only 33.6 percent by men. Going to court, which entails making private matters public, can be troublesome and costly, but many women decide to do so. This essay investigates the reasons underlying women's increasing use of the Islamic courts by examining the attitude of Indonesian Muslim women towards divorce and divorce law as reflected in the narratives they present when petitioning for divorce in court. I examine how and why women use the court and analyze strategies used by women to achieve their objectives. By presenting dispute narratives or stories told by litigants in court hearings, I attempt to understand the attitude of Indonesian Muslim women toward divorce and divorce law and their understanding of themselves as legal actors.

Keywords

Islamic law, state, women, court, divorce

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Introduction

The promulgation of the 1974 Marriage Law and the issuance of the *Kompilasi Hukum Islam di Indonesia* (the Compilation of Islamic Law in Indonesia) in 1991 indicate that certain aspects of Islamic law, including marriage, divorce, and inheritance, have been accepted as part of the Indonesian national legal system.¹ The 1991 *Kompilasi*, which covers marriage, inheritance and endowments, was issued as a Presidential Instruction (*Instruksi Presiden/ Inpres*), codifying it as a substantive law in the Islamic courts. Under the Marriage Law and the *Kompilasi*, all Indonesian Muslims, both men and women, must present themselves before Islamic courts in order to divorce. The Marriage Law and the *Kompilasi* establish that a couple who want to get divorced must go to the court to ask permission to pronounce the divorce formula, to ask the court to annul (*faskh*) their marriage, or to initiate a *khul'* divorce (divorce by redemption), in return, for which the wife pays a certain amount of money to her husband.²

Women come to the courts to resolve their marital problems more often than men do. Although going to court, which entails making private matters public, can be troublesome and costly, it seems that

¹ The 1974 Marriage Law is applicable to all Indonesians, regardless of religion.

² Before the issuance of the 1974 Marriage Law, divorce petitions were brought to Kantor Urusan Agama (KUA), the office of religious affairs at the sub-district level. Beginning in late 1954, couples wishing to divorce had to go to the *Badan Penasihat Perkawinan, Perselisihan, dan Perceraian* (the Advisory Board for Marriage, Disputes, and Divorce, or BP4) for counseling before going to KUA. After receiving the approval of the board members, in the form of a *Naskah Penasihat* (Advisor's Note), they then went to KUA to finalize their divorces. See further Hisako Nakamura, *Divorce in Java* (Yogyakarta: Gadjah Mada University Press, 1983). After the head of a KUA gave approval, the petition for divorce was accepted. The husband then pronounced the divorce, and the marriage was dissolved religiously, legally, and administratively. Because the pronouncement of divorce is an essential legal element in the obtaining of a divorce, when a wife wanted to have her marriage dissolved but her husband did not or was unable to pronounce the formula, she was expected to present the case to an Islamic court. If her husband agreed to divorce her, with or without *'iwad* (monetary compensation), a wife could go to her local KUA to petition for divorce, and her petition would be approved. After the 1974 Marriage Law was issued, a husband or wife who wished to divorce was required to go to court; the KUA was no longer competent to legalize divorce.

some women in Indonesia, as in other Muslim countries like Malaysia,³ Iran, Kenya and Zanzibar, are motivated to do so (see below). In order to elicit positive responses from the court, women must present one or more grounds for divorce and develop strategies to ensure that those grounds are accepted by judges.

Scholars such as Hirsch,⁴ Stiles,⁵ Osanloo,⁶ and Peletz have explored how women in some regions of the world negotiate and fight for their legal rights in court. In her study of Swahili Muslim women in the Kenyan coastal cities of Mombasa and Malindi, Hirsch highlights Muslim women's active use of legal processes to transform the religious and local norms that underlie their disadvantaged position in this Swahili community in postcolonial Kenya. She offers a nuanced analysis, highlighting the ways in which women are both constrained and empowered in this setting. She affirms the ability of women to navigate and manipulate Kadhi courts in Kenya.⁷

Similarly, Stiles studies how Muslim women in Zanzibar fight for justice in court. She found that women in Zanzibar use the courts to a much greater extent today than in the past and that many of them regard increased access to the courts in a positive light. According to Stiles, Zanzibari women present their claims in a manner similar to Kenyan women in Hirsch's study. They often draw on local marital norms. This is because, although they may not witness actual repudiation, they experience certain structural events of divorce directly. Taking their marital problems to court is, for Zanzibari women, beneficial. Even if they do not 'win' the cases, they feel that the court trial has given them a forum to highlight their husbands' neglect of their marital duties.⁸

³ See Michael Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton: Princeton University Press, 2000).

⁴ Susan F. Hirsch, *Pronouncing and Preserving: Gender and the Discourses of Disputing in African Islamic Court* (Chicago: The University of Chicago, 1998).

⁵ Erin E. Stiles, "There Is no Stanger Here to Marriage: Muslim Women Divorce in Rural Zanzibar," *Africa*, 75 (4).

⁶ Azroo Osanloo, *The Politics of Women's Right in Iran* (Princeton and Oxford: Princeton University Press, 2009).

⁷ Hirsch, *Pronouncing and Preserving*, 130-142.

⁸ Erin E. Stiles, "There Is no Stanger Here to Marriage," 582-98.

In 1990s women in Iran, according to Osanloo, have become much more aware of their rights than ever before; women seek information about their legal rights before they marry. She highlights the influence of the media, which has provided information on the legal rights of women and has taught them to fight for their legal rights. She also stresses the effect of public discussion about gender and women empowerment on the legal awareness within society.⁹

Michael Peletz has explored the attitude of female litigants in Malaysian courts. Based on his analysis of cases involving parties and their legal pronouncements, he argues that judgments are largely determined by legal conversations in court hearings, and that all litigants, men and women, use strategies to resolve their cases in court.¹⁰ He stresses that women often play an important role in determining key features of the dialogue that lies at the heart of the hearings.¹¹ Unlike Sharifa, Cederroth,¹² and Sisters in Islam activists who highlight the obstacles faced by women who petition for divorce in court,¹³ Peletz sees courts in a positive light, and he finds no clear evidence to support the contention that women are manipulated in court in ways that men are not.¹⁴

Similarly, in Indonesia the court is often a place in which women fight for their legal rights. Unlike men who can safely avoid court, women find that going to court may be beneficial in attaining legal certainty.

This essay is based on both current scholarship and empirical investigations. The empirical investigation was conducted in four districts

⁹ Azroo Osanloo, *The Politics of Women's Right in Iran*, 4.

¹⁰ Peletz, *Islamic Modern*, 131-54. See also Judith Tucker, *Women, Family and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008).

¹¹ See Peletz, *Islamic Modern*, 154.

¹² See Sharifa Zaleha Syed Hasan and Sven Cederroth, *Managing Marital Disputes in Malaysia: Islamic Mediators and Conflict Resolution in the Syariah Courts* (New York: Routledge, 1996). See also Sharifa Zaleha Syed Hasan, "Women, Divorce and Islam in Kedah," in Joseph Chinyong Liow and Nadirsyah Hosen (eds.), *Southeast Asian Islam: Histories, Cultures, and Identities* (London and New York: Routledge, 2009), 236-40.

¹³ See Sisters in Islam, "Workshop Report on Islamic Family Law and Justice for Muslim Women," Kuala Lumpur, Malaysia, June 2001. According to Saadiah, divorce proceedings are more difficult for wives, who are often subjected to unfair bargaining during negotiations and to intimidation.

¹⁴ See Peletz, *Islamic Modern*, 156.

in Jakarta and West Java: South and North Jakarta, Cianjur and Rangkasbitung. In some ways, the features of Jakartan courts differ from those in West Java. While Jakartan courts receive more cases and are busy, West Javan courts have fewer cases. To some extent judges in these two cities have different attitudes. While Jakartan judges are stricter and have little time to investigate cases deeply, West Javan judges are more adaptable and have time to hear cases more thoroughly.¹⁵

During the period of the fieldwork, I interviewed more than forty judges and relevant officials of the religious courts, collected more than fifty judgments from these four courts, and attended more than twenty hearings. By sitting in on formal court sessions, exploring the different legal references used, and interviewing the judges, I was able to acquire important insights into the work of religious court judges in solving cases and the attitudes of litigants toward divorce and their understanding of the Islamic legal system. This data is complemented by information gained from interviews with some litigants using these courts.

Legal Reform and Practices of Divorce in Indonesia

Legal Grounds for Divorce

According to classical Islamic legal doctrine, divorce is the absolute right of a man. No intervention by other parties, such as the state, is required. It follows that the approval of a court is not needed. A husband may divorce his wife without cause. In Indonesia, authority over religious courts was transferred from the Ministry of Justice to the Ministry of Religious Affairs in 1946. This conferred new legal authority on the Ministry of Religious Affairs, and promoted legal certainty and stability in Islamic marriage and divorce by requiring the registration of these legal acts by official registrars (Pegawai Pencatat Nikah, Talak dan Rujuk/PPNTR) at the Offices of Religious Affairs (Kantor Urusan

¹⁵ Accepting only a small number of cases, judges in Islamic courts outside Jakarta can devote more time to each case and are more flexible and tolerant with litigants who come to the court late. See Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practices of Indonesian Religious Courts* (The Netherlands: Amsterdam University Press, 2010), 36.

Agama/KUA). Despite this rule, however, until 1974 a divorce was considered effective after a husband uttered the divorce formula, and a Muslim husband needed only to register the divorce with the Office of Religious Affairs (Kantor Urusan Agama/KUA).

Obtaining a divorce was therefore more difficult for an Indonesian Muslim woman before 1974. Unless she could persuade her husband to pronounce the repudiation, a wife who wished to divorce was required to appear in court and assure the judge that her husband had committed one of the acts specified in the marriage agreement that automatically brings about a repudiation, usually called *ta'liq talaq* (conditional divorce).

Following the examples of other Muslim countries, Indonesia passed a national marriage law in 1974. The passing of this law was intended to improve women's access to the legal system and to promote fair and equitable treatment and responsive procedures. The issues of arbitrary divorce and polygamy had attracted considerable attention from Indonesian women activists for a very long time. Some efforts had been made to control divorce and prohibit polygamy or, failing that, to restrict its arbitrary practice. Seminars on these issues were held by Muslim Women's Organizations.¹⁶ These struggles gained a positive response from the Government only in the 1970s, when a political crisis occurred in Indonesia.

In an effort to marginalize Muslim politics, Indonesia's New Order sponsored the proposal for a marriage law at the beginning of the 1970s. This bill represented an attempt to unify laws relating to the act of marriage and other related fields in compliance with the various customary (*adat*) and religious laws. It was also a response to Indonesian women's questions about their legal position with respect to polygamy and divorce. However, the ulterior motive of the Marriage Law seems to have been to ensure the New Order's firm grip on power and leadership and to maintain its control of society. The New Order was convinced that the economy would grow only if the state was politically stable. In this case, the New Order utilized the institution of law as an

¹⁶ Musdah Mulia, "Menuju Hukum Perkawinan yang Adil," in Sulistyowati Irianto, *Perempuan dan Hukum: Menuju Hukum yang Berperspektif Keadilan dan Kesenjangan* (Jakarta: Yayasan Obor, 2008), 137. See also Susan Blackburn, *Seminar Pertama Perempuan* (Jakarta: Yayasan Obor, 2010).

instrument of social engineering, as can be seen in the character of the law.¹⁷ The Marriage Law not only marks the change from revolutionary law to development law, but also crosses the threshold at which law becomes one of the instruments of social control by the government.

The government decision to pass the law may also have been influenced by the political climate. In 1968, for the first time since the inception of his presidency, Soeharto experienced a crisis in political support. Beginning in 1970, students began to criticize several of his policies. Later they took to the streets to express their discontent.¹⁸ This was the political context in which the Marriage Law was issued. Its passage—after some revisions—is considered a victory of Indonesian Muslims, women in particular.

One of the goals of the law was to reduce the frequency of divorce and to control it by making divorce more difficult. Both a husband who wants to repudiate his wife, and a wife who wants to initiate a divorce, must appear in court and convince the judges that one or more of the grounds for divorce contained in the statute are present.¹⁹ These provisions of the 1974 Marriage Law have been adopted and expanded by the *Kompilasi*, which contains additional details about the procedures and the grounds on which divorce can be obtained.

The grounds for divorce specified in the *Kompilasi* include: (1) illicit sexual relations by the wife or husband, intoxication, drug addiction, gambling or the like, (2) the absence or disappearance of a spouse, (3) the imprisonment of a spouse, (4) cruelty by a spouse, (5) an acute illness that prevents a spouse from performing his or her duties as a husband or a wife, (6) a protracted dispute between spouses, (7) the husband's violation of a conditional *talak* (*ta'liq talaq*), and (8) the conversion of one spouse from Islam to another religion.²⁰ When a husband or a wife comes to court to request a *khul'* divorce, the judge

¹⁷ Moch. Mahfud MD, *Politik Hukum di Indonesia* (Jakarta: LP3ES, 1998), 10.

¹⁸ Faisal Ismail, "Pancasila as the Sole Basis for all Political Parties and for all Mass Organization: An Account of Muslim Responses," *Studia Islamika*, 3:4 (1996), 3.

¹⁹ John Bowen, "Shari'a, State and Social Norms in France and Indonesia," *Institute for the Study of Islam in the Muslim World (ISIM) Lectures* (Leiden: ISIM, 2001).

²⁰ As for the last mentioned ground, the *kompilasi* specifies 'apostasy' on the condition that it 'ruptures marital harmony'. See the *Kompilasi Hukum Islam di Indonesia*, Articles 115 & 116.

must first verify that there is a valid reason or justification, as specified in the list of grounds for either divorce or *khul'*. A judge who is satisfied that a valid ground exists can order a husband to utter the divorce formula or grant a wife's request for a *khul'* divorce.²¹

Divorce Trends

The number of divorce cases decided by Indonesian Islamic courts has increased dramatically in recent years, from 146,000 in 2001 to 258,000 in 2009.²²

Consistent with the national trend, the number of divorce cases in the courts in which I conducted field research has increased in recent years. In Bekasi, for instance, it is estimated that in 2004 the number of the divorce cases registered in the Islamic court was higher than it was in 2003.²³ The number of divorce cases processed daily by the South Jakarta court demonstrates the increase in the divorce rate. On a given day in 2000 the number of divorce cases heard by this court was only seven, not including *sub-judice* cases or decided cases, of which there were also seven. Hence, in 2000 approximately fourteen cases were either decided or in process every day. In 2002 the number of divorces cases heard was more than eighteen per day, a 29 per cent increase. This

²¹⁾ See the *Kompilasi*, Art. 131.

²²⁾ According to some research, the percentage of divorces decreased after the 1974 Marriage Law was promulgated. On the basis of his examination of official court records, Gavin W. Jones concluded that the legal restrictions on divorce in the Marriage Law played an important role in the declining rate of marital disruption. See Gavin W. Jones, *Marriage and Divorce in Islamic Southeast Asia*, (Kuala Lumpur: Oxford University Press, 1994), 259; June S. Katz & Ronald S. Katz, "Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited," *Journal of Comparative Law*, 309 (1978), 310; and Gavin W. Jones, Yahya Asari & Tuti Djuartika, "Divorce in West Java," *Journal of Comparative Family Studies*, 35 (1995), 395. A study by Cammack, Heaton, and Young confirms other studies showing declining rates of divorce but disagrees with Jones' conclusions on the effect of the 1974 Marriage Law in reducing divorce. Based on survey data reporting self-reported divorces, they concluded that the implementation of the Marriage Law did not significantly impact long-term trends toward lower rates of divorce in Indonesia. See Mark E. Cammack, "An Empirical Assessment of Divorce Law Reform in Indonesia," *Studia Islamika*, 4: 4 (1997), 104. For three years after the *kompilasi* came into effect, i.e., in 1992, 1993 and 1994, the number of divorce cases filed in the Islamic courts declined. See Euis Nurlaelawati, *Modernization, Tradition and Identity*, 189.

²³⁾ See "Perceraian di Bekasi Karena Soal Sepele," *Kompas*, Thursday, 24 April, 2003.

trend is also equally true of the other courts. A survey conducted by the Centre for Research and Development of the Department of Religious Affairs in 1996 mentions that in Blitar, East Java, the divorce rate was one in six marriages.²⁴ In Malang, in the period from January to July of 2004, the Islamic court registered 2274 divorce cases, or approximately fifteen per working day. The total number of divorce cases registered in this court in 2004 is estimated to have been higher than that in 2003.²⁵ The unavoidable inference is that the *Kompilasi*, as the Marriage Law, has not deterred Indonesian Muslims from divorcing and did not cause a decrease in the divorce rate in Indonesia.

Who Uses Court for Divorce More Often?

Hirsch, Stiles, Peletz and Osanloo all mention that most divorces are petitioned by women. As in Malaysia, Iran and Africa, so too in Indonesia, the majority of divorce cases in the Islamic courts are filed by women, and the number of divorce filings by women is growing faster than the number of divorce filings by men. Between 2001 and 2009, the number of divorce cases filed by men grew by a factor of 1.4 from 61,593 to 86,592, while the number of cases filed by women more than doubled from 83,319 to 171,477. By 2009 two-thirds of all divorces in the Islamic courts were based on petitions filed by women.

Most divorce cases brought before the courts in which I conducted field research were initiated by women. In the year 2000, for example, the court of Rangkasbitung, West Java, received 160 divorce petitions. Of these, 126 (79 per cent) were initiated by the wife, and only thirty-four (21 per cent) by the husband. From the total number of divorce cases, we may infer that in the year 2000 the average number of divorce cases received each month by the court was thirteen, of which ten or eleven were initiated by wives, and three by husbands.²⁶ In 2004, the Rangkasbitung court received a similar number of divorce cases (142).

²⁴ Balitbang, "Pengkajian Tentang Pandangan Masyarakat terhadap Perkawinan, Perceraian dan Poligami," *a Research Report* (Jakarta: Balitbang, 1995), 23.

²⁵ See "Di Malang 10 Kasus Gugatan Cerai Dalam Sehari," *Tempointeraktif*, 18 August, 2004.

²⁶ Kementerian Agama (Ministry of Religious Affairs), *Himpunan Data Statistik Perkara di Lingkungan Peradilan Agama Seluruh Indonesia Tahun 2002* (Jakarta: Direktorat Pembinaan Badan Peradilan Agama/Ditbinbapera, 2002).

Of these, ninety-nine (70 per cent) were initiated by wives and forty-three (30 per cent) by husbands.²⁷ In 2000 the South Jakarta court heard 1375 divorce cases, of which 935 (68 per cent) were initiated by wives and 440 (32 per cent) by husbands.²⁸

The main questions that I consider here are: (1) why have women decided to use the court to resolve their marital disputes, and (2) why do more women bring their cases to court than men? With respect to the first question, I argue that a number of institutions have attempted to provide information and knowledge for women and to train judges in Islamic courts judges about judicial discretion and gender sensitivity.

The discourse on gender and law, and its correlation with the legal rights of Indonesian women, has attracted the attention of many interested parties who have established women's study centers that frequently organize seminars to discuss the protection of abused women, orphaned children, single mothers, and other vulnerable groups.²⁹ This indicates that the main public actors in debates about family law are no longer only men, but also women who are imbued with notions of gender equality. They actively explore the gender discourses that have developed throughout the Muslim world, organize trainings, and advocate for women. They also organize trainings for judges about judicial discretion and gender sensitivity. In doing so, they benefit from national and international support from some centers that act in accordance with the United Nations' Convention on the Elimination of All Forms of Discrimination against Women.

Like the Iranian women in Osanloo's study,³⁰ many Indonesian women in my study are strong and empowered. Having gained access

²⁷ See, "Data Statistik Perkara di Pengadilan Agama Rangkasbitung Tahun 2004," Pengadilan Agama Rangkasbitung, 2005. See also Euis Nurlaelawati, *Modernization, Tradition and Identity*, 188.

²⁸ Kementerian Agama, *Himpunan Data Statistik Perkara*, 18-21.

²⁹ These include the Team Pengarusutamaan Gender (the Team of Gender Interests) of the Ministry of Religious Affairs, APIK (Asosiasi Perempuan untuk Keadilan, Association of Indonesian Women for Justice) under the supervision of the LBH (Lembaga Bantuan Hukum, the Association for Legal Aid), Rahima, most of whose members are young NU adherents, Rifka al-Nisa, Yasanti, LSPPA (Lembaga Studi Pengembangan Perempuan dan Anak) and others. Similar centers can be found in a number of academic institutions, including State Islamic Universities (UIN) and State Institutes of Islamic Studies (IAINs) in Indonesia.

³⁰ Azroo Osanloo, *The Politics of Women's Right in Iran*, 4.

to legal advocacy, they now understand legal rules. They have no fear of single parenthood. At the same time, some—but not all—judges have become more sensitive to gender issues and pronounce in favour of women.³¹ This increasing gender sensitivity of judges has made female litigants more positive about courts and more optimistic about their legal rights.³²

With respect to the second question—why are more divorce cases filed by women than men?—I refer to some facts. Many men divorce their wives through an unauthorized repudiation based on *fiqh*-rules. As noted, since 1974 all divorce petitions are required by law to be brought before an Islamic court. One might expect the divorce procedures set down in the relevant laws to deter men or women from divorcing. In fact, the difficulty of procuring a divorce in court has encouraged some men to avoid the courts and to conclude a divorce in a manner regarded as religiously (but not administratively or formally) lawful.³³ Many men who want to divorce their wives summon religious leaders or one of their relatives to witness the pronouncement of the divorce formula, as do Kenyan men in Hirsch's study. In Kenya, where men are likely to begin their legal disputes with Islamic law, Hirsch concluded that men are the owners of Islamic law, or in other words, the discourse of Islamic law is 'masculine'.³⁴ In Indonesia, the religious authorities or '*ulama*' maintain that, according to Islamic law, the essential legal element for a divorce is the pronouncement of divorce by the husband. For this reason, the '*ulama*' are prepared to approve a divorce initiated

³¹ See Arskal Salim et al., *Demi Keadilan dan Kesetaraan: Dokumentasi Program Sensitivitas Jender Hakim Agama di Indonesia* (Jakarta: PUSKUMHAM, 2009).

³² In a recent study, Sumner and Lindsey argue that reforms of the Religious Courts are consistent with broader access to justice by poor people in Indonesia. They note that religious courts in Indonesia have developed a close working relationship with Australian family courts, with the result that client services have improved and women now have increased and better access to justice. See Cute Sumner and Tim Lindsey, "Courting Reform: Indonesia's Islamic Courts and Justice for the Poor," Lowy Institute for International Policy, Australia, 18-35.

³³ Informal marriage practices are also common among rural Muslims in Nglegok, East Java. See Syuhada Abduh and Mursyid Ali (eds.), *Pengkajian Tentang Pandangan Masyarakat terhadap Perkawinan, Perceraian dan Poligami: Studi Kasus di Kecamatan Nglegok* (Jakarta: Badan Penelitian dan Pengembangan Agama Departemen Agama, 1995), 27.

³⁴ Hirsch, *Pronouncing and Preserving*, 111.

by a husband. Some men simply write letters to, or even shout at, their wives, declaring that they are repudiated.³⁵ Having uttered the formula, many men go to Offices of Religious Affairs (Kantor Urusan Agama, KUA) which, since 1974, are no longer competent to legalize divorces.

The marriage registrars (*Pegawai Pencatat Nikah*, PPN) at the KUA sometimes help men avoid compliance with the requirement that they obtain judicial permission to divorce. The KUA is a government institution, located at the intermediate level between the 'ulama' and the religious courts. Since 1974, when the competency to legalize divorce was transferred to religious courts, the main function of this institution has been to register marriages. Every KUA includes, in addition to administrative staff, a head, a deputy-head and one or two assistants, all of whom serve as marriage registrars. A number of assistant marriage registrars (*Pembantu Pegawai Pencatat Nikah*, P3N) have been appointed to help PPN deal with marriage issues. In carrying out this duty, KUA officials regard themselves more as 'ulama' or guardians of the *shari'a* than as state officials, and they differentiate sharply between the *shari'a* and Islamic law as interpreted by the state. Although this attitude does not show up strongly in Jakarta, outside Jakarta it is clearly marked. A description provided by two officials of the KUA in Warung Gunung, one of the districts in Rangkasbitung, West Java, clearly confirms the prevalence of this attitude. The officials of this KUA frequently approve, or consider as valid, divorces concluded outside the court. They do this by registering the second marriages of individuals who, while declaring themselves to be divorced, are unable to present divorce certificates at the KUA. According to the 1974 marriage law, marriages that involve a divorced man or woman can be registered before the KUA only if the applicants can present a divorce certificate or their spouse's death certificate. These officials regard the divorce as

³⁵ At a 1996 conference, the Indonesian Council of 'Ulama' (MUI) of Aceh discussed divorces declared outside of court or without the authorization of the court and their legal effects, with special attention to the beginning of the *iddah* (waiting period). The Council discussed the issue because it had been informed that informal divorces were still practised in some sections of society. See Al Yasa Abubakar, "Ihwal Perceraian di Indonesia: Perkembangan Pemikiran dari Undang-Undang Perkawinan sampai *Kompilasi Hukum Islam*," *Mimbar Hukum*, 44 (1999).

taking effect upon the husband's pronouncement of the *talak*, dismissing the judicial divorce process as merely an administrative matter.³⁶

Consider the case of a woman who said that she married a man in one of the KUAs in Bandung, but was divorced outside court three years later. She then moved to Rangkasbitung and found a new (unmarried) man to marry. She and the man went to the KUA in Warung Gunung to request that its officials marry them. Having acknowledged that she was a divorcée, she was required to present a certificate of divorce. Because she had been divorced informally, she could not comply with the request. She told the officials that if the KUA would not marry them, she would live together with the man (or, in her words, commit *kumpul kebo*, live together without marriage). When they heard this threat, she told me, the officials married them and registered their marriage. Instead of the certificate of divorce, she was asked to present a letter of declaration from the village head stating that she was a widow (*janda*).³⁷

Several factors account for the manner in which the KUA officials deal with such cases. These include: (1) the educational background of KUA officials,³⁸ (2) the fact that many people do not know that the KUA's competency to legalize divorce was removed, and (3) close or

³⁶ Interview with Drs. Sutarjo, Warung Gunung, Rangkasbitung, 4 February 2005. One KUA official, for an example, said, "We often were considered arrogant if we refused to register their marriage. We know the people here well and hence find it difficult to be very strict in applying the law." Interview with Drs. Muhyidin, Warung Gunung, Rangkasbitung, 4 February 2005.

³⁷ Interview with Ibu Amah, Rangkasbitung, 5 February 2005.

³⁸ The majority of KUA officials, particularly outside Jakarta, are graduates of high schools. Only a few have graduated from universities. See Drs. Chairul Fuad Yusuf dan Drs. Mohammad Rosyid Fauzi, *Laporan Kajian Proyekatif Ketataleaksanaan di Lingkungan Departemen Agama tentang Survei Potensi Fisik dan Sosial Kantor Urusan Agama (KUA)* (Jakarta: Departem Agama RI Badan Litbang Agama dan Diklat Keagamaan, 2001). With only a limited education, they tend to be less independent and to follow the '*ulama*' in their interpretation of Islamic law. The '*ulama*', some of whom also graduated from high school and *pesantren* (Islamic boarding schools), enjoy wide acceptance in society and are considered the absolute guardians of the *shari'a*. By contrast KUA officials are state-appointed employees whose qualifications in Islamic law are approved by the state. Moreover, KUA officials are often selected from outside the local community and therefore, have no roots in local society. To some extent this has made KUA officials less authoritative than the '*ulama*'. See Euis Nurlaelawati, *Modernization, Tradition and Identity*, 189.

intense contact between KUA officials and local people.³⁹ In addition, and more importantly, the offices of KUA are established in every district (*kecamatan*), and its officials are firmly rooted in local life. This enables KUA officials to gain a deeper insight into the marital problems faced by men and women. This has prompted certain officials to be more realistic and to urge that jurisdiction over divorce cases be returned to the KUA. The director of one of the KUAs surveyed stated frankly that if the authority to solve divorce cases was returned to the KUAs, unregistered or informal divorce practices would decline, if not disappear entirely.⁴⁰

In addition to the reliance on *fiqh*, local norms also play a role in the avoidance of statutory divorce rules by men. In most regions of West Java, including Cianjur, Karawang, Sukabumi, and Rangkasbitung, the practice of returning seriously sick wives to their families, known as *cerai tamba* (healing divorce), is common. The reason given is to help them achieve a speedy recovery,⁴¹ but husbands often do not take their wives back after their health improves. Instead, they pronounce a divorce, either personally or through intermediaries.⁴² The fact that local norms tend to conform to classical doctrines is also seen in the practice of *pegat sentak* (suddenly broken marriage), a form of divorce resulting from serious problems. This type of divorce is considered lawful according to some communities and does not have to be heard

³⁹ Euis Nurlaelawati, *Modernization, Tradition and Identity*, 190. KUA officials sometimes attempt to retain the roles they had when they still held extensive jurisdiction over divorce cases. Retired KUA officials who once enjoyed extensive power in handling divorce cases often assume that they are still competent to handle divorce cases. Moreover, many rural people do not know that jurisdiction over divorce has been removed from the KUA. Importantly, most KUA officials, particularly those serving as *Pembantu Pegawai Pencatat Nikah* (P3N), are recruited from among local religious leaders or '*ulama*' (*tokoh desa* or *tokoh agama*) and retired KUA officials. They are in close contact with residents of the areas in which they live.

⁴⁰ Interview with Dd, Cianjur, May 2004.

⁴¹ On (other) reasons for this practice, see Jailani, "Praktek Cerai Tamba," a Thesis, submitted to the Faculty of Sharia and law, Syarif Hidayatullah State Islamic University Jakarta, 2009.

⁴² Interview with Sanuji, former marriage registrar at Pangkalan, Karawang, Karawang, July 2005.

before a court, especially if the village in which the couple lives is far away from the nearest court.⁴³

The view that a divorce pronounced out of court is effective may also be linked to the vagueness of state law. The Marriage Law treats divorce briefly and ambiguously. From the perspective of some Muslims, it stresses recognition of the occurrence of legally significant events rather than introducing new legal interpretations. Consequently, a divorce concluded outside court may be illegal but it is nonetheless effective. The 1989 Islamic Judicature Act which, as Cammack noted, clarified the vague position of the Marriage Law in the case of divorce, explicitly states that a divorce initiated by a man must be authorized by a court. Nevertheless, the Act is vague on the question of whether adherence to its procedures is necessary for the divorce to be valid. The approach taken by the *Kompilasi* is clearer. While not explicitly stating that an extra-judicial divorce is invalid, it does state that a divorce without judicial approval does not have legal force.⁴⁴ It seems that Muslim society has not been able to resolve the differences in the interpretation of the divorce rules.

The Attitudes of Women in Court: Causes and Strategies of Divorce

Unlike men, who still can secure a divorce without going to court, women often have no choice but to go to court to petition for divorce or to request a divorce receipt or certificate. Like the women studied by Peletz,⁴⁵ Hirsch and Stiles, Indonesian women who were divorced extra-judicially go to court to obtain a formal divorce certificate.

⁴³ See Cik Hasan Basri, "Dimensi Sosial Budaya dalam Pelaksanaan Kekuasaan Badan Peradilan Agama," *Mimbar Hukum*, 49 (2000), 32-33.

⁴⁴ Mark E. Cammack, "Indonesia's 1989 Religious Judicature Act: Islamization of Indonesia or Indonesianization of Islam," *Indonesia* 63 (1997), 162-65. A similar ambiguity about how to deal with divorce cases can be found in a *fatwa* issued by NU 'ulama' in 1989. This *fatwa*, which begins with a list of six standard *fiqh* texts on divorce rules, makes several statements. See further M.B. Hooker, *Indonesian Islam: Social Change through Contemporary Fatawa* (Honolulu: Allen & Unwin, 2002), 151.

⁴⁵ It is interesting to note that, whereas in Malaysian religious courts there is a special file on divorce registration or confirmation, in Indonesia there is no such special file, and the cases are therefore included in the 'gugat cerai' file.

To petition for divorce, they must present legal grounds. In addition, since the law requires that judges seek to reconcile couples who want to divorce, women also face the challenge of persuading judges to grant their requests. It is important, therefore, to consider the tactics and strategies deployed by women in order to achieve this objective. The strategies can be demonstrated in the narratives they present in court. Before turning to this issue, however, I will first consider the reasons why Indonesian women seek divorce.

Researchers have identified a number of factors that lead Indonesian women to seek divorce. While these factors usually relate to problems arising within marriage — what I call “particular” causes, there are other issues that convince them to petition for divorce. These factors, which relate to a more universal typology and touch upon social and cultural problems, are general and are usually not presented in court.

According to M. Kuchiba [et al], major factors that contribute to the high rate of divorce are the social immaturity of a couple when they marry, the kinship system, and the widespread belief that fate plays a role in divorce.⁴⁶ Gavin W. Jones cites the same factors, although he places more emphasis on polygamy and economic problems. The Indonesian Fertility and Mortality (IFM) Survey, which focuses on marriage and divorce in Indonesia, identifies the following factors that account for divorce: the rights of spouses and their families to bring up and maintain children, age at marriage, the marriage present (bride price/dowry), location of residence after marriage, and the prevailing view of divorce in society.⁴⁷ Although these (earlier) researchers, who did their research in the 1970s, noted particular causes arising within marriage, they were mostly concerned with general ones.

In the late 1990s other researchers have focused more on particular causes for divorce. In his study on Gayo, Bowen observes that economic problems correlate with divorce trends. Cammack notes the husband’s ignorance of financial support and serious or frequent marital dis-

⁴⁶ M. Kuchiba, Y. Tsubouchi, N. Maede, *Three Malay Villages: A Sociology of Paddy Growers in West Malaysia* (Honolulu: University Press of Hawaii, 1979), 33-34.

⁴⁷ Yasmine Al-Hadar, *Perkawinan dan Perceraian di Indonesia: Sebuah Studi antar Kebudayaan* (Jakarta: Lembaga Demografi Fakultas Ekonomi Universitas Indonesia, 1977), 65.

putes.⁴⁸ They did not include general causes in their discussions on divorce.

My research indicates that several general causes play a significant role in divorce. These include: (1) a strong belief in fate, (2) the kinship system, and (3) local tradition, according to which members of the extended family maintain members of divorced family. However, these general causes are unlikely to lead to divorce unless particular causes exist as well.

Causes for Divorce Noted: Particular

According to my research, the particular causes that lead to divorce include economic incompatibility, unacceptable behavior of one spouse, poor relationship with parents-in-law, and sharing a husband with another wife. These particular causes refer to conditions within the family itself that directly encourage a spouse to apply for divorce. Most of the particular causes are relevant to the position of women in family life and they motivate women to petition for divorce more frequently than men do. These particular causes are often mentioned in court, where women seek to convince judges to grant their divorce petitions.

Jakarta is a metropolitan city with many affluent people. In the wake of mass urbanization, however, this city also has many slum areas inhabited by poor people.⁴⁹ The majority of people who live in the areas in which I conducted my research are poor. In Jakarta, as in towns in West Java and Aceh,⁵⁰ many marriages end in divorce. The main cause is the failure of the husband to provide financial support for his wife.

YS, aged twenty-four, came to the North Jakarta Islamic court to petition for divorce because her husband neglected his financial responsibility. She repeatedly asked her husband to divorce her so that she could live alone and find someone who would marry and support her.

⁴⁸ See Mark E. Cammack et al., "Islamic Divorce Law and Practice in Indonesia," in R. Michael Feener and Mark E. Cammack (ed.), *Islamic Law in Contemporary Indonesia* (Cambridge: Harvard University Press, 2007), 112-14.

⁴⁹ T. Ashakul, *Regional and Provincial Urban and Population Projections*, Background Report 2-2, National Urban Development Policy Framework (Bangkok: Thailand Development Research Institute, 1990).

⁵⁰ See John Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003), 67.

When the husband ignored her demands, she initiated divorce proceedings. She did not demand that her husband give her *nafaqa* (financial support) during her waiting period and *mut'a* (divorce compensation),⁵¹ although she knew that she was legally entitled to these payments. She decided not to insist that he fulfill his obligations relating to divorce because of her conviction that he would not comply. Cynically, she asked how she could expect him to make these payments in the future if he had never supported her financially when she was still his wife.

The fact that this woman came to court demonstrates that she was familiar with the state's basic legal rules. She also knew that she had some rights as a divorcee, but her willingness to forego *mut'a* and maintenance payments suggests that she knew that they might prevent her from obtaining a divorce from her husband.

A protracted marital dispute is another important ground for divorce presented by women. As noted above, such disputes often result from the reprehensible behaviour of one spouse, a spouse's poor relationship with in-laws, or the practice of polygamous marriage by a husband. Several divorce cases that I studied were initiated by wives on the grounds of protracted disputes. Consider the case of a woman from Rangkasbitung whose husband had several wives. Her husband's polygamous marriage triggered continuous dispute and tension, and this then resulted in her husband pronouncing a divorce before a religious authority. Although she was convinced that she had been divorced from a religious perspective, she had not been formally divorced, and she came to a religious court to legalize her divorce.

Other Contributing Causes: General

The above-mentioned examples indicate that women are motivated to petition for divorce for specific reasons. Their decisions are often strengthened by general causes. The strong belief that fate plays a role in divorce is one of the general causes that bolster these particular reasons.⁵² In the regions in which I conducted my research Indonesians

⁵¹⁾ The *Kompilasi* specifies that wives have the right to *mut'a* (monetary compensation) after divorce if they are not responsible for the divorce or if they are divorced without fault. See the *Kompilasi*, 149.

⁵²⁾ Since the average age at marriage of both females and males has increased, age is no

believe that people must be compatible (*cocok*) or matrimonially matched (*jodoh*) in order to live together harmoniously. In general, people who think this way are convinced that if a couple is compatible, fate must be involved, because matrimonial compatibility is mystically bestowed. They believe that fate determines whether a couple is matched in marriage, or if the marriage will end in divorce.⁵³ Neither the wife nor the husband should feel regret or guilt if he or she cannot get along in marriage. In Cianjur, I was surprised to learn that AN (a woman) and MT (a man), who were petitioning for divorce, arrived at the court on the same motor cycle. This was not uncommon, and I inferred from this that many couples, although they regret that they divorce, do not bear great animosity for one another or feel any guilt.⁵⁴ In my conversations with a number of women who petitioned for divorce, including AN, they often used the phrases '*sudah tidak jodoh lagi*' (no longer compatible) or *jodohnya sudah habis* (the compatibility is over), which interestingly are also used by Zanzibari women at the time of divorce.⁵⁵ This cultural or local belief plays a significant role in encouraging women to petition for divorce or to approve divorces requested by their husbands.⁵⁶

Another important general cause is the bilateral kinship system in West Java and Jakarta. This is particularly relevant when a spouse petitions for divorce on the grounds of 'protracted dispute'. According to Kuchiba, in a bilateral kinship system the husband and wife belong to two families, but they nevertheless enjoy a considerable measure of independence. Accordingly, although a husband may have a strong sense of belonging to, and reliance on, his wife's family, if he divorces her, the members of his family will not object to his returning to them.

longer relevant to the high rate of divorce, particularly in the areas where I worked. In my data-set the average age at marriage is twenty.

⁵³ Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (Kualalumpur: Oxford University Press, 1994), 224.

⁵⁴ Interviews with seven litigants, Cianjur, 20 March 2003. See also Syuhada Abduh and Mursyid Ali (eds.), *Pengkajian tentang Pandangan Masyarakat terhadap Perkawinan, Perceraian dan Poligami*, 1-20.

⁵⁵ The exact phrases used by Zanzibari women when asked why a marriage ends are, "the marriage was just over. Basi! (That's it!)," and "it was fate". Our love had ended". See Stiles, "There Is no Stranger to Marriage Here," 589.

⁵⁶ Interview with litigants in some courts of Cianjur and Rangkasbitung, 2005.

Likewise, a divorced woman does not have any qualms about returning to her own family, as Stiles notes about Zanzibari women.⁵⁷ The same can be said about their unmarried children, who are normally members of their parents' families. If their parents divorce, the parent-child relationship does not change, nor does the grandchild-grandparent relationship.⁵⁸

In a bilateral kinship system, husbands and/or wives often find themselves caught in a conflict of loyalty. When conflict arises between a wife and her in-laws, a husband must choose between his wife and his parents. The reverse is true for a wife when her husband and her family are in conflict. When a spouse chooses to be loyal to his or her parents, divorce is often inevitable.⁵⁹ Consider a case heard in a South Jakarta court. The wife petitioned for divorce because her husband did not respect her parents, who often complained to her about her husband's attitude. When the wife confronted her husband about this, tensions rose; the husband began to pester her about whether she wanted to remain his wife or be divorced. After numerous challenges, she came to the court without her husband's knowledge.⁶⁰ While I do not know if she was granted the divorce, I understand that she faced a conflict of loyalty and, considering that her husband was not an easy man, she decided to take her parents' side. Hence, she came to court to petition for divorce. A protracted dispute motivated her to apply for divorce, and the bilateral kinship system strengthened her intention to petition for divorce.

Divorce Strategies by Female Litigants

Many women find that the grounds they use for divorce sometimes do not persuade judges to grant their petitions. This is not because the grounds they present are not relevant or serious but because most judges

⁵⁷ Stiles mentions two prominent structural events in women's experience of divorce: (1) leaving the husbands' homes to return to their families, and (2) removing their marriage goods, the *vyombo*, from the husbands' homes. When these events occur, Stiles adds, women assume that a divorce has taken place. See Stiles, "There is no Stranger Here to Divorce," 590.

⁵⁸ Kuchiba, *Three Malay Villages*, 41.

⁵⁹ See Yasmine al-Hadar, *Perkawinan dan Perceraian di Indonesia*, 67.

⁶⁰ Interview with Yulia, South Jakarta, April 2003.

wish to maintain the marriage relationship rather than grant the request for divorce. This has led women to deploy several strategies to influence or encourage judges to approve their demands. It must be said that women everywhere, including those in Indonesia, continue to face gender inequalities, and the persistence of patriarchy in the administration of justice is a fundamental factor that may hinder women's, including Muslim women, access to justice.

Although many Indonesian judges, as noted, have become more sensitive to gender issues, others remain biased, and tend to pronounce in favor of men. Moreover, even sensitive judges often attempt to prevent divorce, on the grounds that divorce will create problems for both parents and children. Although women currently are more optimistic and positive about the attitude of judges than in the past, they feel that they must struggle to win their cases.

The strategies are embedded in the initial stories women tell in court, strengthened by the narratives produced when they give evidence. Initial stories are instrumental in affecting the outcome of court disputes. In her study of legal process and women's attitudes in Swahili coastal Kenya, Hirsch noted that "in court, how a story is told can determine whether or not a narrator proves a point, makes an effective accusation, or justifies an action in a convincing manner."⁶¹ She also emphasized the importance of telling a convincing story at the outset of the hearing.⁶²

At Indonesian religious court hearings, the judges, usually the chief judge, begin the session by ascertaining who is who and asking how the litigants are related to each other. The judge's first substantive question is usually the signal for the argument to begin. Although the judge addresses the question to the party petitioning for divorce, each party is eager to tell his or her side of the story and they have no inclination to sit and wait patiently.

Indonesian litigant women usually highlight the events that they think are the most important to share and that made them petition for

⁶¹ Hirsch, *Pronouncing and Preserving*, 139.

⁶² Hirsch, *Pronouncing and Preserving*, 129. Hirsch explores the ways in which gender is constructed and negotiated in the legal arena through speech. Along the Swahili coast, she reports, women work within the limits of a gendered law, on the one hand, and use social standards and manners to turn rules in their favor, on the other.

divorce. They often explain that their marital relationship is no longer pleasant and why such an unpleasant relationship arose, and then make important statements about it. For example, women who petition for divorce on the grounds that their husbands failed to support their families insist that this duty was performed by the wife's natal family. By stressing this fact, they want to demonstrate that the marriage is no longer economically beneficial or viable for them.⁶³ Hirsch and Stiles noted that, under similar conditions, i.e., having been abandoned by their husbands and deprived of financial support, the women in their studies express similar thoughts about their marriages.

In my experience, almost all wives who petition for divorce assert that their parents have assumed the financial burden for their families. They repeatedly question the benefit of prolonging their marriages to husbands who fail to provide support. Wives stress that marriage is an economic partnership. They prefer to end their marriages and to lead a life alone but with greater reliance on their parents. As plaintiffs, they often say that their husbands failed to maintain them.

In order to gain the sympathy of the court, female litigants and their witnesses often explain why husbands fail to financially support their families, e.g., joblessness, negligence, disappearance or desertion. NB, for example, came to the Cianjur court to petition for divorce on the ground that her husband failed to provide her with financial support. She explained that her husband had been a newcomer in Cianjur, where he worked as a recruiting agent for female workers for countries such as Saudia Arabia. One day, after two years of marriage, her husband said that he had to leave Cianjur, as his contract there had ended, and he would become an agent in another city for two years. He then left, never showed up again, and provided no information about his whereabouts. She also told the judges that all her efforts to find him had failed.⁶⁴

The desertion of a husband is the most frequently recorded reason for his failure to provide his family with financial support. This failure may be the result of his unemployment or negligence. Almost every

⁶³ Stiles, for an example, observes that women in rural Zanzibar seek a forum in which they can highlight their husbands' neglect of marital duties. Stiles, "There is No Stranger Here to Divorce," 595.

⁶⁴ Interview with NB, a female litigant in Cianjur, 2005.

request for divorce on the grounds of the husband's failure to provide financial support was granted when the husband failed to appear in court. Many husbands are reluctant to come to court to discuss their problems with judges. Some think that if they do not come, the divorce cannot be granted. Ironically, the reluctance of husbands to come to court is beneficial to wives who want a divorce. Some husbands intend to avoid paying *nafaqa* and *mut'a*, the administration of which is now strictly controlled by court. In fact, in some regions, judges who are sensitive to gender issues ask husbands to submit to a clerk a certain amount of money for *nafaqa* or *mut'a* payments decided in judgments, before they are permitted to utter the divorce formula.⁶⁵ Although the failure of husbands to appear in court or their disappearance from their native city has disadvantaged wives economically, it often makes it easier for wives to prove that their husbands have failed to provide financial support.

Many wives argue that they no longer have the patience to stay married to men who are irresponsible (*tidak bertanggung jawab*) or unemployed (*pengangguran*). They choose to resolve their disputes in court because they want to be certain that their husbands will no longer disturb them, and because they want to formalize their marital status as "divorced". For example, NN, a woman from Cianjur, petitioned for divorce on the ground that her husband had been absent for one year, and that he had neglected his financial responsibility. Although the judges repeatedly advised her to be patient, they eventually granted her petition for divorce.⁶⁶

Many women also assured judges that they were determined in their demands and that they were prepared to bear the financial and mental burdens of divorce and all its consequences, good or bad. They often said that they did not care what other parties thought of their tenacious demands for divorce.⁶⁷ In many cases women demonstrate that they have no fear of being unable to support their children. Indeed, most of them demand the right to support their children. They feel that they

⁶⁵ See Arskal Salim, et al., *Demi Keadilan dan Kesetaraan*, 67.

⁶⁶ Based on notes I took during the hearing and an interview with her (NN).

⁶⁷ Interview with TH, a female litigant in court of Rangkasbitung. The fact that many women are prepared to bear financial and mental burdens after divorce was also noted in the statements by other female litigants in hearings in several courts.

have a greater right to custody than their husbands do. Although Shafi'i doctrine gives the mother custody of a daughter until puberty⁶⁸ and a son until he is seven, the *Kompilasi* fixes the age threshold for both a daughter and a son at twelve years. If child custody is awarded to the mother, the father is required to contribute to his children's support until they reach the age of twenty-one. In practice, most husbands pay maintenance only during the first few months following a divorce, and some pay no maintenance at all.⁶⁹

Wives who petition for divorce usually acknowledge these practices and understand that they may find themselves in a predicament. Safe in the knowledge that it is customary practice for the economic burden of supporting the children to fall on their mothers, who rely on their extended families, the wives are not worried about getting divorced. LK, for an example, was determined to get a divorce from her husband, although she had no job or higher education. The judges asked her how she could bring up her two children. Rather than withdrawing her petition and agreeing to remain with her husband and receive modest financial support from him, she assured the judges that her family would help her work out the financial problems resulting from divorce.⁷⁰

The strategies deployed in courts by litigant women and expressed both formally within hearings and in informal conversation with judges outside the courtroom relate strongly to the firm intention of women to petition for divorce. Therefore attempts at reconciliation by judges

⁶⁸ The age of puberty for a daughter is established by the onset of menstruation, one of the signs of womanhood. In the absence of this sign, however, the *'ulama'* differ over the age of puberty. According to Abu Hanifah, she is not of age until she is eighteen. Shafi'i follows the view of Muhammad al-Shaybani and Abu Yusuf, who fix the age at fifteen.

⁶⁹ Most ex-husbands who are self-employed, or do not work for the government or business firms, ignore the payment of financial support for their children. Wives whose husbands are civil servants employed by the government are more fortunate. They can claim financial support for their children under a provision that stipulates that the agreed amount of financial support for children can be deducted directly from the monthly salaries of their husbands. See Puslitbang Departemen Agama, "Pandangan Masyarakat Terhadap Perkawinan, Perceraian dan Poligami" (Jakarta: Puslitbang Departemen Agama, 1995), 28-29. See also a recent study by Adriaan Bedner and Stijn van Huis on divorce in Cainjur on non-payment by husbands after divorce, "Plurality of Marriage Law and Marriage Registration, for Muslims in Indonesia: A Plea for Pragmatism," *Utrecht Law Review* 6 (2), 2010.

⁷⁰ Interview with LK, a female litigant in the court of South Jakarta, 2004.

are rarely successful. Judges have long been encouraged by the Supreme Court to reconcile divorce litigants. And in 2007, a Supreme Court circular letter reiterated that judges should make every attempt to reconcile disputants. Although judges always attempt to do this, most litigants do not withdraw their petitions. As I observed in some hearings, reconciliation meetings are often utilized by both judges and litigants to discuss agreements relating to the distribution of property and custody.⁷¹

Dispute Narratives of Divorce and Judges' Approaches

I have cited details of several cases to support the proposition that particular and general causes work together in divorce petitions and that women deploy tactics and strategies to resolve their disputes in court. To clarify this proposition, consider three divorce cases, petitioned by women, whose hearings I attended in the religious courts of South Jakarta in 2003 and of Cianjur and Rangkasbitung in 2005. Each case presents different grounds and strategies for divorce and illustrates the differing approaches of judges. In these three cases the female litigants, presenting different grounds, clearly influenced and successfully persuaded the judges to approve their petitions.

Case one, heard in the court of South Jakarta, involved a wife who petitioned for divorce because her husband, a public transport driver (*sopir metromini*), was a drug addict and did not support her appropriately. Present in court were three judges, a clerk, the husband and the wife. The wife, who seemed to be very confident that her divorce petition would be granted, indicated that she had grown tired of her husband's behavior. She felt that she had given her husband enough opportunities to change his habits, and could no longer tolerate his bad behavior.

Judge: So..., you want to be divorced. Why?

Wife: Actually, I want to save my marriage, but I'm tired of considering this (saving the marriage).

Judge: Tired? What do you mean?

⁷¹) Based on personal observation of hearings and on interviews with several litigants, 2009.

- Wife: I have given my husband the opportunity to change his behavior. I have been hung up for almost a year. I have given up.
- Judge: Yes..., but if you would give him another chance, I can guarantee that he will improve his behavior. It is better, I think.
- Wife (Silent)..... (and then she made a negative sign).
- Judge: So... you won't give him another chance?
- Wife: No... and that's why I came here. This is my final decision, (it) can no longer be negotiated. For the last two months I have lived with my parents and I'm no longer supported by him (the husband). If he still wants me to live in marriage with him, he must convince me that he has improved his behavior and is more responsible. He hasn't done so.... There's no advantage to maintaining our marriage, particularly if viewed from the economic perspective.

Although the judges assured her that her husband's behavior would gradually improve and that he still loved her, the wife insisted on her petition, which they finally granted. This litigant was sure that her story would help to persuade the judges to grant her a divorce. The judges accepted her demand and requested that the husband pronounce the divorce formula in the coming week.

As this case demonstrates, the attitude of women toward marriage and divorce is heavily influenced by the economic situation. In cases from Aceh and Central Java, Bowen demonstrated that economic change correlates strongly with attitudes toward marriage, and therefore, besides the greater legal awareness, divorce rates are notoriously sensitive to economic changes.⁷²

Another case involved a woman in Cianjur who had been abandoned by her husband two years earlier. The husband did not attend either the first hearing or, two weeks later, the second. Her father accompanied her to the second hearing. In response to a question from me, she said that she came to court to ask for '*raf*', an Arabic term meaning 'to remove a marriage contract'.⁷³ Present at this second hearing were three

⁷²) Bowen, *Islam, Law and Equality in Indonesia*, 202.

⁷³) The term *raf* is rarely used by the litigants. When I asked the woman who came to the Cianjur court to petition for divorce why she used this term, she said that it refers to the unclear status of her marriage. Her husband had been absent for a long time, and she had initiated the divorce proceeding without his knowledge.

judges, a clerk, the wife and two witnesses (her father and her neighbor). Having tolerated her husband's absence for two years, this young woman could wait no longer and was determined to terminate the marriage. She mentioned that two years is a long time to wait.

- Judge: So, you're certain that you want to terminate your marriage?
- Wife: Yeah... there's no reason for me to wait.
- Judge: It's been only two years that you have waited. It's better that you wait longer, one or two months more.
- Wife: Why, sir? Two years is long enough.
- Judge: You've found a new man to marry...or....?
- Wife: No, it's nothing to do with a (new) man. Just to make my (legal) status clear.
- Judge: Won't you regret it if, after you're granted divorce, your husband comes with ..., let's say, a nice car?
- Wife: I'm sure he won't come back to me.
- Judge: What if he does?
- Wife: Impossible, but if he really does, I wouldn't regret it.
- Judge: Fine. You come back next week and we'll see what we'll decide.

The wife here demonstrated the same attitude as the wife in case one. When the judges light-heartedly asked her if she would regret it if her husband returned home with a nice car after her petition had been granted, the woman answered that she would not regret it, even if the husband were to offer her a car plus a bag full of money. By asking this question, the judge was trying to make her reconsider her decision. The woman cynically responded that the judge's prediction would never come true. Although the judges had not decided what to do, the chief judge's reference to a hearing 'next week' indicates that the petition would be granted. After the hearing I had a conversation with one of the judges in which he said that the divorce would be finalized by granting the petition.

Like the woman in this case, many women prefer to live alone and carry the burden of being divorcees rather than to remain married in

name but with an unclear status. Although judges often attempt to persuade female litigants to wait longer and to withdraw their petitions, this appears to be a mere pretence or affectation (*'basa basi'*).

A third case, heard in the Islamic court of Rangkasbitung, involved a wife who petitioned for divorce because her husband was jealous of anyone who approached her or talked to her. Although the husband had been present at the first hearing, he was absent from the second. Present in court at the second hearing, which took place a week after the first, were three judges, a clerk, the wife and two witnesses, one of whom was asked to leave the courtroom after he took the oath. Observing the performance of the wife, I could understand why the husband was worried about losing her. She was young and pretty, and it was understandable that other men might easily be attracted to her. I do not know what the husband looked like, but I was told that he was older than his wife. The wife understood that jealousy is a normal emotion. Unfortunately, however, the husband's attitude had harmed her. His jealousy took the form of verbal abuse and his command that she not leave the house. In a jealous rage, he denied his wife appropriate financial support.

Eventually the wife found a job in a grocery store and was about to begin work there. The husband had left the wife almost one month earlier, but knew of her plan to work from a friend. He approached her saying that he would not allow her to work in a grocery store. Accompanied by a *jawara* or influential community leader,⁷⁴ he went to the manager of the store, warning him not to employ his wife. Unable to tolerate her husband's attitude, the wife came to the court to petition for divorce.

Judge: Divorce? Why? Your husband loves you very much.

Wife: Maybe..., but he is cruel and inappropriate.

Judge: You must be more selective, I suppose. I mean 'not too open' to many people. Sorry for saying this.

⁷⁴ *Jawara* literally signifies *champion* or *winner*. Here it refers to a person who has physical strength and influence within community. See M.A. Tihami, "Kepemimpinan Kyai dan Jawara di Banten," MA Thesis, University of Indonesia, Jakarta, 1992. See also Mohamad Hudaeri, "Tasbih dan Golok," *Istiqra* 2:1, 2003.

- Wife: No...sir,... I'm not that kind of woman... He's too temperamental and injudicious. Too much.... in everything... I can't stand him....
- Judge: So...you're sure about your decision?
- Wife: Yes...very much sure.
- Judge: Ok...but we still need to hear your husband's comments.
- Wife: For what else...?
- Judge: The procedure must be that way. Ok...we are finished now, but... do you have anything else to say before we dismiss?
- Wife: Ehmmm....ya....like this, sir... I came here to petition for divorce, and want justice. So.....please divorce me from him. I don't care what people, my family, or his family will say about my decision, or about me. I prefer to be called whatever, such as arrogant, or other negative labels rather than live with him and remain his wife. I mean it. Really....

After the hearing, I was told by the judges that the husband did not want to divorce his wife. But she was determined. At the end of the hearing, when asked if she had anything else to say, she said that she fully trusted that the judges would treat the case fairly. She also said that she came to the court to be divorced from her husband by the judges and did not care what her husband wanted. She stated that she preferred to bear whatever stigma people attached to her rather than to go and live with her husband again. Although the husband's reaction still needed to be heard, I was informed by the judges that the petition would be granted. Commenting on this case, the chief judge said that when a woman has stated that she foregoes all her claims, he and his colleagues, as judges, require no further evidence to establish that her mind has been poisoned by bitter hatred of her husband. When I returned to the court, I was informed that the petition had been granted.

Conclusion

The Indonesian state has reformed the Islamic rules of divorce and mandated that divorce be concluded in court. Nonetheless, many men

continue to conclude divorce out of court. Although they are aware that the role of the government in the arrangement of legal relations among its citizens cannot be ignored, and that its intervention in relevant matters is required, they see the '*ulama*'—not the state—as the guardians of Islamic law and regard their authority as absolute. For this reason, men tend to be oriented towards classical Islamic law, which gives them an exclusive right to divorce without going to court. By contrast, women cannot secure a divorce without going to court. They often have no choice but to rely on state law and therefore to go to court to petition for divorce or to finalize the divorce administratively. In addition, in order to clarify their marital status and to achieve their rights following a divorce, women must use the court. It should therefore come as no surprise that women appeal to court more often than men.

In order to gain satisfaction, women have to fight in court; not only must they present grounds for the divorce petition, but they also must negotiate and convince judges by deploying a number of strategies. At court women explain the marital conditions that led them to petition for divorce, i.e., the grounds for divorce. These grounds usually include specific problems within the marriage, such as a husband's failure to provide financial support or his polygamy. Other, general, causes, such as belief in fate, and the kinship system, encourage women to petition for divorce. In addition, in order to establish the reliability of their narratives and to gain positive responses from judges, many women make statements about their family problems and the conditions of their recent marital life. They are convinced that the stories they tell will encourage judges to approve their requests. A number of cases discussed here, particularly the three cases whose dispute narratives are presented, establish their conviction.

In fact, the cases discussed demonstrate that in practice it is difficult for judges to prevent divorce. Strategies deployed by women have worked out in the sense that judges see women as having an equal right as men in deciding the fate of their marriages. Judges are highly influenced by the ways in which women demonstrated negative sides of their husbands, such as their husbands' delinquencies, and their firm intention to divorce.