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Huis, S.C. van

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No cure for non-payment? Alimony redress in Cianjur

Stijn Cornelis van Huis

1. Abstract

Real life problem

In most cases, a divorce in Cianjur means that the wife must find sufficient resources to provide for herself and her children. For women living around the poverty line the only safety net available for them and their children is a return to their parents or a remarriage. The safety net theoretically provided for by alimony, although legally established, is not functioning well.

Child alimony

With regard to child alimony, compliance by ex-husbands with decisions of the Islamic Court is generally poor. Most women, however, don't seek redress at the Islamic Court. Psychological and practical barriers are mentioned as reasons for this. Non-court alternatives are virtually non-existent. Ex-husbands generally only make insufficient and irregular financial contributions to their children's upbringing. Almost half simply divorce or abandon their wife without providing any alimony. There is no forum available were women can seek effective redress for their grievances. Generally, women simply leave the conflict unresolved or try to resolve the conflict within the private sphere.

Spousal alimony

Decisions of the Islamic Court regarding spousal alimony are more frequently followed. Women who divorce at the initiative of their husband (*talak divorce*) have certain spousal alimony rights - both under national and Islamic law. Husbands almost always comply with Islamic Court decisions on spousal alimony because court procedures dictate that spousal alimony must be paid during the last court-hearing. However, most divorces are initiated by the wife, in which case she has no right to spousal alimony. Of those couples who elect to arrange their divorce unofficially (i.e. out of court) only in 23 percent of the cases make spousal alimony arrangements (*nafkah idah* , or spousal alimony provided by the husband during the compulsory waiting period of three months after a divorce in which the wife may not remarry) , and these arrangements are usually poorly executed.

Civil servants

According to government regulations, both spousal alimony and child alimony may be directly withdrawn from the salary of an ex-husband after a request to the ex-husband's superior. Yet, even when clear legal avenues of redress are in place, women are not always aware of them, or are reluctant to use them. If a woman does approach their husband's superior, they are often successful in getting child support transferred to their account. However, in court orders, spousal alimony is rarely based upon the government regulations, but rather on (state) Islamic law only.

The example of civil servants shows that redress for women denied child alimony can be effective where simple mechanisms for ensuring compliance are in place, provided that the husband has a stable income out of which alimony contributions can be taken. However, for most people - particularly the poor - the economic situation is very different. For most women in Cianjur, their only option is moral pressure on their husband. Until enforcement mechanisms are put in place, a court decision on alimony is in most cases no more than a toothless weapon to increase this moral pressure.

2. Cianjur: a rural Muslim district where people marry young

This case study concerns divorced Muslim women in the district of Cianjur who, according to both national law and Islamic law, have the right to child alimony and spousal alimony. In this respect, there is no tension between the normative systems of the state and Islam. However, with regard to the social practice of divorce itself, there are important tensions between state norms as laid down in national law and local Islamic norms. According to the marriage law,¹ all Muslim divorces must be brought before the Islamic Court.² Yet, social practice in Cianjur shows that most people prefer to divorce ‘according to religion’ – that is, outside court and by repudiation (*talak*) – because it is cheap and less cumbersome. These divorces are not recognized by the state, and accordingly these women do not have the option to seek enforcement of their alimony rights – or other divorce-related rights – within the court system.

If couples do divorce at the Islamic Court, women can file for a court decision on alimony at the same time as the divorce case, and with no extra procedural costs. Surprisingly, few of the women who divorce at the Islamic Court of Cianjur make use of this legal opportunity. There is also the option to file for a separate alimony case after the divorce has been granted, but in 2006, 2007 and 2008 there were no such cases listed at the Islamic Court of Cianjur.

The main subject of this research is redress in spousal and child alimony cases brought before the Islamic Court of Cianjur, and the execution (or otherwise) of these court decisions. However, because all the data indicates that bringing alimony cases to court is not common practice – and even less so among the poor – this case study explores non-court redress as well. The case study focuses upon the following question:

Where women are denied spousal alimony (nafkah muta’ah and nafkah idah) and or child alimony (nafkah anak) by their former husbands, despite having a right to such alimony, what are the rules, actors and factors that affect the extent to which these women gain access to fair, effective and accountable redress?

Methodology

To answer this question I have researched all alimony records from the Islamic Court of Cianjur for the years 2006, 2007 and 2008. I traced back and interviewed a sample of the women who had filed requests for alimony at the court, to examine the extent to which the court’s decisions had been executed, particularly regarding child alimony, since spousal alimony is paid by the husband in court before the divorce is finalised. I also investigated how these women perceived the court process, posed more general questions about the background to each case. This was not an easy task, as many women had since moved away and were difficult to find.

In addition, I have followed a substantial number of court divorce hearings (more than 100) to see

¹ Law No 1 of 1974 regarding Marriage.

² The Islamic Court (*pengadilan agama*) is one of the four branches of Indonesia’s national legal system, which is headed by the Supreme Court (the other three being the General Court, the Administrative Court and the Military Court). People can appeal first-instance Islamic Court decisions at the Islamic high courts. The Islamic Courts are headed by the Supreme Court, where people can bring an appeal in cassation.

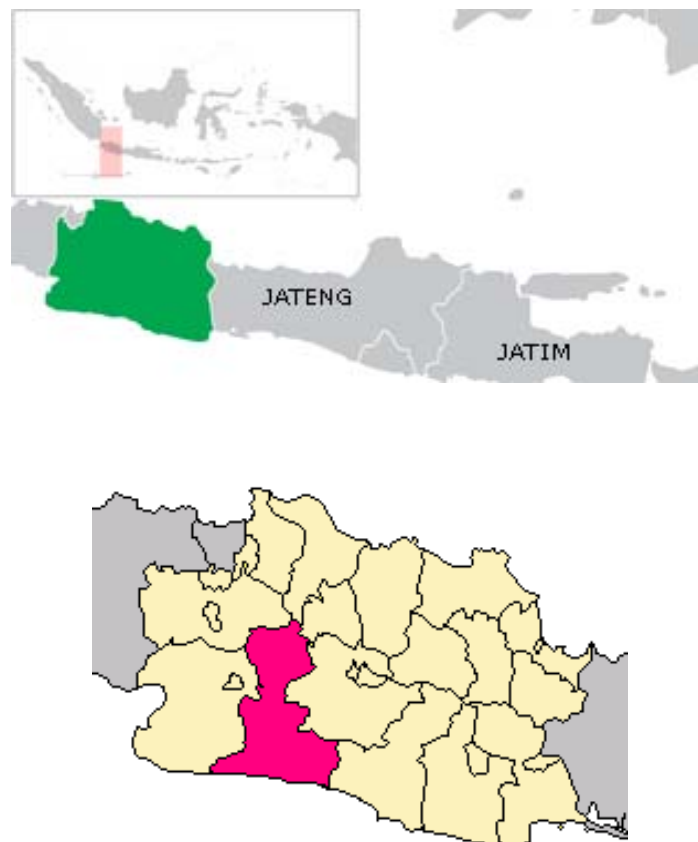
how the subject of alimony is treated by litigants and judges. This data was supplemented by secondary data and qualitative data obtained from interviews with judges and other personnel at the Islamic Court of Cianjur, including experts and key-informants such as lawyers, intermediaries and others.

At an early stage, it became clear that most women in Cianjur don't divorce at the Islamic Court, and of those who do, most do not seek a court decision on alimony. Civil servants and the wives of civil servants are overrepresented in alimony cases. To get a broader picture of the social reality of divorce and alimony in Cianjur, an alimony survey was designed and a representative sample of 120 divorced women with children were interviewed in 4 villages (*desa*) and 4 town quarters (*kampung*) in three sub-districts (Cianjur, Cipanas and Pagelaran).

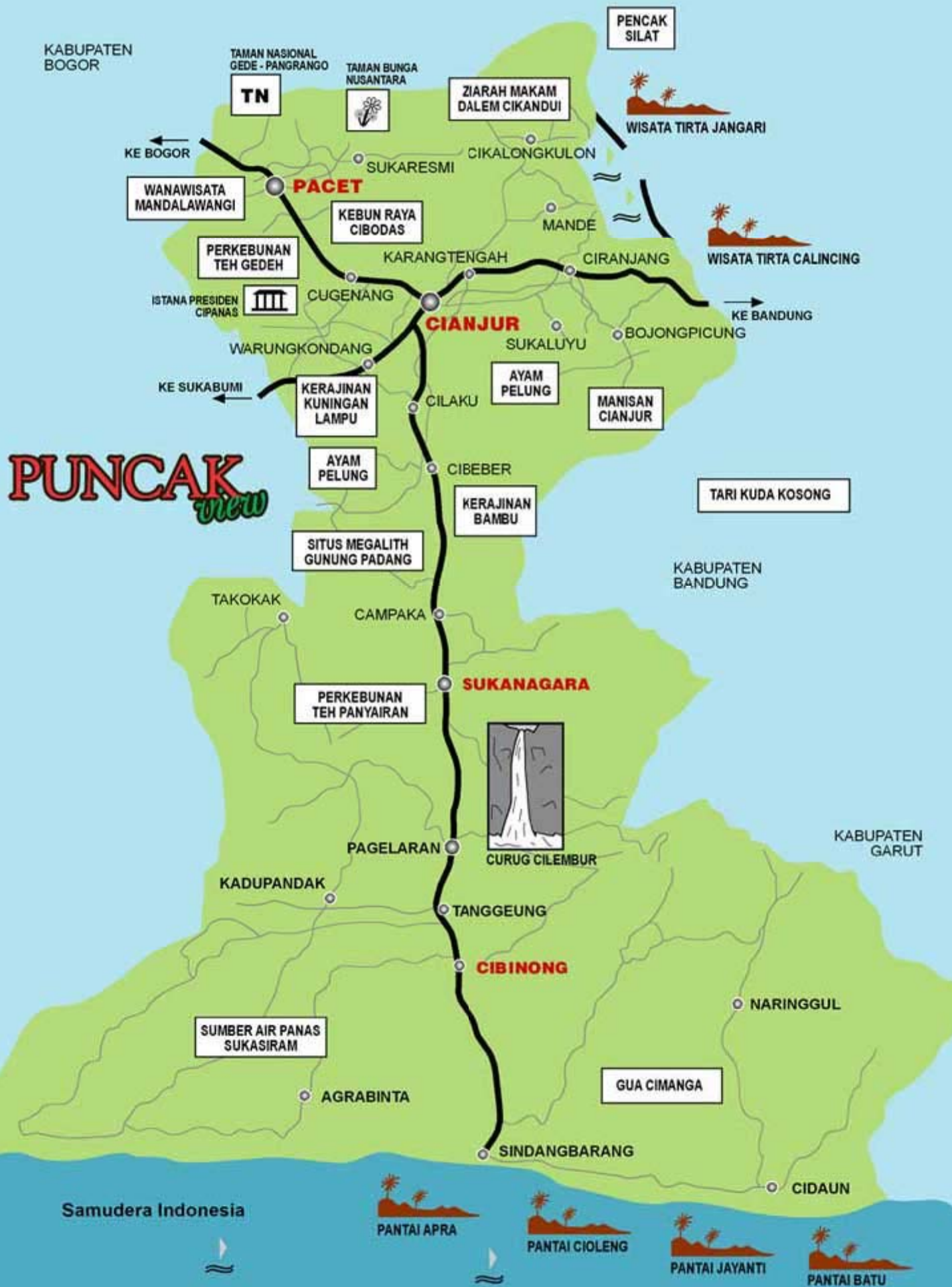
Research location Cianjur

Cianjur is a rural district (*kabupaten*) in the province of West Java, and is located between the cities of Jakarta and Bandung. It has a population of 2,122,756 (2007). The north and south of the district are separated by a mountain range and by the long, winding road that connects the northern town Cianjur with the south, and which makes south-north travel a time-consuming operation. The Islamic Court is located in the district capital of Cianjur (population of 150,000), at the crossroads to Jakarta, Bandung and Sukabumi.

Figure 1. Cianjur in West Java



PETA WISATA KABUPATEN CIANJUR



Farmers, small entrepreneurs and high unemployment

The district Cianjur is known for its rice, and rice fields are abundant. Agriculture is the main business, and rice – especially the local breed *pandangwangi* rice – is the main crop. This is reflected in Cianjur’s employment figures (2007). Fifty two percent of the working population are farmers, 21 percent of the population are categorized as ‘small entrepreneurs’ and 10 percent are active in services.³

18.5 percent of Cianjur’s population is officially registered as being poor. That is slightly higher than the national poverty rate, which is 16.6 percent. The poverty line for the province of West Java (2008) is set at Rp180,821 per month per family member for the cities (*kota*) and Rp 155,367 for rural areas like Cianjur. This is almost half the amount used by the UN to define poverty.⁴

Another way of measuring poverty is by looking at indicators of the most basic needs (see Box 1). According to this measure, only 11.8 percent of the families in Cianjur would be categorized as poor (*keluarga pra-sejahtera*).⁵

Box 1. Indicators for poor families

Poor families (Keluarga Pra Sejahtera)

Are families that are not able yet to fulfil all of the five basic needs of a prosperous family (*Keluarga Sejahtera Tahap I*).

Prosperous Family (Keluarga Sejahtera Tahap I)

Are families that already are able to fulfil the basic needs.

The basic needs are:

1. In general each family member eats two times a day or more.
2. Each family member has different clothes for home, work/school and for special occasions.
3. The house of the family has a good roof, good floor and good walls.
4. The family is able to go to a health service if a child is sick or a couple wants to practice family planning.
5. All children between the ages of 7 and 15 go to school.

³ Penyesunan Sosial Ekonomi Daerah (Suseda) 2005, BPS Provinsi Jawa Barat dan Bapeda Propinsi Jawa Barat [The 2005 Regional Socio-Economical Survey, Central Bureau of Statistics and Regional Spatial Planning Bureau, Province of West Java].

⁴ The UN has set the poverty line at an income of US\$ 1,25 a day and US\$ 2,00 a day. Calculated to rupiah per month this equals approximately Rp 375.000 and Rp 600.000 (exchange rates of July 2009).

⁵ My own calculations of data from the tables ‘*Kepala Keluarga Pra S dan KSI*’ [Poor families and Prosperous Families 1] and ‘*Kepala Keluarga menurut tingkat pendidikan yang memperoleh bantuan modal*’ [Household heads according to education level that receive social security benefit] acquired from the Cianjur’s government’s official website www.cianjurkab.go.id. 70.335 poor households in Cianjur divided by 594.323 total households in Cianjur multiplied by 100 percent equals 11.8 percent.

Statistics from 2007 from the district show that 24 percent of households do not have a member of the household who works.⁶ This means that the unemployment figure is high compared to the nation figure of 9.7 percent (2007).⁷

High poverty and unemployment figures are relevant here not only because 'economic reasons' are one of the major reasons for divorce – just after 'no harmonious relationship'⁸ – but also because it is less likely that a woman whose former husband was poor or unemployed (so that he could not contribute to the family's income anyway) will receive alimony payments from him.

Cianjur's Sundanese Muslim-ness

The vast majority of the 2.1 million inhabitants of Cianjur are ethnic Sundanese, and the district capital Cianjur considers itself to be the centre of Sundanese language and culture. Again and again people emphasise that 'in Cianjur the use of Sundanese language is still proper'.

Furthermore, 99 percent of the population of Cianjur is Muslim. The self-image of piety and Sundanese-ness of Cianjur is reflected in the district's motto *maos, mamaos, maenpo*. *Maos* is the act of reciting the Qur'an, *mamaos* is the performance of traditional poetry, and *maenpo* refers to the martial arts form *pencak silat*. The district government has tried to underline the Muslim-ness of 'kota santri' (city of *santri*)⁹ Cianjur through the adoption of Islamic inspired local legislation. This has attracted the attention of many researchers. The National Commission Against Violence Towards Women (*Komisi Nasional anti-kekerasan terhadap Perempuan, Komnas Perempuan*), for instance, has referred to Cianjur's local legislation as one example of institutionalisation of discrimination against women in Indonesia.¹⁰ The local 'syariah' regulations were all issued by the former district head (*bupati*) of Cianjur, Wasidi Swastomo (*bupati* from 2001 to 2006), a member of the secular Golkar party, but who made Islamisation (*syariasasi*) a mission of Cianjur's government. At the very end of his term, this mission was enshrined in Local Regulation No 3 of 2006, which was adopted by Cianjur's local parliament. Remarkably, the current (since 2006) district head Tjetjep Muchtar Soleh, who was backed by the orthodox Muslim party PKS and supports the existing *syariah* regulations, is yet to issue any new Islamic inspired local legislation.

At a closer look, in practice the regulations mostly concern Muslim civil servants. For example, a dress code for civil servants makes wearing of a veil compulsory for Muslim female civil servants and long-sleeved *batik* shirts for males. Muslim civil servants are encouraged to pray five times a day and to improve their skills in reciting the Qur'an. However, for the majority of the population, the Islamic policies of the local government do not seem to extend further than

⁶Calculation of figures from the table 'Kepala keluarga menurut jenis kelamin, pekerjaan, dan perkawinan' [Household heads according to sex, work and marital status] published on www.cianjurkab.go.id. 142,802 not working households divided by 594,323 (total households) multiplied with 100 percent equals 24 percent.

⁷The number of 24 percent not working households is including households of senior age and does not fully correspondent with unemployment figures.

⁸*Laporan Tahunan Pengadilan Agama Cianjur* [Annual reports of the Islamic Court of Cianjur] of 2006, 2007 and 2008. In the alimony survey 'economic reasons' (23 percent) is the third mentioned reason for divorce, after 'no fit anymore' (62.5 percent) and 'polygamy of the husband' (38 percent). 'Domestic violence' was mentioned by 10 percent of the respondents. Multiple answers were possible.

⁹*Santri* are Muslim modernists who tend to be oriented towards the Qur'an and the tradition of the prophet Muhammad (*Hadith*) as opposed to *abangan* Muslim practices of syncretism.

¹⁰Komnas Perempuan 2009.

public billboards with slogans like ‘wearing a veil is a characteristic of a pious Muslim’ and other ‘soft’ forms of persuasion . Both in the cities in Cianjur and in the villages, these government ‘advices’ can be ignored without consequence, and a large portion of Muslim women still choose not to wear a veil, even when going to the Islamic Court.

This is not to say that the Islamic normative system in Cianjur has only minor influence. On the contrary, Cianjur has 328 *madrasah* (Islamic day schools) and 67 *pesantren* (Islamic boarding schools) from a total of 1819 schools in the district.¹¹ These Islamic schools are led by local Islamic experts (*kyai, uztad, ulama*) who have considerable authority in their communities with regard to Islamic matters. In Cianjur, there is a great deal of variation in the religious affiliation of these Islamic boarding schools and their leaders. This means that there are many competing interpretations of Islamic law. In matters of marriage and divorce, the most conservative schools and leaders will reject state involvement altogether. More moderate schools and leaders recognize the role of the state in marital affairs, but often regard state divorce procedures too burdensome in terms of cost and effort. Many local religious actors (including marriage registrars, who are usually recruited from the pool of local Islamic experts) are willing to (re)marry people who have not divorced through the Islamic Court, and thus are not regarded as divorced according to national law. Qualitative and quantitative data indicates that these local religious actors are enabling men to engage in polygamous marriages, which according to state law is only allowed with the permission of the Islamic Court.¹² The Islamic Court of Cianjur seldom gives such permission.¹³ Yet, more than one-third of the divorcees (42 out of 120) in the alimony survey mentioned a polygamous marriage by the husband as a reason for seeking a divorce.

The strong position of Islam and Islamic religious figures within the community indicates that the alternative normative system provided by Islam is strongly embedded in Cianjur’s society. Indeed, existing research indicates that the Islamic normative system is widely accepted throughout Indonesia as an alternative forum to state institutions for dealing with marital affairs.¹⁴ The question is whether the Islamic system also functions as an alternative forum for female justice seekers to successfully seek redress where their alimony rights are denied.

Young marriage

The marriage age of Sundanese women has traditionally been among the youngest in Indonesia, and the divorce rates have been high.¹⁵ It is highly probable that the two are correlated, since international research has shown that marrying young is one of the main predictors of early divorce.¹⁶ Since the 1970s, the average age of marriage in West Java has been slowly increasing,

¹¹ Figures from <http://schomap.ditpsmk.net/schomap/report.php?Rep=tsissmksemuamts&IdKabR=0205>.

¹² Marriage Law No 1 of 1974, Article 5.

¹³ In total, eight times for the years 2006 - 2008. Polygamous relations I encountered in Cianjur usually concerned men secretly (without the first wife’s knowledge) marrying another woman. According to Indonesian law, these marriages cannot be registered, but in practice people can obtain forged marriage certificates through the Office of Religious Affairs (*Kantor Urusan Agama, KUA*).

¹⁴ E.g. Cammack, Mark E., Donovan, Helen and Heaton, Tim B 2007; Euis Nurlealawati 2007.

¹⁵ See Gavin W. Jones 2001.

¹⁶ Lynn K. White 1990 gives a summary of researches that prove this: ‘Early marriage increases the chances of divorce (cf. Balakrishnan et al. 1987; South and Spitze, 1986; Thornton and Rodgers 1987). In fact, Martin and Bumpass (1989) conclude that age at marriage is the strongest predictor of divorce in the first five years of marriage. Moore and Waite (1981) find that this effect is independent of early childbearing.’ Philip Quest finds the same correlation between marrying young and early divorce for Indonesia (Guest, P. 1992: 95).

while divorce rates have declined.¹⁷

However, in Cianjur, most women still marry young. According to the most recent data, the average age that women first get married in Cianjur is 18.3 years.¹⁸ Other research suggests a much lower figure for women's first marriage in Cianjur – 17 years – and indicates that the number of women marrying below the legal age of marriage (16 years) is the highest in West Java.¹⁹ Many more couples marry before the woman reaches the age of 16, but wait until she has turned 16 before registering the marriage, and therefore aren't counted in official statistics. Women are traditionally encouraged or forced to marry young to prevent extramarital pregnancy and sin (*zina*). However, arranged marriages have recently become less common, and (first) marriage is now ideally based on romantic love and preceded by courtship (*pacaran*).²⁰ After marriage, teenage couples will first reside with the wife's parents, only leaving when they are capable or mature enough to live on their own. They will then form a nuclear family, the most common living arrangement in Sundanese society.

Most people don't divorce at the Islamic Court

In Sundanese culture, there is strong and widespread belief in the existence of a predestined partner (*jodoh*). In practice, this means that if a marriage does not work out, the conclusion is often that the people involved have simply not yet found their *jodoh*. It is this belief that makes divorce socially acceptable.²¹ According to official statistics from the Islamic Court of Cianjur for 2007, 21,744 couples registered their marriages and 445 filed for divorce.²² This amounts to a divorce rate of 2 percent. However, the alimony survey indicates around 80 percent of the interviewed divorced women who registered their marriage in Cianjur divorced unofficially or outside court. The bulk of divorces therefore don't appear in the official statistics. It is arguable, then, that the actual divorce rate for Cianjur should be set five times higher than the official rate of 2 percent, at 10 percent. This is in line with the national divorce rate for Muslims of 10 percent.²³

Although state law stipulates that all divorces must be brought to court, the people concerned and the communities in which they live consider these out of court divorces to be legal according to their religion. The state, however, does not recognize these divorces.²⁴ As a result, women who divorce out of court are unable to seek enforcement of their post-divorce rights – including

¹⁷ Jones, Gavin W., Yahya Asari and Tuti Djuartika 1994.

¹⁸ Komnas Perempuan 2009.

¹⁹ *Survei Sosial Ekonomi Daerah 2005* shows that Cianjur has the highest number of underage marriages in West Java. Source: http://www.bapeda-jabar.go.id/docs/publikasi_data/20080408_163140.pdf

²⁰ In West Java courtship is common practice for girls at Islamic boarding schools (Dwi Rubiyanti Kholifah 2005).

²¹ Jones, Gavin W., Yahya Asari and Tuti Djuartika 1994.

²² *Laporan Tahunan 2007 Pengadilan Agama Cianjur* [Annual Report 2007 of the Islamic Court of Cianjur].

²³ In 2008 there were around 200,000 (Islamic Court registered) divorces and 2 million Muslim (KUA registered) marriages (The Jakarta Post 'Divorce rate up 10 fold in reform era', April 2 2009.

<http://www.thejakartapost.com/news/2009/02/04/divorce-rate-10-fold-reform-era-ministry.html>). According to the alimony survey the official divorce rate of Cianjur would increase five-fold if all Muslim divorces were done at the Islamic Court. This suggests that any increase of the divorce rate in Indonesia could in part be attributed to an increased willingness of Muslims (especially women) to divorce at the Islamic Court. Thus, an increase in the number of divorce certificates issued does not necessarily mean an increase in actual divorces taking place.

²⁴ This can give rise to the strange situation where most divorced women and men in Cianjur are officially still married, and in some cases that remarried couples are not officially married to each other but to their former spouses.

alimony rights for themselves and their children – at the Islamic Court. The question is whether there is an alternative forum available to these women.

Out of court divorce is usually referred to as ‘religious divorce’ – a term that presumes that these unofficial divorces are conducted in accordance with Islamic law. In theory, a divorce proceeding according to Islamic norms would involve a *talak* repudiation by the husband or a returning of the dowry (*khuluk* divorce, also called *tebus cerai*) initiated by the wife,²⁵ respectively followed or proceeded by attempts by both families to achieve a reconciliation and rejuvenation of the marriage (*rujuk*). If this is not possible, financial duties such as child alimony and spousal alimony would be negotiated. By contrast, interviews with village-level marriage registrars (*amil desa*) indicate that in many cases women are simply abandoned or returned to their parents without further financial arrangements being made. The alimony survey indicates that only 30 percent of the out of court divorces involved agreements regarding child alimony. Only 23 percent of the cases involved an agreement regarding the wife’s financial rights. At least half²⁶ of out of court divorces proceed without financial arrangement for wife or children. Thus, one could question the extent to which the Islamic rules regarding alimony are embedded in Cianjur. More importantly, non-payment of alimony could place women and their children on the poverty line.

There are few alimony cases brought before the Islamic Court of Cianjur. None of the listed cases involved only an alimony claim. In 2007, 27 (6 percent) out of the 445 divorce cases included a request for a court-decision on alimony as part of the divorce case and due to six withdrawals only 21 court decisions regarding alimony were made.²⁷ This is rather surprising, given that requests for spousal alimony and child alimony can be included in the claim or counterclaim without the need to seek an extra court session or pay additional court fees. The question is why most women do not make use of this legal opportunity.

Table 1. Percentage of alimony agreements of total divorces

	Out of court (alimony survey 2009)	Included in Islamic Court decisions (2007)
Child alimony	30 %	2.7 %
Spousal alimony	23 %	2.7 %

Back to the parents

In Cianjur, it is rare for a household to be headed by a divorced woman. Cianjur’s population consists of 594,323 registered households, of which 10 percent are headed by females.²⁸ These female headed households are usually households in which the husband has passed away. A study at the village administration of *Babakan Karet* in Cianjur suggested that only about 10 percent of

²⁵ In practice, many women think that if they want a divorce they have to convince their husband to divorce them by asking them to pronounce the *talak*. One way to do that is by ‘buying’ a divorce. This perception of the *khuluk* (returning of the dowry) as a sale rather than a legal right means that sometimes the amount of money that is demanded by the husbands is much higher than the price of the dowry.

²⁶ The figure from the alimony survey is relatively uncertain because a large percentage of the 120 women did not answer these particular questions. Agreement on spousal financial rights: ‘Yes’ 23 percent; ‘No’ 58 percent, ‘No answer’ 19 percent. Agreement on child alimony: ‘Yes’ 30 percent; ‘No’ 52 percent; ‘No answer’ 18 percent.

²⁷ Author’s analysis of *Register Pengadilan Agama Cianjur 2007*.

²⁸ Population statistics of Cianjur for 2007 obtained from www.cianjurkab.go.id.

these female household heads (thus involving about 1 percent of all households) are divorcees. It appears, then, that most divorced women find refuge elsewhere.

One explanation for this is that in Sundanese culture, divorced women and their children are usually returned to the woman's parents by their husbands after pronouncement of the *talak*.²⁹ These women are supported by their parents, and if they work they contribute to the income of their parents' household. Research by Schröder-Butterfill has shown the importance of this support provided by parents to their adult children. She concludes that 'in the majority of cases, the net flow of inter-generational support is either downwards – from old to young – or balanced'.³⁰

In this way, the financial consequences of a divorce can be minimized. In Cianjur, if the divorced woman is young, the children are often cared for by the grandparents on the mother's side, whilst the divorced woman seeks work. Many of these divorcee women become migrant workers abroad (*Tenaga Kerja Indonesia*).³¹ Many others remarry, as in Sundanese culture remarriage is easy and socially accepted

In short, there are safety nets available for divorced women in Cianjur. The question is whether these safety nets are sufficient to avoid divorced women falling into poverty, and to prevent the negative effects of a divorce in terms of income more broadly. To put it more bluntly: is alimony really needed?

3. Cianjur's divorcees and their experiences with alimony

Below I will outline the characteristics of the divorced mothers who were interviewed for the alimony survey. These 120 women were selected through targeting sampling³² in three sub-districts (*kecamatan*) in Cianjur: the district capital Cianjur; Cipanas in the north and Pagelaran in the South.

All these women are considered by themselves and their communities as being divorced. All have children. This paper highlights the differences between women in Cianjur who went to the Islamic Court (17 women or 14 percent) and those who chose to divorce out of court (103 women or 86 percent). I ask the question: are differences in education, income, age of marriage, etc indicators that determine the likelihood that women will divorce at the Islamic Court?

Next, I link the satisfaction of the divorcees concerning the payment of child alimony by their former husbands to the economic situation of the divorcees after the divorce. The question is how the economic situation of these women changed after a divorce, whether the safety nets provided by the family are sufficient for these divorced women, and whether they need alimony?

Educational background

Many of the women divorced out of court have only received basic education. Divorcees who went to the Islamic Court are on average better educated. Sixty three percent of the out of court

²⁹ See Euis Nurlaelawati 2007.

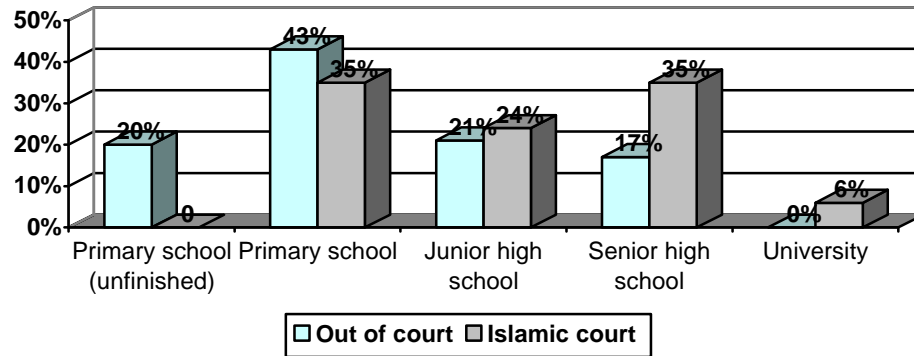
³⁰ Schröder-Butterfill, E. 2004:497.

³¹ Focus group discussion with village-level *amil* at the KUA of sub-district (*kecamatan*) Cianjur 24 – 5 2009.

³² In contrast to the representative sampling method, in which a representative sample of the population is interviewed, in the targeted sampling method only a sample of the group that is subject of research is interviewed.

divorcees had received only primary school education, against 35 percent of the Islamic Court respondents. The latter have all at least finished primary school, against 20 percent of out of court divorcees that had not. Looking at women who finished senior high school or higher education, the figures are 41 percent for Islamic Court respondents against 17 percent of out of court respondents. Thus, the level of education seems to be one of the key factors that determines whether women will divorce at the Islamic Court.

Figure 3. Educational background of the respondent

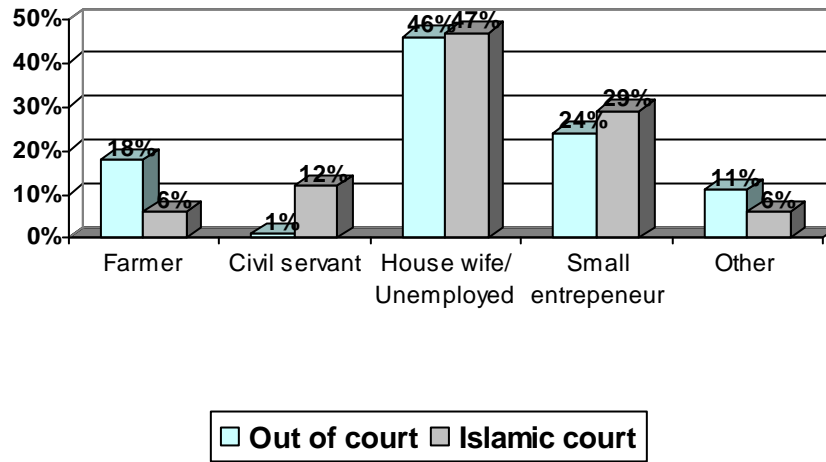


Occupation

Official statistics state that 40 percent of the women in Cianjur work. In the alimony survey, the unemployment figure for divorced women is somewhat different. Of the 120 surveyed out of court divorcees, 46 percent considered themselves to be housewives or unemployed. The rest, 54 percent, see themselves as employed. Most of these working women work as small entrepreneurs (24 percent), while 18 percent are farmers, and one percent are civil servants. The other 46 percent seem to be dependent upon family members for their income. As mentioned above, in many cases married couples largely depend upon their parents as their main source of income. Couples often marry in their teens, before they have a stable income, and therefore stay with one of their parents – usually the wife’s parents- until they are able to start a nuclear family of their own.

If women who went to the Islamic Court are singled out, the main differences are the relatively low number of farmers (6 percent compared to 18 percent for others) and the relatively high number of civil servants (12 percent compared to 1 percent). A comparable percentage of women in this group are also housewives or unemployed, and thus not economically independent. It therefore seems that economic independence is not the main factor that determines whether women go to the Islamic Court.

Figure 4. Occupation of the respondent

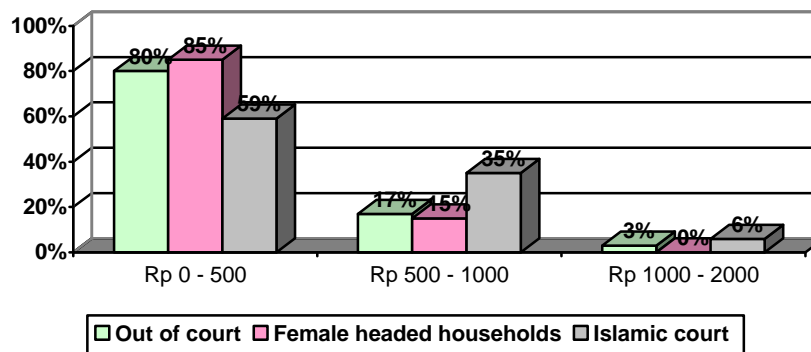


Income

Looking at income, it becomes clear that in Cianjur, a woman's income level influences the likelihood that she will go to court for her divorce. Only 20 percent of out of court divorcees had an income higher than Rp 500,000, whereas 41 percent of divorcees who went to court had incomes above this level. This means that poverty makes it less likely for a woman to seek an official divorce at court. The poorest group are women who are the heads of their households, which can be explained by the fact they have to run a household alone.

Importantly, almost all of the women who file a request for a court decision on child alimony have husbands who fall within higher income groups, while only a few fall into the lowest income group.³³ It seems that lower income couples who seek a divorce at the Islamic Court file for divorce only, and do not exercise their right to seek a decision on alimony. For this reason, the author has broadened the focus of this case study to include informal alimony and child support practices.

Figure 5. Respondent's monthly income (1000s of Rupiah)

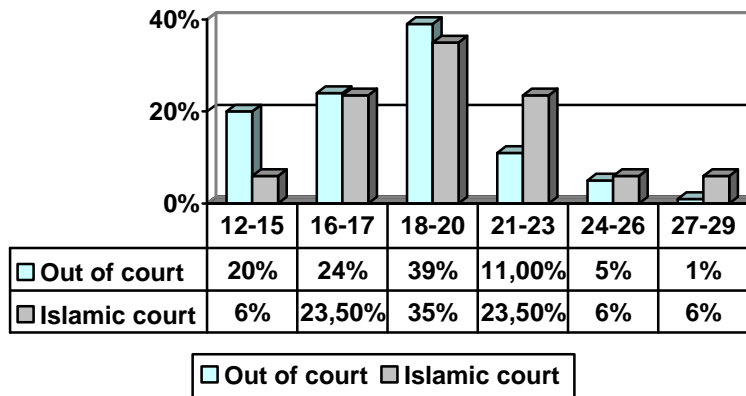


³³ Data regarding the husband's income was not available from the Islamic Court of Cianjur. However, the amount of alimony requested – in almost all cases more than Rp 500,000 per month – indicates that the husband's income is also above Rp 500,000. Judges are required to (and do) consider income level when making decisions on alimony.

Young marriage

As mentioned, the average age of marriage for women in Cianjur according to the latest official data is 18.3. However, the average age of first marriage for the women who participated in the alimony survey was far younger, just 17 years. This is more in line with older statistics for Cianjur.³⁴ This difference can be explained by the fact that the alimony survey only involved divorced women. As previously noted, those who marry young more often end up in divorce than those who marry at a more mature age. Another explanation is that the alimony survey includes unregistered marriages, while the official *Komnas Perempuan* statistics do not. A marriage that is concluded at an unlawful age (below 16 years) cannot be registered without prior court permission. For the years 2006 to 2008, the Islamic Court of Cianjur did not handle any permission for underage marriage cases. In the alimony survey, 20 percent of the out of court divorcees were married at the age of 15 or younger. If these underage marriages were not included in the figure, the average age of first marriage would be much higher.

Figure 6. The age of first marriage



Children

The sample group for the alimony survey consisted of divorcees who have children. These divorced women have an average of 2.4 children each, and given that children usually stay with the mother, hypothetically, female divorcees are responsible for 3.4 persons (including themselves). As Figure 5 shows, around 80 percent of the divorced women in Cianjur have incomes of less than Rp 500,000. This places these households below the poverty line. In 2008, the poverty line for rural West Java was set at Rp 155,367 per capita. The average household of a divorced woman with children therefore needs an income of more than Rp 528,000 (Rp 155,367 multiplied by 3.4 persons) in order to live above the poverty line.

For these women and their children, divorce means running the risk of impoverishment. Returning to the parents is therefore not only a cultural habit, but for many divorced women also an economic necessity. For these women, an additional contribution to their income, for instance in the form of child alimony, would be a significant improvement.

³⁴ In the 2005 social-economic survey conducted by the National Statistics Agency BPS (in which unregistered marriages were included), the mean age at which women in Cianjur first marry was 17 years, while 29.7 percent of first time marriages involved women below the lawful age of 16 (*Survey Sosial Ekonomi Daerah 2005*).

4. Is non- payment of alimony conceived of as an injustice?

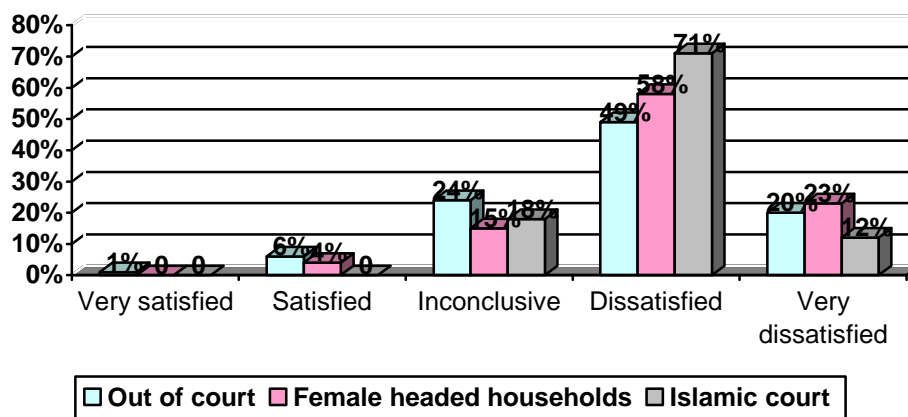
The fact that few alimony arrangements are made after divorce might lead one to question whether alimony rules are embedded in society and whether women in Cianjur know that they are entitled to receive alimony. Surprisingly, the answer to the latter is yes, they do.

More than 90 percent of women state that a husband should pay spousal alimony, and more than 95 percent state that a husband should pay child alimony. Women in Cianjur do feel that the fact that an ex-husband is not paying alimony is an injustice. This could be seen as an awareness amongst these women of their rights to alimony. However, these women appear to regard non-payment, irregular payment or under-payment of alimony as a religious matter – constituting a sin (*dosa*) – rather than in terms of legal rights.

In most cases, the former husband’s contribution to the children’s upbringing is irregular or absent. Consequently, there is high dissatisfaction among women who divorced out of court regarding the former husband’s contributions (69 percent dissatisfied compared to 7 percent satisfied). Women who are the heads of their households are more dissatisfied (81 percent dissatisfied compared to 4 percent satisfied) and most often very dissatisfied. This can be explained by the fact that women running a household alone and without support from their parents have a greater need for alimony payments.

Remarkably, the most dissatisfied group consists of women who went to the Islamic Court (83 percent dissatisfied compared to 0 percent satisfied). An explanation could be that they expected going to court would be an effective guarantee of alimony. However, this explanation is unsatisfactory, because few women file an alimony claim in the court. Another explanation may be that women who go to court generally have a background of higher income levels, and they therefore expect more from their former husbands.

Figure 7. Satisfaction rate concerning child support by former husband



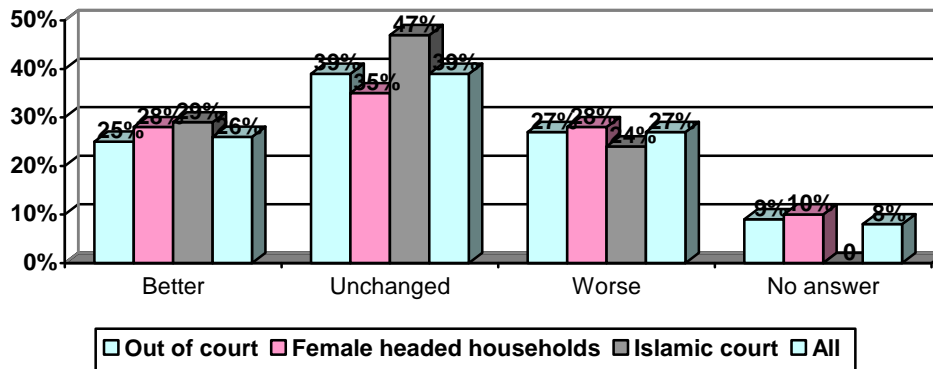
Economic consequences

One of the most important outcomes of the alimony survey is the revelation that in most cases a divorce does not appear to have major economic consequences for the woman involved. Thirty nine percent of the divorced women (including both those officially and unofficially divorced)

stated that there was no change in their economic position, 27 percent that their economic position was worse and 26 percent that their economic position was better than before. There were no big differences between women who went to court and those who did not.

Support from family is a major explanation for the unchanged or even improved position of most divorcees. Another explanation mentioned in interviews is that the husband's contribution to the household economy was so poor that divorce did not have a significant impact. Indeed, in such cases, the absence of the husband means one mouth less to feed. Moreover, as mentioned before, more than half of the divorced women work and thus have their own income.

Figure 8. Economical situation after the divorce



These facts give rise to the question of whether the perceived injustice of not receiving child support from the ex-husband should always be considered a real life problem. Apart from the religious or ethical aspect of alimony payments as a duty of the father, most divorced women seem capable of taking care of themselves and their children in economic terms, albeit with help from their parents.

5. Non-payment of child support: blaming, but no claiming

Most divorced women in Cianjur are dissatisfied with their former husband's contribution to their child's upbringing. The main grievance is that ex-husbands don't fulfill their religious duty to pay child support. In some cases, the grievance is more specific: that ex-husbands don't carry out agreed informal arrangements (30 percent of out of court divorces involve such an arrangement) or court decisions (3 percent of divorces at the Islamic Court include such a decision) regarding child alimony. Other than politely asking for the contribution, women rarely take further action to improve the situation.

Although the non-payment of child alimony is seen as an injustice, most women feel that it does not affect their economic position. Women are able to provide for their children themselves. As a result, not much effort is put towards resolving the perceived injustice.

The annual reports of the Islamic Court of Cianjur for 2006, 2007 and 2008 record no specific alimony cases. This means that not a single woman in Cianjur brought a grievance regarding the non-execution of a court decision on alimony to court.

As a result, men are able to get away with non-payment of child alimony, without having to face any legal (or non-legal) consequences. In many cases, the former husband did not have sufficient income anyway – as noted, this is a major reason for divorce in Cianjur. In these cases, women often don't expect the husband to contribute too much towards the upbringing of the child. More than 90 percent of the women who decide to go to court only seek a divorce certificate, which allows them to remarry according to national laws, and do not seek any decision on alimony.

Apparently, women strongly feel that former husbands should pay child alimony, but only express this view in terms of religious sin, and do not take legal action. Many men feel that they don't have to pay if they don't have the means, or if they are remarried and therefore have responsibility for a new family. They do not seem particularly worried about the consequences of committing a religious sin. As one man put it: '*akhirat datang belakangan*' or 'the afterlife is a concern for later'.

Box 2. Property vs child alimony

This case study focuses on alimony cases only. However, the interviews clearly show that other forms of financial security, especially joint marital property (*harta bersama*) and individual property (*harta bawaan*) are of similar importance. Some of the interviewed women not only experienced non-payment of child alimony but also experienced problems with the execution of decisions or arrangements regarding joint marital property. These women would highlight these problems, and hardly complain about their ex-husbands' non-payment of child alimony. In those cases, I, as the interviewer, had to make an effort to bring the conversation back to the subject of child alimony, in order to ensure all questions were asked. Although not the subject of this case study, and thus not thoroughly examined, I feel that some words should be devoted to the issue of marital and individual property, given that they are one of the most important forms of financial security for women responsible for the upkeep of a household.

Generally speaking, child alimony payments are so low in practice (usually much lower than the Rp 500,000 per month typically awarded by the Islamic Court) that they can only contribute a portion of the actual costs of a child's upbringing. As noted, many women feel that they are capable of providing the day-to-day needs of their children independently of their ex-husbands. However, what women fear is unexpected high costs in the future. One woman explained: 'If the father does not want to pay such a small amount of money now, what if I have to meet high costs in the future, like if my child has to be hospitalised?' Women who have property can rely upon this property as insurance for such unexpected costs.

Furthermore, mothers of young children fear the future costs of education. Again, property can be put towards a child's educational costs. Perhaps for these reasons, my impression is that women are more willing to take action to protect their property rights than to seek redress for non-payment of child alimony issues.

One woman in the sub-district Cugenang, who could not afford a lawyer, successfully defended her child alimony and joint marital property claims herself at the Islamic Court of Cianjur. She had gathered all necessary proof relating to the joint property, which consisted of bank savings,

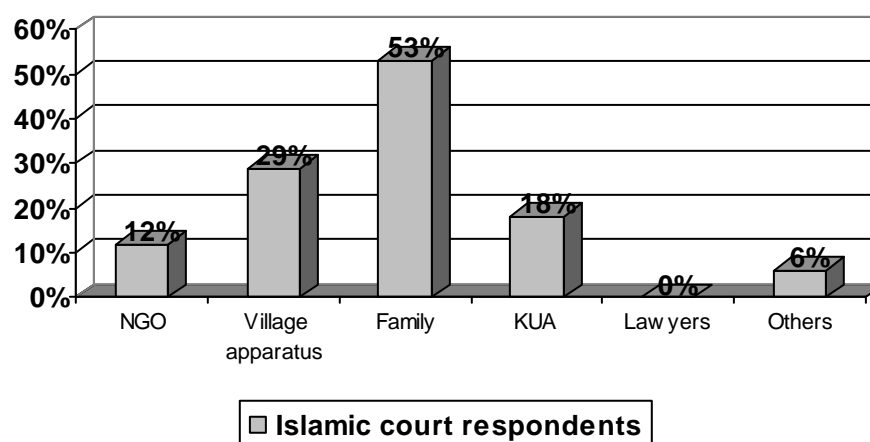
rice fields, and a house. All of the property was registered in her husband's name. When he did not hand over the property voluntarily, she went to the police. One of the problems this woman encountered was that she had no idea what legal steps to take after her case was decided by the court. The property therefore remained in her ex-husband's hands, and she was forced to renegotiate all her property rights again with her husband. She used the police officer to pressure her husband in these negotiations, rather than to seek enforcement of the court decision. The issue of child alimony did not come into the discussions. When I asked her about child alimony, she instead talked about her property: 'I know he has the money, since his other children are going to junior high school (the former husband is responsible for three other children from his first marriage). I can take care of her (pointing at her daughter) myself while she is still young. But what about when she gets older? That is what I need the savings for.'

6. Intermediaries

Here, the focus shifts from the barriers faced by justice seekers, to the people and/or institutions who may refer justice seekers to the Islamic Court. These intermediaries influence the awareness amongst justice seekers regarding rights, procedures and costs of a divorce case at the Islamic Court.

In Cianjur, the most frequently cited source of information concerning the Islamic Court is family, followed by the village administration and the Office of Religious Affairs (*Kantor Urusan Agama*, KUA). NGOs are only prominent in the area of Cipanas because of the activities of the NGO PEKKA (see below). Lawyers were not mentioned at all, and in the cases I observed at the Islamic Court of Cianjur, professional legal representation was rare.

Figure 11. Source of information concerning divorce at the Islamic Court



Family

Sixty five percent of respondents stated that family is the forum in which marital problems are discussed, and 53 percent of respondents who went to the Islamic Court cited family as the

source for legal information. On the negative side, respondents also noted that family members are the most likely parties to discourage couples from seeking an official resolution to marital problems, and the most likely to encourage women to divorce out of court. Accordingly, the experiences and perceptions of family members with regard to the Islamic Court would appear to be an important factor in determining whether a party will go to court.

Before a divorce is brought to the Islamic Court, family members on both sides will generally already tried (unsuccessfully) to reconcile the spouses. In the court process, family members are usually brought into court as witnesses. In many cases, an educated family member will also represent the case before the court. Unfortunately some of these educated family members have just as little knowledge of substantive and procedural rules as most other litigants do and they depend just as much on the advices by the Islamic Court as many other clients do.

After a divorce has taken place any further contact between the former spouses is often via family members. When the father visits or meet his children he will give them some money, usually just pocket money. Interviews indicate that higher amounts of child support most often is handed over to the grandparents. However, in the approximately half of cases in which the father does not want to pay any child alimony,³⁵ neither the grandparents nor any other family member are able to convince him otherwise.

Village apparatus

The *amil*, responsible for family affairs in the village administration, is an important figure with regard to providing information on marital affairs. Officially, these *amil* are the lowest representative of the KUA (see below) and its marriage counseling office,³⁶ but they hold office in the *kantor desa*. These *amil* are junior marriage registrars (*Pembantu Pegawai Pencatat Nikah, P3N*), and are usually recruited from the ranks of the village level Islamic experts (*kyai, uztad*). Potentially, these *amil* can play an important role in bridging the gap between the state normative system and the religious normative system, and provide the community with legal information on divorce matters. Unfortunately, many people state that these *amil* arrange forged marriage certificates and ask large amounts of money for assisting in the arrangement of divorces at the Islamic Court. Their position, as the link between the KUA and the village, is also in this respect a strategic one. It is reported that some *amil* overstate the procedural costs charged by the Islamic Court in order to encourage out of court divorces, from which they benefit through charging for forged marriage certificates.

During a focus group discussion, I asked whether *amil* play a role in alimony disputes. The

³⁵ The alimony survey uses a scale from 'always', 'regularly', 'quite regularly', 'seldom', to 'never'. I give the 'quite regular' against the 'seldom' figures here, since most women filled in these options. 44 percent (against 43 percent seldom) of the ex-husbands quite regularly give pocket money to their children; 43 percent (against 49 percent seldom) quite regularly give money for their children's education; and 51 percent (against 41 percent seldom) quite regularly give money for their children's daily needs. If the answers 'regularly' and 'always' are counted, in total more than 50 percent of ex-husbands at least quite regularly provide support for the children's upbringing. However, according to most women, the amount of support is not satisfactory.

³⁶ This office, which is known by its abbreviation BP4, changed its name (but not its abbreviation) in 2008 to the Office for Marriage Counseling, Development and Safeguarding (*Badan Penasihatatan, Pembinaan dan Pelestarian Perkawinan*). The former name, the Office for Marriage Counseling and Divorce Settlements (*Badan Penasihatatan Perkawinan dan Penyelesaian Perceraian*), was considered to be no longer in line with its jurisdiction, as divorces since the Marriage law of 1974 are in fact handled by the Islamic Court.

gathered *amil* (of 16 villages in Karangtengah sub-district) said they do play a role, namely responding to complaints made by female divorcees by pointing out to the husband his moral duty to pay alimony. However, if this moral pressure fails to convince the husband, the lack of legal sanctions for non-payment leaves no other option for enforcing the woman's alimony rights.

The unsalaried neighbourhood heads (*kepala RT*), who as the heads of Indonesia's smallest administrative divisions are closer to the community, are noted as another source for information regarding the Islamic Court. In some cases, one of the spouses or ex-spouses will approach the *kepala RT* for assistance in mediating a marital conflict, and divorced women sometimes complain to the *kepala RT* about unsatisfactory alimony payments. Sometimes the *kepala RT* will confront the father in response to these complaints.

The Islamic Court of Cianjur appears to regard a *kepala RT* as a reliable witness. Typically, the litigants are asked to bring two witnesses: a family member and the *kepala RT*. Accordingly, the *kepala RT* often acts as witness for one of the parties in divorce cases. In this way the *kepala RT* bring knowledge gained from these experiences with the Islamic Court back to the local community.

Kantor Urusan Agama, KUA (Office of Religious Affairs)

The KUA, which has an office in each sub-district, is responsible for religious affairs – including marital affairs. Many couples who want to divorce go to the local KUA first, assuming that the place at which marriages are registered is also the place to arrange a divorce. If a couple decides to go to the KUA, the KUA will send the couple to marriage counseling (BP4). If this proves unsuccessful, the KUA is obliged to refer the couple to the Islamic Court, where they can file for divorce. However, the KUA does not always do this. In some cases, divorce at the Islamic Court is simply not possible because the couple's marriage was never registered. In other cases, it appears that KUA officials have a vested interest in not providing the right information.

Qualitative data – from interviews with KUA personnel, advocates, judges and Islamic Court personnel – suggests that some people within the KUA arrange middlemen (*calo*) who, for a fee, will arrange most of the paperwork for the litigants. This could explain why many people believe the procedural costs to be higher than they actually are. Indeed, many people end up paying these exaggerated costs. According to sources within the Islamic Court of Cianjur, the KUA refuses to make public the official procedural costs, which allows them to overcharge. 'If we sent them a poster with procedural costs they will not put it on their wall.'³⁷ Sources within the KUA acknowledge the problems, but argue that the situation has improved over the years and that the KUA's poor image is based on its past practices. The Head of the Cugenang KUA says that KUA now takes a more cooperative approach towards the Islamic Court.³⁸ According to Islamic Court sources, some offices have demonstrated major progress, but in many others change is difficult to achieve. In fact, for many people living in remote areas, a corrupt KUA actually provides a good alternative to the Islamic Court, because it allows a party to obtain all the required documents more easily and closer to home.³⁹

³⁷ Private conversation with an assistant-clerk (*panitera muda*) of the Islamic court of Cianjur, 14 12 2008.

³⁸ Interview with head of KUA of the sub-district Cugenang March 17, 2009.

³⁹ As is the case in the remote sub-district of Nangringgul (See Tirtawening Parekesit's case study).

Personnel of the Islamic Court

Personnel of the Islamic Court are a source of information for the people in the communities in which they live, and are often consulted on marital and other issues. In some cases, court personnel will ask for a small amount of ‘typing money’ in return for writing a person’s claim or counterclaim in their private time. Although this would appear to be a conflict of interest, since the same people are also involved in handling the case, I found no evidence suggesting that the court’s decisions are influenced by this dual role performed by court personnel.

In particular, court clerks (*panitera*) and their assistants (*panitera muda*) play a vital role, as they are responsible for registering the divorce request or suit, and in doing so they ask parties what they want to include in their claim or counterclaim. It is these officers who could inform parties of their right to file for alimony as part of a divorce case, although interviews indicate that they do not always do so. Many women who might wish to make a claim for alimony may fail to do so if they are unaware of this right.⁴⁰

NGOs

There are several NGOs active in the field of women rights in Cianjur. However, most of them are preoccupied with issues such as human trafficking and domestic violence rather than marital affairs. In general, women in Cianjur do not refer to NGOs as source of information in this regard.

The one exception is PEKKA, a NGO that in Cianjur works with female household heads in the northern area near the towns of Cipanas and Pacet, and which in those areas is often noted as source of legal information. This NGO seems to be successful in increasing women’s legal knowledge and offering assistance in formulating women’s applications for free of charge (*pro deo*) divorce at the Islamic Court of Cianjur. However, PEKKA’s current focus is on helping poor women gain access to official documentation through both *pro deo* registration of unregistered marriages, and *pro deo* divorces at the Islamic Court of Cianjur. Alimony is less of a concern. PEKKA’s strategy is to empower women and help them to become economically independent. The latter strategy is for instance reflected in projects that encourage divorced women and widows to set up small cooperatives.

Lawyers

In most cases, people choose not to be represented by a lawyer. If there is representation, it is usually by a family member. The cost factor plays a role in this. Allegedly, lawyers ask for around Rp 3.5 million to represent a party in a divorce case. When the amount of money at stake is only a few million, it would not make sense to pay such a high price for legal representation.

Lawyers are able to ensure the court process runs smoothly, as they are familiar with the procedures. As a consequence, the Islamic Court tends to (or is able to) adhere more closely to procedure in cases where a party is represented by a lawyer, as judges do not need to consider the lack of knowledge of the represented party. Evidence, claims and counterclaims are submitted in

⁴⁰ At the time of writing, a second amendment on the law concerning Islamic Courts has passed through Parliament, which requires that there be a free legal aid office in each Islamic Court (Article 60(c) of Law No 50 of 2009)). This legal aid office could take over the current role of the *panitera* in the Islamic Court.

the proper order, and witnesses called at the appropriate time.

Some lawyers seem to have good contacts within the Islamic Court of Cianjur. In at least one case, this led to ‘illegitimate flexibility’, where a case that should have been handled in Bandung was filed for and accepted in Cianjur. According to one lawyer, a lawyer with good contacts within the court can also arrange for a case to be heard earlier.

With regard to the non-payment of alimony orders there was one lawyer who said that she would like to find a client who was willing to bring her case to court to get the alimony order enforced. According to her the Islamic court should first issue a court warning and if the husband would still not pay she would bring the case to the civil court. Such test cases are yet lacking and therefore lawyers could play a role in developing proper legal mechanisms of enforcement.

7. State law on alimony

In this part I discuss the national Islamic rules of relevance to alimony cases. As previously noted, most women in Cianjur who undergo a divorce do not come before the Islamic Court as required by national law, and therefore are unable to enforce their post-divorce rights as laid down in national Islamic law. However, there is little difference between traditional *syafi'ite* Islamic jurisprudence⁴¹ and Indonesia's national laws regarding alimony. Like *syafi'ite* law, Indonesian national Islamic law differentiates between divorces initiated by men (*talak* divorce) and those initiated by women (*gugat cerai*). In both contexts, spousal alimony rights differ greatly depending on who initiates the divorce.

Box 3. Relevant legislation

- Marriage law No 1 of 1974
- Government Regulation No 9 of 1975
- Compilation of Islamic Law 1991 (*Kompilasi Hukum Islam*, KHI)
- Law No 7 of 1989 (as amended by No 3 2006 and No 50 2009) regarding the Islamic Court.
- *Herziene Indonesische Reglement* 1941 (procedural law)
- Government Regulation No 10 of 1983 as amended by No 45 of 1990 regarding permission to marry and divorce for civil servants
- Fiqh (Islamic law, included because it is still referred to in court decisions)

Husband initiated (talak) divorce and spousal alimony

A husband who wants to initiate an official registered divorce first goes to the court and asks for permission to divorce. The wife then can object or list spousal and child alimony claims. Subsequently the court grants or does not grant permission for divorce and if it does it will also decide on the wife's counterclaim. If the husband is granted permission he can ‘declare’ (*ikrar*) the *talak* before court, and only after he has done so does the divorce take effect.

⁴¹ Indonesian Muslims traditionally followed the *syafi'ite* school of Islamic jurisprudence.

If the husband has declared the *talak* (and provided he has not already done so two times in this marriage) the divorce is called *talak raj'i* and still can be reconciled (*rujuk*) in the waiting period of three months (*masa iddah*) in which the wife may not remarry, notwithstanding that the husband has not remarried.⁴² In the three month waiting period, the husband must provide *nafkah iddah* (maintenance), *kiswah* (clothing) and *maskan* (housing) for his former wife, except where she is proven to have been disobedient (*nusyuz*)⁴³ In case of *talak raj'i* the husband is also obliged (*wajib*) to provide *nafkah mut'ah* (gift of consolation; compensation).⁴⁴ In the case of a third declaration of the *talak* within the same marriage (*talak ba'in*) *nafkah mut'ah* is only a recommended act⁴⁵ and all other spousal alimony rights will lapse.

If the Islamic Court accepts a request for permission to pronounce the *talak*, the husband is then entitled to do so. However, this does not mean the divorce is immediately effective. The husband could still decide not to declare the *talak* (*ikrar talak*). The *ikrar talak* must be executed in court before it becomes valid.⁴⁶ If the husband decides not to pronounce the *talak* at the Islamic Court, the case will expire after six months.⁴⁷ As is shown below, a husband may elect not to pronounce the *talak* for financial reasons, namely where the court has granted a request by the wife for spousal alimony.

Wife initiated divorce (gugat cerai) and spousal alimony

If the wife initiates the divorce it is the court that issues the *talak*. Furthermore, in these divorces the wife has no right to any form of spousal alimony as the legal status of such a divorce is *talak ba'in sugrhaa*, which is the equivalent of a third utterance of the *talak*, and cannot be followed by *rujuk*.⁴⁸ The national rules on spousal alimony prescribed in the KHI closely follow procedure of the traditional Islamic *syiqaq* divorce and the following text of the Qur'an (*An-Nasa'i*): 'Women that have the right to alimony and housing are those who the husband can take back (*rujuk*)'.

Child alimony

Custody of a child below the age of 12 years is generally granted to the mother. If, at the time of divorce, the child is 12 years or older, he or she may choose with whom they want to live.⁴⁹ According to state law, the father remains responsible after the divorce for all costs related to the upbringing and education of the child,⁵⁰ and is obliged to pay child alimony until his children reach the age of 21 years.⁵¹

Traditional Islamic jurisprudence also provides for child alimony, and a father remains responsible for his children with a former wife. However, if the mother and children have enough resources of their own, or where the wife remarries, the father is excused from this duty.

⁴² *Kompilasi Hukum Islam* (Compilation of Islamic Law) (KHI), article 163.

⁴³ KHI:149b.

⁴⁴ KHI:149a.

⁴⁵ KHI:159.

⁴⁶ KHI:131(3).

⁴⁷ KHI:131(4).

⁴⁸ KHI:119 and official explanation.

⁴⁹ KHI:105a-b.

⁵⁰ Marriage Law 1974:41b.

⁵¹ KHI:149d and 156b.

One of the main differences between KHI and Islamic jurisprudence relates to the age beyond which the father is no longer required to pay child alimony. Different Islamic schools have different opinions about when the alimony obligation of the father ends, which turn upon differences in opinion as to when a child should be considered an adult or independent.⁵²

Jurisdiction of the Islamic Court in alimony conflicts

The marriage law gives courts the power to establish an obligation for the former husband to his former wife.⁵³ The Law regarding Islamic Courts allows a party to seek an order from the Islamic Court establishing the amount of spousal alimony and child alimony as part of a divorce case, as well as after a divorce is declared.⁵⁴ The fact that alimony requests can be included in a divorce case means that no extra procedural costs are involved.

The KHI gives the Islamic Court more specific jurisdiction regarding child alimony cases. The court decides conflicts regarding child alimony,⁵⁵ and has jurisdiction to establish the amount of child alimony to be paid. In making this decision, the Court must consider the financial capacity of the father.⁵⁶

Civil servants

I include non-Islamic government regulations for civil servants, because in practice Muslim civil servants have to divorce at the Islamic Court, and female civil servants or wives of civil servants submit requests for court decisions based on these regulations. Moreover, it is useful to compare legislation regarding alimony for civil servants with national Islamic legislation, as the former are clear and easy to implement. Civil servants fall under the government regulation regarding permission for marriage and divorce for civil servants.⁵⁷ Divorce requires the permission of a superior.

The regulations regarding civil servants contain provisions on both spousal and child alimony. If the husband initiates the divorce, the wife is entitled to one-third of the husband's salary until she remarries. If the couple has children, another third of the husband's salary will be withdrawn for child alimony. If the wife initiates the divorce, she has the right to child alimony, but has no right to spousal alimony unless her husband cheated on her.⁵⁸

8. Barriers to going to court

In the alimony survey, only 17 out of 120 respondents (or 14 percent) had divorced at the Islamic Court and thus according to national law. An overwhelming majority (86 percent) did not divorce at the Islamic Court. These parties are unable to seek enforcement of post-divorce legal rights, such as alimony rights. What are the reasons for people in Cianjur not to divorce at the Islamic Court, as is stipulated by national law?

⁵² These interpretations can either be based on physical conditions like the time of the first menstruation for girls and a first wet dream for boys, or take the psychological condition of being mature as starting point.

⁵³ Marriage law: 41c.

⁵⁴ Law on Islamic Courts No. 7 1989 jo. No. 3 2006, article 66(5).

⁵⁵ KHI:156e.

⁵⁶ KHI:156f.

⁵⁷ Government Regulation (GR) regarding permission to marry and divorce for civil servants (GR No. 10 1983 as amended by GR No. 45 1990)

⁵⁸ GR No. 10 1983:8(2-6).

No marriage certificate

To obtain full legal status, all Muslim divorces in Indonesia must be sanctioned by the Islamic Court. One of the main preconditions to filing for divorce at the Islamic Court, as well as to obtaining a court decision on alimony and child support, is that the marriage is registered and that the couple possesses a marriage certificate (*akte nikah*). Cammack et al (2007) have calculated that around half of Muslim divorces in the 1980s in Indonesia took place out of court. This has important consequences for the legal rights of divorcees and their children, as the women involved are unable to file for alimony or child support in the Islamic Court.

The alimony survey indicates that in Cianjur, between 73 and 79 percent⁵⁹ of divorced women did register their marriage. However, only 14 percent of all interviewed women divorced officially, namely via the Islamic Court. This is a much lower figure than the figure calculated by Cammack et al.

We can conclude the lack of a marriage certificate is not the main barrier preventing women from accessing court. Many women who hold marriage certificates still decide to divorce outside court or 'according to religion' (*menurut agama*). Nurleawati (2007) argued that in marital affairs, Indonesian Muslims tend to value 'law according to religion' above 'law according to national law'. Interviews I conducted with divorcees support this view.

Psychological and cultural barriers

The fact that divorce 'according to religion' is the method chosen by most Indonesians limits the opportunities for ex-wives to take legal action and demand alimony payment from their former husbands. Many women can only politely request a contribution from a former husband who has failed to pay alimony (33 percent), and most take no action at all (67 percent), saying that they 'don't want to make things difficult' (*nggak mau bikin ribet*). The question is whether there are gendered, cultural reasons that explain women's unwillingness to confront their former husbands.

More than 90 percent of the women say that they regard the husband as the head of the family. This aligns with the position under the Law regarding Marriage. In relation to divorce, most women agree that a husband 'has the right to divorce his wife' (57 percent against 37 percent disagree), while only 43 percent agree that 'a wife has the right to divorce her husband' (with 35 percent disagreeing). According to Indonesian national Islamic law, women are entitled to request a divorce on the same grounds as men. However, a large percentage of women in Cianjur view divorce solely as a male right.

If we single out those who divorced at the Islamic Court, a different picture emerges. A much higher percentage (65 percent) are of the view that women have the right to initiate divorce. This is not surprising, as 87 percent of divorces at the Islamic Court of Cianjur are initiated by the wife.⁶⁰ However, women who go to court seldom claim alimony, allegedly because they 'want to be independent from the husband' (*mau lepas dari suami*).⁶¹

⁵⁹ The number is uncertain because 6 percent of the respondents did not answer the question.

⁶⁰ In 2006, 356 divorces (77 percent) at the Islamic Court of Cianjur were initiated by the wife, and 104 (23 percent) by the husband. In 2007, there were 373 divorces initiated by the wife (84 percent) compared to 72 (16 percent) by the husband. In 2008, the number of divorces initiated by the wife increased to 478 (87 percent) compared to 71 (13 percent) initiated by the husband (*Laporan Tahunan Pengadilan Agama Cianjur* 2006; 2007; and 2008).

⁶¹ Interview with Judge Munawar of the Islamic Court of Cianjur, November 24, 2008.

In conclusion, it appears that a traditional view on the role of the husband in divorce is an important barrier to women requesting divorce at the Islamic Court and/or applying for an order regarding child alimony. According to this view, the husband is the leader of the family, and he alone holds divorce rights in the form of the *talak*. However, women also express their wish to be independent from their former husbands and view asking them for alimony more as a burden than a right.

Figure 9. The right to divorce only is with the husband

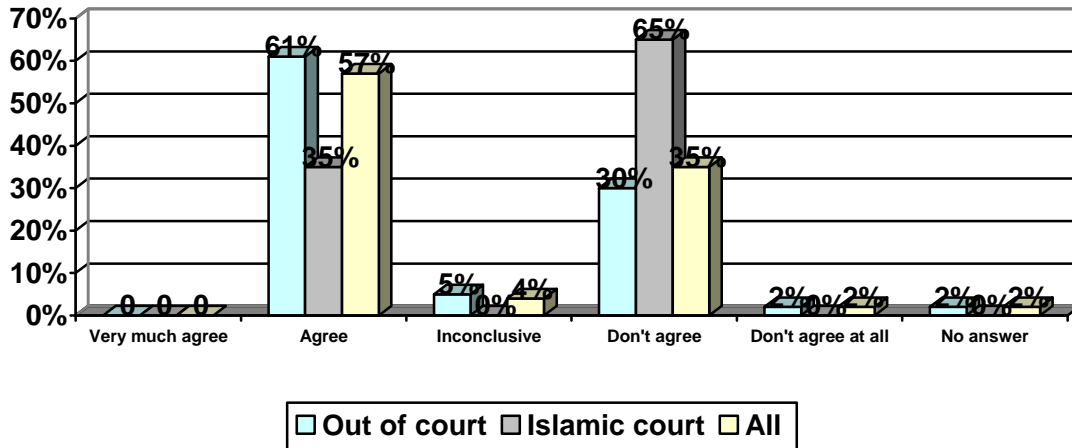
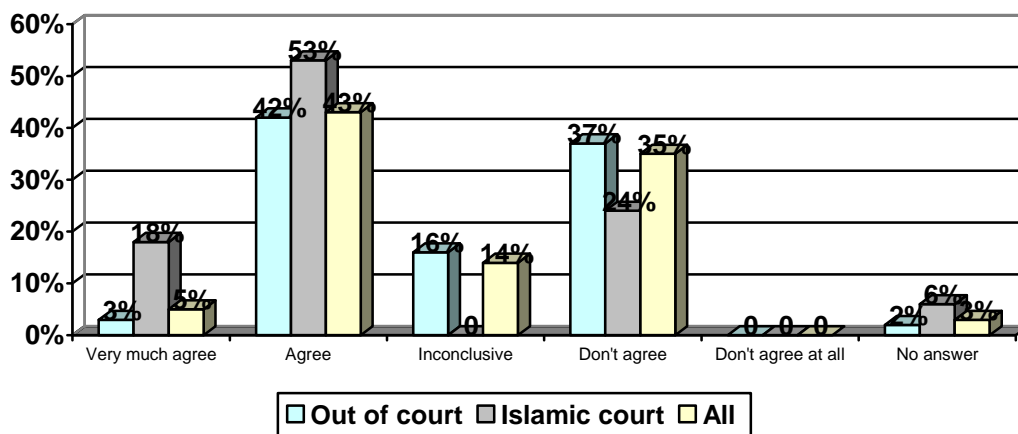


Figure 10. A wife has the right to divorce her husband



Practical barriers

Distance between a person's residence and the court is certainly a practical barrier. There are far more divorce cases (72 percent in 2007) involving couples who live within 30 km of the court than those that fall outside this range (28 percent).⁶² Circuit courts are initiated to tackle this

⁶² Laporan Tahunan Pengadilan Agama Cianjur 2007 and Register Pengadilan Agama Cianjur 2007 (own analyses).

problem. In 2008, circuit court sessions were held bimonthly in different southern towns in the district of Cianjur. A budget cut from the Supreme Court reduced the circuit court sessions to monthly sessions in a single southern location, the town Pagelaran. As each divorce case will involve a minimum of three sessions, people are still required to travel to the court themselves as well.

Cost is another reason not to go to court. A standard court procedure costs Rp 290 thousand,⁶³ a large amount of money for someone earning less than Rp 500 thousand. This does not take into account additional travelling costs that must be paid for the parties and their witnesses to attend the minimum of three court hearings. The further the distance to the court, the higher the costs. Furthermore, qualitative data reveals that people perceive the procedural costs to be much higher than the official costs. Many people think that a court divorce costs over Rp 1 million. Unfortunately, if an unofficial middleman (*calo*) is used to take care of the paperwork, people could in fact end up paying these inflated amounts.⁶⁴

Knowledge about pro deo

Few people know that households registered by the sub-district as a poor household are entitled to request a free (*pro deo*) divorce. Despite this, about 10 percent of the cases heard by the Islamic Court of Cianjur between 2007 and 2008 were free of charge.⁶⁵ Remarkably, over this period only one *talak* divorce (initiated by the husband) was listed as a *pro deo* case. According to the Law regarding Islamic Courts,⁶⁶ the person who initiates the divorce must pay the procedural costs. Apparently the Islamic Court of Cianjur is more prone to approve *pro deo* litigation in *cerai gugat* cases (initiated by the wife) than in *talak* cases. The availability of *pro deo* divorce makes the court much more accessible for poor women. However, according to court personnel, the Islamic Court of Cianjur's budget would not be sufficient to cover any significant increase in *pro deo* cases.

9. Implementation of the law: negotiating a balance

As discussed in Part 7 above, there are no big differences between Indonesian state law and traditional Islamic jurisprudence with regard to substantive alimony rules for Muslims. A situation in which there are no normative controversies between the State and the Islamic establishment should facilitate a 'proper' implementation of state law by the Islamic Court of Cianjur⁶⁷. Is this the case? What other factors and actors influence the quality of implementation of alimony rules by the Islamic Court of Cianjur? Does the fact that state alimony rules are uncontested within Islamic circles also mean that paying alimony is cultural practice in a Muslim district as Cianjur? To what extent do people arrange and execute alimony privately?

⁶³ This was the divorce fee for 2008.

⁶⁴ Judge Dedeh Saida stated that in remote areas people are usually brought to the court by middleman, mostly *amil* who usually demand much higher procedural costs (personal communication, November 24, 2008).

⁶⁵ My own calculations of the *pro deo* data in the monthly reports (*laporan bulanan*) of the Islamic Court of Cianjur for 2007 and 2008. For some reason, *pro deo* is not incorporated into the annual reports. In 2007, 72 of a total of 862 cases (8.4 percent) were free of charge, while in 2008, 96 of a total of 914 cases (10.5 percent) were free of charge.

⁶⁶ Law No 7 of 1989 regarding the Islamic Court.

⁶⁷ Nurlaelawati (2007) indicates that many anomalous decisions within the Islamic court occur because some innovations in state law regarding Islamic law as established in the Compilation of Islamic Law are not accepted by Islamic court judges. The alimony provisions, however, are uncontested within Muslim circles.

Out of court implementation of informal alimony agreements

The fact that the Islamic normative system is still strong for those seeking a divorce does not mean that it provides an alternative forum for addressing post-divorce problems. Islamic unofficial divorce in Cianjur usually involves the issue of divorce only. In general if a husband has pronounced the *talak*, he will return his former wife to her family. One might question whether the Islamic normative system can be considered to provide a forum for addressing the issue of divorce at all, given that out of court divorces often only involve family members. In practice, only 23 percent of out of court divorces involve an agreement regarding spousal alimony, while 30 percent involve a request for agreement on child alimony.⁶⁸ Most out of court divorces do not include alimony agreements at all. In more than half of out of court divorce cases, the husband voluntarily pays some irregular form of child support (e.g. pocket money, money for schoolbooks). However, this is perceived by women as insufficient. One might conclude that arranging spousal and child alimony is not regular cultural practice. If informal alimony arrangements are made, they are usually oral (80 percent) and made within the family sphere, and thus do not involve religious figures. However, execution of these agreements by the husband is usually poor, and women are often left dissatisfied.

Implementation of alimony legislation at the Islamic Court of Cianjur

In 2007, the Islamic Court of Cianjur handled 445 divorce cases. There were no separate alimony cases listed for hearing. In 27 divorce cases (or about 6 percent), the wife filed for a spousal or child alimony request as part of the divorce case.⁶⁹ One would like to hope that all other divorce cases involved out of court agreements regarding alimony, given that providing for spousal alimony (in *talak* cases) and child alimony is a legal obligation. In practice, people usually come to court to get a divorce only. Qualitative data reveals that women 'don't want to make the divorce more complicated' (*nggak mau bikin ribet*) by insisting that their alimony rights be fulfilled. Mediation is primarily regarded by the Islamic Court of Cianjur as a reconciliation effort to save the marriage,⁷⁰ and addressing post-divorce issues such as alimony does not really fit this description. In fact, most requests for alimony (13 of 21 cases) are initiated by the wives of civil servants or military personnel, and fall within the special government regulation on marriage and divorce for civil servants.⁷¹

⁶⁸ Alimony survey.

⁶⁹ This is according to the *Register Pengadilan Agama Cianjur*. However, six of the requests were either withdrawn by the claimant or expired in the process because the husband did not actually pronounce the *talak*. These six cases were not included in the files of the Islamic Court I obtained. Of the 21 alimony cases I was able to analyze, nine contained a request for child alimony, nine a request for spousal alimony and three a request for both spousal and child alimony.

⁷⁰ Decreasing the number of divorces was one of the goals of the marriage law and the compulsory reconciliation effort it stipulates in divorce cases. In Indonesia 5 percent of the cases such efforts are successful resulting in the divorce request being withdrawn (Wahyu Widiana 2008).

⁷¹ Government Regulation on permission to marry and divorce for civil servants (GR No. 10 1983 jo. GR No. 45 1990).

Box 4. Case: Court decision on alimony poorly executed

Despite having recently divorced at the Islamic Court, in March 2006 Ibu Ina and her husband decided to give the marriage another try (*rujuk*) for the sake of their children, who at the time were 6 and 4 years old. However, things did not work out. There were often quarrels about how to run the household, and they finally decided to divorce again. They had an out of court divorce in August 2006, and in October 2006 her husband registered for a *talak* divorce at the Islamic Court of Cianjur.

The court gave permission for the divorce, and determined that the husband must pay Rp 250 000 (*nafkah mut'ah*) and Rp 500 thousand (*nafkah iddah*) in spousal alimony. Child alimony was set at Rp. 500 thousand per month.

If you read the court file of the case, all went according to procedure. However, according to Ibu Ina, this was not entirely the case. As Ibu Ina was not the initiator of the divorce, she was not present at the time the divorce request was registered, and thus did not have an opportunity to talk with the registrar. Before the first hearing, she received a court order informing her that she could respond to her husband claims in her counterclaim. This is all according to procedure. However, she felt that staff of the Islamic Court of Cianjur had not provided her with enough legal information, because she only became aware of her right to seek a court decision on child alimony in the counterclaim (*rekonvensi*) during the final court hearing, when the judge asked about this issue. Although she was still able to get a court decision on child alimony, Ibu Ina felt that she and her husband were forced to take a quick decision on the matter without having much time to think about it. As a result, she reluctantly accepted what she saw as the low amount of child alimony her husband was willing to pay. 'How can Rp 500 thousand be enough to bring up two children these days? I only accepted the amount because I thought that it was better than nothing at all.'

When her husband came to court to pronounce the *talak*, he was first asked to pay the spousal alimony. However, he had not brought the money. To make the divorce possible and prevent further delays, he borrowed the money from Ibu Ina's parents and was thus able to pronounce the *talak* that day. However, 'to this day he has not paid back the whole amount.'

When asked about her former husband's execution of the court decision regarding child alimony, Ibu Ina is very clear: 'He does not fulfil his responsibility'. According to Ibu Ina, her former husband has more money than he admits to her: 'How can he buy a new motorcycle but not have money for his own children?'

However, she says that she had to accept the situation (*pasrah*): 'I am lucky enough to be able to provide for my children myself, and moreover I am married again.' She says that she would not have known how to proceed otherwise, and expressed the view that after a court decision, the Islamic Court should inform women what legal steps to take if alimony is not paid. 'Now I find it all very confusing.'

According to Ibu Ina, the execution of alimony decisions must be guaranteed: ‘It isn’t all just playing a game, is it?’

Implementation of spousal alimony rules in cerai talak cases

From 2006 till 2008, in all of the divorces initiated by the husband (*cerai talak*), the Islamic Court granted spousal alimony requested in the wife’s counterclaim. In no cases did the court refuse such a request on the basis of on the wife’s disobedience (*nusyuz*), nor were there any spousal alimony cases in which *talak ba’in* (the third pronouncement of the *talak*) played a role. The fact that there was not a single case in which the court held a wife to be *nusyuz*, despite many accusations of disobedience being made by husbands – for example, the wife leaving the house without permission or not performing ‘her marital duties’, all of which are traditionally instances of *nusyuz* – indicates that the Islamic Court of Cianjur considers the rules regarding *nusyuz* very much from the wife’s perspective.

A thorough analysis of (non-civil servant) spousal alimony cases distorts this positive picture somewhat. In 2007, in all but one case, the amount of spousal alimony to be paid by the husband was below what the wife requested. Moreover, in all but one case, the Islamic Court of Cianjur accepted the husband’s statement as to his capacity to pay. Typically, decisions on the amount of alimony are not based on written evidence, but instead are negotiated in the courtroom. Where alimony is subject to negotiations between the parties, the wife usually accepts the amount her husband says he is capable of paying. As one woman put it: ‘I thought I’d better take this money rather than not get any money at all’. If negotiations fail, the court must decide. If the wife cannot prove that her demand is reasonable – something which is difficult to do through witnesses who provide the only indication on the husband’s income in the bulk of the cases in which the husband does not have a salaried job – the court will accept the husband’s statement. In general, husbands do not provide written evidence to support their statements.

Another issue pointed out to me in interviews with divorcees is that there is a loophole that husbands are able to exploit in *talak* cases. After the Islamic Court has established the amount of alimony, the husband still has to pronounce the *talak* in order to give the divorce legal status. The Islamic Court only gives *permission* to pronounce the *talak*, and its decisions in *talak* divorce do not take effect until the pronouncement is made. If after six months the husband has not pronounced the *talak* before court, the case will expire, together with the decision (if any) regarding spousal and child alimony.

Box 5. No *talak* pronouncement, no spousal alimony rights

In one case in which the court established a high amount of spousal alimony to be paid (Rp 15 million), the husband never showed up to pronounce the *talak*. At present, two years after the court decision, the couple is still married according to national law, but have divorced according to Islamic law. The wife did not want to initiate a new court divorce, because she did not want to undergo another court process until she had found a serious new marriage candidate. If she did eventually wish to file for a divorce suit (*gugat cerai*), according to the Compilation of Islamic law she would no longer have spousal alimony rights anymore.

For this reason, if the husband wants to avoid a court decision on alimony, he can just withdraw the suit or not pronounce the *talak*, knowing that the wife will lose her spousal alimony rights if she chooses to initiate divorce proceedings herself.

The power balance in *talak* cases is therefore in favor of the husband. If he does not want to pay, he always can withdraw and wait till his wife is forced to divorce him herself. The situation is more equal where the former wife initiates a separate alimony suit after the *talak* divorce has the force of law. However, this would place extra financial and time burdens on the wife. In practice women in Cianjur never file separate alimony suits.

Wife initiated divorces: gugat cerai cases

In *gugat cerai* cases, the wife has no right to spousal alimony, and may only seek a court decision on child alimony. The amount of alimony, which is typically negotiated by the spouses in the courtroom, is usually lower than the amount originally claimed by the wife. As with spousal alimony in husband initiated divorces, the amount of child alimony in wife initiated divorces as appears in the court order is usually in line with the husband's statement regarding his financial capacity. In wife initiated cases, the divorce (including associated orders regarding child alimony) is effective from the moment the Islamic Court gives its order, and accordingly, husbands are unable to avoid the decision not pronouncing the *talak*.

Civil servant cases

Government Regulation No 10 of 1983 as amended by No 45 of 1990 requires civil servants to obtain their superior's permission for divorce, which for Muslim civil servants takes place at the Islamic Court. Alimony can be deducted from the ex-husband's salary and transferred to his former wife's account. In fact, case law states that Islamic Courts do not have jurisdiction to determine alimony matters at all, and that this power lies entirely with civil servants' superiors.⁷² Notwithstanding this fact, the Islamic Court of Cianjur accepts alimony cases involving civil servants. In fact, more than half of all alimony cases filed in the Islamic Court of Cianjur involve civil servants. The rules regarding alimony for civil servants are clear, and the court will typically set child alimony at one third of the husband's salary, as stipulated in the Government Regulation.

Box 6. The civil servant case: successful redress

Ibu Nur was 31 years old in July 2007 when her husband, a civil servant, decided to seek a divorce. She and her husband had three children together: a one year old girl, a three year old boy and a five year old girl. At first, she disputed the amount of alimony her husband proposed to pay, bearing in mind the ages of the children. However, her husband (who had unofficially and without Ibu Nur's knowledge, married another woman) was persistent. In the end, Ibu Nur felt she had to accept his proposal.

After the husband's superior granted permission for the divorce (it was initially refused on the basis of the children's ages), the Islamic Court of Cianjur gave permission to the husband to pronounce the *talak*, and ordered him to pay spousal alimony in the form of Rp 1.5 million *nafkah iddah*, and Rp 750 thousand *nafkah mut'ah* and *kiswan*. The husband was also ordered to

⁷² *Yurisprudensi Mahkamah Agung RI* (Supreme Court jurisprudence): 106 K/AG/1997

transfer one third of his salary to his former wife as child alimony. Ibu Nur is very satisfied with this decision, and during the court process felt that the Islamic Court sided with her.

However, her husband, who did pay the spousal alimony at the Islamic Court, did not at first pay the set amount of child alimony. 'Mostly he only gave some pocket money (*uang jajan*) when he came to meet the children.' It took Ibu Nur a few months to decide to go to her husband's superior again to complain. 'I wanted to give him a fair chance first to show before God that he is a good person.' When she finally faced her husband's superior the man's reaction was so fierce, that she initially backed off. 'He said he was going to fire him. That was not my intention.'

Only after she heard from a friend that she could ask the treasurer to transfer her ex-husband's child allowance directly to her account did she decide to go to her husband's office again. 'The treasurer was very cooperative. It was not difficult.'

Now Ibu Nur automatically receives Rp 1 million per month transferred directly into her account, which equals more or less one third of her husband's salary.

Ibu Nur's case again shows that legal knowledge is vital. Even when alimony rights and foreclosure mechanisms are in place, as is the case for civil servants, one still needs to know what steps to take to assert those rights.

As is illustrated in the case above, despite clear provisions in the Government Regulation, the Islamic Court often makes its spousal alimony decisions on the basis of KHI. In these husband initiated cases, the Court recognizes Islamic rights such as *nafkah iddah*, *nafkah mut'ah* rather than the one third of the husband's salary as stipulated in the Government Regulation. The amount and duration of spousal alimony according to these Islamic rules is less than what would be awarded under the Government Regulation. Theoretically, a woman could 'cash' their Islamic spousal rights based on the KHI, and then proceed to claim their secular rights from the ex-husband's superior according to the Government Regulation. However, I have not encountered such case.

Flexible procedures

With regard to procedure, judges at the Islamic Court of Cianjur tend to be creative. They make sure that the minimum requirements are fulfilled, but are very flexible in terms of the sequence of procedures to be followed. In many cases, this is due to lack of knowledge of the parties. For instance, if the parties do not bring at least two witnesses to the second court hearing, the Court will typically give them opportunity to bring witnesses to the third and last hearing (reading of the court decision). If, after two hearings, a party requests a third hearing (thus fulfilling the procedural requirement that there be at least three hearings), the court will not list a separate hearing for the reading of the court decision, but instead will immediately decide the case.

The main reason for this flexibility appears to be the high case load. On busy days, a single presiding judge will hold twelve court hearings, taking only a single break. It is not unusual to have a judge hear ten matters in a row. For this reason, judges try to be as time-effective as possible, and achieve this through procedural flexibility.

With regard to evidence, judges will check the evidence (mainly marriage certificates, identity

cards, and in case of civil servants the superior's permission to divorce), and if something is amiss they will advise the as to how evidence should be prepared. The main problem is that the names in different pieces of evidence do not precisely correspond due to sloppiness of state officials or the parties themselves. Clients are given the opportunity to correct this. In some cases, the Islamic Court allows the parties to provide the corrected piece of evidence after the court decision. If the parties provided more evidence than is required by law, the unsatisfactory evidence will simply be removed.

Notwithstanding this flexibility regarding procedural law, in the over one hundred cases I attended, the judges of the Islamic Court of Cianjur did generally manage to provide justice seekers with a process by which both sides were heard evenly.

Poor witnesses

In many cases, there is a low level of awareness of the role of witnesses in the court process. Witnesses with no or very little knowledge of the case are brought to court. The consequence for litigants can be that the case is weakened by their own witnesses. For example, one witness, when asked by a judge what he thought was his role in court, answered: 'I am here to witness the court process'. The same witness clearly lacked any knowledge of the marital situation, and gave inconsistent statements. Finally, he became so nervous that he decided to withdraw all the statements he had made.

As most circumstantial evidence relevant to alimony cases is witness evidence, awareness of the role of witnesses should be improved. Or more correctly, since most decisions are negotiated between the spouses, and witnesses can improve a party's bargaining position, the parties should be informed as to the importance of thinking carefully about which witnesses to bring.

Judges' rhetorical powers

Judges at the Islamic Court of Cianjur sometimes use their authority to influence the court process. One way of doing this is by trying to convince litigants to settle alimony requests out of court, and suggesting that parties do not include a claim regarding alimony in the case, or even withdraw an alimony claim already made 'so that the case will proceed smoothly.' In general, the flexibility of the Islamic Court in Cianjur does not seem to have any significant negative influence upon the court process. Judges are willing to be flexible with court procedure in an effort to enable both plaintiffs and litigants to be heard. Even poor witnesses with no clear contribution to the case are given time to speak, seemingly just to give each side the feeling that their cases are given the same weight and that each of their families have had their say. However, if a judge discourages a woman from including an application for alimony in her counterclaim just to speed up the court process, a line would seem to have been crossed.

Another method applied by judges to influence the process is using moralistic rhetoric. In one joint marital property case (not an alimony case but relevant none the less), the husband had a legal right to demand half of his wife's earnings as a migrant worker in Saudi Arabia. However, when he made his demand, the judge reacted as follows: 'Aren't you ashamed!?! You were not even able to fulfill the duty of a husband as provider for your wife and children and now you ask for half your wife's money? Maybe it is better if you settle this with your wife through mediation'. At this point, the husband was almost obliged to agree to mediation, and he withdrew his demand from the case. Eventually, after mediation, he agreed to receive only one sixth of his

wife's earnings, rather than his initial demand for half.

10. Execution of alimony decisions

With the exception of cases involving civil servants, justice seekers do not use the legal mechanisms available for the enforcement of court decisions on child alimony. This situation makes court decisions unsustainable. Court decisions are widely ignored, resulting in dissatisfaction amongst female divorcees. It is difficult to enforce Islamic Court decisions on child alimony unless the husband has a regular salary and enforcement mechanisms – such as on-the-spot payment of the total amount of alimony (such as is the case with spousal alimony), or foreclosure of salary for civil servants – are readily available. However, even in cases involving civil servants, women usually try to find a private solution first. It seems that women want to give their former husband a chance to fulfill their religious and moral duty first, and only reluctantly would approach the former husband's superior if he fails to fulfill his duty.

Box 7. Execution of court decisions in *Herziene Indonesische Reglement* (Art.196-200)

- Courts have jurisdiction to force parties to comply with court decisions if they do not comply voluntarily.
- Forced compliance will only occur after a request is submitted by the plaintiff to the Chair of the Court of the court concerned.
- If the request is sustained, the court will summon the litigant to fulfill his duty within a certain time limit.
- If the summonsed party does not appear before the court, the Chair of the Court will issue a court confiscation order.
- Confiscation will proceed with assistance of the police.
- Confiscated goods will be sold by auction.

Judges at the Islamic Court were a bit hesitant to comment on the enforcement of court decisions. To their knowledge, the Islamic Court of Cianjur has never received a demand for enforcement of a court decision on child alimony. There was some confusion among judges of the Court as to the options for enforcement. According to some, unpaid alimony does not constitute a debt, and as there are no specific sanctions for non-payment of alimony, women seeking to enforce alimony decisions have no official enforcement options. However, according to procedural law, all decisions of the Islamic Court are executable. In practice, compliance with alimony decisions is regarded as a voluntary moral duty of the husband, and this results in poor and irregular compliance.⁷³ This situation is not likely to change until enforcement mechanisms are used to ensure compliance.

Execution of out of court alimony arrangements

Outside court, marital disputes are usually addressed via the families of the couple, sometimes with a village or lower level authority (*kepala RT* or *amil*) functioning as mediator. However, this mechanism appears to break down after a divorce has taken place, and the bond between the families is already broken. Women are also very reluctant to further complicate matters with their

⁷³ The situation is similar in Malaysia, where the *kadi* (judge) has power to invoke legal sanctions, but is often sympathetic towards poor husbands who are unable to pay alimony, and therefore 'commonly refrains from imposing even relatively minor sanctions' (Peletz, M.G. 2002:91).

former family-in-law, and so unwillingly accept non-payment. The main conclusion is that there is no normative framework, state or non-state, available to address post-marriage child alimony grievances arising out of unrecognized out-of-court divorces. It is clear that non-court arrangements regarding child alimony are also poorly executed, and alternative normative systems do not provide a solution to this problem.

11. Conclusion and recommendations

Most families in Cianjur live close to the poverty line. A divorce, after which the care of the children is typically left entirely to the mother, therefore creates a real risk that it will lead to impoverishment. Fathers often fail to fulfill their legal obligation to provide sufficient child alimony. As a result, a large majority of women in Cianjur are dissatisfied with their former husband's contribution to the children's upbringing. Their main grievance is that husbands don't execute (written or oral) child alimony arrangements, court decisions, or their legal, religious and moral obligations. Besides politely requesting a contribution, women rarely take any action to improve their situation. Almost all women in Cianjur are aware of their right to alimony, yet few are aware of the steps they can take to assert and materialize these rights.

A large majority of women who hold marriage certificates still divorce outside of court. This means that they have no right to seek a court decision on (spousal and child) alimony. The main barriers preventing women from going to court are: procedural costs (including incorrect information as to the level of cost involved), psychological barriers (expecting a difficult process, unwillingness to face husband and family), effort (non-court divorce is swift and easily arranged) and cultural factors (family or husband insists on non-court divorce). Improving women's awareness of the actual procedural costs at the Islamic Court, and of the option of free (*pro deo*) court proceedings for poor families could improve this situation.

Of the women who divorce at the Islamic Court of Cianjur, only a small proportion (5-6 percent) seek a court decision on (spousal and or child) alimony as part of the divorce case. Most women do not seek any arrangement regarding alimony, and even if they do, 30 percent opt for an out-of-court arrangement. Women are not always aware of the option to file for alimony, at no extra cost, as part of their counterclaim in the divorce proceedings. It is likely that more women would take this option if they knew it existed. The Islamic Court itself obviously has the most important role in providing this information.

At the Islamic Court, the amount of alimony is usually negotiated between the spouses. Women often accept the amount proposed by their husband in his statement of financial capacity. If the court has to decide, the amount is usually lower than what the wife initially requested. Judges also tend to simply accept the husband's statement of financial capacity, although they sometimes ask witnesses what amount of money is considered sufficient for a child's upbringing in the area in which the wife lives.

The Islamic Court of Cianjur has an increasing case load, and this is placing pressure upon the personnel of the court to ensure that processes are time-efficient. For this reason, judges allow procedural discrepancies, so long as they are satisfied that the process remains just. In general, they seem to succeed in this respect. However, in some cases, judges discourage women from including claims regarding child alimony as part of their divorce case 'to speed up the process'. Women can be intimidated by this, and as a result they refrain from making an alimony claim

which would have legal effect.

In practice, the enforceability of a court decision on alimony, especially child alimony, is questionable. The Islamic Court in Cianjur itself does not regard these decisions as enforceable, as non-payment of alimony is not regarded as a debt. Moreover, with the exception of cases involving civil servants, there are no special legal sanctions, and no special mechanisms (such as foreclosure of salary) in place to enforce court decisions on child alimony. To date, the Islamic Court of Cianjur has never received a request for the enforcement of a court decision regarding child alimony.

This situation makes court decisions unsustainable, and in many cases court decisions are simply ignored. If easy enforcement mechanisms (such as foreclosure) were in place, such as those applying to civil servants, a much more positive picture may arise. However, one must realize that legal solutions like the one contained in the regulations for civil servants are only be effective where the ex-husband has a stable income in the form of a fixed salary. Of course, the social reality for the poor is very different, and therefore legislative solutions are unlikely to improve the situation for the poor.

Alternative forums do not appear to be available either. Non-court arrangements regarding child alimony are usually made within the family, but are poorly executed. Alternative normative systems, such as the Islamic normative system, do not provide a better solution to ensure compliance with informal child alimony arrangements.

Having said all that, it remains a fact that women themselves elect not to take action with regard to the enforcement of child alimony rights. Economic independence is an important factor in this. Most women (about 75 percent) say that they are no worse off economically after divorce, because they work and because of the safety net provided by their parents. Alimony payments for these women are regarded more as a matter of religious duty than as an economic issue. This could explain the unwillingness of many women to apply much effort in the resolution of their alimony related grievances.

For women who are worse off economically after divorce (about 25 percent), and therefore have a greater need for the alimony contribution, it remains difficult for them to obtain regular payments from their former husbands. Husbands will – some perhaps truthfully – claim they don't have the money. Further, many women are unwilling to face their former husbands, especially if the husband has remarried. In many other cases, the husband has moved away and is untraceable. In most cases, the idea of going to court is not even considered. So what can be done to improve the situation?

In general, unless the former husband has a stable income (which offers the possibility of foreclosure), it would be difficult to change the current situation of irregular and lax alimony payments.

Legal sanctions for non-payment – the solution most frequently proposed by experts and the judiciary – are important. However, this option would only be effective if women themselves were to respond to non-payment by taking legal action. As we have seen, women rarely elect to do so.

In practice, the most frequently used enforcement mechanism is moral pressure. Through state and religious education, women and men alike can be made aware that alimony rights are established in both national law as Islamic law, and that payment is both a legal and a religious duty. One option would be to incorporate lessons on marital (including post-divorce) rights into the junior high school curriculum. In this way, women could not only be taught what are their rights, but also how they can assert their rights in the Islamic Court. This legal knowledge could become a weapon in post-divorce alimony negotiations. And if more women take the initiative to seek legal sanctions, such as a penalty (*dwangsom*) or confiscation of assets, the psychological pressure on former husbands to pay will increase, and moral pressure may become more effective.

Most importantly, the execution of court orders must be regulated. In fact, Indonesian law already allows a party to seek a penalty (*dwangsom*) if another party does not comply with an obligation imposed by a court decision. The fact that this legal mechanism is not utilized demonstrates why the solution to the problem of enforcement does not lie in creating new legal sanctions, but rather in creating and socializing standard procedures for how to apply the existing ones.

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Figure 2a Cianjur in West Java

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Figure 3 The District of Cianjur

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