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(...) the Bugis consider divorce to be shameful, not only for women, but also for men. However, the stigma is greater for women, especially if a woman is divorced by her husband because of his infidelity, not to mention her infidelity. The infidelity of the husband may lead to gossip which pushes a woman into a corner, since it is assumed that such wife did not 'serve' her husband properly, expressed in Bugis and usually uttered by elders as 'she is not capable of meeting her husband's needs.' (Idrus 2003: 262)

8.1 INTRODUCTION

This chapter discusses the results of my empirical research concerning divorce and post-divorce rights, obtained during fieldwork in the district of Bulukumba in 2011.¹ Central to this research were the knowledge, experiences and actions of divorced women with children, regarding their divorce rights in general and the role of the Islamic court in particular. By linking their experiences with primary data from key informants, secondary statistical data and literature about divorce in Bulukumba, I examine what the role and performance of the Islamic court of Bulukumba is in protecting women's divorce and post-divorce rights.

8.1.1 Short description of the Islamic court of Bulukumba

The Islamic court of Bulukumba was established on the first of September 1958, but for a long time suffered from a lack of facilities and moved ten times in its first 20 years, administering justice from five different private homes, the sub-district office of Ujung Bulu, the office of the Red Cross, and a rice storehouse (*gudang dolog*), after which it was based in a very small office for 31 years (1978-2009).

However, since August 2009, the Islamic court of Bulukumba has been located on the Jalan Lanto Daeng Pasewang, one of the main roads in Bulu-

1 This Chapter has been published as a chapter in the Leiden University report 'Regime change, democracy and Islam. The case of Indonesia.' See Van Huis 2013.

kumba. Driving on the road, it is difficult to overlook the large white court building with its high pillared entrance – a striking contrast with the small building in which the court was located in Cianjur.² If one still fails to identify the function of the building, the large letters on the white stone fence make it clear: *Pengadilan Agama Bulukumba Kelas B* (Islamic court of Bulukumba, category B).³ The two floors comprise an office space of 2,448 square metres on a 2,800 square metre plot of land, leaving sufficient space in front and to the sides of the court building to park cars or motorcycles and keep a small garden. On the compound behind the court building there is a tennis court used by the male judges and clerks for leisure time after working hours.

Court clients enter the air-conditioned court building through the pillared main entrance. To the right of the hallway is a small legal aid office, which at the time of my field research was not yet operational, because, I was told, the Islamic court of Bulukumba was still in the application process.⁴ Straight to the left of the entrance is the window for the registration and administration of court cases. Large posters on the wall in the small hallway leading to the registry window announce detailed information concerning court fees. Separate posters announce court fees for first-instance cases, appeals and appeals in cassation. The court fees are broken down into administration costs, costs for summations subdivided into three zones according to distance from the court, and costs for the official seal (*biaya materai*). Small, modern metallic benches at the side of the hallway are used by those who line-up to register a court case or to arrange other administrative matters. At the end of the hallway, the single registry window physically separates the office of the court clerks from the court clients, increasing the formal atmosphere of the building.

Facing the entrance, after passing the fingerprint scanner used by court personnel to clock in and two large white stairways on both sides leading to the second floor offices, one finds the first of the two courtrooms. The courtroom has transparent glass walls, apparently designed to symbolise transparency in the court process, but at the same time giving the impression that the closed sessions are not as private as they should be (all divorce sessions except the reading of the judgment are closed). A clerk behind a wooden desk in front of the courtroom entrance oversees all who enter and leave the room. Litigants and defendants involved in a court case, as well as

2 In 2010, a year after my field research in Cianjur, the Islamic court of Cianjur also moved into a model court building.

3 The Islamic courts in Indonesia are subdivided into categories based on certain criteria, of which the main ones are the number of cases decided every year and the tidiness of the courts' administration. Category B is below the categories 1A and 1B, and since the higher the category of the court, the higher the standard salaries of court personnel, the Islamic court of Bulukumba was working and lobbying hard during my stay to have their court upgraded to 1B.

4 Legal aid offices within the Islamic courts are stipulated in the 2009 amendment on the 1989 Islamic Judiciary Law (Law 49/2009).

those accompanying them (witnesses, relatives and the occasional legal representative) sit on the metallic benches in the hallway between the first and the second court room, waiting for their or their relative's turn to be called in.

The courtrooms contain rows of modern blue chairs placed on the left and right side of the passage to the judge's bench – a large wooden desk covered with green cloth – with a single chair in front of the rows on each side for the litigant and defendant. The judge panel's bench is placed on a platform, symbolising the judges' authority, and behind the bench there is a prominent place for the Indonesian flag, the national symbol of the *garuda* (eagle) and a photograph of the president and vice-president of the Republic of Indonesia, all of them symbolising the authority of the state. The entrance to the clerks' office area is in the hallway between the courtrooms. In the joint office area the vice-chief clerk, three assistant clerks (*panitera muda*) and five substitute clerks (*panitera pengganti*) have several desks at their disposal, where they can fill in the register books by hand or work on their laptops. In a separate office are two PCs and a printer. The bailiff and two substitute bailiffs have a separate office with a PC. The chief clerk is the only one who does not work in the clerks' area, having a large office on the second floor.

While at first sight I found an equal number of male and female staff in the clerks' office area, this did not reflect their equality in terms of position within the office hierarchy. Higher positions are dominated by male clerks and the lower by female ones. The chief and vice chief clerks were male, whereas one of three assistant clerks, and even four out of five substitute clerks were female. If we look at the bailiffs, the chief is male and one of his two assistants female. Nonetheless, the fact that an equally divided female and male staff prepares court cases, writes the proceedings, conducts administration and handles the petitions of court clients, gives the sense that women staff do have considerable influence on the clerks' office as a whole.

On the second floor at the top of each white staircase, we find the large offices of the head of the Islamic court and the chief clerk (*panitera sekretaris*), both furnished with sofas to receive guests. The head of the Islamic court at that time, Judge Muhammad Rusydi Thahrir, did not have government housing at his disposal and preferred to spend the night in his court office. The second floor includes a larger meeting room, as well as a very orderly archive of recent court files. The court files older than five years are stored elsewhere, and are less accessible. Last but not least, all the judges' offices are situated on the second floor, thus physically separated from the court clerks. If we look at the sex of the judges, the same picture emerges as for other staff. The head and the vice head of the Islamic court, who also act as judges, were male, while five out of the seven other judges were female. However, even though the higher positions were reserved for male judges, this still means that half of the judges were female, which is a rather high number.

Every day ten to twenty court hearings take place. Some hearings, for instance those that have to be rescheduled because the defendant did not show

up, are very short and take only minutes, whereas others take much longer as they have reached the evidence and testimony stages of the process. As a rule, court hearings will be finished before two o'clock in the afternoon and then the Islamic court becomes a rather calm place; court files will be put in order and professional or more private matters are discussed. Around five, some of the male judges will go outside to play some tennis, while most of the court personnel heads home.

8.2 DIVORCE IN BULUKUMBA

8.2.1 Divorce statistics explained

There are no recent divorce figures available for Bulukumba, so I have calculated an estimation of the divorce rate myself, in the same way I have done in Chapter 6 for Cianjur. Usually the divorce rate is defined as the probability that a marriage ends up in a divorce, and requires long-term surveys. Such population surveys clearly fall outside the scope of this research. Therefore, following Jones (Jones, G.W. 1994), I have used another, slightly less reliable way to estimate the divorce rate, by dividing the number of divorces with the number of marriages in a certain year. According to the 2008 annual report of the Islamic court of Bulukumba, 426 divorce requests had been registered and 3,700 marriages concluded that year (*Bulukumba dalam angka 2011*). Hence the divorce rate of Bulukumba in 2008 is approximately 11.5 percent. In 2009, 3,982 marriages and 447 divorces were registered, setting the estimated divorce rate at 11.2 percent. This figure does not differ much from the national estimated divorce figure for Muslims in 2009: 223,371 Muslim (formal) divorces divided by two million marriages in 2009 also gives a divorce rate of around 11.2 percent. The figure is however much higher than in Cianjur, where in 2007 21,744 couples registered their marriages and 445 divorces were processed by the Islamic court, equaling a divorce rate of around two percent.

The main explanation for the differences between Bulukumba and Cianjur is that while in both districts most couples register their marriages, in Cianjur a very high number of the divorces, 86 percent, takes place out of court through an unofficial *talak* (see Chapter 6), while in Bulukumba most couples choose to divorce at the Islamic court as required by the Marriage Law. The divorce survey carried out in the framework of this research found that 72.5 percent of respondents in Bulukumba had divorced at the Islamic court, compared to 25 percent that had not – while the remainder of the respondents did not answer the question.

The research assistants of the divorce survey told me that at least some respondents out of those 25 percent were not sure whether their former husbands had gone to the Islamic court, but if they did so it was without prior notice and they themselves had not attended the divorce process. In reality,

the percentage of formal divorces might be even higher as the question concerned was probably too ambiguously formulated; it could also be interpreted as asking whether the women themselves went physically to the court to divorce. Nonetheless, the figure of 72.5 percent already indicates that Bulukumba has a relatively low number of out-of-court divorces compared to an estimated 50 percent of out-of-court divorces for the whole of Indonesia (Cammack, Donovan & Heaton 2007) and 86 percent in Cianjur. Obviously, in order to be able to divorce officially one must be officially married first. In Bulukumba, 98.3 percent of respondents answered that they had registered their first marriage at the KUA, whereas in Cianjur this figure was 73 percent.

The numbers above indicate that women in Bulukumba know their divorce rights, as well as the fact that divorce has been turned into a judicial proceeding. This is reflected in the 91.7 percent of the respondents aware of the requirement to obtain a divorce certificate (*akta cerai*) to be formally divorced, whereas in Cianjur the figure was 60 percent. 25 percent of respondents in Bulukumba also answered that a formal divorce can be arranged at the KUA. This 25 percent probably reflects the local reality in which KUA or village officials in Bulukumba provide mediation and 'legal aid' services and help with the paperwork of a divorce process. Nonetheless, the number is much lower than the 74 percent in Cianjur. This all indicates that while women in Cianjur still consider the KUAs as the main institution for marriage and divorce, in Bulukumba it is the other way around; women know they ought to divorce at the Islamic court and approach it without consulting the KUAs first.

8.2.2 Women's reasons not to divorce out of court

Semi-structured interviews with divorced women confirmed a high awareness of divorce rights. Bringing a case to the Islamic court is considered the proper way to divorce by most informants. The latter is reflected in the following answer an informant gave to the question why she went to the Islamic court, and did not divorce out of court:

'The reason [to divorce] is that I wanted to be clean (*bersih*), if you only separate like that you will not be considered clean, will you?' (*Maksudnya kan mau bersih, kalau cuma pisah-pisah begitu saja kan tidak bersih namanya*). The divorce must be 'black on white' (*hitam di atas putih*), otherwise 'it will be difficult to remarry'.⁵

Another woman linked the common practice to divorce at the Islamic court with custom (*adat-istiadat*):

5 Interview with Ibu R., Ujung Loe, Bulukumba, 28-07-2011.

'Researcher: Why did you divorce at the Islamic court and not outside? I ask this question because in a number of areas in Indonesia it is common (*cukup biasa*) to divorce [elsewhere] not before the Islamic court.

Informant: Do you mean divorce in the village (*cerai di kampung saja*)?

Researcher: Yes.

Informant: Because here that is not customary (*karena adat-istiadatnya disini kan ga begitu*). Here you have to divorce before the court. [...]

Researcher: Thus in the village there are no people who are willing to divorce a couple?

Informant: No, they would not dare (*Gak mau, takut*).⁶

Even in cases in which the marriage was not registered, women prefer an official divorce in order to obtain clean status. *Ibu K.* had been married for nine years and two children were born from the marriage. The marriage remained unregistered because the KUA refused to provide the couple with a marriage certificate, as her husband still was married to someone else. *Ibu K.* clarified that her former husband had been married before, but that he had been divorced by his first wife through the Islamic court. According to *Ibu K.*, the first wife did not want to cooperate with the remarriage and kept the divorce papers to herself. When after nine years of marriage *Ibu K.* discovered that her husband had been unfaithful, she wanted to divorce him formally in order to obtain official divorce papers, so she would be able to remarry formally in the future. The Islamic court advised an *isbath nikah* procedure, where the marriage is formally recognised first, after which the divorce can take place.⁷

It remained unclear why the husband had not received a divorce certificate himself. To go deeper into this problem would be speculation, and beyond the point I wish to make: that formal divorces through the Islamic court seem to be the norm in Bulukumba, and that women divorced out of court are stigmatised. Women are made very much aware that they ought to divorce at the Islamic court, or their status is considered 'unclean' and inappropriate for remarriage.

Hence, in addition to its legal role in providing judgments, the Islamic court of Bulukumba is able to successfully fulfil two other important roles with regard to divorce; divorce registrar as part of state population registration, and provider of clear, 'uncontaminated', legal identities to women, so that they become appropriate marriage candidates in their communities. The stigma on informal divorce clearly has a cultural component, but the stigma is probably enhanced by the fact that the KUAs as a rule do not issue marriage certificates to men and women still registered as married. Through the stigma on informal divorce, a chain of formality is promoted: formal divorce enables

6 Interview with *Ibu I.*, Ujung Loe, Bulukumba, 28-07-2011.

7 Interview with *Ibu K.*, Ujung Loe, Bulukumba, 28-07-2011.

formal remarriage, which in turn facilitates birth certificates for children born out a remarriage, making the latter formal heirs with rights they can claim through a legal process (see also Sumner 2008).

8.2.3 Divorce practices at the Islamic court of Bulukumba

As in Cianjur, the statistics for the Islamic court indicate that women divorce their husbands far more often than the other way around. Most divorces registered at the Islamic court of Bulukumba are *gugat cerai* cases, petitioned by the wife. In 2008, 345 of 426 divorce cases, or 81 percent, were petitioned by the wife. This is not an incident as in 2009, 447 divorces took place of which 364 or (81.4 percent) petitioned by the wife and in 2010, a total of 519 divorces were registered at the Islamic court of which 392 (75.5 percent) petitioned by the wife. The Islamic court of Cianjur saw a similarly high number of female-petitioned divorces (86 percent in 2008).

These statistics suggest that women in Bulukumba are aware of their right to divorce their husband at the Islamic court. Indeed, the outcomes of the divorce survey demonstrate that a large majority of the respondents in Bulukumba did not consider divorce a male right. An overwhelming 86 percent of the respondents did not agree with the statement 'divorce is only the husband's right', of which 10 percent did not agree at all, compared to a mere eight percent in agreement. In Cianjur only 36.7 percent disagreed, of which 1.7 strongly, compared to a majority of 57.5 percent in agreement. Similarly, 97.5 percent of the respondents in Bulukumba agreed, of which 36.7 strongly, to the opposite statement 'women have the right to divorce their husband.' In Cianjur 48 percent agreed, of which five percent strongly. This again indicates that in Cianjur, traditional out-of-court *talak* divorce is much more socially accepted than in Bulukumba.

The divorce survey also assessed the position of the traditional *khul* divorce, in which women negotiate a *talak* divorce in return for a financial compensation to their husband. Most of the respondents in Bulukumba (66.7 percent) believe that they do not have to 'buy' a divorce through the *khul* procedure, compared to 16.6 percent believing it is the only means for women to divorce if the husband does not agree. In Cianjur, a similar number of respondents (61.7 percent) know other ways to divorce, whereas 23 percent agreed to the statement that they might only divorce through *khul*. This means that in both districts women know that several divorce options are available to them, despite their differences in opinion concerning whether a divorce is purely a male right. It may mean that women in Cianjur have the *taklik al-talak* in mind, which is technically a *talak* and thus a male divorce (see Nakamura 1984 and Chapter 6), but unfortunately the divorce survey did not assess respondents' knowledge of *taklik al-talak*, so I do not know.

When confronted with the high percentage of women petitioning for divorce Nurul Ilmi Idrus, professor of anthropology at Hasanuddin University in Makassar, explained that it is indeed common in South Sulawesi that women file for divorce. She related this to special features of the local *adat*; according to her, in Buginese culture women are considered the honor-bearers of the family, and if a woman is divorced by her husband, the *sirri* (honor, status, shame) of the wife, but also of her kin is affected, more than the husband's *sirri* when it is the other way around.⁸ Indeed, the practice of women divorcing men in South Sulawesi seems to go far back. Matthes paraphrases the chief *penghulu* of Makassar, who asserted that during his career he had received dozens of men but hundreds of women who had come to him in order to divorce. Although at that time many men may have divorced their wives without the involvement of the *penghulu*, the enormous difference between male and female clients in this anecdote indicates that even in nineteenth century Makassar more women divorced their husbands than vice versa (Matthes 1875: 45).

The picture above reveals women's traditionally strong divorce rights in South Sulawesi. However, these strong rights are not correlated with the concept of equality between the sexes. Patriarchy is the norm, as appears from the staggering 97 percent of respondents that agreed with the statement that the husband is the leader of the family (Cianjur: 92.5 percent). In South Sulawesi, the husband and wife are expected to act according to their gender roles, with female leaders and kings the exception to that rule (Idrus 2003; Röttger-Rössler 2000; Chabot 1996). The husband must fulfil his role as the head and provider of the family, or women may leave him through divorce, as the next example demonstrates.

One of the divorced women interviewed as part of my qualitative research very much resented the passive and unambitious behaviour of her husband. After marriage, she and her husband had to live in the house of her parents-in-law, as they were still incapable of starting a household of their own. She was eager to move out some day, but her husband did not put much effort in establishing their financial independence. The couple lived mostly form support by her husband's parents, and to make matters worse her husband liked to gamble and drink *balo* (a locally-brewed palm wine). She had warned her husband that if he did not give up these money-wasting habits she would leave him. When one night he came home late, smelling of alcohol, she exploded: 'I caned him with a stick' (*saya cambuk dia, pake tongkat*), she said, not without pride. Not long after this incident she filed for divorce at the Islamic court.⁹

The story above is illustrative of the fact that generally speaking women in Bulukumba possess authority and independence within the family, regardless of the clear patriarchal division of roles between genders. A good Buginese

8 Interview with Prof Nurul Ilmi Idrus in Makassar, 16-06-2011.

9 Interview with Bu L. in Bulukumba, 23-06-2011.

or Makassarese husband is expected to be ambitious and to do all he can for the improvement of the family's status and position (Chabot 1996). Women, on the other hand, are the main decision-makers of the household and the family, especially in conflict situations (Rötgger-Rössler 2000). If the husband does not act as he is supposed to, women will stand up to him, often backed by their kin, and in the end even leave him.

Moreover, similar as in the Sundanese kinship system of Cianjur, in the Buginese-Makassarese bilateral kinship system, women do not have to depend economically on their husbands because in divorce situations they can always rely on support from their own families, and their own inheritance (Idrus 2003). Since women are considered to be the status-bearers of the kin-group, in the middle and higher classes the husband's status and position in fact may be jeopardized by divorce when his status and career was for a large part built through his wife's status and family network (Rötgger-Rössler 2000).

8.2.4 Women's reasons for divorce and the underlying causes

Let us now turn to the reasons for divorce. As we have seen in Chapter 6 regarding Cianjur, women's reasons for divorce do not necessarily correspond with the formal legal grounds noted in their divorce suits, as they subsequently appear in the statistics of the Islamic court. Court statistics are made by the clerks on the basis of a short scan of the court files. As we have seen in the case of Cianjur, 'continuous strife' is the most common legal ground for divorce, and not difficult to prove. I observed in both Bulukumba and Cianjur that all one needs is two witnesses who can confirm that the couple quarrelled a lot for a certain period of time. As a result, women will not base their case on any of the other legal grounds for divorce. Therefore, in court statistics 'continuous strife' has the potential to absorb all other reasons women have to leave their husbands, and the underlying causes for their marital quarrels.¹⁰

The divorce survey can provide a more reliable picture of the reasons for divorce. In the questionnaire I adopted a set of reasons for divorce similar to the standard grounds in the annual reports of the Islamic court ('no harmonious relationship', 'my husband had another woman or wife', 'economical reasons', 'domestic violence', 'no offspring', and 'pressure from a third party'). They were encouraged to give multiple answers in order to ensure that the specific reasons why women had chosen to divorce were not absorbed by the broad legal divorce grounds.

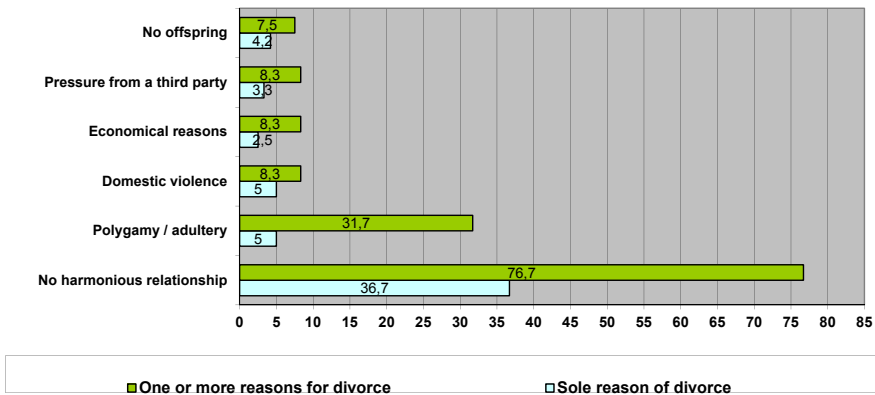
As appears from the outcome, 56.7 percent of respondents provided a single reason for divorce and 43.3 percent gave more than one reason. 'No harmoni-

10 In Chapter 9 I will provide a more detailed legal analysis of court judgments concerning divorces based on continuous strife.

ous relationship' tops the list with 36.7 percent of respondents giving it as their single answer. Another 40 percent mentioned it as one of the reasons, so a total of 76.7 percent. 'My husband had another woman or wife' is only provided as the sole reason for divorce by five percent, but another 26.7 percent mentions it as one of the reasons (total: 31.7 percent), mainly in combination with 'no harmonious relationship.' 'Domestic violence' is mentioned by 8.3 percent, as are 'economic reasons' and 'pressure from a third party.' Finally, 'no offspring' is at the bottom of the list of reasons, and is mentioned by 7.5 percent of the respondents.

Hence, from the divorce survey one may conclude that the two main reasons for divorce in Bulukumba are a lack of harmony between the spouses, followed by the husband's polygamous desires. The latter reason would have been hidden from view if one relied on court statistics only. Cianjur records the same top two; 62.5 percent of respondents mentioned a lack of harmony as the reason for their divorce, 35 percent polygamy. With 8.3 percent of respondents selecting them as their reason for divorce, it appears that economic factors are not a major reason for divorce in Bulukumba, although they play a somewhat more important role in Cianjur at 23 percent. This finding refutes the much-heard male complaint that Indonesian women today are materialists. Quite the opposite image emerges from the divorce survey; Indonesian women want a harmonious relationship and the undivided love of their husbands.

Figure 5: Reasons for divorce as mentioned by respondents in Bulukumba (percentage; N = 120)



I have also conducted qualitative research to assess the underlying causes for divorce, and the circumstances that according to my informants may explain local divorce practice in Bulukumba. The informants mentioned the following four local circumstances as having an impact on divorce practice in Bulukumba: working overseas (*merantau*), marrying at a young age, the practice of arranged (or semi-arranged) marriages and marriage by elopement.

The practice of *merantau*, or husbands seeking work overseas, contributes considerably to both the high divorce figure and the nature of divorce in Bulukumba. Judge Andi Djohar, one of the five female judges at the Islamic court of Bulukumba at that time, without any hesitation brought up *merantau* as one of the main underlying causes of divorce in Bulukumba: 'That [divorce] is caused by this, when the husband looks for work overseas, it is clear that often she [the wife] gets impatient and asks for it [divorce].' Nurul Ilmi Idrus, who conducted anthropological research on marriage and divorce in the Buginese village Kulo in the district of Sidrap in South Sulawesi, mentions the same cause for divorce: '[...] irresponsibility, which means that the husband neglected to provide living necessities to his wife and children, usually because of leaving the house in search of fortune, (Bug. Massompé) [...]' (Idrus 2003: 272).¹¹

Men who leave their community to *merantau* are expected to send money to their wives and return home once in a while. When that is not done frequently enough, women eventually lose their patience and file for divorce. According to judge Andi Djohar, *merantau* is also the cause for another reason respondents mentioned most in the divorce survey: 'Another reason is that because he works overseas, the husband marries again over there, under the pretext of looking for livelihood (*nafkah*).'¹² In other words, when the husband stays elsewhere for long periods, this increases the risk of him marrying a second time, and many women in Bulukumba will not accept that.

In the interviews I held in Bulukumba, several divorced women stated that they had divorced their husband for these reasons. An example is the story of H. (25 years old, one child) from the village Tamatto, whose husband left for Kalimantan in their third year of marriage:

'He said that he would leave for five to six months, but he did not come home. He did not send any support, it appeared that he was married there. [...] In the end, I called him [and said] that if you love me more [than her], then you come home, but if not then you are hers, which means that I will petition for divorce at the court. He did not return within the term of two months, so I went to the court.'¹³

In the divorce process at the Islamic court (2008) H. was accompanied by her brother and cousin, and at the time of the interview (2011) she and her child still lived with her parents, relying on them for support and shelter. This shows that her family backed her decision to divorce.

11 The other main reasons for divorce that the informants in Nurul Ilmi Idrus' research brought up were infidelity related to polygamy and informal marriage.

12 Interview with Dra. Andi Djohar, female judge at the Islamic court of Bulukumba, August 4th 2011.

13 Interview with Bu H., *desa* Tamatto, *kecamatan* Ujung Loe, *kabupaten* Bulukumba, July 28th 2011.

The example of H. illustrates how women in Bulukumba are empowered in divorce matters through their strong ties with their kin. A good husband seeks to improve the status of the extended family, and one way to achieve this is through *merantau*. When the husband leaves to *merantau*, his wife and children should have priority, otherwise his wife, backed by her kin, will end the marriage. When a husband does not behave as he is expected to, a divorce is socially acceptable. This social acceptance is further illustrated by the fact that, despite the divorce, the former in-laws of H. still tried to maintain good relations (*sillahturrahmi*) with her family three years after she had divorced her husband.

This can also indicate how in Bulukumba, husbands still break the marital relationship with their wives out of court by simply leaving and not returning. In this manner they force their wives to petition for divorce at the Islamic court in order to obtain a clear and 'clean' marital status and be eligible for remarriage. Women have high legal awareness and a lot of agency in divorce matters, but the fact that many men still do not bother to go to the Islamic court as required by the Marriage Law remains somewhat hidden.

Furthermore, when men leave their families in order to find work, they do not necessarily have to formally divorce, since they are new to the area they moved to and no one, including the local Office of Religious Affairs, knows what their marital status is. The wives in many cases are left behind in their home community where people know of their marriage. Moreover, when men remarry without formal divorce papers this may be considered polygamy, which for men is acceptable according to custom and religious norms, but for women in South Sulawesi is shameful (Idrus 2003: 271). In short, the social consequences of an informal separation are less harsh for men than for women, which means that whilst many men can still remarry, for women that would be socially difficult.

Besides *merantau*, a second underlying cause for divorce is marrying at a young age. Research in Indonesia has indicated that an early marriage increases the chance of divorce (Jones, G.W. 2001; Guest 1992). Hence, the divorce survey assessed the age of the respondents when they married for the first time. In Bulukumba 12.5 percent of the respondents had been married before the legal age of 16. More than half had been married before the age of 20. Almost 90 percent of the respondents were married at the age of 25 years or younger. The mean age of first marriage in Bulukumba was 22.4 years, because of a number of women who married relatively late. Thus, it makes sense to look at the median age, which was 19 years. This indicates a lower

mean age of first marriage in Bulukumba in 2011 than for the whole of South Sulawesi in 1990 (23.6 years; Jones, G.W. 1994: 80).¹⁴

Although many women in Bulukumba marry before they reach 16, the legal age of marriage, they do not seem to ask for dispensation (*dispensasi kawin*) at the Islamic court, as they are legally required to. In 2009 and 2010 not a single dispensation case was listed by the Islamic court. Still 15 out of the 120 respondents in the divorce survey had been married below the legal age, while only one of the respondents answered that the marriage had not been officially registered. There are three possible explanations: first, the underage marriages remained unregistered, but were registered the moment the legal age had been reached; second, the marriages had been registered by the KUA without prior dispensation from the Islamic court; or, third, the respondents concerned received a fake marriage certificate, but are unaware of it.

In the district Sidrap, South Sulawesi, Nurul Ilmi Idrus found that both the village apparatus and KUA marriage registrars are indeed willing to turn a blind eye when a marriage involves an underage girl. With the cooperation of such officials, the age of the girl will be registered as 16 years. The KUA officials in Bulukumba with whom I spoke denied this possibility, yet the story of *Bu S.*' arranged marriage below indicates that in Bulukumba as well underage marriages are registered by the village level official of religious affairs (*imam desa*) acting as the assistant marriage registrar (*pembantu petugas pencatat nikah*, P3N) of the local KUAs.

Underage marriages can also remain unregistered at first and be registered by the Islamic court when the couple have reached the legal age. As we have seen in Chapter 3, the procedure of *isbath nikah* provides a legal means to register informal marriages concluded in accordance with religious requirements. In 2010, the Islamic court of Bulukumba received 43 *isbath nikah* requests in a total of 499 cases. Most *isbath nikah* cases are related to a widow's pension, as she needs to be legally recognized as the wife when her husband has passed away. However, the procedure may easily be utilised to postpone the registration of underage marriages since few judges will refuse such registration, especially when children have been born from the marriage or when the couple needs the registration in order to obtain a formal divorce. In such cases, judges will appeal to *maslahat* (the public good), to justify their ruling (Nurlaelawati 2010: 192-203, see also Chapter 9).

14 There might be two reasons for this. Firstly, all respondents in the divorce survey had been divorced, and therefore the survey is not representative for all married women in Bulukumba. There is a considerable chance that women who married young are overrepresented, since they have had a greater chance to divorce. Second, there are no large cities in Bulukumba, and in large cities such as Makassar the age of first marriage is considerably higher than in the country-side.

In addition to marrying at a young age, arranged marriages can be an underlying cause for divorce. Marrying within the kin group traditionally assures the parents that there is no difference in status between the spouses, and that land will remain within the extended family. In the words of H.Th. Chabot, the goal of the practice of cousin marriage in South Sulawesi traditionally was 'keeping the blood pure and the goods together' (1996: 230). Moreover, a successful arranged marriage traditionally demonstrated that parents had an obedient daughter, a female characteristic looked upon favorably (Idrus 2003: 236-237). Arranged marriages in South Sulawesi do not appear to be more stable than other marriages. On the contrary, in the nineteenth century B. F. Matthes already gave an account of the *penghulu* of Makassar, who observed that forced arranged marriages, that is those undertaken without the consent of the spouses, often led to misery, adultery and divorce (1875: 45).

Today most marriages in South Sulawesi are ideally based on romantic love, or at least follow a dating (*pacaran*) stage during which the couple can decide whether there is a match (see also Idrus 2003). However, although I cannot present figures, I have noticed during interviews and courtroom observations that quite a few marriages in Bulukumba – even when they were preceded by *pacaran* – were actually arranged by the parents or other family members and concluded between (second, third, etc.) cousins. Often it is a relative who selects the candidates with whom someone may *pacaran*. Choosing your own partner against the wishes of the family may have the consequence of someone being ex-communicated and disowned, and although honor killings are less common than they allegedly were in the past (Chabot 1996), such a couple still might have to elope as they are not safe from the vengeance of their families.

The arranged marriages I came across in Bulukumba had been concluded at a very young age, thereby increasing the instability of the marriage. However, even in such arranged marriages women have enough agency to divorce if the marriage is unhappy. For example, S. had been married off to her first cousin at the age of 12, just after she had finished primary school. Her husband was only a few years older. Although she clearly was a minor at the time of marriage, and thus formally needed permission to marry from the Islamic court, the assistant marriage registrar (*imam desa*) gave her a marriage certificate (*buku nikah*), apparently without a court decision on the matter. The marriage lasted only a year, according to her because her husband 'still acted as a child' (*alasanya kayak anak-anak dulu, suamiku*) and always went out with his teenage friends, leaving her home with her parents. Only thirteen years of age, she and her family decided to go to the Islamic court to divorce. Although the marriage seemed to have been unconsummated, she did not have to return

half of the dower (*mahar*); her husband had not asked her to because 'she was still kin' (*masih saudara*).¹⁵

8.3 THE ISLAMIC COURT OF BULUKUMBA AND POST-DIVORCE MATTERS

8.3.1 Court statistics

As I have argued in Chapter 1 and elsewhere (Huis 2010), the role and performance of Islamic courts in post-divorce matters is seldom fully researched. I have established above that more than 80 percent of the divorce cases at the Islamic court of Bulukumba were petitioned by women. The court plays an important role in providing women a formal divorce, which endows women and children with a clear family status as part of their legal identity. However, a good performance of the Islamic court in divorce matters does not automatically mean that its performance in women's post-divorce rights is similarly positive. In this section I examine the role of the Bulukumba Islamic court in securing women's post-divorce rights. The focus in this section is on the frequency of post-divorce cases being brought before the court, and the reasons why women brought a case to the court or not. As such I take an access-to-justice approach rather than a legal one. A legal analysis of post-divorce rights cases in Cianjur and Bulukumba follows in Chapter 9.

To start with, it is difficult to establish the number of post-divorce claims that women bring before the Islamic court. As I have explained in Chapter 6 concerning Cianjur, most post-divorce cases petitioned at the Islamic court are part of, and filed as, a divorce case. Thus, I had to go through the divorce register books to establish case by case whether post-divorce (counter-) claims were included.

Table 7. Percentage of post-divorce claims of the total number of divorces at the Islamic court of Bulukumba for the years 2008 and 2009

	Spousal support	Child support	Marital property
2008	3.3%	1.3%	2.0%
2009	3.1%	1.6%	1.6%

8.3.2 Spousal support

The spousal support claims can be subdivided into three components: unpaid due maintenance (*nafkah yang lampau*); maintenance, clothing and housing

15 Interview with *Ibu S.*, STAI- Al-Ghazali, town of Bulukumba, 23-06-2011.

during the three-month waiting period; and the consolation gift (*mut'ah*). Chapter 3 and 4 discussed the substance of spousal post-divorce rights in Indonesia, so I will not treat them further here. According to the court register, in 2009 a total of 14 women made spousal support claims on a total of 426 divorce claims (3.3 percent). However, as I argued in Chapter 5, in practice spousal support claims are primarily substantiated in *talak* divorce cases filed by the husband, thus it makes sense to compare spousal support claims with the number of *talak* divorce cases. Looked upon in this way, the percentage of women making spousal support claims is significantly higher: 14 claims out of 81 *talak* divorces means 17.3 percent of the women claimed spousal support rights in *talak* cases.

In 2009, the total number of women who included spousal support claims in the divorce suit was also 14, but the number of divorce cases was slightly higher: 447 divorces in total, and 83 *talak* divorces. The percentage of women making spousal support claims at the Islamic court in 2009 was 3.1 percent of the total number of divorces and 16.9 percent of *talak* divorces.¹⁶ These numbers, which are very similar to those of the Islamic court of Cianjur (where 2.9 percent spousal support claims were registered out of the total number of divorces in 2008, and 22.5 percent out of *talak* divorces) demonstrate that a relatively large percentage of women in *talak* divorces claim their spousal support rights.

The divorce survey also assessed women's claiming behaviour during the divorce process. 19 of the 87 respondents to the Survey who had divorced at the Islamic court answered that they had claimed spousal support rights. 16 of the 19 claims made by the respondents were granted by the court, although only five entirely, and 11 partially. The survey thus indicates a much higher percentage (22 percent) of women claiming spousal support rights than appears from the analysis of the 2008 and 2009 court registers (3.1 and 3.3 percent respectively).

A possible explanation for the large discrepancy between the number of formally registered spousal support claims and the number of claims in the divorce survey may be the tendency of judges to settle disputes informally during the divorce process. In other words, most claims will not become a formal part of the divorce suit. As I have observed in the courtroom on numerous occasions, informal settlements are not only reached during the mandatory mediation session but at every other stage of the divorce process. Such agreements between the parties are not registered in the court files, but are often reached following the intervention of a judge. Therefore, it is likely that many of the respondents made a claim during a divorce hearing at the Islamic court,

16 When the spousal post-divorce rights are subdivided the picture is as follows: in 2008 there were twelve unpaid due maintenance claims, and in 2009 seven. In 2008 there were six, and in 2009 seven claims concerning maintenance during the waiting period. Finally in 2008 there were two, and in 2009 six, *mut'ah* consolation claims.

which was informally mediated by the judge leading to an agreement between the two parties, but that was not formally part of the court judgment and not put down in the register books.

As we have seen, most women did not claim post-divorce rights at all. The divorce survey has assessed the reasons given by those respondents. 46 Respondents had not claimed spousal support rights and 35 of them gave a reason for this. Their reasons for non-claiming can be divided into five categories: firstly, they have 'no need for support.' 19 Respondents gave an answer that can be brought under this category. Seven answers can be brought under the second category: 'I did not want to delay the divorce process.' Four answers fall under the reason 'I did not want the trouble.' Four respondents replied that 'the claim would not have been endorsed.' Finally, in the category 'others', one of the respondents was in absentia during the divorce process at the court. These answers indicate that respondents who did not claim support rights can be divided into two main groups: a group of respondents who felt that they could manage well on their own, and a second group of respondents who primarily felt that a support claim would mean a more difficult divorce process and was not worth the effort. The latter group might very well have been discouraged by court officials from making formal support claims, as the following example illustrates.

A respondent I interviewed as part of the qualitative section of the research provided insights into why she had not claimed any post-divorce rights. According to her, one of the clerks who assisted her during the process had dissuaded her from claiming any post-divorce rights:

'There was a woman there, a clerk, she said it would be [a] long [process], since it had to be arranged first [with] the husband, [to know] whether he approved [of the claim] or not. We would have to meet each other first to mediate how much [support] I want. If we would disagree then it would become cumbersome. If there was no point of agreement, he wanted 300 and I wanted 500, the process would take much longer. It would constantly have to be dealt with, [and I would have to go] back and forth, back and forth [to the court].'¹⁷

The clerk clearly succeeded in discouraging her from claim post-divorce rights and it is likely that this often happens.

8.3.3 Child support

The second post-divorce right to discuss is child support (*nafkah anak*). As we have seen in Chapter 4, the father remains legally responsible for the maintenance of his legal children, no matter who has custody over them. Women can

17 Interview with Ibu L., Ujuung Bulu, Bulukumba, 23-06-2011.

make child support claims in divorce cases petitioned by themselves or by their husbands. According to the register books of the Islamic court of Bulukumba, in 2008 seven women claimed child support, or 1.6 percent of the total. In 2009 the numbers are slightly lower, six child support claims or 1.3 percent.¹⁸ This number is lower in Cianjur, where the percentage of child support claims from 2006 to 2008 went down from 3.5 percent, via 2.7 percent, to two percent. The divorce survey reveals much higher numbers of women who stated they claimed child support rights at the Islamic court. 23 of the 64 respondents who had requested a divorce from the Islamic court and had children answered that they had claimed child support from the father. According to 21 of them their claims were endorsed by the court, although in 12 cases only partly.

The large discrepancy between formally registered claims at the Islamic court and claims in the divorce survey can be explained along the same lines as the similar discrepancy with regard to spousal support rights described above. The possible explanation is the same too. Since judges prefer to settle disputes informally during the mediation process and look for an agreement between the parties, most child support negotiations do not become part of the formal judgment of the court and are not formalised into court orders. The women involved, however, feel that the judge has listened to their case and has offered a solution.

41 Respondents of the divorce survey who went to the Islamic court to divorce and who had children did not file a child support claim. 33 Of them gave a reason for their decision not to claim. Eight respondents gave an answer that can be categorized as having 'no need for support.'¹⁹ Four respondents thought that the claim 'would not be endorsed.' Four respondents 'did not want to go through the trouble.' Three respondents 'did not want to delay the process.' Falling in the category 'others', three respondents did not make a child support claim because the husband had custody over the children and one was in absentia during the divorce process.

Another reason for the low number of formal child support claims at the Islamic court may be that in practice fathers voluntarily support children residing with their mothers. In order to measure the extent to which fathers in Bulukumba support their children after divorce, the divorce survey asked the (female) respondents the frequency (always, often, seldom, never) that the father offered support to the children residing with the mother after divorce.

18 Those percentages are based on the total number of couples divorced at the Islamic court of Bulukumba. The percentages of 1.6 in 2008 and 1.3 percent in 2009 do not reflect the percentage of claims of women who indeed had children at time of divorce, for the obvious reason that not all of the couples had children when they divorced or their children had reached the age of 21. Still, I think the numbers give a good indication of the number of women in Bulukumba who make formal child support claims, since in Indonesia it is normal to have children shortly after marriage, usually within two years (Choe et al. 2001).

19 This was an open question. I have brought similar answers into a single category.

The six forms of support consisted of buying necessities for the children (clothes, games); money for the mother; educational costs; pocket money for the children; recreational activities; and money or clothes for holidays.

The picture emerging from the divorce survey suggests that about 30 percent of fathers are involved in the upbringing of the children residing with the mother after divorce, as 29.5 percent of the fathers in Bulukumba always or often buy necessities for their children and thirty percent contribute to the educational costs of their upbringing (see Table 8) Moreover, 26.3 percent of fathers always or often give pocket money to the child. These are much higher percentages than in Cianjur, where those numbers fall below ten percent.

Although 30 percent of fathers are involved in raising their children, only a few fathers (7.6 percent) invite their children regularly to spend leisure time with them. Islamic holidays see the largest involvement of fathers, as 36.9 percent always or often contribute to the costs involved. More importantly, regular payments to the mother are not a common form of child support (12.7 percent always or often), and this may indicate that fathers are more inclined to take responsibility for child support when the purpose of the support is specified.

A majority of divorced fathers seem to not, or only occasionally, contribute to the costs of raising children residing with the mother. In each form of child support listed, the percentage of fathers who never deliver them at all lies above 40. The additional percentage of fathers who only occasionally do so varies from 19.4 percent for educational costs to 26.3 percent for costs of daily necessities for the child. Taken together, the groups 'never' and 'occasionally' amount to 65.6 percent to 69.4 percent per category of support. Although fathers may give one form of support and not the other, which means that the actual number of fathers who regularly give some form of support is higher, I believe that the percentages still indicate that only a relatively small number of fathers give regular and substantial support to their children.

Table 8: Frequency that fathers provide specific forms of child support after divorce (N=95)

	Always	Often	Occasionally	Never	No answer
Buying supplies (clothing, toys, etc)	10.5%	19%	26.3%	42.1%	2%
Money to the mother	5.3%	7.4%	25.5%	57.4%	4.3%
Educational costs	14.0%	16.1%	19.4%	46.2%	4.3%
Pocket money to the child	10.5%	15.8%	30.5%	38.9%	4.2%
Invite children for leisure time	5.3%	2.3%	16.0%	73.4%	3.2%
Money or clothes for Islamic holidays	27.4%	9.5%	12.6%	46.3%	4.2%

The divorce survey asked whether the women concerned were satisfied with the contributions by the father towards their children in terms of child and spousal support. A mere 8.5 percent of the respondents were satisfied with the father's contribution, 40 percent were dissatisfied and 44.2 percent neutral (*biasa saja*). In Cianjur the numbers were not much better: 17.5 percent satisfied, 35 percent neutral, and 59.2 percent dissatisfied. Thus, although 25 to 30 percent of fathers support their children regularly, in general the fathers do not do support their children enough in the eyes of their ex-wives.

Even so, the background of this dissatisfaction appears to be more of a moral nature than an economic necessity: a remarkable 72.5 percent (in Cianjur 26 percent) of the respondents stated that their economic situation had actually improved after divorce, 22.5 percent (Cianjur 40 percent) that it had remained the same and only 1.7 percent (Cianjur 27 percent) considered it to have worsened. As in Cianjur, one of the main explanations for this high number is the bilinear kinship pattern that facilitates a return to the parents' home and care, but I cannot explain the large differences between Cianjur and South Sulawesi. The stronger kinship ties in South Sulawesi and the position of woman as honor-bearers may play a role, but I do not think that these factors can fully explain these numbers.

8.3.4 Joint marital property

The third post-divorce matter I have looked at is joint marital property (*harta bersama*): property acquired during the marriage (see Chapters 3 and 4). In Bulukumba the Islamic court registered seven *harta bersama* claims in 2008 and nine in 2009. This denotes a percentage of 1.6 percent in 2008 and 2.0 percent in 2009, a similar figure as for Cianjur in 2007 and 2008 (both two percent). All but one of these *harta bersama* claims were included in the divorce suit itself, rather than filed as a separate lawsuit after the divorce had come into effect.

The Supreme Court in 2010 attempted to encourage people who want to claim *harta bersama* to start a lawsuit after the divorce has been formalised. It issued an instruction in 2010 (*Petunjuk Teknis, Juknis*) in which the Islamic courts are requested to convince claimants to reach an agreement during the mediation stage, or make a separate claim after divorce. *Harta bersama* claims can potentially postpone the divorce itself when they become part of the divorce suit, since if they concern land the court is often required to conduct a field investigation in order to establish exact size and boundaries. Moreover, when a relatively large amount of property is at stake the chances of appeal increase, and consequently the chances of a postponed divorce. Whether the interventions of the court personnel will be successful remains to be seen. A

separate lawsuit after the divorce means that a claimant has to pay the court fees twice, which may be a significant obstacle.

Outside the realm of the court, only a minority of the divorced couples in Bulukumba make informal agreements on joint marital property. The divorce survey reveals that 15 or 12.5 percent of all 120 respondents had made an arrangement with their husband concerning marital property and 64, or 53 percent, had not.²⁰ 46 Respondents provided reasons for not seeking a marital property arrangement with their husbands. 19 Respondents answered that they 'did not need the marital property.' 13 Respondents said that 'there was no marital property.' Seven respondents gave the answer 'I did not want to delay the process.' Three respondents 'did not want to go up against their ex-husband.' Four claims fall under the category of 'other reasons,' including a respondent's statement that her children would get her part of the marital property in the future.

The latter kind of agreement is illustrative of other cases in Bulukumba, in which rights of the spouses themselves are made secondary to the rights of the children. In the following case the husband wanted to divide the joint marital property. According to the Marriage Law the husband indeed had the legal right to half of the marital property, but for the sake of the children the Islamic court decided that he had to refrain from his legal rights.

Interviewer: so he turned up and then he asked for, he immediate asked for, eh, he claimed, joint marital property?

Respondent: Yes, he asked to divide the property. But I resisted, because I have [custody of] our only child.

Interviewer: And the property, [consisted of] a house or land?

Respondent: a house.

Interviewer: This house?

Respondent: This one.

Interviewer: Oh, so he wanted to sell this house and divide the money?

Respondent: Yes, he said he wanted to divide it, he wanted to take it. But I resisted, persisted, I have our only child. And in court, eh, what is it (*bagaimana*), the judge, he said, the judge said it could not be divided because I have a child. In case we would have no children, then it could be divided. [...]

Interviewer: So the marital property was not divided at all?

Respondent: It was not divided.²¹

Chapter 9 will delve deeper into the legal reasoning in the courtroom, but with this quotation I wish to demonstrate that the Islamic court is more inclined to grant women the house they live in when they have children. Similarly, women seem to consider property more essential for the future of

20 30 Percent of the respondents, for no clear reason, chose the 'no answer' option, and the other 4.5 percent did not answer at all.

21 Interview with *Bu M.*, desa Tammato, sub-district Ujung Loe, Bulukumba, 23-07-2011.

their children than child support arrangements, as the latter depend on implementation by the ex-husband.

8.3.5 Implementation and enforcement of court judgments

If we examine the execution of court orders and their enforceability, a mixed picture emerges. With regard to spousal support for the three-month waiting period, the Islamic court facilitates implementation since, just like in Cianjur, the court puts pressure on the husband to pay the entire sum established in the court order before the divorce is uttered. In contrast, child support implementation depends on the ex-husband's goodwill and is difficult to enforce. Many women complained that their ex-husband did not provide the support established in the court order, but no one had considered to file an enforcement request at the Islamic court. Court enforcement is non-existent. Somewhere in the middle is the enforcement of court orders concerning marital property, which can be effective, but is relatively expensive. According to estimations by chief clerk Hasanuddin, enforcement requires about Rp one million in court fees, and depending on the expected resistance additional payments (to police, sometimes military) of at least Rp four million. According to Islamic court officials, the performance of the Islamic court of Bulukumba in enforcing property cases had improved significantly in the two years since 2009.

Chief clerk Hasanuddin has an especially good reputation for getting court orders enforced. According to bailiff Ambo, the Islamic high court of Makassar had sent Hasanuddin to the Islamic court of Bulukumba because of his reputation of being able to get execution orders enforced in the notorious district of Jeneponto,²² while the Islamic court of Bulukumba had an enforcement problem.²³ In a personal interview chief clerk Hasanuddin was very open about his strategies and the use of his military network.²⁴ According to him, the military network of his father, a high-ranking officer, helped him get information about the expected resistance in the field. Moreover, he combines a tough appearance with a good understanding of the context.

He explained to me that because of the central importance of defending one's *sirri* (honor) in South Sulawesi, police force will often provoke a violent response: '[...] if we bring in the security apparatus their honor will be affected. That is what we call the honor culture, *masirri*. You have brought shame upon us, they will say, it is better to die than that I hand it over.' For this reason, chief clerk Hasanuddin used the strategy of always giving the person con-

22 When travelling from Makassar to Bulukumba and back people would time and again warn me to pass Jeneponto in daylight only, because of the dangerous conditions for travellers.

23 Interview with bailiff Ambo of the Islamic court of Bulukumba, Bulukumba, 02-08-2011.

24 Interview with chief clerk Hasanuddin of the Islamic court of Bulukumba, Bulukumba, 03-08-2011.

cerned another chance to save his honor in a non-violent way – even if the time to negotiate had passed according to legal procedures. He explained that together with two or three soldiers, in civilian dress and unarmed, he visited the location in person, and tried to convince the person who had been ordered to hand over the property to do so voluntarily. He said that many people respond to this last chance in order to avoid the shame of a forced foreclosure. Another example he gave was the case in which he – with the approval of the rightful claimant – postponed the enforcement of a court order to give the person, a farmer, the chance to collect the harvest first.

Farmers who have planted crops and worked the land are less willing to give up the land before than after the harvest. According to the chief clerk, such a personal approach that considers the honor and the private situation of the persons concerned has greatly facilitated the enforcement of court orders. He claimed that in the two years he had been the chief clerk in Bulukumba (since July 2009), he managed to get 16 property cases enforced, many of which had been unresolved for many years, and only four had required the use of force.

The latter four cases reveal that if in the end the personal approach fails, chief clerk Hasanuddin did not hesitate to resort to force. In order to make enforcement of property execution orders in Bulukumba more feasible, he had created a network involving court personnel, intelligence, the police and the military. In such execution cases he would contact the intelligence agents first, to assess the security situation in the field. During the forced execution itself chief clerk Hasanuddin relied on the military rather than on the police, although the formal coordination of security issues is always in the hands of the police, as is stipulated by law. According to him, the military are involved because they are more resolute (*tegas*) than the police, hence reducing the chance of casualties on the law enforcement side. The police also feel more secure with military backup, he claimed. Although this approach makes property cases enforceable, there are financial consequences: each of the persons involved has to be compensated by the claimant and therefore, although chief clerk Hasanuddin stated that he did not know what informal costs are involved, forced execution is not cheap.

8.4 CONCLUSION

If we look at divorce itself, women in Bulukumba show a strong awareness of their rights. They know that they can go to the Islamic court to divorce their husbands, and that the legal divorce grounds in the Marriage Law do not require them to pay compensation to their husbands, as in the *khul* procedure. It appears furthermore that although the division of gender roles is rather patriarchal in Bulukumba, there is nevertheless strong female agency in divorce matters, even within arranged marriages. This agency is reflected by court

statistics, the outcomes of the survey and interviews with divorced women, and can be explained by cultural factors. Bulukumba has a lineage system of bilateral family descent, in which children derive their status (degree of noble blood) from the father and the mother. In practice, this means that the relatives of the wife remain influential after a marriage. The husband marries into his wife's family just as much as she marries into his. Thus, the ties between a wife and her family remain strong; she will in principle be backed by her family in a conflict, and in the case of a divorce she can return to her parents. This ensures greater independence to women in marriage than one would perhaps expect, considering the traditional roles most Muslim women play in South Sulawesi. We must see the 75 to 80 percent of divorces in Bulukumba that are filed by women in this light of strong female agency.

An examination of the reasons for divorce reveals that they usually are personal rather than material or economic. Most divorces take place because spouses do not get along well, which results in quarrels. Those quarrels worsen in many cases due to the threat of polygamy or poor economic conditions, and frequently turn violent. Underlying causes for the problems in the personal sphere include immaturity due to a young age at marriage, and incompatibility in cases of arranged marriage, but the practice of *merantau* (working overseas) appears to be the largest cause of marital problems. This includes those related to polygamy and maintenance. Thus, women are assigned the role of household manager and are supported by their kin, maintaining a lot of agency in divorce matters and sufficiently empowered to break out of an unhappy marriage. However, in many cases it is the husband who intentionally brings the marriage to a breaking point by leaving his wife behind, subsequently ending maintenance payments or marrying someone else.

The qualitative data of the research reveal that in Bulukumba the only socially acceptable way to divorce is through the Islamic court. In interviews, women explained that through a divorce at the Islamic court they would become *bersih* or 'clean', indicating that they would be suitable marriage partners again. This implies that in Bulukumba there is a stigma attached to unofficial marital status, which may explain why a large majority of the respondents in the divorce survey divorced at the Islamic court. It also demonstrates that the Islamic court in Bulukumba has succeeded in obtaining its formal-legal position as the only legitimate provider of divorces, and performs much better than the Islamic court of Cianjur in this regard.

The performance of the Islamic court with regard to post-divorce rights is similar to that of Cianjur and much less positive. Few women make formal post-divorce claims, and the advice and interventions of actors within the Islamic court play an important role in this non-claiming behaviour by women. The Islamic court personnel have a preference for informal agreements, and push women's claims outside the realm of the court. Even when a claim is formally registered, the judge will insist on negotiations between the parties first. Judges claim that the chance of implementation of informal agreements

is larger than that of court orders. However, the divorce survey shows that in Bulukumba, much as we have seen in Cianjur, such agreements in most cases are simply ignored by the husband. Nonetheless, the main factor in the non-claiming behaviour of women appears to be the availability of support and shelter of their kin, which enables financial independence from an ex-husband and provides a roof over their head. Most women do not need support from their ex, and even feel that they are financially better off without him.

When women are persistent and do claim post-divorce rights in the divorce suit, the Islamic court generally endorses these claims, with the proviso that regarding spousal and child support the court tends to follow the husband's report of his financial ability, purportedly in order to increase the chance that the husband executes the court order, a practice I also observed in the Islamic court of Cianjur. There are also positive exceptions concerning the judge's role. Women who have custody over the children will sometimes be assigned a larger portion of the marital property by the judge, in order to ensure that the children at least have sufficient housing.

The actions of the Islamic court concerning the various post-divorce rights, as well as judges' rulings appear to be at least partly influenced by the enforceability of the court orders. While Muslim spousal support court orders are easy to enforce by requiring them to be paid before the divorce takes place, enforcement of child support orders is non-existent, and enforcement of marital property matters is relatively expensive. Hence, even if the track record for enforcement of executive court orders has improved greatly in the past few years by involving the intelligence service and the military, the role of the Islamic court regarding most post-divorce rights remains limited, and most court orders have no teeth.

In conclusion, we have seen that the Islamic court in Bulukumba has succeeded in becoming the sole authority in divorce matters. Compared to the 86 percent in Cianjur, 25 percent of out-of-court divorces in Bulukumba is very low. Out-of-court divorce is stigmatized and considered unclean. Those differences can be explained by the distinct historical trajectories of the districts' Islamic courts described in Chapters 5 (Cianjur) and 7 (Bulukumba). In Cianjur strong competition to the Islamic court developed from a network of KUA officials, *kyais* and *ulamas*, who wanted to retain their traditional authority in those matters, whereas in Bulukumba those same Islamic institutions refer people who want to divorce to the Islamic courts.

Regarding post-divorce matters, the performance of the Islamic courts of Cianjur and Bulukumba is very similar: there are few claims, and judgments are difficult to enforce, with the exception of spousal support in *talak* divorces. The judges and other court staff know this and because of that and cultural preference, they press for informal agreements that ironically are also rarely implemented. The concept of 'shadow of the law' (Mnookin and Kornhauser 1979) implies that each case in which the court endorses women's post-divorce

rights influences future negotiations that take place out of court. Thus, poor enforcement may very well have a negative shadow, one that falls beyond out-of-court negotiations, as it also affects the behaviour of the Islamic courts themselves.

In Chapter 9 I turn to the court judgments and legal justifications of the Islamic courts of Cianjur and Bulukumba. In my legal analyses of a number of legal concepts I will explain how doctrinal changes in the Islamic courts emerge out of the details of the every day adjudication processes.