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Propositions relating to the dissertation

ISLAMIC COURTS AND WOMEN'S DIVORCE RIGHTS IN
INDONESIA

The Cases of Cianjur and Bulukumba

by Stijn Cornelis van Huis

1. The reforms of the 1931 Penghulu Courts Regulation which formally transferred the Islamic courts jurisdiction in marital property and inheritance disputes to the *landraden* was not the abrupt legal change that it commonly is considered to be: the Regulation mainly codified legal practice that had arisen from case law on jurisdictional issues between the two branches of the legal system of the Netherlands Indies.
2. The adoption of the concept of 'broken marriage' by the Islamic courts means that a new 'no fault divorce' concept has been adopted in Indonesian Muslim family law, which has effectively replaced all explicit divorce grounds of the 1974 Marriage Law without any involvement of parliament or *ulamas*.
3. Islamic courts in Indonesia will not be able to offer women from the lower classes legal protection against the negative economic effects of a divorce as long as the 'formal' legal system remains incompatible with the social reality of most court clients, i.e. living in an informal economic system.
4. As long as the Islamic courts lack enforcement mechanisms for child support orders there will be almost no difference between informal private arrangements and court judgments: in both cases implementation completely depends on the goodwill of the husband.

5. In addition to the shadow of the law, which refers to a situation in which court judgments influence the much larger sphere of out-of-court dispute settlements, the shadow of weak law-enforcement also exists: a situation in which judges in their adjudication take into account the fact that court judgments can be ignored without legal consequences.
6. The legal doctrine within Islamic courts should be treated as a distinctive judicial tradition, apart from both the Islamic *fiqh* tradition and the judicial traditions of common law and civil law.
7. The field of Islamic law studies should add a focus on everyday adjudication processes to the traditional studies of the opinions of *ulamas*: this would enhance our understanding of how Islamic law actually worked, and works, in practice.
8. The global discourse about the economic vulnerability of 'poor' women and children after a divorce does not fit well with the situation in Indonesia, since it ignores many facts: women who more often initiate divorce than men, the substantial economic contribution of women to the household, a labour market which seeks female workers, and a variety of safety nets that are available to them after divorce.
9. The ideas of Snouck Hurgronje and Van den Berg about the role of Islamic law in Javanese society do not differ much at all, when viewed from a perspective of their implications on family law practice.
10. Young and unstable marriage provides the Indonesian economy with a cheap labour force of under-aged but legally adult women.