Matrilineal Islam: State Islamic Law and everyday practices of marriage and divorce among people of Mukomuko-Bengkulu, Sumatra, Indonesia

Al Farabi, A.

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Introduction

1.2 State, Islam, and Matrilineal Traditions

In 2017, I encountered an ongoing dispute over joint marital property (*harta-sepencarian*) at the Arga Makmur Islamic court. The dispute involved Syahril and Yati, an ex-husband and wife from Mukomuko, on the west coast of Sumatra. A couple of months earlier, the court judges had granted permission for Syahril to divorce his wife on the ground of broken marriage. This permission put an end to their marriage, which despite its unhappiness had survived for 23 years. Syahril had been involved in extra-marital affairs several times, culminating in an informal polygamy or unregistered second marriage with a divorced woman in 2013. Since then, the couple had been living separately. Yati continued to take care of their three children and their family business: a confectionary shop. Without the presence of her husband, she expanded the business by investing in palm oil plantations and properties, and in 2017 the business had a net worth of 3.98 billion rupiahs. This is a remarkable amount, compared to the average monthly earnings in this region, which are around 2 million rupiahs.

Their dispute about the division of the marital property became intense, when Syahril demanded an equal share of it. Meanwhile, Yati insisted that the majority of assets belonged to her and the children, as prescribed in the local customary norm, or *adat*.[1] According to the *adat*, Yati and her children were entitled to a

[1] *Adat* is a broad concept, which can be used to mean either: (1) a concrete body of rules and practices inherited from the past; (2) a coherent discourse concerning history, land, and law; or, (3) a set of loosely related ideals which (rightly or wrongly) are associated with the past: authenticity, community, harmony, order, and justice (Henley & Davidson, 2007, 2008, pp. 817–818). In this study, the term *adat* carries the first definition, meaning a concrete body of rules and practices inherited from past Minangkabau (cf. Abdullah, 1966, p. 15, 2010, p. xxxii; F. von Benda-Beckmann & von Benda-Beckmann, 2013, p. 15) and developed in Mukomuko throughout the course of its history.

share of at least three-quarters each, and Syahril to no more than a one-quarter share. However, during a mandatory mediation session in court, a judge, acting as a mediator, intervened by suggesting that the property should be divided equally, according to state law. Yati was unhappy with this, but after a prolonged process that took almost a year, she reluctantly accepted the advice and signed a peaceful agreement (*akta perdamaian*). After converting all their assets into rupiah, Yati and Syahril agreed to allocate 300 million rupiah as alimony for their youngest daughter and distribute the remaining assets between themselves equally. However, this was not the end of the story, because execution of the agreement was another issue at play. Syahril could not take over some parts of his share, which were under the control of the couple's children, and Yati had not received a single rupiah of alimony for her daughter (16), who was under her tutelage. During my visit, a year later, Yati and the children were starting a new business, whereas Syahril was about to sell a house from his share, in order to pay for the alimony.

This case shows the tension between state and society, and amongst Muslim citizens, in matters of marriage and divorce. Existing studies teach us that the Indonesian state has implemented reforms in the field of marriage and divorce (Hanstein, 2002; Lubis, 1994; Nurlaelawati, 2010; O'Shaughnessy, 2009). In doing so, the state has employed multiple approaches, ranging from legislative change to the 'bureaucratisation' and 'judicialisation' of marriage registration and divorce procedures. Regardless of their differences, these approaches have been pivotal to Indonesian family law reforms. These reforms have made marriage registration and judicial divorce procedures mandatory. They have also restricted polygamy, and introduced a minimum marital age and equal divorce grounds for wives and husbands alike (M. Cammack, 1989; M. E. Cammack, 1997; Soewondo, 1977). The reforms have also formalised so-called 'legal pluralism'[2], by introducing state-sanctioned Islamic law and establishing an

[2] Here, the term 'legal pluralism' is equivalent to the term 'classic pluralism', which is used by Merry (or 'weak pluralism', the term used by Griffiths, 1986) to denote when "a sovereign commands different bodies of law for different groups of the population according to their ethnicity, religion, or geographic location" (Merry, 2017; Sartori & Shahar, 2012, p. 638).

Islamic court exclusively for Muslims (J. R. Bowen, 2001; M. E. Cammack, 1997; van Huis, 2019a). The main consequence is the imposition of a single form of Islamic law, i.e. the 1991 Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI) for Indonesian Muslims, with Islamic court judges as official interpreters (cf. J. Bowen & Salim, 2018, pp. 4–5).

Nevertheless, it remains not so clear just how the state interacts with Indonesian Muslims of various ethnicities, Islamic denominations, and sociocultural traditions. In other words, how does the single interpretation of Muslim family law that the state imposes actually interfere in practice, *especially* if we consider Indonesia's multicultural Muslim societies and different forms of empirical laws or norms to be operating within them? With a view to this, a number of important studies have suggested that the state's interference in these fields does not necessarily end with binary solutions, but that it is also a matter of compromise and mutual adjustment (Bedner, 2021, p. 393; Brickell & Platt, 2015; Fauzi, 2023, p. 9; Grijns & Horii, 2018; Horii, 2021). Despite these compromises and adjustments, broadly speaking, the state unification of Muslim family law and the (Islamic) judiciary is often at odds with local normative variations across the archipelago. These variations, as I will present briefly below, are primarily informed by different forms of local custom (*adat*), by Islamic precepts, or by a combination of the two.

To start with, Idrus, in her study among Bugis, maintained that a localised version of Islam continued to offer an alternative to that of the state, as seen in the numerous unregistered marriages in the community (Idrus, 2003; see also Millar, 1991). Likewise, Nurmila pointed out a growing public sphere of competing 'Islamic' discourses on polygamy, after the fall of Suharto's authoritarian regime in 1998 (Nurmila, 2009, p. 64). She also added that legal restrictions on polygamy are not seen as fundamental by many Indonesian men, who often prefer to secure their second and subsequent marriages via an Islamic ceremony, which is beyond the state's reach (Nurmila & Bennett, 2014, p. 84; cf. a more recent study by Wirastri, 2018; Wirastri & van Huis, 2021 about this particular topic). Van Huis' research on women's access to post-divorce rights in the Cianjur and Bulu-

kumba Islamic courts, taught us how the different historical trajectories of the courts have contributed to different attitudes towards informal divorce. Whereas in Cianjur autonomous *ulamas* and the Islamic court were competing institutions, in Bulukumba the two institutions and their actors were relatively new, and they managed to develop a more consensual relationship (van Huis, 2015, pp. 264–265). Platt's study on informal marriage and divorce amongst Sasak in West Nusa Tenggara, showed that marriage and divorce are predominantly a community-based affair (Platt, 2017, p. 8).

These insights have taught us that the state's reach remains limited, and that various forms of local norms continue to shape marriage and divorce among Indonesian Muslims. Confirming this, my research among matrilineal Muslim communities in Mukomuko shows that the local *adat* of *pegang-pakai* (customs and usages) on marriage and divorce remain the general norms observed. Yet, in *Syaril v. Yati* we witness how the husband, feeling dissatisfied with the result of the *adat* deliberation, chose the state Islamic court in order to obtain a greater share of the joint marital property (cf. 'forum shopping' in K. von Benda-Beckmann, 1981). And indeed, the adjudicating judges conducted a formalistic interpretation of Article 97 of the KHI, which stipulates that an ex-husband and wife should receive an equal share of their joint marital property[3]. This interpretation disregards both the local *adat* and any more nuanced interpretations of the provision.[4] This formalistic interpretation also went against one of the objectives of Indonesian family law, i.e. better legal protection for wives and children, who in this case are better served by their own *adat* than by state law. Put more generally, this case reflects an ongoing trend of homogenising and centralising Indonesian Muslim family law, and the first instance Islamic court serves as a strategic locus to this process.

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[3] An exception only applies if the couple has agreed to distribute the property differently (see also, Articles 35, 36, 37 of the Indonesian Marriage Law 1/1974 and Constitutional Court judgement 69/PUU-XIII/2015, which enable a couple to arrange an agreement regarding the separation of joint marital property at any point in the course of their marriage).

[4] More information on this topic is provided in Section 1.4.1.3 of this chapter, where I discuss important developments in the Islamic court regarding the distribution of joint marital property.

The role of the Islamic court in the unification of Muslim family law has inspired a number of studies in many Muslim countries.[5] Peletz' study on the Malaysian Islamic courts suggests that the courts have played a pivotal role in the formation of a nation state. He also argues that, by promoting the state's patriarchal ideology, the courts have been instrumental in the reproduction and transformation of symbols of nationhood and cultural citizenship, as they have penetrated deeply into communities and families, irrespective of their membership of a particular clan, ethnicity, or community (Peletz, 2002, pp. 4, 277–278). O'Shaughnessy's study about Indonesian Islamic courts in Central Java went even further, by holding the courts responsible for making the state's patriarchal ideology, namely the male-headed family and the stigmatisation of divorce, mainstream (O'Shaughnessy, 2009, p. 70). Van Huis' research in Cianjur and Bulukumba Islamic courts suggests that the courts may be held accountable for the transformation of divorce norms within society, according to the state's 'patriarchally-inclined' ideology.[6] However, he adds that the transformation occurs in subtle ways and depends on, "the courts' role and functioning in the local communities concerned and the level of competition between the local alternative normative systems and institutions" (van Huis, 2015, pp. 17–18).

The present study seeks to understand the complex entanglement between the state's more homogenised and centralised Muslim family law system and the existing local norms. The research asks how a geographically 'peripheral'[7] matrilineal Muslim community in Mukomuko constructs and safeguards its own Islamic law on marriage and divorce vis-à-vis the interpretation

[5] In Malaysia (Peletz, 2002), in Pakistan (Abbasi, 2017), in Egypt and Morocco (Sonneveld, 2019), in Zanzibar (Stiles, 2019), in Kenya (Hirsch, 1998), in Senegal (Bouland, 2022), in Jordan (Engelcke, 2018), in Iran (Mir-Hosseini, 2000), in Palestine (Moors, 1995), in Israel (Shahar, 2008), and in many Western countries (Sezgin, 2018; van Eijk, 2019).

[6] Despite the prevalence of patriarchal influence in the state's ideology (cf. "state ibuism" in Suryakusuma, 2011), it is important to note that the Muslim family law promulgated by the state also incorporates elements, i.e. existing local, Islamic and global ideas, that promote more equal relationships between men and women (M. Cammack et al., 2015; van Huis, 2015). Therefore, the term 'patriarchally-inclined' is more accurate than the word 'patriarchal', when describing Indonesian state ideology.

[7] In this research, the term 'peripheral' is not employed to mean a dichotomous category of great v. little tradition, central v. peripheral Islam, or orthodox v. non-orthodox Islam, in the study of Muslim communities (cf. Asad, 2009, pp. 7–9; Geertz, 1971; Gellner, 1981; Redfield, 1956). Rather, I use the term to mean the community's isolation from the surrounding regions, and the relatively late arrival of central government to this particular region.

of Islamic law as promulgated by the state. In state-society encounters at the Islamic court, this study reveals the prevalence of both compromise and conflict, loosely aligned with the national and local levels, respectively. While the Islamic Chamber of the Supreme Court has considerable room for compromise, local courts frequently see tension emerging. Mukomuko is a case in point, where the state's patriarchally-inclined Islamic law is sometimes in conflict with the local *adat* of the more matrilineally-inclined Islamic law.[8] One should keep in mind that the community in general continues to rely on its *adat.* Confirming van Huis' thesis, this shows that the state's top-down approach to the mainstreaming of unified Muslim family law has not automatically transformed local practices in favour of the state. However, some individuals, like Syahril, have started to take cases to the Islamic court. In this thesis, I will show how this is affecting non-court divorces too, even if the current social significance of *adat* and its institutional actors cannot be underestimated.

1.2 Mukomuko as a Research Site

Mukomuko is a district of Bengkulu province, on the West Coast of Sumatra. In this study, Mukomuko is primarily defined geographically, rather than ethnolinguistically or culturally. Its population is predominantly Muslim and, in terms of settlements, is comprised of three distinct community groups. These are: (1) matrilineal communities, who have resided in the upstream and downstream (*hulu-hilir*) villages since time immemorial; (2) migrants, mostly from the island of Java, who are scattered across several enclave settlements, following the mass arrival of state sponsored transmigrants from the 1980s to the present day; and, (3) urban people, who are a mixture of the first two groups and more recent migrants, and who live in emerging market and administrative centres across the district of Mukomuko. While most of the matrilineal community and the transmigrants remain ex-

[8] While the state's Islamic law has its origin predominantly in the Shafiite school of Islamic jurisprudence, which is more patriarchally-inclined (Azra, 1992; Hooker, 1984; Kooria, 2022; Lukito, 2008; Nakamura, 2006; van Bruinessen, 2012; van Huis, 2015), the local *adat* of Mukomuko inherits a unique mixture of Islam and matrilineal traditions from the Minangkabau (Abdullah, 1966, p. 15, 2010, p. xxxii; F. von Benda-Beckmann & von Benda-Beckmann, 2013, p. 1).

clusively within their respective settlements, urban people have become more inclusive, as more diverse ethnic groups have come to live side by side. In the field of marriage and divorce, the matrilineal community usually observes the *semendo-adat* (their own Islamic law), whereas the transmigrants often carry various traditions with them from their place of origin. Meanwhile, native-migrant encounters[9] are inevitable, as evidenced by the numerous cross-ethnic marriages occurring. This multicultural society is an interesting subject in its own right, but for a number of reasons this study draws mainly on the experience of those from the matrilineal community.

The main reason for focussing mainly on the experience of those from the matrilineal community concerns the aim of this study, which is to understand the complex entanglement between the 'official' Islamic law promoted by the state in the field of Muslim marriage and divorce, and the local law observed by the community. By narrowing its focus to Mukomuko's matrilineal Muslim community, the present study manages to concentrate on observing the everyday practices of marriage and divorce among this particular group, as well as extending its inquiry to other connected sites, such as the first instance and higher Islamic courts (the appellate and Supreme courts). This focus allows me to concentrate on studying the ways people conclude their marriages, obtain their divorces, and solve related disputes arising from these matters at societal level. Meanwhile, by extending the sites of research, the study manages to ask how people navigate between the state's patriarchally-inclined Islamic law and their equivalent local *adat*, which is a more matrilineally-informed form of Islamic law. Another benefit of expanding my focus sites is that I can delve into the logic informing judges' decisions regarding incoming cases in general, and cases brought to them by members of the matrilineal community in particular.

[9] While realising the colonial associations of the term 'native', I nevertheless use the term for the matrilineal community across the *hulu-hilir* villages, in order to distinguish them from the remaining locals who reside permanently in Mukomuko, but are not part of the *adat* community.

As I will show later in this dissertation, even though the majority of the people in Mukomuko's matrilineal Muslim community continue to rely on their *adat* and its institutional actors (*orang adat*),[10] a few individuals have started to conduct 'forum shopping', by bringing their disputes before the state Islamic court rather than making them the subject of *adat* deliberation (cf. K. von Benda-Beckmann, 1981, 1984). This anomaly, as seen in Syahril's case (above), usually stems from 'unsatisfied' husbands, whose chances for a better result are now higher, following the establishment of the Mukomuko Islamic court at the end of 2018. Another threat comes from local government, which tries to prevent *orang adat* being involved in village administration. Regardless of these threats, the social significance of *adat* and its institutional actors cannot be underestimated, and they remain a popular option, or at least a temporary alternative, within the community. The matrilineal Muslim community in Mukomuko serves as a perfect case for this study investigating the extent to which a local condition matters to the state, when it comes to promoting social change in the field of Muslim marriage and divorce. However, considering the diversity of Mukomuko's society from the onset, I did not approach this matrilineal community in isolation, as encounters between the community and people from different ethnic groups is inevitable.

Another reason for my choice on Mukomuko's matrilineal community lies in the fact that the community is now at a crossroads, following two subsequent and important events, i.e. the 2003 regional autonomy of Mukomuko district, and the 2018 establishment of the Mukomuko Islamic court. These events have brought rapid changes to members of this matrilineal community, who are now experiencing the increasing presence of the state. In other words, their *adat* and its institutional actors are now being really tested. My choice is known in anthropology as

[10] *Orang adat* is a local term used to designate *adat* elites, which are comprised of *kaum* (clan) leaders and elders, sub-village heads, and religious functionaries. This composition can be projected back to Minangkabau's *orang-tigo-jenis*, after the Padri movement formalised the involvement of religious dignitaries as an integral part of local elites (Abdullah, 1966, p. 15, 2010, p. xxxii).

'salvage ethnography', when a researcher places urgency on studying traditional ways of life that are rapidly changing (Monaghan & Just, 2000, p.28). While matrilineal kinship system is embraced by several regions, including Minangkabau, Mukomuko serves a unique site for this research as the region had long been isolated from the surrounding regions and neglected from the central governments. Its isolation and neglection were advantageous to the preservation of local *adat* and its institutional actors as compared to other regions, and the increasing presence of the state in the last two decades and its patriarchal ideology pose a serious threat to the existing local normative system observed by this particular group. The changing situation of contemporary Mukomuko signifies my choice on this region as it enables the present study to trace and document this timely process.

The more practical reason concerns a limit that I have to draw in order to make this research feasible. Within the framework of one-year fieldwork, it is almost impossible to conduct a balanced study of each community group, because they are scattered across the 4.146,52 km^2 region. Therefore, rather than approaching all the existing community groups, I chose to conduct an in-depth study of one particular group that is a matrilineal Muslim community inhabiting the upstream and downstream villages (or, the traditional *hulu-hilir* villages).

A more detailed explanation of the research setting is provided in Chapter 3. Below, I elaborate on three important questions that guide this inquiry, and how I approach each of them in my research.

1.3 Research Questions

To understand the complex relationship between state unification and the local variations regarding marriage and divorce in this region, I conducted my research at three different but connected sites. These were: everyday practices of marriage and divorce among the people of Mukomuko at societal level; incoming cases that involved these people at the first instance Islamic

courts, i.e. the Arga Makmur Islamic court up to 2018, and the Mukomuko Islamic court since 2018 onwards; and relevant cases and developments in the Islamic Chamber (*Kamar Agama*) of the Supreme Court at national level.[11] To guide this inquiry, I raised three central questions:

> The first question is:
>
> *How do geographically peripheral Muslim communities construct and safeguard their own Islamic law on marriage and divorce vis-à-vis the interpretation of Islamic law as promulgated by the state? And, how can we explain why some localised forms of Islamic law manage (or do not manage) to survive the dominant interpretation of Islamic law imposed by the state?*

The answer to these questions can be found mostly in the everyday practices of marriage and divorce among the people of Mukomuko. For the most part, attention will be paid to the experiences of those inhabiting the upstream and downstream (*hulu-hilir*) villages across this region. This focus is mainly based on a consideration that, while they are subject to the state's interpretation of Islamic law, these people still observe their *semendo-adat.* The term *semendo* derives from a popular denomination and a particular element of their matrilineal *adat*, to mean their own Islamic law on marriage and divorce (Adatrecthbundel VI, 1913, p. 290; Bogaardt, 1958, p. 34). To ensure that this matrilineal community is not presented in isolation, this research considers emerging encounters between members of this particular group and those who belong to more diverse ethnic groups. For these purposes, I have formulated the following set of practical questions: *(1) How do the people of Mukomuko, notably hulu-hilir people, conclude marriages and obtain divorces? (2) Who are the main actors involved in the process? (3) How do these actors navigate state law and the different forms of local norms in their marriage and divorce practices? (4) What conflicts and compromises*

[11] *Sistem Kamar* (or the chamber system) was first implemented following Supreme Court Decree No. 142/KMA/SK/IX/2011, which divides the court into five chambers: criminal, civil, administrative, Islamic, and military. In Decree No. 213/KMA/SK/XII/2014, the Supreme Court mentioned that the purposes of the chamber system are to maintain legal unity and the consistency of judgements, to improve the professionalism of judges, and to speed up case resolution.

arise from such norms diverging from state law? These questions are addressed in Chapters 3 and 4, where I discuss Mukomuko's multicultural Muslim society and the *semendo-adat* that informs their matrimonial affairs.

The second question is:

> *How do Islamic court judges representing the state respond to local conditions, when promoting social change in the field of marriage and divorce among the people of Mukomuko in particular, and among Indonesian multicultural Muslim societies in general? Why are some local conditions accommodated, while others are not? In other words, what is the 'logic' that informs judicial process (or reasoning) in the Indonesian Islamic courts?*

These questions focus on how incoming cases on marriage and divorce were treated at the state Islamic court. For the purposes of analysis, the existing normative systems, notably the state's Islamic law and that which belongs to Mukomuko's matrilineal community, will be perceived respectively as a 'discursive tradition' (Asad, 2009). By discursive tradition, I mean a tradition that "consists essentially of discourses that seek to instruct practitioners regarding the correct form and purpose of a given practice that, precisely because it is established, has a history. These discourses relate conceptually to a past and a future through a present" (Asad, 2009, p. 20). Employing this concept, this dissertation identifies both the state family law for Indonesian Muslims and the local *adat* of Mukomuko as distinctive discursive traditions, as they each relate conceptually, via their past, present, and future, to an established form of Islamic law. The former has its origin predominantly in the Shafiite school of Islamic jurisprudence (cf. Azra, 1992; Kooria, 2022; van Bruinessen, 2012 for excellent historical acounts of this school and its spread across the Indian Ocean, especially the Indonesian archipelago), as well as some elements of local norms and 'governmental' regulations (Hooker, 1984; Lukito, 2008; Nakamura, 2006; van Huis, 2015). Meanwhile, the latter inherits a unique mixture of Islam and matrilineal norms from Minangkabau (Abdullah, 1966, p. 15, 2010, p. xxxii; F. von Benda-Beckmann & von Benda-Beckmann, 2013,

p. 15), as adapted in Mukomuko. By distinguishing the two forms of Islamic law, I was able to explore how the parties and adjudicating judges made use of them (or not) when dealing with marriage and/or divorce disputes at the state Islamic court.

The answer to the second question is provided in two chapters: Chapter 2, on doctrinal developments within the Islamic Chamber of the Indonesian Supreme Court; and Chapter 5, on specific cases involving Mukomuko people at the first instance Islamic court. Chapter 2 discusses landmark decisions (case law), circulation letters (*Surat Edaran Mahkamah Agung* or SEMA), and regulations (*Peraturan Mahkamah Agung* or PERMA) at the Supreme Court, including further sources from existing scholarships and interviews with Supreme Court judges on the subject. Meanwhile, materials for Chapter 5 were collected via: an analysis of court records containing relevant case law from Mukomuko; observation at first instance court hearings; and interviews with parties, judges, and other important actors, such as court registrars, professional lawyers, 'informal' case drafters (*juru-ketik-perkara*), and *adat* elders. The two chapters bring the discussion to the second and third research sites: Islamic courts at the district and province levels, and one Islamic court at national level.

The third question is:

> *What can we learn from Mukomuko's case, with regard to the increasing trend in Indonesia toward a more centralised and homogenised Islamic judiciary? And, what are the implications of this increasing trend for a diverse nation like Indonesia?*

I raise these questions in order to extend my case studies to include a wider discussion on state formation in Indonesia. My point of departure is to assess the impacts of a highly centralised political system, as depicted in the more centralised and homogenised Islamic judiciary in Indonesia (J. R. Bowen, 2001; M. E. Cammack, 1997; van Huis, 2019a). I will demonstrate throughout subsequent chapters that the centralising and homogenising trend is at odds with a diverse nation like Indonesia. This trend, as I mentioned earlier, has led Islamic court judges and the state

Islamic law which they apply to create both compromise and opposition with local conditions. Opposition is more apparent in Mukomuko, since matrilineal Islam, which is observed by rural communities across the region, is often in conflict with the state's more patriarchally-inclined form of Islam.

1.4 Conceptual Framework

In this section I will describe how different bodies of the state, i.e. the parliament, judiciary, and government, have been instrumental to the development of the Indonesian Muslim family law system. They have contributed to the attainment of Muslim marriage and divorce law that is more centralising and homogenising. Nonetheless, for a diverse nation like Indonesia, this process reflects only part of the story, or only one story among many. Various forms of law or norms continue to coexist as 'differentiated' (Griffiths, 2017), but not necessarily 'isolated' (F. von Benda-Beckmann & von Benda-Beckmann, 2013, p. 15), normative systems and institutions. Santos spoke of this as 'inter-legality': when different legal spaces superimpose, interpenetrate and mix (Santos, 1987, pp. 297–298, 2020, p. 89). In this manner, legal developments as promulgated by the state and existing local variations among Indonesian multicultural Muslim societies are equally important to the inquiry. By combining 'state-law-focussed' and 'law-in-context' analyses, this study seeks to understand how the state's more centralising and homogenising Muslim family law actually works in practice, *especially* among the matrilineal Muslim community in Mukomuko. It also looks at inevitable encounters between the state's patriarchally-inclined Islamic law and the equivalent local *adat* of the more matrilineally-inclined Islamic law.

1.4.1 Multiple approaches to the development of Indonesian Muslim family law

Over the past century, Islamic family law has been the subject of statutory reforms in many Muslim-majority countries. Welchman maintains that this process, which varies from one state to

another, evolved through three phases. The first phase was the early codification of Muslim family law in the first half of the 20th century, and the second phase was statutory reforms in the second half of the 20th century, which began to restrict a husband's rights and expanded those of a wife. The third phase denotes more recent developments toward men and women having an equal standing in Muslim family law (Welchman, 2007, pp. 12–15). In the field of divorce, for instance, many Arab states have passed legislation that treats divorce as a judicial process which is conditional to certain grounds, and which: constrains a husband's recourse to the traditional *talak*; expands the divorce grounds available for wives; introduces judicial *khulʿ* (consensual divorce) as a non-consensual and no-fault divorce procedure for wives; and applies compensation for those who have been injured by a divorce (Sonneveld, 2019, p. 150; Welchman, 2007, pp. 107–131). Most statutory reforms are thus still in the second phase of distinguishing men from women,[12] as informed by provisions in the traditional *fikih.*[13] An exception can be found in Tunisian law, which promotes a more equal relationship between men and women. However, a more recent study shows that "the 'progressive' character of Tunisian personal status law is only relative, as the legislation leaves much room for judicial interpretation"(Voorhoeve, 2012, p. 222).

[12] Although the variety of divorces is modelled on those in the traditional *fikih*, their present-day applications have been genuinely modified. A husband's recourse to *talak* has been restricted, by procedural constraints, court permission, etc.; *khulʿ*, which was based on mutual consent, is made non-consensual and no-fault in Egypt and in many other countries; *taṭlīq* or *tafrīq* (judicial divorce) divorce grounds have been expanded; and the judges' attitude to *fasakh* (marital dissolution) has also become more lenient (Sonneveld, 2019; Welchman, 2007).

[13] There are three different terms that are used interchangeably to refer to the prescribed rules of Islam, i.e. sharia, *fikih*, and Islamic law. Sharia is (in a broad sense) equal to Islam as a religion, but its narrow meaning refers to the 'practical' rules mentioned in the primary sources of Islam, i.e. the Qur'an and prophetic traditions. Meanwhile, *fikih* means 'practical' rules deriving from primary sources, through a process of *ijtihad* (legal reasoning). In this sense, both sharia in its narrow meaning and *fikih* yield the same output: namely, practical rules. The only distinction is in how the rules are derived. This explains why the terms are often used interchangeably, to mean either 'practical' rules, or provisions prescribed in Islam (Anwar, 2021, pp. 1–3; Auda, 2008, p. xxiii). Lastly, the term 'Islamic law', which was invented by colonial regimes (Buskens & Dupret, 2014; Cohn, 1989), refers to either sharia in the narrow sense or *fikih* that have gained legal status from a sovereign regime (state). In this chapter these distinctions will be retained, but sometimes the term Islamic law will be employed in its broader sense, to include either sharia in its narrow meaning or *fikih*.

In 2019, Brill published a volume that documented more recent developments in *khulʿ* divorce within the Muslim world. The developments range from Muslim-majority nations in the Middle East and Southeast Asia to Muslim-minority societies in Western Europe. Across these jurisdictions, *khulʿ* and other forms of wife-initiated divorce have been significantly developed, not solely through statutory reforms but also through independent reasoning (*ijtihad)* and judicial lawmaking (Abbasi, 2017; Engelcke, 2018; Sezgin, 2018; Sonneveld, 2019; Stiles, 2019; van Eijk, 2019). The latter trend also resonates in Indonesia, where reforms of Muslim family law, particularly the law of *khulʿ*, have predominantly been informed by judicial practice in the Islamic court (or 'judicial tradition', the term used by van Huis, 2015, pp. 10, 85, 2019a). Van Huis maintains that important legislation on Muslim matrimonial affairs in Indonesia "was primarily built upon the existing judicial tradition, and as the appropriation of that legislation by the judicial tradition." I will explain the term judicial tradition later, in Section 1.4.1.2 of this chapter. For now, it can be said that the roles of legislators in parliament and judges in the state Islamic courts have been equally important to the development of Indonesian Muslim family law.

In addition to the two state bodies above, the government's role has also been pivotal. The government, notably bureaucrats from the Ministry of Religious Affairs (henceforth, the MoRA) and the Ministry of Home Affairs, have been actively involved in the reform process. Their contributions are clearly seen, among other things, in the establishment of the Islamic court, the formalisation of *taklik talak* (conditional divorce), the creation of KHI, and better access to important civil documents for citizens (see Section 1.4.1.2, for more detail). In this manner bureaucrats (or officials) have become 'politized', rather than confining themselves to being mere enforcers of the existing law (cf. Andreetta & Kolloch, 2022, p. 280; Sezgin & Künkler, 2014). Therefore, this dissertation argues that, prompted in part by legislative deliberation in parliament, the development of Indonesian Muslim fam-

ily law has been shaped for the most part by important policies and discretion generated within the Islamic courts and the ruling government. In other words, the Indonesian Muslim family law system is the result of three important approaches, namely: legislation, bureaucratisation, and judicialisation. A description of each of these is given in the following sections. First, I will sketch important legislation (or statutory reforms) concerning Muslim family law in Indonesia.

1.4.1.1 Statutory reforms

Since the late 20th century, the Indonesian state has implemented reforms in the field of marriage and divorce. These reforms have made marriage registration and judicial divorce mandatory, while restricting polygamy, introducing a minimum marital age and equal divorce grounds for wives and husbands, and formalising so-called 'legal pluralism', by introducing state-sanctioned Islamic law and establishing an Islamic court exclusively for Muslims (M. Cammack, 1989; M. E. Cammack, 1997; Nurlaelawati, 2010; Soewondo, 1977; van Huis, 2015). These reforms have been the subject of debate and compromise among three major groups in Indonesian society, namely: the women's movement, conservative Muslims,[14] and progressive Muslims. The first group advocates a better position for women, which corresponds with 'strategic' and 'practical' agendas concerning gender.[15] Meanwhile, the second group favours Muslim marriage

[14] Conservative Muslims fall within the so-called *santri* group, in Geertz's trichotomy of Javanese Muslims: *santri-abangan-priyayi* (Geertz, 1976). According to this classification, *santri* refers to an individual who adheres to Islam and adopts Islamic values as his/her way of life; *abangan* refers to an individual who adheres to Islam, but maintains the animistic views of Javanese syncretism; and *priyai* refers to Muslim social elites, as opposed to lay people. While the inclusion of *priyayi* has been criticised, mainly because the term is regarded as a social stratification rather than a religious category, the first two categories of *santri* and *abangan* are still used today to depict the pattern of Muslims in Java. For the purpose of analysis, the term *santri* (a generic term comprising traditionalists, modernists, and so on) is used to designate those maintaining Islamic doctrine on marriage and divorce, in opposition to women's movement agendas and state penetration (M. Cammack et al., 2015; Saat & Burhani, 2020).

[15] Gender agendas include early marriage, polygamy, divorce rights, spousal freedom of choice, equal rights in education, equal citizenship, and the improvement of women's socioeconomic status. These agendas, as Cammack and friends suggest, can be divided into two categories. The first category—strategic agendas—comprises the first four issues (above). The second category—practical agendas—consists of the last three issues (above). Accord-

and divorce that is based on the traditional *fikih*. In between the two, the third group aspires to a middle ground, somewhere between the need for reform and preservation of the 'core values' in Islamic law.[16] These competing interests have inspired a number of statutory developments that belong to the second phase of reform mentioned by Welchman earlier, but (as I will demonstrate later) other progressive developments in government policy and judicial discretion took place simultaneously, which fit better within the third phase of Muslim family law reform.

After proclaiming independence in 1945, the Indonesian state issued Law 22/1946, requiring marriages, divorces and *rujuk* to be registered.[17] Yet, this law only concerns registration, which meant that the family law inherited from the colonial period was still in effect. Therefore, the people were still divided into different ethno-religious categories, with Muslims as the majority, remaining subject to their customary and religious norms. After a lengthy endeavour to unify the law, the state eventually passed Law 1/1974 on Marriage, which makes marriage registration and judicial divorce mandatory and stipulates the same divorce grounds for husbands and wives, restrictions on polygamy, and minimum marital ages: 16 years for a bride, and 19 years for a bridegroom (M. Cammack, 1989, pp. 59–60; Katz & Katz, 1975, p. 674; Soewondo, 1977, p. 286). These reforms have formalised so-called 'legal pluralism', by introducing state-sanctioned Islamic law and by establishing an Islamic court exclusively for Muslims. The reason for this was that the government wished to appease pleas from the competing groups mentioned earlier, in an attempt to maintain political stability and gain electoral fa-

ingly, strategic agendas concerning gender are most likely to directly encounter the agendas of Islamic conservatives and the state (M. Cammack et al., 2015, pp. 3–5).

[16] Among this group are reform-minded bureaucrats, judges, and Muslim scholars and figures, all of whom perceive legal reforms in this field to be necessary, as long as they do not go against the core values of Islam. 'The core values' is a generic term, which is used to designate established principles and rules in Islamic law, such as the religious nature of marriage, divorce, inheritance, and the like.

[17] Initially, the 22/1946 law applied in Java and Madura. Only later did the law apply to Sumatera through the government's Emergency Decision Number I/pdri/ka, and to the whole nation through the passage of the 32/1954 law.

vour (M. Cammack et al., 2015, pp. 5–9; Katz & Katz, 1975, 1978, p. 681; Künkler & Sezgin, 2016, pp. 15–17). Despite the change in approach, it is important to note that the formalised Muslim family system at the time was also conditioned to the limits set out in the marriage law.

Having adopted a pluralistic approach, the state passed Law 7/1989 to enhance the institutional status and jurisdiction of the Islamic court. The law provides procedural rules (*hukum acara*) for the court and annuls provisions dating from the 19th century, which required Islamic court decisions to be made enforceable by the general court (M. E. Cammack, 1997, p. 157). Long before the enactment of this law,[18] the Islamic court had survived Law 19/1948 and Emergency Law 1/1951, which promoted a single court for all citizens. The reasons behind the failed attempts were strong resistance from conservative Muslims, coupled with the role which the MoRA played in protecting the court from abolition (Alimin & Nurlaelawati, 2013; Lubis, 1994; Noer, 1983). Under the MoRA, the Islamic court grew to cover a wider scope than ever before, through the issuance of Government Regulation 45/1957 on the establishment of Islamic courts outside of Java and Madura (Lev, 1972; Otto, 2010; van Huis, 2015). The ministry also played a role in the creation of state Islamic higher education, which has been crucial to the development of prospective judges and employees for the court. In 1991, a joint committee from the MoRA and Supreme Court compiled a body of Islamic law (or KHI) by involving Islamic figures and scholars. The KHI was intended to be the official reference for judges in the Islamic court, even though a few judges initially retained the views available within the traditional *fikih* (Nurlaelawati, 2010).

After the collapse of the New Order (1966-1999), the state started to reform its judiciary by issuing Law 4/2004, placing the organisational, administrative, and financial matters of the Is-

[18] Earlier forms of Islamic court can be traced to past Islamic 'judiciary' throughout the archipelago, i.e. the *Penghulu* courts in Java and Palembang, the *Qadi Malikun Ade* in Aceh, the *Kali* in Sulawesi, and the *Qadi* in Kalimantan and Ternate. A number of seminal studies have been conducted on the institutional background of the Islamic court (Hanstein, 2002; Hisyam, 2001; Isma'il, 1997; Rahim, 1998; see van Huis, 2015).

lamic court under sole control of the Supreme Court. This reform, which is known as 'the one-roof system', brought MoRA's control over the Islamic court to an end. In 2006, the state passed Law 3/2006, as an amendment to Islamic Judicature Law 7/1989, which broadens the jurisdiction of the Islamic court to include sharia economics, full competence on Muslims' inheritance, and the special appointment of *Mahkamah Syar'iyah* in the Aceh province. By establishing *Acehnese Mahkamah Syar'iyah*, which assumes exclusive competence on Islamic penal law as part of the Indonesian Islamic Chamber of the Supreme Court, the law puts an end to the previously much-debated issue of the status of this special court, which was vaguely mandated in Law 18/2001 (Salim, 2010, p. 8).[19] Another aspect worth mentioning concerns the responses to the law. While media attention focussed mainly on the court's new jurisdiction over sharia economics and Acehnese Islamic penal law, its full competence in the field of inheritance among Muslims went relatively unnoticed (van Huis, 2019b, p. 19). However, the law does not automatically make the Islamic court the only forum for inheritance disputes among Muslims, as seen in the general court preference demonstrated by Minangkabau's matrilineal Muslim community (K. von Benda-Beckmann, 2009).

In December 2006, the state passed Civil Registration Law 23/2006, enabling local governments to impose heavier administrative fines on people who do not register their marriages. However, its implementation falls short of expectation, as local authorities rarely proceed complaints regarding either unregistered marriage or informal polygamy to the competent authorities. In early 2010, the government submitted a Draft Bill on Substantive Muslim Family Law to the parliament that entailed, among other things, the criminalisation of unregistered

[19] To appease bloody conflicts in Aceh, the central government enacted Law 44/1999, granting greater local authority over religion, customs, and education in this region. This special acknowledgement was followed by Law 18/2001 which, among other things, entailed the establishment of *Mahkamah Syar'iyah* for the Province of Nanggroe Aceh Darussalam. Only five years later, the jurisdiction of the court was addressed in a more meaningful way, when Law 11/2006 was issued just a couple of months before the passing of Judicature Law 3/2006 on 29 December 2006.

marriages and informal polygamy. However, the draft had to be withdrawn, as it was strongly rejected by the public. The rejection revolved around the imposition of financial penalties and criminal charges for actions permissible in Islam. The critics also pointed out that heavier sanctions on these matters were unnecessary, since case law had begun treating non-compliance with registration as felony. For the critics, the sanctions seemed likely to threaten those already at risk, notably the wives and children of unregistered or informal polygamous marriages (van Huis & Wirastri, 2012, pp. 11–12). More recently, in its attempt to prevent the occurrence of under-age marriages, the state enacted Law 16/2019, raising the minimum marital age for women from 16 to 19 years. The law has caused a staggering rise in marriage dispensation cases in the Islamic courts,[20] predominantly filed by prospective brides who suddenly found themselves to be under-age under the new law.

This brief overview shows how the state has implemented reforms in the fields of marriage and divorce. These reforms have been shaped by compromise, notably with conservative Muslims, as seen in the establishment of the state's Islamic law, Islamic marriage registrar, and Islamic court (which is exclusively for Muslims). By doing so, the state has formalised legal pluralism by distinguishing Muslims from non-Muslims. However, as I mentioned earlier, the development of Indonesian Muslim family law is not only in the hands of the legislature, because it also involves actors from different state bodies, i.e. the executive and judicature, whose roles in to the process should not be underestimated.

1.4.1.2 The bureaucratisation of Muslim marriage and divorce

The term 'bureaucratisation (of Islam)' refers to its conventional use, meaning "a formalisation, expansion, and functional diversification of Islamic institutions…, as a top-down strategy

[20] In 2019, marriage dispensation in the Islamic court increased twofold: from 13,822 to 24,864 cases. In the following year, when Law 16/2019 had been in full effect for a year, the number soared threefold, to 64,196 cases (*Laporan Tahunan Badilag* 2017-2020).

for co-opting religious-political opposition by integrating its ideas and actors into the state apparatus and thus neutralising it" (Müller & Steiner, 2018, p. 12; Sezgin & Künkler, 2014). Bureaucratisation thus resonates with a phenomenon where "state actors have empowered state-funded 'administrative' bodies—including state-formed ones such as the Indonesian Ulama Council or MUI (Müller & Steiner, 2018, p. 9)—in diverse ways to guide and influence Islamic discourses and regulate matters of religion and morality in the public sphere in accordance with their political interests" (Müller, 2017). In the present study, the concept of bureaucratisation was used to designate important policies and implementing regulations generated by the government, notably officials of the MoRA, in its attempt to streamline Islamic marriages and divorces in accordance with their own agenda. I will show in this section that, rather than confining themselves to being mere enforcers of the law, the ruling government has been active in bureaucratising marriage and divorce among Indonesian Muslims.

Firstly, since securing an important place in the newly independent state, the Indonesian MoRA has been held responsible for administering marriage, divorce, and reconciliation (*Nikah-Talak-Cerai-Rujuk* or NTCR) among Muslims. It has thus inspired the creation of a local office, the KUA (*Kantor Urusan Agama* or an Office of Religious Affairs), in each sub-district, with the state Penghulu as the official registrar. However, it must be noted that the creation of these offices did not automatically replace the 'informal' registrars in each village, i.e. P3N (*Pegawai Pembantu Pencatatan Nikah*). Instead, after a number of failed attempts to abolish these informal actors,[21] the MoRA issued Regulation 20/2019 (*Peraturan Menteri Agama* or PMA), which tolerates the existing P3N remaining operative. Article 18 of this regulation stipulates the possibility of the official registrar relying on the informal registrar, or the P3N. The ministry's more accommodating approach toward P3N corresponds with Fauzi's findings in Pasuruan, where

[21] See the equivalent MoRA Regulations (PMA) on P3N from 2018 and before, which all tried to eliminate the involvement of non-state actors in marriages.

(to ensure the attainment of citizens' rights) local marriage registrars often cooperate with the local *modin*, who act as P3N, rather than confining themselves to being the sole actor in solemnising a marriage (Fauzi, 2023, p. 222). Nevertheless, generally speaking, MoRA officials remain the main actors in the administration of Muslim matrimonial affairs.

As I mentioned in the previous section, the role of the MoRA has been prevalent in the development of the Indonesian Muslim family law system. The ministry played a crucial role in the institutionalisation of the Indonesian Islamic court, successfully shielding the court from a number of failed attempts at its abolition. Unlike *adat* courts across the archipelago, which were abolished by the issuance of Law 19/1948 and Emergency Law 1/1951 on the unification of the Indonesian judiciary (Hanstein, 2002; Lev, 1972; Lukito, 1999), the Islamic court managed to survive under the tutelage of the Directorate General of the Islamic Court within the MoRA (Lubis, 1994; Noer, 1983). The ministry even passed Government Regulation 45/1957, inspiring the establishment of Islamic courts outside of Java and Madura, including in places which had never previously housed such courts (Lev, 1972; Otto, 2010; van Huis, 2015).[22] Moreover, in response to the shortage of competent employees, the ministry initiated the creation of state Islamic higher education (*Perguruan Tinggi Agama Islam Negeri*, or PTAIN). The creation of PTAIN has been conducive to the development of so-called Indonesian '*religio*-legal identity' (Hallaq, 2009). Now, the state Islamic court and Islamic higher education are available in nearly every district, or at least in every province across Indonesia.

MoRA also played a pivotal role in the institutionalisation of *taklik talak* (conditional divorce). The ministry successfully formalised and unified the pre-colonial institution of *taklik talak* for marriage between Muslims. The institution has its origin in a

[22] It is important to note that, unlike their counterparts in Java that have suffered a number of restrictions, the existing Islamic courts outside of Java and Madura have continued to exercise greater jurisdiction over inheritance, *hadanah*, *wakaf*, *hibah*, and *baitul mal* (cf. Noer, 1983, p. 90).

number of ordinances issued by the Islamized Javanese Kingdom and other sultanates throughout the archipelago (Hurgronje, 2007; Nakamura, 2006, p. 11). Unlike the pre-colonial *taklik talak*, which differs from one place to another, the present-day *taklik talak* contains fixed conditions that are 'compulsorily' agreed to by a husband. Viewed this way, the former *taklik talak* has risen from being a mere optional agreement between a couple into a compulsory agreement between the state and a husband (Nakamura, 2006). The violation of *taklik talak* remains a popular divorce ground for wives in the Islamic courts, particularly for those who were 'neglected' by their husbands.[23] I will return to this topic in Chapter 4, when discussing the impact of more formalised *taklik talak* on out-of-court divorces within Mukomuko's matrilineal Muslim community. This study will show how members of this community have creatively invoked the *taklik talak* criteria imposed by the state, when dissolving marriages using their own *adat*, suggesting that the formalised form of *taklik talak* has converged with local practice, to become known as the *minta-sah* procedure.

Another MoRA contribution appeared in the creation of the 1991 KHI. With full support from the president, the ministry collaborated with prominent figures from the Supreme Court and Islamic scholars[24] to promote the creation of KHI as a standardised interpretation of Islamic family law, for Islamic court judges to refer to. Later, following the collapse of the New Order, the ministry also attempted to introduce a more 'progressive' interpretation of Islamic family law by making a Counter Legal Drafting (CLD) proposal, but the proposal had to be withdrawn following strong objection from conservative Muslims (Mulia & Cammack, 2007). More recently, the ministry was the main actor behind

[23] While the majority of *fikih*-based divorce grounds, such as *talak*, *khul'*, *šiqāq*, and *fasakh*, are now disappearing as types of broken marriage (van Huis, 2019a; see also Chapter 2 of this book), the violation of *taklik talak* is still observable in present day Islamic court practice.

[24] The prominent figures include: Busthanul Arifin, a senior judge of the Supreme Court who became the first Chair of the Islamic Chamber of the Supreme Court; and Munawir Syadzali, the Minister of Religious Affairs from 1983-1993 (Nurlaelawati, 2010, pp. 80–84; van Huis, 2015, p. 50).

the proposal of the 2010 Draft Bill on Substantive Muslim Family Law, which entailed (among other things) the criminalisation of unregistered marriages and informal polygamy, but the proposal also had to be withdrawn, following public resistance to it (van Huis & Wirastri, 2012). In another collaboration with the Islamic Chamber of the Indonesian Supreme Court and a number of district governments, including the Indonesian foreign embassy in Malaysia, the MoRA bureaucrats facilitated a number of mass retroactive validation programmes, or *isbat nikah massal.* These programmes were designed to accommodate persistently widespread unregistered marriages (Nisa, 2018; Wahyudi, 2014).

All the above-mentioned ministry-level policies and regulations show that the involvement of the ruling government has been instrumental in the development of Indonesian Muslim family law. However, it is important to note that, here, 'ruling government' is not taken to mean exclusively officials from the MoRA. The Ministry of Home Affairs (for example) issued two important regulations, i.e. the 9/2016 and 108/2019 regulations on civil registration. The regulations enable a local Civil Registry Office under the ministry to issue important civil documents, such as family cards (*Kartu Keluarga*, or KK) and birth certificates, but only with *Surat Pernyataan Tanggung Jawab Mutlak* (SPTJM, or a letter of absolute responsibility). The issuance of these documents used to be dependent on presenting a marriage certificate determining whether a person's marriage was registered or not, but now a person may obtain the documents simply by presenting their SPTJM to the Civil Registry Office. This shows that the Ministry of Home Affairs, in its attempt to make the civil documents more accessible to citizens, has participated in the wider process of Indonesian family law reform.

This section has shown how MoRA officials, including those from the Ministry of Home Affairs, have been active in shaping marriage and divorce among Indonesian (Muslim) citizens. This demonstrates a so-called bureaucratisation process, in which the ruling government is involved as an integral aspect of the devel-

opment of Indonesian marriage and divorce law, and therefore cannot be overlooked.

1.4.1.3 The judicialisation of Muslim marriage and divorce

The judicialisation [of politics] is an umbrella-like concept that is usually used by legal and political scholars to designate either "(1) the expansion of the province of the courts or the judges at the expense of the politicians and/or the administrators, that is, the transfer of decision-making rights from the legislature, the cabinet, or the civil service to the courts or, at least, (2) the spread of judicial decision-making methods outside the judicial province proper" (Beirich, 1999; Ginsburg & Moustafa, 2008; Handberg, 1999; Shapiro & Sweet, 2002; Tate, 1993; Tate & Vallinder, 1997). The point of departure is when a court is being used as a political institution, an issue which has attracted scholarly attention since the late 20th and early 21st century (cf. the Indonesian Islamic courts in Lev, 1972; van Huis, 2019b, p. 109). Within this development, Hirschl further classified the concept to mean three distinct phenomena, which include:

> "(1) at the most abstract level, a 'juridification of social relations' to mean the spread of legal discourse, jargon, rules, and procedures into the political sphere and policy-making fora and processes, (2) a 'procedural justice and formal fairness in public policymaking processes' to mean the expansion of the province of courts and judges in determining public policy outcomes, mainly through administrative review, judicial redrawing of bureaucratic boundaries between state organs, and 'ordinary' rights jurisprudence, and (3) a 'transition to juristocracy' to mean the transformation of supreme courts worldwide into a crucial part of their respective countries' national policymaking apparatus or, in other words, the reliance on courts and judges for dealing with what we might call 'mega-politics': core political controversies that define (and often divide) whole polities" (Hirschl, 2009b, pp. 2–6).

In this section, I explore this concept in its most practical sense, when it designates "a phenomenon of judges making public policies that previously had been made or that, in the opinion of most, ought to be made by legislative and executive

officials appears to be on the increase" (Handberg, 1999; Tate & Vallinder, 1997). For operational purposes, I adapted the concept to mean the persisting and increasing roles of the Indonesian Islamic judiciary in representing the state, by initiating and introducing reforms to the field of Muslim matrimonial affairs. This corresponds to similar phenomena around the Muslim world[25], ranging from judicial *ijtihad* in Pakistan (Abbasi, 2017), through judicial law making in Egypt (Lindbekk, 2017),[26] Morocco (Sonneveld, 2019) and Zanzibar (Stiles, 2019), the more lenient use of *fasakh* divorce in favour of women in the contemporary Malaysian Islamic courts (Peletz, 2018, p. 665), and the dominant influence of Supreme Justice on Jordanian lawmaking (Engelcke, 2018), to civil court interference in the reform of Islamic family law in many Muslim-minority nations in Western Europe (Sezgin, 2018; van Eijk, 2019). Across these jurisdictions, Islamic family law has increasingly been the subject of reform, by either the Islamic judiciary or civil courts, thereby making it the subject of judicialisation.

Specific to Indonesia, my point of departure is Van Huis' thesis on 'judicial tradition', as an approach to understand present-day Indonesian Muslim family law. By judicial tradition, Van Huis means:

> "The legal heritage transmitted over generations within a judicial institution or system, with each generation consciously building on the transmitted heritage of their predecessors, the authoritativeness of which is based on a certain origin or historicity. Legal change proceeds within a judicial tradition by conscious reinterpretation of legal heritage, but always with due consideration for its origins and historical background" (van Huis, 2015, p. 10).

Employing this concept, Van Huis suggests that present-day Indonesian Muslim family law must be viewed as "legislation

[25] Some countries, such as Indonesian and Egypt, have sanctioned new codifications and integrated the Islamic court into their state bodies (Sonneveld, 2019; van Huis, 2019a); some countries, e.g. Zanzibar and India, have not yet introduced substantive law, but have accommodated Muslim divorce through the creation of an Islamic court (Sezgin & Künkler, 2014; Stiles, 2019); and other countries have neither developed substantive law nor institutionalised the Islamic court, but have instead creatively exercised religious law through different means, such as the civil court (Sezgin, 2018; van Eijk, 2019).

[26] See also 'the judicialization of religion' in Egypt (Moustafa, 2018).

that was primarily built upon an existing judicial tradition, and as the appropriation of that legislation by the judicial tradition". According to this line of thought, the development of Indonesian Muslim family law is an ongoing process that takes place mainly in the Islamic courts via (Islamic) judges, who interpret and apply legal norms in their everyday adjudication (van Huis, 2015, p. 10). Henceforth, the judges become the vanguard of reforms in Indonesian family law, considering the relative absence of substantive law making after the passing of Marriage Law 1/1974. The following gives an overview of important reforms informed by this judicial tradition, which I refer to in this section as a judicialisation process.

Long before the passing of Marriage Law 1/1974, Islamic courts were known as a promising forum for Muslim women, and thereby equivalent to women's courts (Lev, 2000, p. 155; Nurlaelawati, 2013a, p. 245). Judges from Islamic courts have been creative in exercising *ijtihad* (Islamic legal reasoning), by invoking various thoughts and opinions available in classical Islamic jurisprudence (*fikih)*, such as *khulʿ*, *šiqāq*, and *fasakh,* in order to grant divorces for women, especially when their husbands have refused to deliver a unilateral repudiation, or *talak*, on their wives (van Huis, 2019a; Yakin, 2015). The judges have simultaneously resorted to the pre-colonial *taklik talak*, as an exclusive divorce mechanism for 'neglected' wives. Although, as I mentioned when discussing the impacts of bureaucratisation (above), the institution of *taklik talak* contains fixed conditions that are 'compulsorily' agreed to by a husband (Nakamura, 2006). Even after the issuance of Marriage Law 1/1974, which makes marriage registration and judicial divorce procedures mandatory, the judges began to validate unregistered marriages retroactively, as they had not developed a consensus on the status of registration in terms of validating a marriage. Meanwhile, the judges were at first indecisive about divorce pronounced out-of-court by a husband; some counted it as the first *talak*, while others argued just the opposite. Only later, in the late 1990s, did they reach a con-

sensus to invalidate such divorce (J. R. Bowen, 2003; Lev, 1972; van Huis, 2015).

After the passing of Islamic Judicature Law 7/1989, which contains procedural laws and ends the general court's executorial force (*executoire verklaring*) over Islamic courts, the position of Islamic courts became more established. Yet, the situation did not change significantly, as Islamic court judges continued to run their tasks as usual, different judges rendering different judgements on 'similar' cases. This caused inconsistencies and legal uncertainties (Otto, 2010). In response, the judges collaborated with prominent figures from the Supreme Court and the MoRA, in order to codify KHI as a standardised interpretation of Islamic law (Nurlaelawati, 2010). However, Van Huis maintains that, rather than being a new invention, for the most part the KHI was a codification of existing judicial practice in the Islamic court, and thereby a continuity of judicial tradition (van Huis, 2015, p. 103). Nevertheless, he added that this codification, including the marriage law, provides a threshold that prevents judges from falling into more conservative *fikih* interpretations (Nurlaelawati & van Huis, 2020). In this way, developments in marriage and divorce law are an ongoing process—taking place mainly in the Islamic courts—including developments on different substantive areas of Islamic law, such as property and inheritance disputes (J. R. Bowen, 2005; K. von Benda-Beckmann, 1981, 2009). The following presents a number of legal breakthroughs generated within the Islamic Chamber of the Indonesian Supreme Court.

The most apparent judicial breakthroughs in the field of marriage and divorce appeared in the extended and refined form of *isbat nikah*, and in the invention of broken marriage as a unilateral, no-fault, and all-encompassing divorce ground. Through the new form of *isbat nikah* Islamic court judges manage to validate unregistered marriages retroactively, as long as such marriages do not go against other legal provisions, e.g. they are religiously valid and not an informal polygamy. In doing so the judges mediate the mandatory marriage registration procedure, because

unregistered marriages remain socially widespread. Meanwhile, through the invention of broken marriage, judges are introducing a simpler divorce procedure for both husbands and wives, and lifting the burden to discover who is at fault from their own shoulders. Moreover, to prevent their court from becoming merely a divorce registration office, judges have started to reapply a fault consideration to a divorce by broken marriage, so that they can hold one party accountable for the breakdown of a marriage without necessarily falling into prolonged blame games (cf. van Huis, 2015). A more elaborate discussion of these topics is provided in Chapter 2 of this dissertation, where I link them to a wider issue: the 'autonomy' of the Indonesian Islamic court.

Important breakthroughs have also appeared in other substantive areas of Islamic law. Concerning joint marital property, Islamic court judges, notably those from the Supreme Court, have started introducing more nuanced interpretations of Article 97 of the KHI, which stipulates an equal share between an ex-husband and wife. In Judgement 266K/Ag/2010, the Supreme Court judges adjudicated a three-quarter portion of joint marital property to a wife from Yogyakarta, taking into consideration her greater contribution in acquiring the property. In a similar case from West Sumatra, i.e. Judgement 88/Ag/2015, the judges allocated one-third to the husband and two-thirds to the wife, by invoking the local norm of *harta-pusaka* (a matrilineally-inherited property), which constitutes part of the disputed property (cf. a more recent case, 78K/Ag/2021, which allocated 70% of marital property to a wife and 30% to a husband). Concerning the minimum marital age, judges have also exercised discretion, prioritising the best interests (*maṣlaḥah*) of children over the minimum age required by law, by granting most incoming dispensation petitions for under-age marriage (Wahyudi, 2014). As I mentioned above, this explains why marriage dispensation cases skyrocketed after the passage of Law 16/2019, which elevates women's minimum marital age from 16 to 19 years. More recently, the Indonesian Supreme Court introduced PERMA 3/2017 on women

to the court. This regulation serves as an affirmative action to proffer better access to justice for disadvantaged groups; notably, women and children.

All the breakthroughs generated within the Islamic Chamber of the Indonesian Supreme Court are signs of the judicialisation of Muslim family law. This trend, which can be traced back to existing judicial tradition, has become more relevant after the adoption of the one-roof system in 2004, which marked a full transfer of the Islamic court from shared supervision with MoRA to the Supreme Court alone. Under the one-roof system, Islamic court judges enjoy a greater autonomy as the vanguard of reforms in present-day Indonesia. However, it is important to note that in exercising their autonomy the judges have been very careful not to trespass on the 'core values' of Islam (Lev, 1972, p. 163; Nurlaelawati, 2010, p. 224; Nurlaelawati & van Huis, 2020; van Huis, 2015, p. 113). They still maintain the balance between the so-called 'Islamic triangle', or the three types of symbolic universe, i.e. sharia (religion), state law, and customary law (*adat*) (Buskens, 2000; K. von Benda-Beckmann, 2009, p. 217).

1.4.2 Law in context: the unification of Muslim family law and Indonesian multicultural Muslim society

The previous section demonstrated that legislative deliberation, bureaucratic discretion, and judicial law making have been instrumental to the development of Muslim family law. These approaches have unified Islamic family law and promoted Islamic court judges as its official interpreters (J. R. Bowen, 2001; M. E. Cammack, 1997; van Huis, 2019a). The unification was further accelerated by the adoption of the one-roof system in 2004, which 'centralised' (Rositawati, 2010, pp. 50–52) and 'homogenised' the Islamic courts under the Islamic Chamber of the Indonesian Supreme Court (see Chapter 5 of this dissertation). These developments are in fact advantageous to the modernisation of Muslim matrimonial affairs in general (cf. other countries in Hirschl, 2009a; Peletz, 2002, pp. 227–278). However, one should keep in mind that they do not automatically replace the existing

normative systems and institutions available; various forms of more localised Islamic law have continued to shape Muslim matrimonial affairs across the archipelago (J. R. Bowen, 2000; Platt, 2017; K. von Benda-Beckmann, 2009). Therefore, in order to further understand these developments it is necessary to consider the local variations at play and how they have been appropriated or overlooked by the state.

Local variations appear in the everyday marriage and divorce practices of Indonesian multicultural Muslim society. A number of studies have suggested that the social importance attached to marriage and divorce remains strong, and that community recognition is often more important than that of the state (Brickell & Platt, 2015; Idrus, 2003; Mulia & Cammack, 2007; van Huis & Wirastri, 2012). By featuring the rural Muslim Pasuruan communities from East Java, Fauzi maintains that state-society encounters on the subject of marriage are not necessarily a point of conflict, but sometimes a point of 'mutual adjustment[s]' (Fauzi, 2023, p. 9; ; see also West Java case in Grijns & Horii, 2018). In the field of inheritance, while people may resort to the state upon failure to resolve their own disputes, initially people usually prefer to solve their disputes according to either their *adat* or a more localised version of Islamic law (K. von Benda-Beckmann, 2009, p. 217). Viewed in this way, the existing normative systems coexist as 'differentiated' empirical laws (Griffiths 2017, 103), operating on 'a continuum scale', resolving people's marriage, divorce, and other related disputes (Brickell & Platt, 2015; Platt, 2017) at some point over the course of their lives.

In Mukomuko, where I conducted my research, the unification of Muslim family law can come into conflict with the equivalent local *adat* observed by members of Mukomuko's matrilineal Muslim community. Unlike the state's family law, which is patriarchally-inclined (cf. O'Shaughnessy, 2009, p. 70; van Huis, 2015, pp. 17–18), the local *adat* inherits a unique mixture of Islam and matrilineal traditions from Minangkabau, which is more matrilineally-inclined (Abdullah, 1966, p. 15, 2010, p. xxxii). In this

dissertation I will show how local *adat* law continues to operate as either a differentiated empirical law (Abel, 2017; Griffiths, 2017, p. 103) or a semi-autonomous law (Moore, 1973), even though the trend toward (a) more centralised and homogenised law and judiciary is also inevitable. However, it must be noted that the *adat* does not operate in isolation, as it incorporates some outside elements, especially from the state. Conversely, the state (mainly via judges) has started to consider local variations, as seen in a number of landmark decisions within the Islamic Chamber of the Supreme Court. Santos spoke of this phenomenon as 'inter-legality', where different legal spaces superimpose, interpenetrate, and mix (Santos, 1987, pp. 297–298, 2020, p. 89). Chapters 2 and 4 provide a more elaborate discussion of the complex entanglement between state and local interpretations of Muslim family law.

By considering this pluralistic configuration, this dissertation seeks to understand how developments in Indonesian Muslim family law actually work in practice. It looks primarily at everyday practice in Muslim marriage and divorce among the matrilineal Muslim community in Mukomuko, which either involves state bodies and actors, or has occurred exclusively within Mukomuko society, beyond reach of the state.

1.5 Research Methods

This dissertation is the result of sociolegal research that seeks to understand the relationship between state and society with regard to marriage and divorce. The research is interdisciplinary and it combines doctrinal and historical analysis of the law with ethnographic accounts of legal phenomena. Its main objective is thus to describe and understand, rather than to prescribe (Griffiths, 2017; Halliday & Schmidt, 2009; Monaghan & Just, 2000; Pirie, 2013, p. 22). The research is an area study, focussing on Mukomuko on the west coast of Sumatra and how its inhabitants conclude marriages, obtain divorces, and solve related disputes, either on their own or by involving the state. The research

was conducted bottom-up, by looking at marriage and divorce practices at three different but connected 'sites' or contexts: i.e. societal level, the first instance Islamic court at district level, and the higher courts (the Appellate and the Supreme courts) at provincial and national levels. In researching these sites I employed various strategies, ranging from participation observation, in-depth interviews, life histories, and extended case studies. In addition, I collected archival data concerning Mukomuko's history, marital records from the local MoRA, incoming petitions and lawsuits at the Islamic court, population records from a number of government agencies, and other relevant statistics on Mukomuko.

From a methodological point of view, this sociolegal research is qualitative in nature, as it has been drawn mostly from case studies. The research thus calls for logical rather than statistical inference, for case-based rather than sample-based logic, and for saturation rather than representation (Small, 2009). The research is therefore rooted firmly in the descriptive richness of cases and a more nuanced view of reality; notably, on the everyday marriage and divorce practices of Mukomuko's matrilineal community (Flyvbjerg, 2006, p. 223; Monaghan & Just, 2000, p. 2; Pirie, 2013, p. 3). Further, rather than focussing on representation or generalisability issues, the research was conducted in a more interpretive fashion (Geertz, 1973a, 1973b), in accordance with case study logic that seeks to produce an in-depth study instead of making generalisations regarding other (not observed) empirical conditions (Flyvbjerg, 2006, p. 219). It revolves mainly around "the extent to which I attained an empathetic understanding of my informants, on the level of reflexivity in the work, or on the extent to which the history of the neighbourhood informed the analysis" (Small, 2009). What follows is a more detailed description of how the fieldwork was conducted, in order to answer my research questions, including the various strategies I employed in approaching research contexts and selecting the featured cases.

1.5.1 Empirical fieldwork

Field research has been a core element of this study. Prior to starting my PhD, I paid a short visit to North Bengkulu from 23-28 December 2015 to interview Darussalam, a former employee of the North Mukomuko KUA and its chairman from 1990 to 1997, about how the people of Mukomuko concluded marriages and obtained divorces during his period of service. I also interviewed some former judges of the Arga Makmur Islamic court, which served as the competent court for the people of Mukomuko, until the establishment of their own court in late 2018. My intention was to obtain a general picture of Mukomuko, and to make sure that this particular region and its matrilineal society would serve as a perfect case for my PhD thesis. Despite being born in Bengkulu, I was not familiar with Mukomuko, since this district is quite far away from my hometown - an approximately eight-hour road trip. More importantly, the kinship system observed by the natives of Mukomuko is matrilineal, whereas the system in my hometown is predominantly patrilineal. Nevertheless, I found myself in a somewhat privileged position, since the interlocutor for the initial visit was my uncle, and this allowed me to follow up on interviews from a distance while I lived in Leiden, in 2016. While refining my research proposal abroad, I managed to arrange a visit to Mukomuko with the help of my cousin, Dang Guntur, who settled there following his marriage to the daughter of a Mukomuko native. In 2017, I went back to Indonesia to conduct my research in the field.

I did my primary research in Mukomuko for 10 months, and during several subsequent shorter visits. I spent two months preparing for my first visit (in January-June 2017), including arranging permits and collecting demographic data and records on marriage and divorce. At the same time, I approached elite members of the *adat* council (*Badan Musyawarah Adat*, or BMA), journalists, and NGO activists, who were available in Mukomuko, in order to learn about the current situation there. The latter approach aimed to find local collaborators who would guide

me to a particular village that best represents the region. While I had found a similar approach to be effective in my previous research in West-Java (Farabi, 2011, 2013), it did not work well here. Later, I realised that the BMA institution had only 'recently' been invented and its members had been appointed according to how close a relationship they had to the district government, rather than with the aim of representing and reflecting the existing *adat* communities across Mukomuko. Meanwhile, I found that the local journalists and NGO activists were too centralised to the district capital, and they therefore knew little about the surrounding rural areas. These constraints prevented me finding a 'perfect' village for this research, until I accidently met a local head of ADIRA Finance. From his experience in the automotive financing business I could learn the various characteristics of villages and their respective populations. This eventually led me to Talang Buai, a village renowned for its strong matrilineal *adat* community, where I would spend most of my remaining four months carrying out fieldwork.

In addition to the fact that it is renowned for its matrilineal kinship system, I chose Talang Buai for its strategic location. The village is relatively close to the district capital and the market centre of Penarik. In addition, the village is surrounded by various forms of migrant settlement, such as transmigrant enclaves and plantation settlements. As is shown in Chapter 3, looking into the local variations is crucial to any research which takes Mukomuko's contemporary multicultural society into account. As well as focussing on this particular village, I could also make visits to other surrounding urban and migrant settlements, which belong to more diverse community groups. In doing so, I tried to hinder any temptation to present Talang Buai and its matrilineal residents as temporally and spatially isolated as "the 'ethnographic present' in which communities were presented as frozen in time, outside any historical context, and without reference to neighbouring societies or encapsulating states" (Monaghan & Just, 2000, pp. 25–26). Another reason for choosing one village

concerns one of the key principles observed in matrilineal marriage that is clan-exogamous. The principle makes inter-village marriages inevitable, and involves not only clan members from other villages but also those who do not belong to a clan. Therefore, it is necessary for this research to focus on a particular site, and at the same to make its inquiry as open as possible.

During my stay in Talang Buai, I concentrated on observing everyday marriage and divorce practices at societal level. I attended a number of marriage feasts that took place there and in the surrounding villages, and I participated in a number of *adat* deliberations. At the same time, I conducted a mini survey on the marital history of each family in Talang Buai, to discover whether the current marriages were the couple's first or second. My main purpose was to obtain the actual number of divorces that have occurred among the villagers, since these were not well documented in the official records—i.e. the decennial census by *Badan Pusat Statistik* (BPS, or the Central Bureau of Statistics), the monthly survey by *Badan Kependudukan dan Keluarga Berencana Nasional* (BKKBN, or the National Family Planning Coordinating Agency), and records from *Kependudukan dan Pencatatan Sipil* (*Dukcapil*, or the Civil Registry Office Service). In addition, unlike marriage, which is openly celebrated, divorce often goes unnoticed. This is why the survey on marital history is instrumental, as it led me to prospective interviewees for my inquiry. In performing these interviews, I had to be very careful, since discussing marriage and divorce with a stranger is always uncomfortable. After establishing good communication, the interlocutors began to be more open to discussing their private affairs, and they even invited me to attend ongoing marital disputes that were being handled in the *adat* council. After spending four months among these people, I went back to Leiden to process the empirical data I had gathered.

On my second visit to Mukomuko (September-December 2017) I followed up on my preliminary findings by digging deeper into cases I had encountered during my earlier visit. I conduct-

ed in-depth interviews with elite members of *adat* clan elders who were directly involved, not only in arranging marriages and granting out-of-court divorces, but also in resolving related disputes according to their local customs. With regard to the latter, I also inquired at the local police station, because I came across an adultery accusation case where one of the disputing parties threatened to bring their dispute to the police, supposing that his or her demand went unfulfilled by *adat* deliberation. For cases of divorce involving civil servants in the district government, I interviewed their superiors, local inspectorates, and the *Badan Kepegawaian* Daerah (BKD, or Human Resource Agency), whose approvals and mediating services are mandatory prior to formalising such a divorce in the Islamic court. Meanwhile, I paid several visits to the Arga Makmur Islamic court, to observe ongoing divorces involving people from Mukomuko. I spent these visits interviewing the parties, adjudicating judges, registrars, lawyers, and informal case-drafters. I also collected incoming cases to the court from Mukomuko, which included marriage dispensation petitions, retroactive validation (*isbat nikah*) petitions, divorce lawsuits, marital property distribution (*harta-sepencarian*) lawsuits, and inheritance lawsuits.

By way of comparison, I stayed for a month with Wo Tin's (another of my cousins) family in Penarik, to look at marriages and divorces occurring in this market centre. Meanwhile, together with my research assistants, I conducted the same inquiry at three other villages: Agung Jaya, Bantal, and Sibak. In Agung Jaya, a former transmigrant enclave, I collaborated with an old friend, Wahib, who helped me analyse villagers' marital histories. In Bantal, a coastal village, I was assisted by Elvandi, Matkaharda, and Renaldi, in conducting the same analysis of the villagers' marital histories. In Sibak, a rural village that belongs to the Pekal people who inhabit the southern part of Mukomuko, I relied mostly on M. Zikri. Zikri spent several subsequent weeks making shorter visits to Sibak, to observe the village's everyday marriage and divorce practices and record the marital histories

of its the villagers. By extending the research sites, I did not intend to make a generalisation for the whole of Mukomuko, but to obtain a better understanding of my earlier findings in Talang Buai and the Islamic court. My purpose was thus therefore saturation rather than representation (Flyvbjerg, 2006; Small, 2009). I returned to Leiden to analyse the data and write my thesis, and at the end of 2018 I returned to Indonesia for personal reasons. While writing my thesis from a distance, I also spent my time in Indonesia enriching my data, by interviewing judges from the Islamic Chamber of the Supreme Court and several stakeholders from the MoRA and the Ministry of Villages, Development of Disadvantaged Regions, and Transmigration.

1.5.2 Archival data collection

In addition to the fieldwork, I conducted archival data collection to put my empirical research into context. The archival data were divided into two categories: historical sources from Mukomuko, and marriage and divorce statistics. While the former focus on continuities and changes in this particular region, the latter aim to present an overview of marriage and divorce over five recent years (2016-2020). Together, they enrich my materials, making it easier to understand marriage and divorce in contemporary Mukomuko, and to answer my research questions.

First, in describing Mukomuko, I relied mostly on secondary historical sources, such as *History of Sumatra* (by William Marsden), the *Syair Mukomuko*, Thomas Barnes' expedition to Kerinci in 1818 (edited by Jeyamalar Kathirithamby-Wells), the *Undang-Undang* of Mukomuko (translated in 1822 by Richard Farmers), *Moko-Moko in 1840* (by T.C. Bogaardt), and the 1862 *Undang-Undang* of Mukomuko, which is codified in *Adatrecht Bundel* (Adatrecthbundel VI, 1913, pp. 290–292). I also referred to historical texts on this particular region, written by a number of historians, such as John Bastin, Jeyamalar Kathirithamby-Wells, John Ball, David S. Moyer and Heinzpeter Znoj. Additionally, I collected historical information (life stories) from the elders I met

during my fieldwork, and from former state employees serving at the local KUA and Arga Makmur Islamic court. Afterwards, to describe more recent changes in Mukomuko, I collected reports on state-sponsored transmigration programmes in Mukomuko, from the Ministry of Villages, Development of Disadvantaged Regions, and Transmigration. With regard to the rise of large-scale plantations since 1990, which have attracted more migrants to the region, I consulted yearly reports issued by two multinational companies, SIFEF and AEP, both of which operate and dominate palm oil and natural rubber plantations in the region. All the above materials inform my writing on contemporary Mukomuko and its history, in chapters 3 and 4.

Second, in order to obtain the total number of marriages and divorces among the people of Mukomuko, I collected registered marriage records from the local MoRA office. The office also provided me with a list of 2,031 unregistered marriages in Mukomuko, which formed part of its attempt to arrange an *isbat nikah massal* (a mass retroactive validation of marriage) in 2016. Afterwards, I consulted divorce records within the five-year period 2016-2020, at two competent courts: the Arga Makmur Islamic court, and the Mukomuko Islamic court (from late 2018 onwards). After eliminating non-Mukomuko cases, the records contained 1,184 incoming cases: i.e. 552 cases at the Arga Makmur Islamic court, and 632 cases at the Mukomuko Islamic court. By inventorying the parties' profiles, I managed to sort the cases according to their village of origin. The main purpose for this was to understand the spread of cases across the region and (more importantly) to obtain an initial hint that would guide me to the parties' domicile. Rather than being evenly distributed across the region, the inventory shows that the majority of judicial divorces originated in the villages that were formerly migrant enclaves. Moreover, by cross-checking these numbers with a mini-survey I conducted at the Talang Buai village, I found that the number of judicial divorces hardly represent the actual total number of divorces which have occurred in this particular village.

In search of the actual number of divorces at societal level, I collected relevant data from BPS, BKKBN, and *Dukcapil*. However, these sources were problematic, because of their different scopes and timespans. The BPS 2010 decennial census was no longer actual, but the latest census has not yet been made available to the public. The BKKBN record provides a monthly updated 'single-headed' family survey, but unfortunately it lacks financial support - i.e. 50 thousand rupiah (around 3 euros) for each surveyor - which contributes to its poor quality. In addition, the classification used in the survey does not distinguish a divorcee from a widower (*cerai mati*). Fortunately, the *Dukcapil* population record (*kartu keluarga*, or KK) includes more comprehensive information, including the marital status, religion, and parents of household members. With the help of Zikri, Rahmadani, and Kaharda as my research assistants, I conducted a close reading of the KK for five villages: Talang Buai, Penarik, Agung Jaya, Bantal, and Sibak. By looking at the children's biological parents, this reading provides not only the number of divorcees from each village, but also the number of people who had remarried. Even though this result could not be cross-checked with the annual divorce records of the Islamic court, I can safely assume that the actual number of divorces was significantly higher than the number of judicial divorces.

1.6 Research Ethics

Marriage and divorce are always a sensitive topic, kept hidden from strangers. Therefore, as a researcher I first needed to gain people's 'trust' by participating in a number of marriage and customary feasts in the main village, establishing good communication with local elites, and finding my host parents (Maadas and Kudimah), who introduced me to the villagers as their own son. Only then could I reach my interlocutors more conveniently. When talking to female interlocutors, such as brides, wives, and divorcees, I was always accompanied by a local colleague, as it is socially improper to contact female

members on my own; I might make myself liable to a customary sanction for breaching the local *cobak* (sanction), which requires proper male-female interaction. This proximity even allowed me to attend a number of disputes within the *adat* council, as well as unregistered marriages, as an observer. To maintain trust I needed to protect my informants, as the information I gained usually contained their private stories. For this reason, I identified most of the informants by using pseudonyms or their current positions in the structure of *adat*, religion, or government, rather than using real names. An exception applied to the names of the villages. I retained the real village names, in order to make important insights into these places accessible to the public and stakeholders.

While I conducted my inquiries as carefully as possible, I still experienced ethical issues with regard to my positionality toward the subjects being studied. When attending a marital dispute that was being handled in the *adat* council, I was often asked for my opinion by those who were present at the deliberation. From my experience living among the people, I knew that they were not looking for an answer; they were merely making a gesture of appreciation for my presence. For this reason, I preferred to become a 'good' observer, by not interfering. However, the situation was sometimes very tempting. For example, when attending a village deliberation on the invention of *Lembaga Adat* (LA, *Adat*, or institution), I knew that the deliberation was the village leader's bid, representing the district government, to discharge representations of *adat* (*orang adat*) from the village structure. My knowledge of the ongoing unification of *adat* has taught me that the elimination of *orang adat* will endanger not only the position of *orang adat*, but also the government's social legitimacy in the eyes of village communities. While tempted to interfere, I preferred to become a passive observer, because the debate between the proponents of LA and *orang adat* was already intense. In other words, I tried my best not to show any allegiance to either group, and only gave my own view when I was asked for it.

Another ethical issue concerns my strategy for collecting marriage and divorce statistics. With the help of village secretaries, I conducted a close reading of population records containing more reliable numbers for marriages and divorces which had occurred in their respective villages. The records were not available to the public, by law, but I consulted them anyway, as I needed to know the villagers' marital histories. This particular information would provide a more reliable picture of marriage and divorce among the villagers and, more importantly, it would lead me to prospective interlocutors. To make sure that I would not abuse this access, I confined myself to accessing the records on my own and always with the assistance of the village secretaries. By doing so, I managed to reconcile my need for more reliable data with the need not to infringe the secrecy of that information. Still, interviewees often asked me, during a visit to their home, how I knew them in the first place, which undoubtedly caused unease on my part. However, after a careful approach and explanation they consented to be interviewed, as I assured them that I would protect their privacy by presenting their story using pseudonyms.

This section has presented my strategies for dealing with the ethical issues I encountered during my fieldwork. By employing pseudonyms, I wanted to ensure that this research does not harm the people I studied (Monaghan & Just, 2000, pp. 31–33). Moreover, by distancing myself from actively interfering with ongoing disputes, I prevented conveying any preference for one particular group in any dispute. Despite all the privileges I have as a native of Bengkulu, I realised that my position is still that of an outsider. These strategies proved effective for maintaining a 'proper' relationship between me as a researcher (i.e. an insider and, at the same time, an outsider), and the people as the subjects of the study.

1.7 Structure of the Thesis

Chapter 1 serves as an introductory section, and it includes the research background, design, and methodology. The chapter

begins with a case and an overview of the existing scholarship on marriage and divorce among Indonesian Muslims. It proceeds to describing the research site and questions, conceptual frameworks, and research methods and ethics. In addition, this chapter provides an explanation of the different approaches of this study, i.e. legal (doctrinal) analysis, case studies, historical research, and ethnography. These approaches will be employed interchangeably in subsequent chapters, so as to understand marriage and divorce at three different but connected sites, namely: (1) the everyday practice of marriage and divorce at societal level; (2) relevant cases available in the first instance Islamic court for the people of Mukomuko, i.e. the Arga Makmur Islamic court until 2018, and the Mukomuko Islamic court from late 2018 onwards; and, (3) landmark decisions and judicial developments within the Islamic Chamber (*Kamar Agama*) of the Supreme Court, at national level.

Chapter 2 provides a doctrinal analysis of the Indonesian law of marriage and divorce for Muslims. By doing so, this chapter consults landmark decisions, emerging discourses available in the quarterly magazine of *Majalah Peradilan Agama* from 2013 onwards, and various forms of judicial policy, namely: *Peraturan Mahkamah Agung* (PERMA, Supreme Court's regulations), *Surat Edaran Mahkamah Agung* (SEMA, the Supreme Court's circular letters), and *Rapat Pleno Tahunan* (yearly plenary meetings). These materials reveal a consistent trend of judicial law making, as is apparent in the extended and refined form of *isbat nikah* (the retroactive validation of marriage) and the invention of broken marriage as a unilateral, no-fault, and all-encompassing divorce ground. By employing the new *isbat nikah*, judges manage to accommodate unregistered marriages that are still pervasive, as long as the marriages are religiously valid and not against the law (e.g. not informal polygamy). Through the increasing use of broken marriage as a ground for divorce, they also promote a more simple and equal divorce procedure for husbands and wives and lift the burden to find who is at fault from their own shoulders.

Moreover, in the case of broken marriage divorce, judges can still employ consideration of fault, especially when the 'fault' is relevant to a spouse's post-divorce rights. These breakthroughs suggest the 'autonomy' of Islamic court judges, mainly in bridging gaps between a formal application of law and a sense of justice within society that is informed by more diverse forms of Islamic law and their specific conditions.

Having discussed the judicial trend at national level, the next chapters shift attention to Mukomuko, on the west coast of Sumatra, focussing on everyday marriage and divorce practices at both societal level and in the Islamic first instance court.

Chapter 3 presents an overview of the sociostructural and political background of Mukomuko. This overview suggests that Mukomuko's population comprises three distinct community groups. These are: (1) the matrilineal community which has lived in upstream and downstream (*hulu-hilir*) villages since time immemorial; (2) transmigrants, mostly from the island of Java, who have lived scattered throughout several state-sponsored enclaves, including private palm oil plantation enclaves, since their initial arrival in the 1980s; and (3) urban people, who are a mixture of the first two groups and more recent migrants, and who live in emerging market and administrative centres across the region. Together, these multicultural community groups constitute the so-called 'local people of contemporary Mukomuko'. While a great majority of the *hulu-hilir* people and transmigrants stay exclusively within their respective settlements, urban people have become more inclusive. In the fields of marriage and divorce, for instance, the matrilineal community usually observes the matrilineal *adat* inherited from Minangkabau, whereas the (trans)migrants and urban people often bring various traditions with them from their place of origin. Therefore, in addition to the 'official' marriage and divorce law imposed by the state, Mukomuko people simultaneously observe various forms of 'localised' law in their respective community groups.

Chapter 4 focusses on everyday marriage and divorce practice among the matrilineal communities of the *hulu-hilir* villages. In doing so, the chapter looks at how people navigate between state law (patriarchally-informed Islamic law) and the equivalent local norm of *semendo adat* (matrilineally-informed Islamic law) in concluding marriages, obtaining divorces, and solving related disputes. The term *semendo* derives from a particular element in local tradition, designating a matrilineal marriage and divorce, whereas *adat* means "a concrete body of local rules and practices inherited from the past [Minangkabau, added]" (Henley and Davidson 2008, 817–18). This study reveals how *semendo* marriage and divorce are often complementary, and do not necessarily go against registered and judicial marriage and divorce as required by state law. The *semendo adat* and the state's more patriarchally-inclined Islamic law coexist as 'differentiated' normative systems and institutions (Griffiths 2017, 103). They operate on 'a continuum scale', shaping people's marriages, divorces, and related disputes (Platt 2017). *Semendo adat* in fact runs secondary to state law in *hulu-hilir* society, in terms of popular alternatives, but it is often more important socially, and in practice it is certainly more established when compared to the remaining non-state normative systems and institutions available, such as a religious marriage or divorce.

Chapter 5 draws upon marriage and divorce cases among the people of Mukomuko in two Islamic courts, i.e. the Arga Makmur Islamic court (2016-2018), and the Mukomuko Islamic court (from 2019 onwards). During these periods, cases were mainly brought by people of migrant origin. This can be attributed to the fact that, unlike the matrilineal community, who may resort to their *adat* council, migrants have no forum that is binding and which serves as an alternative to the state Islamic court. The situation was better when the people of Mukomuko could bring cases to a regular circuit court (*sidang keliling*) which was held in the Arga Makmur Islamic court in Mukomuko. However, this option was no longer available after the adoption of the one-roof system (*sistem*

satu atap) in 2004. This system, which centralises both the technical judiciary and court administration under the Supreme Court, has turned the previously demand-based circuit court into a mere annual programme. The demise of the regular circuit court shows the flip side of the one-roof system, which has estranged people, rather than bringing them closer to the court. The situation was exacerbated by the 'late' establishment of the Mukomuko Islamic court, in 2018. To reach the court, for instance, people had to make a seven-hour road trip to the capital regency of North Bengkulu. Even after the establishment of their own court the situation did not automatically change, as people mainly continued to resolve their matrimonial affairs out-of-court.

Although incoming cases from the matrilineal community are rare, the few cases I found, notably cases relating to property, are still of great importance. They helped me to delineate between emerging conflicts and possible reconciliations between the state's patriarchally-inclined Islamic law and the more matrilineally-inclined Islamic law of the Mukomuko community. The adjudication process involves three main actors: parties or justice seekers, adjudicating judges, and brokers. Parties are members of matrilineal communities, who went to the court upon failing to resolve their disputes amicably out-of-court. To secure their respective interests, each party usually engages in 'forum shopping' in state courts and 'discourse shopping' between different legal repertoires – notably, *semendo adat*. Meanwhile, the judges are state-appointed officials, who are rotated regularly from one place to another; they therefore know little about local norms. In rendering their decisions, the judges rarely exercise their competence beyond the established judicial developments at national level, disregarding parties' particular conditions. In between, brokers refer to informal case-drafters (*juru-ketik-perkara*), legal aids (*Pos Bantuan Hukum*, POSBAKUM), and professional lawyers, who assist the parties in 'formulating' their lawsuits, but also serve the judges in 'constructing' incoming cases to fit the latter's agenda.

Chapter 6 summarises the discussion with four main findings. The first finding is the pluralism of law, i.e. the state law and *semendo-adat,* which governs marriage and divorce among Mukomuko's matrilineal community. The second finding concerns the different logic observed by judges at different levels of court. While the general wisdom of Supreme Court judges has been more accommodating, judges from the first instance Islamic court for the people of Mukomuko are often trapped in a formalistic approach. The reason for this finding lies in an increasing trend toward more centralised and homogenised Islamic law and Islamic judiciary in Indonesia, which circumscribes the independence of first instance court judges. All these findings contribute to the fourth finding, which concerns the role of Islamic courts play in the process of nation-state formation. For a diverse nation like Indonesia, the state's unifying agenda has launched Islamic court judges on a path toward both compromise and opposition. The case of Mukomuko teaches us that opposition is inevitable, and that judges' insistence on not considering local norms will endanger their own legitimacy before the community and bring harm to the interests of wives and children—one of the objectives of Indonesian family law—who are better served by *semendo-adat*.