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

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Conclusion: The Interplay between State Islamic Law and Matrilineal *Adat*

This study has approached marriage and divorce among Muslims in peripheral areas in Indonesia from various angles, employing legal analysis, and historical and ethnographic research. It seeks to understand the intricate relationship between the interpretation of Muslim family law, as promulgated by the state, and the different forms of empirical laws or norms operating within Indonesia's multicultural Muslim society. Focussing on Mukomuko-Bengkulu, on the west coast of Sumatra, this dissertation discusses marriage and divorce practices in three different but connected contexts: everyday practices at societal level; relevant cases available in the first instance Islamic court; and landmark decisions and developments within the Islamic Chamber of the Indonesian Supreme Court, at national level. The main finding of this study is that Mukomuko's *adat* and its institutional actors persist, even though marriage and divorce practices are increasingly influenced by the state. In state-society encounters at the Islamic court, the study reveals the prevalence of compromise and conflict, respectively aligned with the national and local levels. While the Islamic Chamber of the Supreme Court has considerable room for compromise at national level, local courts frequently see tensions emerging. This difference can be attributed to the gradual centralisation and homogenisation of the Islamic judiciary, which saw discretion and policy making being predominantly placed in the hands of Supreme Court judges. Before elaborating on these findings, I will start with major scholarly insights regarding the development of the Indonesian family law system before I discuss what my own findings contribute to this literature.

The existing scholarship teaches us that the Indonesian state has implemented profound reforms in the fields of marriage and divorce. These reforms have made marriage registration and judicial divorce procedures mandatory, restricted polygamy, and introduced a minimum marital age and equal divorce grounds for wives and husbands (M. Cammack, 1989; M. E. Cammack, 1997; Soewondo, 1977). The reforms have also formalised legal pluralism, by introducing state-sanctioned Islamic law for Muslims and establishing an Islamic court exclusively for Muslims (J. R. Bowen, 2003; M. E. Cammack, 1997; Nurlaelawati, 2010; Pompe, 1988). The state has employed multiple approaches in these reforms, ranging from statutory (legislative) change to 'bureaucratisation' and 'judicialisation' (cf. J. R. Bowen, 1998, 2005; Nakamura, 2006; van Huis, 2015). Yet, exactly how the state interacts with Indonesian Muslims of various ethnicities, Islamic denominations, and sociocultural traditions is not so clear. Many studies have suggested that the unification of Muslim family law does not necessarily end with binary solutions, but that it is also a matter of compromise and mutual adjustment (Bedner, 2021, p. 393; Fauzi, 2023, p. 9; Grijns & Horii, 2018; Horii, 2021; Platt, 2017). This has to do with the fact that, broadly speaking, unification is often at odds with existing local normative variations across the archipelago (Idrus, 2003; Millar, 1991; Nurmila, 2009; Platt, 2017; van Huis, 2015; Wirastri & van Huis, 2021), and that straightforward implementation of state law would lead to conflicts and the loss of state legitimacy.

Mukomuko is a case in point, in which the state's patriarchally-inclined Islamic law often conflicts with matrilineal community traditions. In order to shed light on this topic, the study has examined three central questions: (1) How do geographically peripheral Muslim communities, and specifically the matrilineal Muslim community in Mukomuko, construct and safeguard their own Islamic law on marriage and divorce *vis-à-vis* the interpretation of Islamic law as promulgated by the state? (2) How do Islamic court judges representing the state respond to local con-

ditions, when promoting social change in the fields of marriage and divorce among the people of Mukomuko in particular, and among Indonesian multicultural Muslim societies in general? (3) What can we learn from Mukomuko's case, with regard to the increasing trend in Indonesia toward a more centralised and homogenised Islamic judiciary?

6.1 Main Findings

6.1.1 Legal pluralism: *State law v. semendo adat*

The first finding concerns the pluralism of the laws, i.e. state law and *semendo adat*, governing marriage and divorce among matrilineal Muslim communities in Mukomuko. While the former represents 'patriarchally-inclined' Islamic law, as promulgated by the state, the latter refers to 'matrilineally-inclined' Islamic law, as preserved by members of the communities across the *hulu-hilir* (upstream-downstream) villages. They can both be labelled as Islamic law, since they both relate respectively to an established form of Islamic law as a 'discursive tradition'. 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). By examining how state law and *semendo adat* operate in present day Mukomuko, this study reveals a mixture of compromise and conflict, with certain actors caught in the middle: i) state actors, such as marriage registrars at the Office of Religious Affairs (*Kantor Urusan Agama*, KUA) and Islamic court judges; ii) quasi-state actors, such as case-drafters (*juru-ketik-perkara*) and lawyers; and, iii) non-state actors, such as local clan (*kaum*) leaders and elders, and religious functionaries (*pegawai syarak*). Before explaining the dynamic of these pluralistic constellations, I will first provide a brief discussion of state law and *semendo adat*.

The state law on marriage and divorce for Muslims has its origin predominantly in the Shafiite school of Islamic jurispru-

dence, which is patriarchally-inclined, combined with elements of local norms (or *adat*), legal understanding of other schools, contemporary interpretations of Islamic law, and bodies of policies and regulations promulgated by the 'state' (Hooker, 1984; Lukito, 2008; Nakamura, 2006; van Huis, 2015).[204] By contrast, the *semendo adat* inherits a unique mixture of Islam and matrilineal traditions from Minangkabau (cf. Abdullah, 1966, p. 15, 2010, p. xxxii; F. von Benda-Beckmann & von Benda-Beckmann, 2013, p. 15). While in this dissertation *adat* refers to "a concrete body of rules and practices inherited from the past" (Henley & Davidson, 2008, pp. 817–818),[205] *semendo* derives from a popular denomination and a particular element of Mukomuko's *adat*, i.e. matrilineal marriage and divorce (Adatrecthbundel VI, 1913, p. 290; Bogaardt, 1958, p. 34). Put together, the term *semendo adat* means a concrete body of local rules and practices on marriage and divorce, inherited from Minangkabau. It is therefore 'Islamic', but also 'matrilineally-informed', in the specific context of Mukomuko. In their operation, state law and *semendo adat* coexist to shape everyday practices of marriage and divorce among the matrilineal Muslim community in Mukomuko, and thereby must be viewed (respectively) as a distinctive discursive tradition.

The coexistence of state law and *semendo adat* becomes apparent in the way members of the matrilineal Muslim community in Mukomuko conclude their marriages and obtain their divorces. Despite the mandatory marriage registration and judicial divorce procedures stipulated by state law, local *semendo adat* marriage and divorce procedures remain a popular option within this community. In this way, state law and Mukomuko's *semendo adat* coexist as 'differentiated' normative systems and institutions (cf. Griffiths, 2017, p. 103), shaping people's marriages,

[204] The term 'state' denotes not only the Indonesian state, but also the ruling regimes in the sultanate and colonialist eras, which introduced important ordinances and policies that are still relevant today.

[205] *Adat* is a broad concept that can be used to mean: (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).

divorces, and related disputes. They operate, among other forms of normative systems and institutions, in 'a continuum scale'(cf. Platt, 2017, pp. 6–9), from the ultimate zero point of 'less differentiated' to the infinite point of 'more differentiated'. In this manner, an informal union and a registered marriage must be viewed as the least and the most differentiated marriages, respectively, whereas Islamic (religiously valid, but unregistered) and *semendo* marriages both fall between the two extremes. The same logic applies to a divorce in *semendo adat*, locally known as a *minta-sah* procedure, which is more differentiated than an arbitrary separation and an Islamic divorce, but is still less differentiated than a judicial divorce at the Islamic court. Therefore, although secondary in terms of a common and accepted part of the state legal system, *semendo adat* is often socially more important, and certainly locally more differentiated, in comparison with the general provisions of Islamic law.

Nonetheless, the distinction between state and *adat* laws is not always clear, and their relationship in practice is often a matter of compromise and mutual adjustment (cf. Brickell & Platt, 2015; Fauzi, 2023, p. 9; Grijns & Horii, 2018). Since the Islamic court extended the application of *isbat nikah* to validate unregistered marriages retroactively, registration at the KUA at the time of marriage is not the only way to have a marriage recognised. Moreover, the local procedures of marriage and divorce in the *semendo adat* are often complementary and not necessarily opposed to the state procedures. For instance, a marriage registrar from the KUA can easily adapt to an *adat* marriage, as the community will secure a special session for him within the sequence of steps involved in the *semendo* marriage ceremony. This privilege enables the registrar to disseminate certain ideals mandated by the state, such as the mainstreaming of *taklik talak* (conditional divorce). An important development is that the state's *taklik talak* also operates outside the court. This can be seen in the role of the local *imam* (representing the *adat*) when this *imam* assesses the feasibility of a divorce in *adat* according to the criteria for

conditional divorce that are set by the state. These adjustments create a twilight zone, where the shadows of different legal orders converge. Santos speaks of this phenomenon as 'interlegality', when "different legal spaces superimpose[ed], interpenetrate[d] and mix[ed] rather than coexist[ed] merely in the same political space" (Santos, 1987, pp. 297–298, 2020, p. 89).

Despite the prevailing convergence of state and *adat* laws, I have seen tensions emerging at both societal and state levels. At the societal level tension usually occurs in subtle ways, and it might also involve a conflict with the more 'orthodox' provisions in Islam (sharia). I discussed how, in *Abbas v. Dini* (presented in Chapter 4), Abbas sued Dini (his wife) before an *adat* council to return all the expenses for their marriage, after he discovered her affair with another man. He demanded a full return of the expenses, totalling 21 million rupiah, which he claimed as *mahar* (a bride price), because the marriage was unconsummated and the wife was the one at fault. However, the council refused to rule in his favour, since most of the expenses were considered *antaran-belanjo* (wedding expenses from a groom to a bride), which are voluntary and therefore non-reclaimable. According to the local *adat*, Abbas was entitled to only a very small amount (50 thousand rupiah), as a 'fixed' *mahar* (cf. a local concept of 'ampa co'i ndai' among Bimanese in Wardatun, 2018). The council eventually disbanded, without the parties reaching an agreement. This case shows the tension arising from confusion between *mahar* - prescribed differently in sharia, state law, and *semendo adat* - and the local concept of *antaran-belanjo.* It also reflects the dynamic between three types of symbolic universes, i.e. sharia, state law, and *semendo adat* (K. von Benda-Beckmann, 2009, p. 217; or 'an Islamic triangle', the term used by Buskens, 2000).

At state level, the tensions between state law and *semendo adat* can be found in property-related cases, such as disputes about joint-marital property and inheritance distribution, that have ended up in a courtroom. However, one should keep in mind

that the members of matrilineal Muslim communities in Mukomuko rarely bring their disputes to the Islamic court, unless they are forced to, as has happened in some lawsuits involving state officials, and in some property-related cases. While state officials are legally subject to stricter regulation when attending court, in property-related cases a few husbands seeking a greater share of marital property have made attempts to escape or challenge *semendo adat.* If this were not the case, the members of Mukomuko's matrilineal communities would likely have to rely on internal resolution within their nuclear family, *kaum* deliberation, or the *adat* council. This suggests that disputes at the Islamic court have only occurred in rare and extreme cases, when resolution has failed to occur via the *adat*. This study also reveals that in these few cases the judges from the first instance Islamic court in Mukomuko are not compromising, and their strict application of state law does make conflict between state law and *semendo adat* inevitable.

Disputes ending up in the Islamic court involve three main types of actor. The first type tends to be a member of Mukomuko's matrilineal community, who has appeared before the court as a party to secure their own interests. In doing so, they have engaged in two shopping processes: 'forum shopping', in various dispute resolution fora; and, 'discourse shopping', within different legal repertoires (Biezeveld, 2004; K. von Benda-Beckmann, 1981). When forum shopping, the members of this matrilineal community chose either a deliberation in the *adat* council or the state Islamic court. In some cases, their choice included mediation at a police station and a battle in a criminal court, even though neither of these forums were the proper place for their disputes. When discourse shopping, they referred not only to the state law, but also to their own *semendo adat*. The second type of actor is the first instance Islamic court judge. Although rare, Islamic court judges have received a few cases containing a demand to consider the *semendo adat*. In response to this particular demand, the judges usually used a formalistic approach, ma-

noeuvring only within established developments in the Islamic Court. If they had not done so, their judgements would be liable to nullification by the higher courts, as seen clearly in *Nurdin v. the late Hamida's family* (presented in Chapter 4). This formalistic trend has to do with the gradually centralised and homogenised Islamic judiciary, which I will address later in more detail, when presenting the third finding of this study.

Between these two actors sit the intermediaries (or 'brokers', the term used in Geertz, 1983, p. 173; Horikoshi, 1987), such as informal case-drafters (*juru-ketik-perkara),* lawyers, *kaum* (clan) leaders, and *kaum* elders. Intermediaries can be divided into two categories according to their legal preference: toward state Islamic law, or toward *semendo adat*. The first category consists of informal case-drafters and lawyers. Their role is 'constructive' and 'prospective' (cf. Buskens, 2008, p. 153; Dupret & Drieskens, 2008, p. 9). They help parties to properly draft their lawsuits, while providing something for judges to base their decisions on. These intermediaries have generally showed a preference for state Islamic law, and their assistance has been crucial not only for anticipating possible errors but also for constructing incoming lawsuits in a way that fits the established developments in the Islamic court. In drafting a divorce lawsuit, for example, they are most likely to refer to the existing templates provided by the court, by including either broken marriage or *taklik talak* violation grounds (cf. Dupret et al., 2019, p. 430). Consequently, the outcome of such procedures is predominantly determined by state Islamic law. The second category of intermediaries consists of *kaum* leaders and elders as staunch defenders of the matrilineal *adat*. They often speak before the court on behalf of their clan members, and assist them in invoking their *semendo adat*. However, their intermediary role is now increasingly contested, as judges are encouraging individual citizens to appear in court on their own.

The lessening role of *kaum* elites corresponds to the non-compromising approach of judges in the first instance Is-

lamic court for Mukomuko's population. The judges in this court have become more formalistic in their judgements, causing the involvement of *kaum* leaders and elders to be unnecessary. At first, the judges were concerned about their legitimacy and getting recognised by the people and their *kaum* elites, but now (especially after the gradual trend toward the more centralised and homogenised Islamic judiciary) the judges no longer need to look for such social recognition. The demise of the role of *kaum* elites at court works in parallel with the creation of KUA in each sub-district, which have replaced the existing 'informal' registrars, i.e. *Pegawai Pembantu Pencatatan Nikah* (P3N), which used to be *kaum* representatives. Although, in practice, many *kaum* leaders still play a brokerage role for their clan members in the KUA office (cf. the role of 'modin' in Fauzi, 2021), the abolition of P3N in Mukomuko has seriously threatened the position of *kaum* elites, as it further weakens the state's recognition of them. Another threat to the *adat* and its institutional actors comes from local governments, which have tried to eliminate the involvement of *kaum* leaders and elders in village administration. Rather than preserving the longstanding collaboration with the local elites, the district of Mukomuko created *Lembaga Adat* (LA, *Adat* Institution) in each village, as an institution separate from the village administration.

Prior to the establishment of LA, the *kaum* elites were an integral part of village politics and administration. They used to play a role in determining how a village election must be conducted, and who must be included in the village government structure through their involvement in an *orang adat* assembly.[206] Although one village may differ from the next in this, *kaum* elites have generally been increasingly excluded from village administrations. In this manner, the invention of LA demonstrates what many legal scholars have called an imposition of 'official'

[206] The *orang adat* assembly comprises *kaum* leaders and elders, sub-village heads, and religious functionaries. This composition can be traced 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).

law on a 'living' one (Bedner, 2021, pp. 378–380; Just, 1992, p. 379; Pirie, 2013, p. 50; Vincent, 1990). This contrasts with the more accommodative approaches in other regions, such as the return to the *nagari* in West Sumatra (Vel & Bedner, 2015; F. von Benda-Beckmann & von Benda-Beckmann, 2013) and the district government's recognition of customary rules and village elites in Aceh (Arfiansyah A., 2022). However, it does not necessarily imply that the role of *kaum* leaders and elders no longer holds, since the community generally continues to rely on them to arrange most of their important affairs, known locally as *kerja-baik-kerja-buruk* ('good' and 'bad' affairs).[207] Their social significance persists in everyday practices, especially in matters of marriage and divorce, and cannot be underestimated.

6.1.2 The logic of the courts

I will now turn to the second finding of this research, which concerns how the attitudes of judges differ between the different levels of court. While judges from the Islamic Chamber of the Indonesian Supreme Court have become more accommodating toward various local conditions, judges from the first instance Islamic court in Mukomuko often use a formalistic approach, disregarding the local *adat* observed by members of Mukomuko's matrilineal Muslim community. This study reveals that both compromise and opposition serve as forms of logic to inform the judicial process at different levels of the Islamic court. Compromise is the approach favoured by judges at the Islamic Chamber of the Supreme Court, when they are aligning state law with various social conditions informed by provisions in Islam and *adat*, and by sociocultural backgrounds. Meanwhile, opposition is likely to occur at local court level. This is illustrated by the conflicts between state law and *semendo* adat which have emerged from disputes (mostly property-related) between members of Mukomuko's

[207] Important affairs are generally divided into *kerja-baik* (good events), such as births and marriages, and *kerja-buruk* (bad events), such as deaths. While public participation in the first category tends to be passive, their participation in the second is active. Accordingly, people will not participate in a marriage celebration unless invited, but they will automatically get involved in taking care of a deceased person. Still, the involvement of *kaum* leaders and elders in both categories is mandatory.

matrilineal community that have ended up in a courtroom. The different forms of logic can be attributed to the greater autonomy enjoyed by Supreme Court judges, compared to their counterparts in lower courts. Therefore, to better understand the role and function of the Islamic court, it is important to consider the different inclinations (or logic) of judges from different court levels.

At national level, judges from the Islamic Chamber of the Supreme Court have been active in judicial law making, in order to reconcile the law and its purposes and to consider the various local conditions informed by provisions in Islam and *adat*, and by sociocultural backgrounds. For instance, in order to find a middle ground between the mandatory marriage registration procedure and widespread unregistered marriages, the Supreme Court judges introduced an 'extended' and 'refined' form of *isbat nikah.* Through this new form of *isbat nikah,* the judges now manage to validate unregistered marriages retroactively, as long as they are religiously valid and not contrary to other legal provision(s). In the field of divorce, 'broken marriage' was invented as a unilateral, no-fault, and all-encompassing divorce ground. Through increasing use of broken marriage as a ground for divorce, a simpler and more equal divorce procedure for husbands and wives is being promoted, and the burden to find who is at fault is being lifted from the judges' shoulders. Moreover, in order to prevent their court turning into a mere divorce registration office (cf. Husaeni, 2012; van Huis, 2015, p. 243), the judges have started to reapply consideration of fault to broken marriage divorces, especially when the 'fault' is relevant to a spouse's post-divorce rights. These breakthroughs show the judges' ability (or 'autonomy', the term used by Bedner, 2016) to bridge emerging gaps between the formal application of law and a sense of justice in society.

The judges' autonomy to develop the law is crucial to the court's legitimacy in the eyes of Muslim communities, as more responsive judgements enhance people's recognition of the

court. However, it is important to note that social recognition is not the only logic that works. Judges from the Islamic Chamber of the Supreme Court have also been very careful to ensure that developments do not work against the 'core values in Islam' (the term used by Nurlaelawati & van Huis, 2020). In establishing a child-father legal relationship, for instance, judges from this court do not automatically incorporate the 2012 Constitutional Court ruling, which enables a child out of wedlock to legalise their legal relationship to their biological father, as long as there is sufficient proof that they have a blood relationship. Instead, the judges make legalisation of a child-father relationship dependent on an *isbat nikah* judgement, which is now applicable only to a religiously valid and non-polygamous unregistered marriage. Beyond this adaptation, a child-father legal relationship may only be 'acknowledged' (with a restricted legal relationship) through a separate petition on a child's origin (*hak asal usul*), rather than 'legalised' (with a full *nasab* relationship). By doing so, the judges seek to protect not only the child but also the first wife, and more importantly, to ensure that their judgement is in accordance with a more accepted provision in Islam that enables full filial status (*nasab*) to arise only from a religiously valid marriage.

In contrast, at local level, the first instance Islamic court in Mukomuko frequently sees tensions emerging. The state Islamic law which the judges from this court apply is often in conflict with *semendo adat.* By examining incoming cases from members of Mukomuko's matrilineal Muslim community, notably their disputes about joint marital property, this study reveals that judges have responded to these cases by sticking strictly to the law and disregarding the *semendo adat* that entails, among other things, a greater share for wives than for husbands. This actually goes against the existing trend among judges at the Supreme Court, who have started to render more nuanced decisions on this matter by delivering a greater share of the joint marital property to wives, rather than remaining confined to the equal distribution

mandated by the law.[208] The first instance judges' formalistic approach explains why the majority of Mukomuko's matrilineal community prefers to resolve such disputes on their own, out of fear that the involvement of the court will harm their local ideas of justice. This attitude is perfectly illustrated by the local expression *"satu menjadi arang, satu menjadi abu"* (or, "one party becomes charcoal, the other becomes ashes"), which describes the usual fate of their cases in the hands of the Islamic court judges. In fact, the outcomes of their cases would not have been different if the parties had decided to bring their disputes to the Supreme Court. However, such parties often find the higher courts to be too costly and time-consuming, and therefore less accessible.

The prevalence of this formalistic approach is remarkable, considering the greater chance of first instance judges meeting the parties in person and digging deeper into facts the parties have presented. Generally, it is argued that first instance court judges are more likely to exercise judicial law making than those from higher courts, who often confine themselves to spotting errors of law, rather than rendering factual judgements (Shapiro, 1986, pp. 93–96). The case of Mukomuko, where judges from the first instance Islamic court have been less responsive to parties' pleas to invoke their *semendo adat*, shows the opposite. By contrast, Supreme Court judges have become more accommodating toward various local conditions, as demonstrated earlier on in their innovation in matters of marriage and divorce. Although Shapiro made an exception, stating that higher courts from the European civil law tradition might be closer to facts (Shapiro, 1986, p. 95), I found that in Indonesia, which inherited the Dutch European civil law tradition, this exception is unlikely to be the reason for the Supreme Court's more accommodative approach, since the 'accepted' competence of this court is not to assess facts

[208] In Judgement 266K/Ag/2010, 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 (cf. Judgement 78K/Ag/2021, which allocated 70% of joint marital property to a wife and 30% to a husband). 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.

but to spot errors of law. A more convincing explanation for this can be found in the gradual centralisation of the Islamic judiciary, which provides the Supreme Court with greater autonomy than the lower courts to control what Shapiro calls the "three main tasks of a court"; namely, conflict resolution, social control, and law making (Shapiro, 1986, p. 151). Such centralised autonomy is a puzzle which needs to be considered when attempting to understand the role and function of Islamic courts within Indonesian multicultural Muslim society.

The greater autonomy enjoyed by judges from the Islamic Chamber of the Supreme Court enables them to perform judicial law making, and to maintain a balance between the preservation of law and core values in Islam and the necessity of considering various social conditions in their judgements. Their autonomy confirms many important studies that suggest the defining role of Islamic court judges in general, in preserving and transforming (or reforming) Indonesian Muslim family law (J. R. Bowen, 1998, 2005; Lev, 1972; Nurlaelawati, 2010; Nurlaelawati & van Huis, 2020; van Huis, 2015, 2019a). However, when we look at the role of judges in such processes it is important to distinguish between different judges from different levels of court. The present study demonstrates how centralising autonomy in the hands of the Supreme Court comes at the expense of the independence of the first instance Islamic court. As first instance judges have come under the increasing control of the Supreme Court, it is safest for them either to render their judgement in a formalistic manner, or to make their judgement according to established developments in the Islamic Chamber of the Supreme Court (for example, via frequent use of the extended and refined form of *isbat nikah* and the ground of broken marriage). Otherwise, their judgement will be liable to nullification by the higher courts, either through an appeal at the appellate court or through a cassation and judicial review at the Supreme Court. This means that the first instance judges are 'never' taking the lead in judicial innovation.

6.1.3 The gradually centralised and homogenised Islamic judiciary

The increasing trend toward a more centralised and homogenised Islamic judiciary is the third finding of this dissertation. The trend is clearly depicted in the adoption of the one-roof system (*sistem satu atap*) in 2004, which centralises both the technical judiciary and court administration under the Supreme Court (Rositawati, 2019, p. 256). The one-roof system put an end to the MoRA's and Supreme Court's dual authority over the Islamic court. It also resulted in better facilities, such as new buildings in the capitals of many regencies and increased salaries for judges, clerks, and court employees (van Huis 2015, 55–56). However, in Mukomuko the one-roof system served to alienate people from the Islamic court and, as I will show later, made this court more dependent on the Islamic Chamber of the Supreme Court. Although the distance separating Mukomuko from Arga Makmur had long been a barrier to accessing the court, people from Mukomuko had somehow found the court to be more accessible *before* the adoption of the one-roof system. The situation was better for people from Mukomuko at that time, because they could bring their cases to a circuit court (*sidang keliling*), which would routinely be held in their hometown. During this period, the judges and court employees from the Arga Makmur Islamic Court worked hand in hand with local KUA employees to address peoples' barriers to court access, by creating a demand-based circuit court.

After the one-roof system came into force, cooperation between the Arga Makmur Islamic court and the local KUA started to decline. The one-roof system turned the previously demand-based circuit court into a top-to-bottom programme. As a programme, the new circuit court was dependent on the limited budget, allocated by the Supreme Court no more than twice a year (cf. van Huis, 2015, p. 156). Meanwhile, the judges were no longer free to use litigation fees to finance their visits to Mukomuko. The situation worsened in 2017, when judges from the

Arga Makmur Islamic Court discovered that South Mukomuko KUA had doubled the litigation fees and put them into its own pocket, ultimately leading the Arga Makmur Islamic court to terminate its cooperation with the KUA. A year later the circuit court resumed, in response to demand from the people, but this time it was not located at the KUA office. Instead, it took place at the sub-regency office (*kecamatan*) of South Mukomuko. It soon appeared that the new form of circuit court was no longer demand-based, and any attempts to revive its previous format are now considered corruption; financing a circuit court with the litigation fees will be certainly against the law. The demise of the demand-based circuit court shows the flip side of the one-roof system, which circumscribes the independence of the lower courts and has severed the link with the MoRA and the KUA. The one-roof system put a stop to every policy issued by the Arga Makmur Islamic court aiming to bring it closer to the Mukomuko population, and this caused a split in the administration of Muslim family matters on the part of the state.

The split between the KUA and the Islamic court also resulted in ambivalence on the part of the state. When legalising an unregistered marriage (for instance), in practice people can still resort to the KUA, although *isbat nikah* in Islamic courts is the only legal procedure available to register such a marriage retroactively. This confirms Fauzi's finding in Pasuruan, where *isbat nikah* is meaningful only to people who seek legal status for children born outside a registered marriage, whereas those who only need a marriage certificate can simply ask the KUA to register their marriage (Fauzi, 2023, p. 263). Another problem arising from this split concerns the weakening relationship between judges and people. Unlike officials of KUA at the sub-district level, who have managed to develop a closer relationship with the people, first instance judges at district level have become increasingly estranged from the people. At the end of 2022, when visiting the University of Bengkulu, I had a chance to present my research to the head of the Islamic Chamber of the Supreme Court and Is-

lamic court judge representatives from the region. After the session, I was approached by one of the judges who adjudicated a case I had presented, saying that he had not realised that the case had been that complex, involving conflicts between state law and *semendo adat.* His statement did not surprise me, as we cannot expect more from a judge who, after the split, serves at one court for just a few years, before being rotated to another court for another short-term stay. The split and short periods of service certainly serve as barriers to judges becoming more familiar with the people and their sociocultural backgrounds.

The negative impact of the one-roof system was aggravated further by the 'late' establishment of the Mukomuko Islamic court. The region, which had already obtained regional autonomy in 2003, had to wait 13 years for the central government to create its Islamic court through Presidential Decree 15/2016. Nonetheless, the court did not immediately start operating; Mukomuko had to wait a further two years for an Islamic court to be officially established in the capital city of Mukomuko. To reach the competent court (i.e. the Arga Makmur Islamic court) before this time, people had to spend a considerable amount of time and money on a seven-hour road trip to the capital regency of North Bengkulu. The establishment of Mukomuko Islamic Court in 2018 has significantly cut people's travelling distances to court, but some residents still consider the court's position at the far north of the region to be a barrier. People who reside in the *hulu* (upstream) and southerly villages, at a maximum distance of 124 km, still have to travel for around four hours to reach the capital. Therefore, the people, especially those who belong to the matrilineal *adat*, have continued to resolve their disputes on their own. An exception applies to those of migrant origin, who contribute for the most part to incoming lawsuits in the Mukomuko Islamic court. The difference can be attributed to the fact that, unlike migrants whose only option is the state Islamic court, Mukomuko's matrilineal Muslim community may resort to their *adat* council as an alternative.

Another effort to centralise and homogenise the judiciary appears in the already mentioned adoption of the obligatory transfer system and uncertain career management in the Supreme Court. This system, as I mentioned briefly above, rotates judges from one place to another once every two to four years, and makes this rotation a condition for promotion. Its proponents argue that this system is strategic, as it disseminates national law and prevents conflicts of interest. Yet, critics of this system have made it clear that it has prevented judges from gaining a better understanding of local contexts and Indonesian multicultural society (Bedner, 2017; Rositawati, 2010, pp. 50–52, 2019, p. 172). Bedner, in his study of the Indonesian administrative court, maintains that making promotion conditional on obligatory rotation has been practically counterproductive, because the system is now shaped mainly by "wide discretionary powers", rather than by merit or detailed assessment. He adds that the system has led to corruption, as judges craving a better, more strategic placement might use all means to persuade their superiors. At the same time, it is used for punishment of judges stepping out of line. (Bedner, 2001, pp. 204–210; see also Pompe, 2005). The impact of mandatory transfer and its function as a form of career management in the Islamic court both require more attention; further research is still required. What is clear from my research is that the judges now serving at the Mukomuko Islamic court are not from this region. They therefore know very little about the people and their *adat*.

In general, the increasing trend toward a centralised and homogenised Islamic judiciary has been advantageous in terms of accelerating the state's unification project (cf. O'Shaughnessy, 2009; Peletz, 2002, pp. 277–278; van Huis, 2015). Nonetheless, the case of Mukomuko and examples elsewhere in Indonesia show how the gradually more centralised and homogenised Islamic judiciary is also problematic, especially for a diverse nation like Indonesia. Many studies have suggested that marriage and divorce among Indonesian Muslims remain predominantly communi-

ty-based affairs, beyond the state's reach (Brickell & Platt, 2015; Idrus, 2003; Millar, 1991; Nurmila, 2009; Nurmila & Bennett, 2014; Platt, 2017; Wirastri, 2018; Wirastri & van Huis, 2021). In response to this, and mainly to maintain their social legitimacy before the Muslim community (cf. Fauzi, 2023, p. 250; Shapiro, 1986, p. 97), judges from the state Islamic court have been active in judicial law making activities, accommodating various local conditions in their judgements. However, as I mentioned earlier, in my discussion of judges' different attitudes at different court levels, judicial law making has become centralised in the hands of the Supreme Court judges. This ongoing centralisation serves to further homogenise lower level Islamic courts, but ironically, in Mukomuko this homogenisation will only endanger the court's legitimacy before the people, as the latter have become reluctant to bring their disputes to the court.

6.1.4 Islamic courts and state formation

The fourth finding concerns the role of Islamic courts in the process of nation-state formation. Peletz, in his study of the Malaysian Islamic courts, suggests that these courts have played a pivotal role in nation-state formation (Peletz, 2002, pp. 277–278). By promoting the state's patriarchal ideology, they were instrumental in the reproduction and transformation of symbols and meanings of nationhood and cultural citizenship, as they penetrated deeply into communities and families, irrespective of their membership of a particular clan, ethnicity, or community (Peletz, 2002, p. 4). O'Shaughnessy, in her study of Indonesian Islamic courts in Central Java, went even further by concluding that the courts were responsible for mainstreaming the state's patriarchal ideology, namely the male-headed family and stigmatisation of divorce (O'Shaughnessy, 2009, p. 70). Van Huis, in his research on women's access to post-divorce rights in the Cianjur and Bulukumba Islamic courts has nuanced this argument. He confirms that the Islamic courts may be accountable for the transformation of divorce norms among the societies studied, according to state ideology, but he adds that the transformation

depends on "the courts' role and functioning in the local communities concerned and the level of competition of the local alternative normative systems and institutions". Whereas in Cianjur the 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. 17–18 and 264–265).

Van Huis' research suggests that the historical trajectory of each court has contributed to different attitudes toward judicial divorce, as evidenced in the greater social acceptance of non-court divorces in Cianjur than in Bulukumba. Confirming van Huis' thesis, my research in Mukomuko shows that the state's top-down approach to the mainstreaming of unified Muslim family law has not automatically transformed the local practices of marriage and divorce in favour of the state ideology suggested by O'Shaughnessy. While van Huis draws his argument from people's different attitudes toward the mandatory judicial divorce procedures promulgated by the state, I draw my argument from the intricate relationship between two forms of Islamic law: i.e. the *semendo adat* observed by the villagers from Mukomuko, and the Muslim family law imposed upon them by the state. The case of Mukomuko demonstrates how the unification of Muslim family law has launched the Islamic court upon a path which leads to both compromise and opposition. Compromise usually serves as a 'cultural logic' (Dupret, 2007; Gluckman, 1955; Merry, 1990; Mir-Hosseini, 2000; Peletz, 2002, p. 277; Rosen, 1989), influencing the Supreme Court's approach of aligning state Islamic law with various social conditions informed by provisions in Islam and *adat*, and by sociocultural backgrounds. Meanwhile, opposition likely occurs at the local level, as depicted by the conflicts between state law and *semendo adat* in some Mukomuko cases, mostly property-related ones, that have ended up in a courtroom.

Despite the different forms of logic observed by judges at different court levels, it is important to note that the Indonesian Islamic courts have served as strategic loci for developments in

Muslim family law. As "official interpreters" of the law (cf. J. R. Bowen, 2001; M. E. Cammack, 1997; Lev, 1972; van Huis, 2019a), judges from these courts have introduced many important reforms to give men and women equal standing in Muslim family law (or the 'third phase' of Muslim family law reform, the term used by Welchman, 2007, pp. 12–15). This opposes O'Shaughnessy's argument that these courts would promote the stigmatisation of divorce for women, thereby as she added causing women's subordinate position in divorce to remain unchanged (O'Shaughnessy, 2009, pp. 70, 202). This judicial development also corresponds to similar phenomena around the Muslim world, ranging from judicial *ijtihad* in Pakistan (Abbasi, 2017), through judicial law making in Egypt (Lindbekk, 2017), Morocco (Sonneveld, 2019) and Zanzibar (Stiles, 2019), and the dominant influence of Supreme Justice on Jordanian law making (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, Muslim family law has increasingly been the subject of reform, by either the Islamic judiciary or civil courts. The case of Indonesia shows that the role of Islamic courts in this respect has become increasingly centralised and homogenised toward the Islamic Chamber of the Supreme Court (cf. Tunisian Case in Voorhoeve, 2012, p. 216). For a diverse nation like Indonesia, this trend is problematic. It has led to conflict and loss of state legitimacy, as evidenced by the people's reluctance to bring their disputes to the Islamic court in Mukomuko and by the fact that some judgements, which opposed *semendo adat*, cannot be executed in practice.

Next, I will provide a further elaboration of these findings, with regard to the intricate state-society relationships in the field of marriage and divorce. I will also provide some critical reflections on the prospects of *adat* and the gradually more centralised and homogenised Muslim family law system in Indonesia.

6.2 Everyday Practices of Marriage and Divorce in the Contemporary Mukomuko

As I already mentioned elsewhere in this book, Mukomuko's contemporary population is predominantly Muslim and, in terms of settlement patterns, comprises three distinct community groups. These are: (1) matrilineal communities, who have resided in the upstream and downstream (*hulu-hilir*) villages and across a number of important rivers in this region, since time immemorial; (2) [trans]migrants, who are mostly from the island of Java and were scattered across several enclave settlements following their mass state sponsored arrival 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 Mukomuko. While the majority of the matrilineal community and transmigrants remain homogenous within their respective settlements, urban people have become more heterogenous as diverse ethnic groups have come to live alongside them. The matrilineal community also includes the ethnic group, Pekal, who inhabit the most southern part of the region and share a matrilineal kinship system. Together, this multi-ethnic society constitutes the so-called 'local people' of the now district of Mukomuko.

In the fields of marriage and divorce, the matrilineal community, constituting the 'natives', must be distinguished from communities of migrant origin.[209] While natives usually observe the *semendo adat*, their own Islamic law on marriage and divorce, migrants often carry various traditions with them from their place of origin. However, native-migrant encounters are also inevitable, as evidenced by numerous cross-ethnic marriages. The native-migrant encounters work in parallel with two important events: (1) the regional autonomy of Mukomuko district in 2003, which led to the creation of an Office of Religious Affairs (*Kan-*

[209] While acknowledging the colonial implication embodied by the term 'native', I still use this term to distinguish natives from other locals who reside permanently in Mukomuko, but who are not part of the *adat* community.

tor Urusan Agama, KUA) in each sub-district; and (2) the establishment of Mukomuko Islamic court at the end of 2018. These events brought the state closer to Mukomuko society, but they also made the native-migrant distinction in matters of marriage and divorce clearer. Migrants saw the increasing presence of the state as a positive development which brought them better access to state marriage and judicial divorce. By contrast, natives regarded this development with suspicion, fearing that the more patriarchally-inclined Muslim family law that the state promotes would bring harm to their local idea of justice. This explains why marriage and divorce among the latter remain predominantly community-based, and the involvement of the state mostly occurs in less problematic and more extreme cases, as happened in the first marriage at the KUA and the property-related disputes at the Islamic court.

While focussing on the matrilineal Muslim community I learned that *semendo adat* remains a general norm that shapes marriage among them, particularly marriage involving one of their daughters. According to this *adat*, a proper marriage must involve the *orang adat* assembly and observe (among other things) clan-exogamous and uxorilocal (matrilocal) principles. In this manner, membership of a particular *kaum* or clan is mandatory if a marriage is to be recognised by the *adat*. Prospective brides and bridegrooms, especially those who plan to settle outside their village of origin after their marriage, can in fact escape the *adat* by resorting to one of the Offices of Religious Affairs (KUA) that are now available in each sub-district across Mukomuko. However, couples are not allowed to celebrate their wedding publicly in the village, which undoubtedly brings shame to their parents. More importantly, the parents, especially the bride's parents and her *kaum*, will be excluded from *kerja-baik-kerja-buruk* ('good' and 'bad' affairs), and only after paying an *adat* fine will the latter's social rights be restored. This corresponds with the communal nature of the marriage, which is not only a matter between the couple but also between two extended families

or clans. Consequently, even though state marriage at the KUA now provides an alternative, *adat* marriage remains strongly observed and its social significance cannot be underestimated.

In terms of obtaining a divorce, this study reveals the prevalence of non-judicial divorces within this matrilineal community, which initiated by either the husband or the wife. While a husband can easily terminate his marriage out-of-court by uttering *talak*, as prescribed by Islam, a wife does not have any such privilege under the dominant interpretation of Islamic law. Instead, she has recourse to a local alternative that has become known as the *minta-sah* procedure, which serves mainly as leeway for a neglected wife to escape an unhappy marriage. Through this procedure, a neglected wife presents a symbolic offering of *siri-secerano (serrano* or *cerano)* to the local *Imam*, while uttering: "*Aku naik bersuami dan turun tidak bersuami lagi*" (or, "I ascended with a husband, and I am descending without one"). Afterwards, she lays down the offering and leaves the Imam's house before the latter can even answer. While it might seem one-sided, this procedure in fact relies on the fulfilment of several conditions which have been agreed socially, within this community. The agreed conditions are comparable to those of *taklik talak* (conditional divorce), as promulgated by the state. The difference lies in who will examine these conditions. While the state law requires the violation of these conditions to be examined solely by Islamic court judges, members of Mukomuko's matrilineal Muslim community have incorporated them into their own system by bestowing the authority to examine these conditions on the local *Imam*.

From a legal perspective, the state and the unified Muslim family law that it promotes have clearly ruled that both marriage registration and judicial divorce are mandatory to gain the force of law. However, this does not necessarily mean that the local procedures of *adat* marriage and *minta-sah* are not 'recognisable' by law. In the case of an unregistered *adat* marriage, the couple can validate their marriage retroactively through the *isbat nikah* procedure at the Islamic court, although this sometimes leads to le-

gal problems, because not all types of unregistered marriage are eligible for such retroactive validation (see Chapter 2 in Section 2.2.3, on the limits of *isbat nikah*). Meanwhile, the local *minta-sah* procedure often serves as a 'temporary' solution for neglected wives who want to dissolve their marriage but cannot yet access the Islamic court. The latter can validate their non-judicial divorce at the Islamic court at some point over the course of their lives. Therefore, it can be said that the local procedures of *adat* marriage and *minta-sah,* both representing the matrilineal *adat*, have managed to operate in everyday practices as either 'differentiated' empirical law (cf. Abel, 2017; Griffiths, 2017, p. 103) or 'semi-autonomous law' (cf. Moore, 1973). The local procedures are recognisable by state law, and are certainly more differentiated than other local normative systems and institutions.

Speaking of Mukomuko generally, one must keep in mind that the level of adherence to the *semendo adat* differs from one village to the next. While the *semendo adat* and its institutional actors remain in full operation in many rural *hulu-hilir* villages, I have witnessed a growing dissatisfaction with the *adat* and its institutional actors among members of the matrilineal community in villages that are now becoming urban centres. A few male attendees of the Madani mosque in the capital of Mukomuko district shared their discontent toward the incumbent *pegawai syarak* (religious functionaries) with me. In their eyes, the functionaries are not pious enough to occupy their positions and had been elected arbitrarily, within the *adat*.[210] Their dissatisfaction also concerns some elements of *adat*, such as the matrilineal property and inheritance system and the trivial position of a husband, which all run counter to the more orthodox interpretation of Islamic law prescribed in classical Islamic jurisprudence (*fikih*). Another threat comes from the few husbands who, dissatisfied with the result of *adat* deliberation, have started bringing cases to the Islamic court (by 'forum shopping', the term used by K. von Benda-Beckmann, 1981). Their appearance

[210] An interview with the Madani mosque congregation on 22 March 2017.

before the Islamic court is usually an attempt to obtain a greater share of marital property and is therefore also a clear sign of escaping *adat*. Viewed this way, it can be said that people's attitude toward *semendo adat* is gendered, because it distinguishes husbands from wives and depends on the level of social acceptance of *adat* among the local communities of each village.

6.3 Matrilineal Muslims and the Unification of Muslim Family Law

The case of Mukomuko shows how the unification of Muslim family law has not led automatically to complete domination by the state. I have seen the persisting role of matrilineal *adat* across the *hulu-hilir* villages of this region. Although the matrilineal sultanate of Anak Sungai (in Mukomuko) was already in decline following the 1789 patrilineal revolution instigated by the British EIC, eventually disappearing in 1870, under Dutch colonial administration (Bastin, 1965; Bogaardt, 1958; Znoj, 1998, pp. 106–110),[211] matrilineal *adat* and its institutional actors managed to survive at village level as the dominant normative system and institution. This situation changed neither during Japanese occupation (1942-1945), nor nearly 80 years after Indonesian independence (in 1945). The pejorative term, *'pulau di atas pulau'* (or, 'an island upon an island') is often used to describe Mukomuko's isolation from the surrounding regions and central government. Therefore, unlike the fate of many local norms and actors elsewhere in Indonesia, which disappeared under Indonesia's centralising and unifying regimes (J. R. Bowen, 2003, p. 89; Galizia, 1996, p. 139; Lev, 2000, pp. 28–31; K. von Benda-Beckmann, 2009, p. 223), Mukomuko has enjoyed the advantage of the local *adat* and its institutional actors, which have managed to remain in full operation at village level, without much outside intervention (cf. Arfiansyah A., 2022 about Gayo).

[211] The 1789 patrilineal revolution had weakened the relationship between the central (sultanate) and peripheral (supra village and village) levels and increased the former's subjugation by the British EIC, who had appointed the incumbent sultan in 1804 as a mere salaried local assistant. Under the Dutch colonial administration, the local sultanate continued to decline and culminated in the abolition of Anak Sungai Sultanate through an introduction of *marga* (an alien supra villages) system to this region.

In matters of marriage and divorce, this isolation also means more space for the local interpretation of Muslim family law. The *semendo adat,* which is matrilineally-informed in nature, continues to shape everyday practices of marriage and divorce among this matrilineal community, despite the state's agenda to unify Muslim marriage from the time of Indonesian independence (1945) onwards. In other words, the *semendo adat* resisted a more patriarchally-inclined interpretation being imposed on all Muslim citizens by the state. The persisting role of the *semendo adat* was facilitated by the late establishment of the Mukomuko Islamic Court at the end of 2018. Meanwhile, access to the Arga Makmur Islamic Court, a seven-hour round road trip, was simply too costly and time consuming for most people. The situation worsened after adoption of the one-roof system in 2004, which gradually homogenised and centralised the Islamic judiciary. As I mentioned earlier, the one-roof system caused a split between the local KUA and Islamic court and (more importantly) put an end to the existing cooperation between the two offices, which had aimed to bring the state closer to the population. The state's relative absence and the lack of access to state institutions have both caused marriage and divorce among Mukomuko's population to remain community-based affairs.

However, even before the state's increasing presence in the 2000s, the situation had started to change, following the mass arrival of migrants in the last two decades of the 20th century. Migrants arrived in three subsequent stages: i) during the state-sponsored transmigration programme in the 1980s; ii) during massive investment in large-scale natural rubber and oil palm plantations in the 1990s; and, iii) during Mukomuko district's regional autonomy in 2003. While transmigrants inhabit several enclaves, which have been allocated to them across the region, other migrants have settled in either the planation enclaves or the emerging urban centres. At present, migrants already outnumber those from *hulu-hilir* villages (or natives) by

a ratio of 51:49.[212] Apart from diversifying the composition of the Mukomuko population and stimulating economic growth in the region, migrants have also contributed to increased state involvement in matters of marriage and divorce. However, as I mentioned earlier, this development is specific to migrants. Unlike natives, who have their *adat* and its institutional actors as a socially binding alternative, migrants have no other option than to resort to the state. The Arga Makmur Islamic Court records in 2016 and 2017 confirm this point, as most of its incoming cases are brought by migrants.[213]

The establishment of the Mukomuko Islamic Court towards the end of 2018 brought the court closer, even though people from the southernmost villages still have to travel for around four hours to reach the court. This also marks a new phase for the matrilineal community, in which their adherence to the *semendo adat* and its institutional actors is being seriously tested. Their local interpretation of matrilineally-informed Muslim family law is being challenged by the state's more patriarchally-inclined version of family law, which has arrived in their backyard. The Mukomuko Islamic Court records from 2019 and 2020 confirm that the majority of incoming cases were brought by those of migrant origin, instead of by the matrilineal community. I did encounter some cases brought by the latter, but this was a continuation, rather than a new trend: before the Mukomuko Islamic court was established, I had already found a few cases at the Arga Makmur Islamic Court which had been brought by members of the *adat* community. The cases were brought to the court either by civil servants or by unsatisfied husbands; the former was generally for a legal reason, whereas the latter was generally to obtain a better outcome. However, the vast majority of the matrilineal community continue to rely on their *adat* and its institutional actors, just as they used to before the establishment of the

[212] The 2010 census, from the Central Bureau of Statistics (*Badan Pusat Statistik,* or BPS).

[213] A close reading of the profiles of parties originating from Mukomuko shows that the ratio of cases between traditional villages (*hulu-hilir*) and non-traditional villages (migrant) was 40 to 130 (23.53% to 76.47%) in 2016, and 42 to 162 (25.6% to 74.4%) in 2017.

court. In the village of Talang Buai, for instance, where divorcing and remarrying were pervasive, I only encountered two in-court divorces between 2016 and 2020, both of which were filed by civil servants.

The persistent reliance of the matrilineal community on their *adat* and its institutional actors occurs for several reasons. *First*, even though access to the first instance Islamic court is now much easier, the court has not really served the needs of this particular community group. Unlike the Supreme Court judges, who have started to become more lenient toward particular conditions, the first instance Islamic court judges have taken a formalistic approach to adjudicating their cases, disregarding their sense of local justice informed by their *adat*. Instead of exercising judicial discretion (or 'legal differentiation', the term used by Bedner, 2017), the Islamic court judges dared only to manoeuvre within the legal structure established by the Islamic Chamber of the Supreme Court at national level. *Second*, the situation was aggravated by the increasing trend toward a more homogenised and centralised Islamic judiciary, which caused a split on the part of the state between either the Supreme court and the lower courts, or between the first instance Islamic court and the KUA. The case of Mukomuko shows how the split served to alienate the people from the state, especially the state Islamic court, as seen in the demise of the demand-based circuit court. *Third*, a number of disputes, such as those concerning *mahar* and *antaran* (discussed in the first finding), were just beyond the court's jurisdiction. For all these reasons, the *adat* and its institutional actors become the *only* choice, or at least the only temporary one, to serve the needs of Mukomuko's matrilineal Muslim community.

6.4 The Prospect of *Adat* in the Gradually Centralised and Homogenised Muslim Family Law System: A Lesson from Mukomuko

As my final conclusion, I would say that 'all's well that ends well'. When we consider what developments the future may bring, I

would argue that the situation in Mukomuko will likely change in favour of state norms. I draw this hypothesis on the basis of two important developments.

The first development concerns the increasing presence of the state over the last two decades: (1) the 2003 regional autonomy has automatically led to the formation of KUAs in each sub-district (from just two to 15 KUAs); (2) the adoption of the one-roof system in 2003 has gradually centralised and homogenised the Islamic judiciary; and (3) a new Islamic court was eventually established in 2018 in the Mukomuko district capital. The second development concerns ongoing changes from within Mukomuko's contemporary population. Migrants already outnumber natives, and native-migrant marriages are occurring. In other words, the matrilineal *adat* communities are now at a crossroads. In addition, I have witnessed anomalies from within the *adat* community. A few (male) members of the *adat* community have started to bring their disputes to the state in an attempt to escape their *adat*. A similar shift is evident in the growing dissatisfaction among the *adat* community. This is happening especially among people residing in the emerging urban centres, who have started to question the legitimacy of *adat*, which for them seems to go against not only the state law but also the more orthodox interpretation of Islamic law. These developments have brought the state closer to Mukomuko's population, but they have also called the established local normative system and community institution of *adat* into question.

Nonetheless, this hypothesis requires more attention. The increasing presence of the state has attracted a few husbands to bring their disputes to the Islamic court, but it has still caused tension and conflict between *semendo adat* and state law, particularly in cases that involve property-related disputes, such as joint-marital property and child supports. What is obvious now is that *semendo adat* and its institutional actors (*orang adat*) continue to shape the everyday practices of marriage and divorce among Mukomuko's matrilineal Muslim community. The social

significance of this *adat* and its institutional actors cannot simply be overlooked, especially when it comes those inhabiting the rural *hulu-hilir* villages across the region. In this manner, the first instance judges' insistence not to consider the local idea of justice will bring harm to local people, notably to the female members of this *adat* community and their children, who are better served by the *semendo adat,* their own Islamic law on marriage and divorce, rather than by the state Islamic law (cf. the importance of "cultural expertice" for judges in rendering a more just decision from other areas in Indonesia in Holden, 2023; Holden et al., 2019; Nurlaelawati & Witriani, 2023, p. 332). Moreover, the judges' lack of consideration for the local *adat* of Mukomuko is against one of the underlying objectives of Indonesian family law, i.e. better legal protection for wives and children.

The first instance judges' insistence not to consider the local *adat* in their judgements also contradicts Article 229 of the 1991 Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), which makes it mandatory for judges at the Islamic courts to thoroughly consider legal values that live within society so that their judgments are in accordance with feelings of justice. For this reason, the judges should more carefully consider the local *adat* in their judgments, which would also help sustain the basic social logic of courts, i.e. the 'triadic' structure of conflict (Shapiro, 1986, p. 16). Otherwise, they may lose legitimacy in the eyes of local communities and become merely marriage and divorce registration institutions. More importantly, gradually centralised and homogenised Muslim family law would be counterproductive to the development of law itself. The case of Mukomuko teaches us how this ongoing centralisation and homogenisation has caused fragmentation on the part of the state, as has happened in the split between KUA and Islamic Court and the different forms of logic that informed judges' judgments from different levels of court (cf. the perpetual role of non-state actors in the implementation of marriage law in Pasuruan in Fauzi, 2023; and a situation in Sudan where an 'illegibility', rather than a fully

codified sharia, can be more attractive to a state for being more effective either to respond to new threats or to take advantage of new opportunities in Sachs, 2018, p. 648).

To sum up, I will return to my point of departure. In *Syahril v. Yati* (presented in the introductory chapter) I showed how Syahril, the husband, attempted to obtain a greater share of marital property by asking the Islamic court to intervene in the dispute. The husband's bid eventually paid off, as judges from the Islamic court successfully 'forced' Yati, the wife, to give up half the marital property to Syahril, after allocating 300 million rupiah of the assets as alimony for their youngest daughter (16). However, this judgement, which was against the *adat*, reflected only part of the story, because execution of the judgement 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, who was under her tutelage. This story teaches us that, in order to make a judgement meaningful, a judge must consider not only state law but also the local idea of justice. Bedner speaks of this as the need for 'legal differentiation'(Bedner, 2017), especially if we consider Indonesia's multi-ethnic Muslim communities and the various forms of local normative systems and institutions that operate within them. It is equally necessary for judges at the first instance court to become more female friendly by following their counterparts from the Supreme Court (cf. J. R. Bowen, 2003, p. 257; Lev, 1972, p. 155; Nurlaelawati, 2013a, p. 245; Nurlaelawati & Salim, 2017, p. 211; van Huis, 2015, p. 4). Otherwise, as evidenced in *Syahril v. Yati* and other Mukomuko cases, the court's judgement would not be enforceable in practice, and more importantly, it would lead to conflict and loss of the state social legitimacy.