This book examines gender, state and social power in Indonesia, focusing in particular on state regulation of divorce from 1965 to 2005 and its impact on women. Indonesia experienced high divorce rates in the 1950s and 1960s, followed by a remarkable decline. Already failing divorce rates were reinforced by the 1974 Marriage Law, which for the first time regulated marriage for both Muslim and non-Muslim Indonesians and restricted access to divorce. This law defined the roles of men and women in Indonesian society, vesting household leadership with husbands and the management of the household with wives. Drawing on a wide selection of primary sources, including court records, legal codes, newspaper reports, fiction, interviews and case studies, this book provides a detailed historical account of this period of important social change, exploring fully the impact and operation of state regulation of divorce, including the New Order government’s aims in enacting this legal framework, its effects in practice and how it was utilized by citizens (both men and women) to advance their own agendas. It argues that the Marriage Law was a tool of social control enacted by the New Order government in response to the social upheaval and protests experienced in the mid-1970s. However, it also shows that state power was not hegemonic: it was both contested and co-opted by citizens, with men and women enjoying different degrees of autonomy from the state. This book explores all of these issues, providing important insights on the nature of the New Order regime, social power and gender relations, both during the years of its rule and since its collapse.

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The contributions of women to the social, political and economic transformations occurring in the Asian region are legion. Women have served as leaders of nations, communities, workplaces, activist groups and families. Asian women have joined with others to participate in fomenting change at micro and macro levels. They have been both agents and targets of national and international interventions in social policy. In the performance of these myriad roles women have forged new and modern gendered identities that are recognisably global and local. Their experiences are rich, diverse and instructive. The books in this series testify to the central role women play in creating the new Asia and re-creating Asian womanhood. Moreover, these books reveal the resilience and inventiveness of women around the Asian region in the face of entrenched and evolving patriarchal social norms.

Scholars publishing in this series demonstrate a commitment to promoting the productive conversation between Women’s Studies and Asian Studies. The need to understand the diversity of experiences of femininity and womanhood around the world increases inexorably as globalisation proceeds apace. Lessons from the experiences of Asian women present us with fresh opportunities for building new possibilities for women’s progress the world over.

The Asian Studies Association of Australia (ASAA) sponsors this publication series as part of its on-going commitment to promoting knowledge about women in Asia. In particular, the ASAA women’s caucus provides the intellectual vigour and enthusiasm that maintains the Women in Asia Series (WIAS). The aim of the series, since its inception in 1990, is to promote knowledge about women in Asia to both the academic and general audiences. To this end, WIAS books draw on a wide range of disciplines including anthropology, sociology, political science, cultural studies and history. The Series could not function without the generous professional advice provided by many anonymous readers. Moreover, the wise counsel provided by Peter Sowden at RoutledgeCurzon is invaluable. WIAS, its authors and the ASAA are very grateful to these people for their expert work.

Louise Edwards (University of Technology Sydney)
Series editor
Note on translations and spelling

All translations from Indonesian to English are my own.

Because this topic may also be of interest to non-Indonesian speakers, all quotations appear in the main text of the book in English. The original Indonesian quote is included in the endnote. Current standard Indonesian spelling is used throughout, in keeping with changes to the Indonesian spelling system that occurred from the 1960s onwards. However, quotes contain the spelling used in the original source.

Book and article titles are referenced with their original Indonesian titles.

In endnotes, specific components of court files and legislation are cited in Indonesian. The first time such terms are used in each chapter they are accompanied by an English equivalent in brackets. Non-Indonesian readers can find a more lengthy explanation of these terms in Appendix I.
Linguistic origin of foreign terms used in the book are denoted as Indonesian [I], Dutch [D], Arabic [A], Javanese [J].

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
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<tbody>
<tr>
<td>BP4</td>
<td>Badan Penasihat Perkawinan dan Penyelesaian Perceraian [I] (Marriage Counselling and Divorce Resolution Board), now Badan Penasihatan, Pembinaan dan Pelestarian Perkawinan [I] (Marriage Counselling, Guidance and Preservation Board)</td>
</tr>
<tr>
<td>BPHN</td>
<td>Badan Pembinaan Hukum Nasional [I] (National Legal Development Board)</td>
</tr>
<tr>
<td>BW</td>
<td>Burgerlijk Wetboek [D], Kitab Undang-Undang Hukum Perdata [I] (Civil Law Code)</td>
</tr>
<tr>
<td>CLD KHI</td>
<td>Counter Legal Draf Kompilasi Hukum Islam [I] (Proposed Revisions to the Compilation of Islamic Laws)</td>
</tr>
<tr>
<td>DEPAG</td>
<td>Departemen Agama [I] (Department of Religion)</td>
</tr>
<tr>
<td>DPR</td>
<td>Dewan Perwakilan Rakyat [I] (People’s Representative Council, legislative parliament)</td>
</tr>
<tr>
<td>DPRD</td>
<td>Dewan Perwakilan Rakyat Daerah [I] (Regional People’s Representative Council)</td>
</tr>
<tr>
<td>Dra</td>
<td>Dokteranda [D] (Female holder of a postgraduate degree, roughly equivalent to Master’s)</td>
</tr>
<tr>
<td>Drs</td>
<td>Dokterandus [D] (Male holder of a postgraduate degree, roughly equivalent to Master’s)</td>
</tr>
<tr>
<td>GBHN</td>
<td>Garis Besar Haluan Negara [I] (Broad Guidelines to State Policy, drawn up by the MPR every five years)</td>
</tr>
<tr>
<td>KADARKUM</td>
<td>Keluarga Sadar Hukum [I] (Legally Aware Families, legal education programme developed in the 1980s by BPHN)</td>
</tr>
<tr>
<td>KHI</td>
<td>Kompilasi Hukum Islam [I] (Compilation of Islamic Laws)</td>
</tr>
<tr>
<td>KTP</td>
<td>Kartu Tanda Pengenal [I] (National Identity Card)</td>
</tr>
<tr>
<td>KUA</td>
<td>Kantor Urusan Agama [I] (Office of Religious Affairs, Marriage and Divorce Registration Office for Muslims)</td>
</tr>
</tbody>
</table>
KUHP  Kitab Undang Undang Hukum Pidana [I] (Criminal Law Code)

LBH APIK  Lembaga Bantuan Hukum, Asosiasi Perempuan Indonesia Untuk Keadilan [I] (Legal Aid Institute of the Association of Indonesian Women for Justice)

LKBH-UII  Lembaga Konsultasi dan Bantuan Hukum, Universitas Islam Indonesia [I] (Legal Consultation and Aid Institute of the Islamic University of Indonesia)

MPR  Majelis Permusyawaratan Rakyat [I] (People’s Deliberative Assembly, plenary parliament)

MUI  Majelis Ulama Indonesia [I] (Council of Indonesian Islamic Scholars)

NTR  Nikah Talak Rujuk [I] (Marriage, Divorce, Reconciliation)

Ny  Nyonya [I] (Mrs)

PKI  Partai Komunis Indonesia [I] (Indonesian Communist Party)

PKK  Pembinaan Kesejahteraan Keluarga [I] (Family Welfare Association)

PNS  Pegawai Negeri Sipil [I] (Civil servant)

PP  Peraturan Pemerintah [I] (Implementing Regulations)

PPN  Pegawai Pencatat Nikah [I] (Marriage registration official)

R  Raden [I] (Title for Javanese man of noble descent)

REPELITA  Rencana Pembangunan Lima Tahun [I] (Five-Year Development Plan)

RIB/HIR  Reglemen Indonesia yang Diperbaharui [I], Herzien Inlandsch Reglement [D] (Criminal Procedural Law Code)

RT  Rukun Tetangga [I] (Neighbourhood administrative unit)

RW  Rukun Warga [I] (Sub-neighbourhood administrative unit, within the RT)

SEMA  Surat Edaran Mahkamah Agung [I] (Supreme Court Circular)

UII  Universitas Islam Indonesia [I] (Islamic University of Indonesia)

UU  Undang-Undang [I] (Basic Law)

UU KDRT  Undang-Undang tentang Penghapusan Kekerasan Dalam Rumah Tangga [I] (Law for the Eradication of Domestic Violence)

UUD  Undang-Undang Dasar [I] (Indonesian Constitution)
Introduction

On 2 January 1974, Indonesian President Suharto ratified Marriage Law 1/1974 (Undang-Undang Perkawinan). Under the provisions of this law, all marriages were required to include a religious ceremony and state registration, and all divorces were to be ratified by a court. Women and men were declared to have equal rights to file for divorce, and equal social status. However, husbands were defined as ‘heads of the family’ (kepala keluarga), and wives as the ‘mothers of the household’ (ibu rumah tangga, sometimes translated as ‘housewife’, although this term does not exist in Indonesian). These disparate components of the law were indicative of a range of interests. The emphasis on religious rather than civil marriage accommodated Muslim groups, who had protested against the bill in 1973.1 As the first unified state regulation on marriage, it marked the culmination of five decades of campaigning by Indonesian women’s groups.2 Despite this influence, the law also reflected the conservative gender ideologies of the New Order state. This major piece of legislation had numerous implications for women’s and men’s experience of marriage and divorce, as well as for the formation of both state and citizen. The Marriage Law has frequently been cited in passing in feminist scholarship, but there have been few studies which analyse its impact upon Indonesian society in depth. This book addresses this gap, using divorce as an entry point to analyse contestation of the Marriage Law. In particular, it examines how the state attempted to use the Marriage Law (and related legislation) to shape Indonesian society from 1974 to 2005, and how citizens, women especially, responded to this state project.

The regulation of marriage by both the colonial and the post-colonial Indonesian state has always been an exercise of state power. Under Dutch rule, a tripartite system of laws regulated the marriage of ‘Europeans’, ‘Natives’ and ‘Foreign Orientals’ differently. This effort was directed towards defining individuals, and by extension families, as either citizens or subjects of the colonial state. The family was understood as a site where state values might be instilled and reproduced, and has therefore been deemed essential to the state-formation process in Indonesia throughout the twentieth century.3 This was in part because the concept of an Indonesian nation was a consciously created, artificial entity. It was delineated by the Dutch as the
colonial Netherlands Indies and later by nationalists as an independent republic, and has been contested ever since.

Familial loyalty to a new nation is one way of ensuring the perpetuation and unity of that nation. However, state regulation of marriage (and therefore of families) has always co-existed with familial, religious and customary \((adat)\) processes and obligations. Thus, individual negotiations of marriage, which may have resisted or supported state prescriptions on marital behaviour to different degrees, may be understood as expressions of social power, which also have gendered dimensions. In other words, the extent to which women and men can obtain their goals in divorce (whether that be in terms of obtaining the divorce, or financial or custodial settlements) also reflects the degree of power they may hold in any given (and usually overlapping) social framework (which includes the family, religious community, village and nation). I further contend that all personal actions have a macro-political dimension and consequence, even if social actors engaged in these actions do not have such explicitly political intentions. Thus, for example, while a woman engaged in a court-mediated divorce suit in the late 1970s in New Order Indonesia may indeed have been using the court exclusively to obtain a divorce, her actions (whether unconscious or otherwise) nonetheless opposed emergent New Order discourses about ideal femininity. This, I will argue, reveals both the nuances of women’s power in social, non-political contexts (that is, a lack of social power for certain women in religious or community contexts necessitates seeking the assistance of the court), and the gendered complexities of state power (which is predicated on macro-political control of parties and parliament, and micro-political control of families). In the New Order context, the role of gender in determining how marriage and divorce might mediate the distribution of state and social power has been little interrogated, and forms the basis of my inquiries.

The New Order’s implementation of a marriage law which applied to all Indonesian citizens is worthy of close study, in particular because it succeeded where the colonial and Sukarno-led states had failed. The role of the state in regulating marriage had always been a point of contention for Muslims, at least since women’s groups first posited the issue of a unified marriage law in the 1920s. While colonial legal divisions between ‘Native’ subjects and ‘European’ citizens were abolished through the 1945 constitution, a range of disparate colonial marriage laws were retained. Sukarno’s newly formed government was able to pass only basic legislation on the registration of Muslim marriage and divorce in 1946 and 1954. But these laws still did not regulate marital age, spousal maintenance or custodial and marital property settlements, or require a court’s permission to divorce. The Marriage Law addressed all of these issues to varying degrees, but also contained clear ideological prescriptions on the roles of wives, husbands and the family within the Indonesian nation. Different social actors may have used these prescriptions differently, thus inviting analysis of the success or otherwise of state projects.
This book is concerned with the variety of possible responses to, and uses of, the Marriage Law. Such responses and uses were generally characterized by a range of overlapping markers of identity. As the study was based in the Special Region of Yogyakarta, I analyse divorce cases from rural and urban courts in this region, filed by Javanese and ethnic Chinese, who were variously Muslim, Christian or Confucian. Where relevant, I have also drawn upon published cases of divorce in regions other than Java. Throughout the four-decade period analysed in this book, Muslims comprised approximately 88 per cent of the Indonesian population, and so also predominate in the sources employed in my analysis.

At this juncture, there are three key points regarding this research that should be noted. First, I am not attempting to provide a comprehensive analysis of divorce in Indonesia. I focus on the experience of women primarily in State and Religious Courts, and the significance of their actions to the state and to their local communities, which has thus far been under-researched. Second, and extending from that point, because I am also interested in formal uses of the Marriage Law, and particularly women’s interactions with the state and how such encounters may have changed over time, my key sources are written court records. Of course, as I discuss later in the book, many Indonesian women and men did, and continue to, marry and divorce according to religious and customary rites without reference to state institutions. This is also an under-researched topic and further investigation of this issue may provide new insights into women’s experience of marriage and divorce and the character of female and male social power in various parts of Indonesia. However, time and length limitations preclude anything further than a comparative analysis of this topic based on the current literature. Finally, because access to Indonesian court records is entirely dependent on the strength of a researcher’s personal contacts, a systematic collection and analysis of data that would occur in a traditional historical project has not been possible here. Nonetheless, rather than leave this important topic untouched, I have approached a relatively small body of material from a range of different thematic angles in order to illustrate some of the ways in which women interacted with the state on the matter of divorce. Much, of course, remains to be done, including investigation of unregistered marriage and divorce, the role of polygamy in influencing divorce, and domestic violence. This book attempts to provide a starting point for future work.

An interrogation of state and social power in Indonesia necessarily intersects with the relationship between Islam and the state, a relationship that has been debated by Indonesian Muslims throughout the twentieth and twenty-first centuries. Before the Declaration of Independence in 1945, some Muslims had called for an Islamic state and the implementation of syariah law. However, this was rejected by Sukarno’s government in favour of the state ideology of pancasila (‘five principles’, including belief in a singular God), intended to accommodate Indonesia’s significant religious and ethnic minority populations. After his rise to power in 1965–6, Suharto curtailed
Muslim political strength and organizations. Following the Islamic revival of the 1980s and the emergence of pro-democracy Muslim activism in the 1990s, Suharto sought the support of religiously conservative Muslims. Post-Suharto, the enactment of the Regional Autonomy Law has resulted in some areas (notably West Java and Aceh) implementing syariah law, and their own regional regulations on public morality and behaviour (see also Chapter 1 for a review of Islamic-based proposals for national law). Thus, although Islam has been accorded differing levels of political freedom throughout Indonesia’s modern past, as a social and political force it has often retained a level of insularity from the state. This renders Muslim uses of and resistances to the Marriage Law a fruitful site for analysis of the subtleties of state and social power, and how it is constituted and used.

My study aims to build upon feminist scholarship on family, gender and power, by considering the interlinked significance of marriage and family to the constitution of state and social power under the New Order. Scholars such as Ann Stoler, Frances Gouda and Elsbeth Locher-Scholten have already highlighted the significance of gender, race, sexuality and family in the formation of the colonial state. Similarly, there has been widespread feminist scholarship identifying the New Order’s emphasis on nuclear family formations and domesticated and subordinated femininity. However, there has been little historical scholarship which examines the details of the local implementation of New Order state power through the family, which I undertake here through a microhistory of divorce. By investigating the state’s application and litigants’ use of the Marriage Law in divorce, I aim to answer a number of key questions. Did the New Order attempt to harness gender order (by which I mean the organization of society according to gendered social hierarchies) to achieve their goals? How did this happen, and was it effective? How did women in particular experience the Marriage Law? Were women targeted by the state for the purposes of reinforcing state power, and if so in what ways did this occur? How did women and men resist state projects differently? How were citizens’ actions in divorce influenced by the state, and how might their actions both reflect and constitute gender hierarchies within society? My examination of divorce, a contestation of the state’s ideological prescriptions, may reveal further nuances of the nexus between gender order and the operation of power in state and society, about which still too little is known.

By answering these questions, I intend to offer a significant reassessment of Indonesian history along four major axes. First, my analysis of legal developments and individual case studies provides a detailed legal history of how divorce has been negotiated through the court systems after the introduction of the Marriage Law, an issue that has received limited attention from scholars prior to my study. Second, I will reassess the political history of the New Order, asking if the institution of marriage is a significant tool used by the state to establish legitimacy. Third, I offer a reinterpretation of the national history of Indonesia by asserting the importance of marriage as
an indicator of historical and social change. Finally, as divorce is frequently characterized by competing assertions of the meanings of gender, I will use this feature to chart a history of the ways in which constructions of gender roles may have changed and determined women’s and men’s access to social power. These four major aims are grounded in the basic feminist assumption that if any given historical moment is analysed through the lens of gender, previously accepted historical markers or events may change in meaning. This book does not presume to provide a ‘new national history of Indonesia’ but rather contributes towards looking at this history in a new light, using new points of reference; namely gender and women’s particular experience of historical milestones.

I approach my study of the constitution of social and state power through an investigation of the Marriage Law. However, I do not assume that 1974 was necessarily a watershed moment in Indonesian history. Rather, through my investigation I will also examine whether the Marriage Law was, as most feminist scholars, Indonesian activists and various Indonesian state regimes have long posited, a turning point in Indonesia’s legal (and implicitly social and political) history or whether there were other chronological markers which were of greater significance. Consequently, while my analysis primarily concentrates on developments after 1974, some of my analysis of necessity examines divorce prior to 1974.

**Historiography: marriage, gender, power and the state**

The book analyses marriage, gender, power and the state concurrently, an approach frequently advocated by feminist scholars but less so by ‘mainstream’ (usually male) scholars of political and national history. Feminist scholars such as anthropologist Maila Stivens have long argued that formal politics is inseparable from household, family and sexuality. However, in ‘standard’ political and historical studies of the Indonesian nation and state, the critical role of marriage, gender and family has often been overlooked. Conversely, studies of marriage, gender and power have not always been linked explicitly to state formation. In the Indonesian context, marriage has received greater attention from anthropologists and demographers than from historians or political scientists. My study assumes that pivotal life events such as marriage and divorce form the basis of societal function, and so constitute important historical events. I claim that the regulation of marriage and divorce was an important tool by which the New Order state sought to control families and constitute itself. This was, of course, not the only determining factor in the constitution of state and social power, but it was a significant one, which has been largely neglected by scholars of Indonesia.

Inattention to gender has been a long-standing problem in the study of Indonesian politics (and indeed in that discipline generally). Historian and political scientist Susan Blackburn, in a 1991 review of studies of Southeast Asian politics, found few scholars who addressed even her deliberately
minimalist criteria of female representation in political parties and parliament. A brief review of some historical and political studies of the New Order state published in the last decade reveals a similar situation. Historians and political scientists such as William Liddle, Colin Brown, Adrian Vickers and Damien Kingsbury highlight the role of military coercion, the crippling of political opposition parties and economic development in the consolidation of New Order power. Studies of political resistance to the New Order state, such as that of Edward Aspinall, focus on the role of male intellectuals and religious leaders, male-led non-government organizations (NGOs) and a non-gendered, but implicitly male, middle-class opposition. With the exception of Vickers, whose study does briefly discuss women’s representation in parliament and the debates about gender roles ushered in by modernization, the bulk of these studies rarely mention women at all, nor (more importantly) do they examine the gendered subjectivity of the male social actors they describe. Rather, male action is accepted as normative. Certainly, institutions such as political parties, the military, NGOs and religious organizations are frequently led by males, shaping the scholarship surrounding these institutions. However, this has led to an intransigent problem in the study of politics, whereby the exclusion of women from public organizations and roles leads also to their exclusion from scholarly discourse on the state. My book, as an explicitly feminist study, posits that all historical processes and outcomes may change in meaning if gender is employed critically as a tool for analysis.

It is therefore important that scholars not only grapple with the influence of gender in shaping the institutions they describe, but also remain attentive to the possibility that marginalized or less powerful groups (such as women) might engage with the state in less public but equally important ways. Without detracting from the important findings of the scholars described above, many questions remain unanswered, especially regarding how women and men might participate differently within the state, and how gender identity might constrain or facilitate such participation.

Despite this continuing tradition of male-oriented political scholarship, there have been a number of feminist studies of women and their interaction with the Indonesian state. These have revealed that women’s actions, both within their everyday lives and within the formal political forum, have been of great significance to the constitution of state and social power.

In a colonial context, Stoler argues that both female and male colonial subjects in the Netherlands Indies actively contested the right of the state to regulate race and sexuality by engaging in inter-racial unions, co-habiting instead of marrying, refusing to give up children from inter-racial unions to European charitable institutions and at times using the court system to protest against colonial incursions into the private sphere. Locher-Scholten has also shown that women’s resistance to the state’s gender ideology can be ambivalent, as was the case when the colonial state attempted to pass a law on monogamous marriage in 1937. This was interpreted by Muslim groups
as an attempt to shape a secular colonial citizen. They garnered the support of the women’s movement on the grounds of the unity of the nationalist effort, and the bill was successfully opposed.20 Both studies provide guidance on areas requiring further research, which this book addresses. Stoler’s microhistorical analysis of individuals’ court actions interrogates the effectiveness of paternalistic state control, a process I wish to examine in the post-colonial context. Locher-Scholten’s demonstration of the ambivalent results of women’s resistance, and the importance of noting which power structures they can choose to resist and which they cannot, also invites investigation within the history of the New Order regime.

In the post-colonial context there have also been a number of important feminist studies of women and the state. Susan Blackburn’s seminal 2004 book, *Women and the State in Modern Indonesia*, identifies a hitherto unacknowledged history of twentieth-century Indonesian women’s engagement with the state on issues including education, marriage, polygamy and citizenship. She argues that while the interests of the women’s movement and the state have sometimes converged, the women’s movement has frequently been dissatisfied with the state’s implementation of such policies.21 Moreover, she finds that at moments when the state is weak (such as in the post-Suharto era), women may also become vulnerable to discrimination due to a ‘resurgence of local identities and ethno-nationalisms’.

Elizabeth Martyn’s study focuses on women’s activism in the 1950s, arguing that women’s groups pursued nationalist and gender interests simultaneously, but that this ultimately ensured that gender interests were often ignored by the state.23 Both Blackburn and Martyn primarily analyse the manner and success of women’s political mobilization. They highlight the importance of the Marriage Law, but their analyses focus on the struggle to obtain it in the period up to 1974. Combined, their work comprehensively documents the women’s movement’s role in obtaining a Marriage Law, and consequently this book does not explore this issue in any great depth. Importantly, Blackburn further notes that women’s experience of state-mediated divorce remains an area of research requiring greater attention.24 This book responds to this dearth in scholarship, through an historical examination of women’s experience of divorce, and its implications for the constitution of state and social power, beyond 1974.

Other studies have focused on the importance of sexuality to nation and state-building. Saskia Wieringa’s history of the communist Indonesian Women’s Movement (Gerakan Wanita Indonesia) argues that male military aggression and the demonization of female sexuality were the foundation of the New Order state.25 Similarly, Indonesian sociologist Julia Suryakusuma contends that the state’s regulation of male and female civil servants’ sexuality (with a higher level of restriction for women) enabled the state to exert a greater control over all citizens. Subjugated male civil servants undertook the state’s work by resorting to ‘to subjugating women, who are socially defined to be even more powerless than they are’.26 I approach my study of
divorce in a similar way, arguing that the political basis and function of the state is inextricable from the distribution of power between the sexes.

In theorizing the significance of gender, marriage, and family to the state, the work of feminist historians of early modern Europe is useful. In particular, Sarah Hanley’s concept of the ‘State–Family compact’ in the early modern French state, and Julia Adam’s notion of the ‘Familial State’ in the early modern Netherlands yields some important insights for my study. Both argue that the early modern state was predicated upon a patriarchal family formation, whereby male heads of household purchased official positions within the state, which could also be obtained through female dowry at marriage, and later inherited by male offspring. Hanley in particular notes that marriage and women’s sexuality was important to the state, as illegitimate children or imprudent marriages affected men’s access to financial capital, symbolic capital (in the form of reputation) and therefore their ability to maintain a position within the patronage system. Men’s position in the family, and therefore in political office, was dependent upon women’s subordination, which Hanley argues ‘casts women as prime participants, never merely spectators, in early modern state building’. Notwithstanding obvious comparisons with the nepotism of the New Order state, Hanley’s argument that the subjugation of women is essential to the maintenance of state power, and that women’s resistance challenges the legitimacy of the state, is a concept of some significance, which I will interrogate in the context of divorce in this study.

Building upon the insights of the feminist scholars described above, my book challenges received views of state power in Indonesia on a number of grounds. I suggest that the constitution of the state can occur in part through the family and to this end my analysis is underpinned by Hanley’s notion of the State–Family compact. Moreover, in the context of limited possibilities for overt opposition under the New Order, I suggest that resistance to the state can also occur through actions such as divorce. This premise is an important foundation of the book. If resistance to the state can only be gauged through organized political action, feminist scholars are limited to the discussion of the same, male-oriented political movements that have been the focus of decades of political scholarship. However, in all historical and cultural contexts, state attempts to regulate families have been embraced or rejected to varying degrees by citizens. This offers an insight into the power of the state to control (or fail to control) its citizens at the most basic level, and may illustrate gendered distinctions in the ability of women and men to reject state control (even if this is not overtly understood by the social actor as an act of political resistance). Consequently, as men and women both participate in divorce, their actions may be deemed to have had varying levels of influence in constituting state and social power.

By analysing state and social power through a microhistory of divorce, my book also provides a new perspective on marriage and gender in Indonesia. Existing studies of marriage have not, in general, examined its macro-political
dimensions. Moreover, the most detailed qualitative studies of marriage and divorce were all conducted prior to the introduction of the Marriage Law.

Numerous demographic studies have addressed marriage and divorce, taking a necessarily quantitative perspective. Such studies have revealed much about patterns of marital behaviour. Demographers have scrutinized links between divorce and population control, concurring that the 50 per cent divorce rates of the 1950s across the Malay Archipelago have consistently and significantly decreased since then, as a result of increased female education and reduced parental arrangement of marriages. Such conclusions will inform my analysis, but a demographic approach cannot answer some of the qualitative concerns of my study, including why the state regulated marriage in the way that it did, and how men and women experienced this regulation differently.

There have also been specialized studies of the Indonesian legal system, which provide important insights into the legal framework of state rule, although by and large the Marriage Law has not received detailed attention. This has included the excellent studies by M. B. Hooker and Tim Lindsey, which explain respectively how the colonial and post-colonial legal systems functioned in practice, but do not examine how and why law might be written and applied in a gendered manner. My analysis assumes that gender is integral to understanding law, and uses law as a source for understanding historical change.

It should also be noted that marriage and divorce have been topics of great interest to Indonesian scholars. However, such research has often consisted of descriptive studies of the law, guided by practical concerns such as how to interpret and apply the Marriage Law, what aspects of Islamic and customary law are accepted by courts and how marital property can be claimed and divided. These studies have been inevitably shaped by the nature of data kept by courts, which deal primarily with causes and rates of divorce. Such studies provided important context for my own research. However, because these studies have not generally been concerned with interrogating gender order, I have not drawn significantly upon them.

The most significant studies of gender and marriage in Indonesia have been produced by anthropologists. However, these immensely useful analyses necessarily lack historicity, which is important if we are to understand how gender orders change, and under what circumstances women can and cannot access power. Hildred Geertz’ classic 1961 study, The Javanese Family, was one of the earliest anthropological examinations of family, gender, and marriage and divorce in Java. Geertz argued that Javanese women controlled domestic finances and thus had considerable power within the family and society, and also that they were able to divorce easily. Her argument regarding female domestic power has subsequently been critiqued by Suzanne Brenner, Ward Keeler, Diane Wolf and Norma Sullivan, among others, who note that in Java, concern with monetary matters signifies a lack of spiritual strength and social power. Both Wolf and Sullivan conclude, based on
fieldwork conducted respectively in rural Java in the 1980s and urban Yogyakarta in the 1970s, that the ideology of female power functioned to mask women’s inferior social position. Keeler and Brenner further argue (based on fieldwork in Java in the 1980s) that while dominant Javanese models of gender dictate that women have lower status, women can manipulate this status to produce benefit for themselves and their family, for example through aggressive market trading. However, Brenner (working in Java), as well as Michael Peletz (working in Malaysia in the 1980s), also encountered counter-hegemonic views that attributed greater emotional restraint and therefore spiritual strength and cultural power to women.36 I adopt these notions of concurrently operating gender ideologies, which social actors attempt to manipulate to their advantage, in my subsequent analysis of divorce.

Only two further studies after Geertz examine the issue of women and divorce in any depth, and they do not use gender as a tool for analysis in the way that I do. Political scientist Daniel Lev’s 1972 work is a descriptive study of the function of Islamic courts in Indonesia. He found that women, as the primary users of the court system, received largely sympathetic treatment from courts when they filed for divorce.37 Anthropologist Hisako Nakamura focuses on divorce practices in the Kota Gede suburb of Yogyakarta in the late 1960s and early 1970s, arguing that customary practices (adat) were in fact rooted in Islamic doctrine.38 As the studies of Geertz, Lev and Nakamura were all conducted prior to 1974, an analysis of the subsequent three decades is timely.

Because the Marriage Law defined women’s marital role as subordinate to men, Western feminist scholars have sometimes automatically assumed that the law has had a negative effect upon women. For example, an anthropological study in Java in the 1980s by Jutta Berninghausen and Birgit Kerstan claims, without reference to court records or observance of court proceedings, that most official divorce proceedings were initiated by men and that courts discriminated against women.39 Detailed interrogation of specific divorce negotiations may or may not prove this contention. In contrast, I have approached my study assuming that benefit or disadvantage for women and men is subjective, mediated by culture, class and religion.

The potential for women to employ ostensibly patriarchal state structures to their advantage has been shown in anthropological studies of court use in Sumatra in the 1970s and 1980s by Herman Slaats and Karen Portier, and Keebet von Benda Beckmann. These studies note that litigants often engage in ‘forum shopping’, using whichever state, religious or customary legal avenues are most advantageous to them. In Slaats and Portier’s study, 88 per cent of the litigants in divorce cases in a State Court (which deals with all non-Muslim divorces) in North Sumatra between 1956 and 1974 were women, who used the State Court to circumvent the Karo Batak custom of stripping divorced women of their bride-wealth and access to marital property.40 This suggests that as much as the state or other local power structure
might attempt to elicit particular behaviour from its constituents, those citi-
zens may also attempt to manipulate those state or local power structures, or
even play one power structure off against the other. I approach my analysis
of divorce with such reciprocal possibilities in mind.

Through a microhistory of state-mediated divorce, my study attempts to
uncover an under-researched aspect of the formation of the New Order state,
as well as to reveal the nuances of female resistance to state, religious and
local authority. In doing so, I offer an original approach to the study of
Indonesian history.

Terms and concepts
I use a number of key terms and concepts throughout this book which need
to be defined. One of the central concepts underpinning this book is that of
‘the state’. In the last century, Indonesia has experienced four different state
formations: the colonial state; the independent Republic led by Sukarno
(1945–67); the authoritarian New Order state under Suharto (1967–98); and
the emerging democratic state, heralded by the 1999 parliamentary elections,
the first uncensored ballot in more than three decades. Using the concept
of the state is theoretically difficult because, as political scientist Nira Yuval-
Davis notes, ‘the state is not unitary in its practices, its projects or its
effects’. States may be comprised of institutions which have competing
interests and government policies may be administered differently by both
men and women whose interests might diverge according to religion, ethnic-
ity, class, gender or age. This means that, as historian Tony Day argues, ‘the
state never becomes a fully, finally constructed “thing”, nor does its power
act independently from or simply upon human actors. It is made and remade
by human beings who form a “complex agent”’. Political scientist Joel Migdal
contends that in relatively new states, this process is even more pronounced,
as there is a constant struggle between the state and other organizations over
who can make rules that govern society.

I approach this study by using ‘the state’ to refer to the ideological power
vested within a central ruling authority, which attempts to elicit the com-
pliance of citizens to its laws. The New Order state attempted to elicit such
compliance though military coercion, censorship and the repression of poli-
tical opposition. Ordinary citizens, as well as employees of the state such as
judges and civil servants, may therefore have had very circumscribed oppor-
tunity to shape or change policies and instructions emanating from pre-
sidential, ministerial and military authorities. Nonetheless, as my study will
show, the state’s authority was implemented in fragmentary ways. Given that
neither judges nor litigants were able to exercise democratic choice regarding
the composition of the state, divorce can be understood as a forum by which
individuals could participate in the state, and attempt to shape it, however
circumscribed those attempts might have been. As the role of the state in
regulating marriage and divorce in Indonesia has often been contested,
divorce is a particularly valuable area in which to analyse how the state and its citizens interact, and therefore how the state itself is constituted.

In stating that courts and litigants did not have the option of exercising democratic choice regarding the composition of the state, I am suggesting simply that no one during the rule of the New Order had the option of going to the ballot box and voting out the regime. This statement should not be inferred to imply a comparison of Indonesian jurisprudence, which is a relatively new concept, with Anglo-Saxon legal systems where judges and courts may play an active and clearly defined role in shaping state decisions. What I am suggesting is that while Indonesian judges were ostensibly employees of the state, they may not always have implemented laws consistently, and this may usefully illustrate the fragmentary authority of the state. Similarly, litigants who challenge an aspect of the law in a public court forum, in my view are also challenging (albeit out of self-interest) an aspect of state ideology. The grounds on which they might choose to challenge state ideology is the point of interest in this book, revealing tensions between state and local conceptions of citizenship, gender and power.

I also refer to the concept of ‘nation’, which Benedict Anderson famously defined as an ‘imagined political community … imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion’. An Indonesianist himself, Anderson’s argument fits the incredible ethnic, linguistic and religious diversity that characterizes the modern Indonesian political entity, and I take his definition of the nation as an entry point for my analysis. In doing so, it is worth stating that ‘Indonesia’ was a construction of the early twentieth-century, male-led nationalist movement, and was based upon the boundaries of the colonial state. While in theory it was an inclusive ideology, in practice ‘Indonesia’ has always been contested and at times exclusive. Groups in Aceh and South Maluku attempted to withdraw from the nation soon after independence, Suharto’s government excluded Chinese Indonesians from citizenship in the nation, and women’s role in the nation was defined differently to men, to name just a few examples of how different groups could be marginalized within the nation. In this study, I am particularly aware of the gendered implications of the term ‘nation’. Here, I concur with Joanne Nagel’s argument that nationalism is a masculinist project, and that men and women may therefore experience citizenship and national identity dissimilarly.

In Indonesia, national identity may be subordinate to an individual’s identity defined through their membership in a range of other communities, such as religious, regional and ethnic communities. Thus, the term ‘identity’ implies multiple, and sometimes conflicting, allegiances. I use ‘community’ as a shorthand for a local or neighbourhood community, but specify where I intend this to imply other communities (such as gender or religious communities).
In referring to ‘citizens’, I understand this to imply an active participation within a polity. Following gender historian Patricia Crawford’s framework, I use ‘citizens’ to refer to self-defined, rather than state-defined, members of a polity. Crawford argues that exclusion from formal rights of citizenship does not necessarily mean that social actors understand themselves to be excluded from making meaningful contributions to society. She demonstrates that in early modern England, although women were denied many of the formal attributes of citizenship, they nevertheless engaged in public life through religious and familial activities on issues they deemed to be of public concern. This constituted ‘subterranean citizenship’, a term she used to encompass women’s informal activities previously overlooked by historians and political theorists in their analyses of citizenship.\(^{47}\) I find this concept to be a useful way of approaching citizenship in Indonesia, where women were similarly constructed as inferior by the New Order state, yet sought to engage with the state in ways that countered this construction. However, I distinguish ‘citizens’ from ‘subjects’, who are the passive recipients of the injunctions of political authority. Although most frequently in the body of the book I refer to citizens, I suggest that the outcomes of women’s attempts to participate in the state may determine whether they were in fact citizens or subjects; I will return to this dichotomy at the conclusion of the book.

I also frequently refer to state and social power, and my investigation will demonstrate whether these terms are necessarily mutually exclusive. In using the term ‘state power’, I am referring to the capacity of a central ruling authority to establish and maintain legitimacy, and to influence, control or coerce the actions of its citizens. I understand ‘social power’ to encompass the capacity of social actors to influence or control other social actors, to maintain social status and to access or control a variety of forms of economic and cultural capital. I use the term ‘cultural capital’ following theorist Pierre Bourdieu, who argues that access to economic, social and political power is also determined by social attainments and status (see Chapter 2 for further explanation of the idea of cultural capital).\(^ {48}\) Such attributes are further defined by class, ethnicity and gender. Thus, while Javanese women are generally presumed to have lesser ascetic abilities and social standing than men, a higher-class Javanese woman may have greater social power than a poor, rural man. Power thus is relative to circumstance. My analysis of state and social power does not presume that it is simply a matter of male versus female, but rather examines the particularities of each case.

In the negotiation of power, the concepts of agency and resistance are important. I draw upon anthropologist James C. Scott’s influential definition of resistance as an act which may outwardly comply with hegemonic ideologies, concealing minute confrontation of that ideology.\(^ {49}\) This concept is central to my argument that divorce may also constitute a micro-resistance by women to various structures of authority (patriarchal, religious, familial and state). I use ‘agency’ to describe actions that bring a positive outcome
for the social actor, however such an outcome may be defined (these concepts are discussed in detail in Chapter 5).

I refer to women and men in this study, cognisant of the fact that female and male are not transparent categories, but rather are further defined by ethnicity, religion and class, a point that has also been made by feminist theorists such as Chandra Mohanty.50 Finally, in using the term ‘gender’, I am following Joan Scott who argues that ‘gender is the knowledge that establishes meanings for bodily differences’ and that this knowledge is historically shaped.51 Throughout this study, I attempt to situate the operation and use of gender in its historical context, as a category which may change in meaning according to circumstance.

Sources

This book is based upon analysis of legislation, court records and interviews with court and government officials. This has been enriched by newspaper reports, fiction and interviews with NGO workers and women who have divorced. As alluded to earlier, this is an historical project and the majority of the sources used in the book are written records. I have used oral history where possible to supplement these sources, but oral history is not the foundation of the book.

I obtained my sources during fieldwork between April 2004 and April 2005 in the Special Region of Yogyakarta (Daerah Istimewa Yogyakarta), inhabited by approximately three million people, the centre of which is the Javanese court city of Yogyakarta.52 Research was conducted across the entire province, encompassing Religious and State Courts from the central urban district (Kabupaten) of Yogyakarta, the semi-urban/rural districts of Bantul and Sleman, and the rural districts of Gunung Kidul (and its major town, Wonisari, where the court is located) and Kulon Progo (and its major town, Wates). My analysis is based upon 151 unpublished divorce cases dating from 1965 to 2005 sourced from these courts, 35 court case registers, 11 published cases (published primarily in the Supreme Court’s journal Varia Peradilan), 88 interviews, 21 pieces of legislation relating to marriage, five works of fiction and random sampling from newspapers.53 Below I will explain the benefits and limitations of these sources.

Court records

Divorce records represent a rich resource for charting the history of women’s encounters with the state which, for a number of reasons, have until now remained largely untapped. This was not least because, under the New Order, research access to government records of any kind was extremely limited. In the post-New Order era, many of the formal and informal restrictions upon access to written records have been lifted and my study takes timely advantage of this development. Nonetheless, there were numerous challenges to
collecting court record data for this project. Courts were (and are) generally understaffed, record-keeping techniques are haphazard and records pre-dating 2000 are often difficult to locate.

Divorce records, of course, are particularly sensitive. Even with an undertaking to protect the identities of litigants, their release was contingent upon the permission of court officials. The records I was able to analyse depended on the strength of my contacts within the court, the views of the archival officers on what information should be made available to me and the state of organization of the archives themselves. In addition, there are no useful or systematic catalogues in courts which enable focused sampling of case records, nor are there comprehensive (or catalogued) public archives which would enable cross-checking of information. In short, the focused, comprehensive and systematic historical research that I have conducted on other topics (Australian history, for example) was not possible for this project. Instead, I had to collect as many cases as court officials were willing to provide me, and examine these cases in detail. To further address the limitations of this research methodology (over which I necessarily had little control), I broadened my search to courts across the province. Consequently, the database I have amassed provides an entirely unexamined body of historical evidence. This is not a demographic or sociological project and therefore I do not use this data-set in a quantitative manner. Rather, I analyse a relatively small (in demographic terms) sample in depth: that is, qualitatively. Although this is not an empirical study, I contend that my qualitative analysis offers particular insights into the localized effects of the Marriage Law and allows me to examine the nuances of individual personhood, social discourses of rights and of honour in ways a quantitative study would not identify. Moreover, within the constraints of the monograph, it was the only practicable approach, and certainly preferable to not researching this topic at all.

Before I explain the nature of court records and how I used them, it is also important to clarify that I sourced records from both Religious Courts (Pengadilan Agama, which deal with Muslim cases) and State Courts (Pengadilan Negeri, which deal with all non-Islamic and customary cases). State-sponsored Religious Courts (priestraad) were first established in Indonesia under Dutch colonial rule in 1882.54 Priestraads dealt with personal matters such as marriage and divorce disputes, and although they were headed by Muslim penghulus (Religious Court leaders), all decisions were required to be ratified by the secular landraad (‘Native’ State Court), which were controlled by Dutch judges.55 Although the priestraad and landraad were ostensibly different court systems, they were inextricably linked. This linkage, political scientist Daniel Lev argues, illustrated the importance the colonial state attributed to controlling both Muslim and non-Muslim family matters.56 The basic structures of Religious and State Courts were retained after independence and indeed, until 1989, all Religious Court decisions needed to be ratified by State Courts before they attained legal force.
Muslim and non-Muslim divorces, of course, have their own legal particularities. Islamic personal law was employed in Muslim divorces, while colonial statutes such as the Civil Code sometimes applied to Christian divorce, and official interpretations of customary law applied in others. Prior to 1989, slightly different laws of procedure also applied to either court system, although each court consists of a panel of three judges (Majelis Hakim). Religious Court judges also historically often had less (or no) formal university training compared to their State Court counterparts. However, in my analysis of records from both court systems over a four-decade period, it became apparent that the Marriage Law provided a unifying framework and discourse that was applied by judges in both systems. Moreover, in terms of the gender ideologies employed by judges, women’s experience of divorce did not seem to differ greatly between the two systems. Therefore, as I am most interested in women’s and men’s experiences of divorce, and in particular the operation of gender ideologies and discourses in court, I have analysed Muslim and non-Muslim divorces concurrently.

The majority of the cases, naturally, relate to Muslim divorce, although I have also consulted some Catholic, Protestant and ethnic Chinese cases. All cases used in this book which date prior to the introduction of the Marriage Law (that is, 1965, 1967 and 1973, dates selected solely because they were the only extant records made available to me) were sourced from the Wates Religious Court, which was the only court able to locate earlier records.

Indonesian court records in both Religious and State Courts comprise a case file, which includes documentary evidence submitted by litigants, a record of each of the hearings (berita acara) which is sometimes presented as a verbatim transcript and sometimes clearly paraphrased, and a summary of the panel of three judges’ legal considerations and decision (salinan putusan). Litigants may appear on their own behalf, or be represented by a lawyer or NGO. In the majority of cases, court officials were prepared to release only the record of the judges’ decision. However, I was able to access full case files from the Sleman State Court, and from the records section of the legal aid NGO attached to my sponsor university (Lembaga Konsultasi dan Bantuan Hukum, Universitas Islam Indonesia, LKBH-UII). Throughout the book, I use the term ‘court’ as shorthand for the panel of three judges (Majelis Hakim) that presides over all civil and criminal cases, inclusive of the administrative processes, bureaucratic mechanisms and staff and state laws mediated through this institution. I refer to litigants and legal representatives (lawyers, NGOs) separately.

I interpret the information presented in courts as part of a public performance which reveals litigants’ and judges’ perceptions of how best to negotiate structures of power, and to apply power. This method of analysis was employed by historian of early modern France Natalie Zemon Davis, who argues that rather than searching for the ‘truth’ of a case, court documents show how a narrative was crafted, which offers the potential to analyse why it may have been crafted in this way. The records I am using offer
a more nuanced picture than has been available in existing scholarship of the
diversity of ways different women negotiated divorce. My records include a
range of socio-economic classes, religious affiliations and urban and rural
locations. However, my book does not pursue an urban/rural, class or religious-
based analysis as its primary investigation. Rather, I use this diverse material
to answer questions about how gender was used in state processes, and what
implications marriage and divorce had for the distribution of social, political
and state power in Indonesia during the late twentieth century.

In my citation of court cases, I follow standard procedures used when
citing Australian court cases. I reference the case number and the court, but
litigant and witness names are withheld, abbreviated to the first initial of
their first name. If an honorific was used in the original case, this is retained
(see Appendices I and II for a full explanation of honorifics used throughout
the book). Otherwise, the terms Ibu (older woman, or one of higher stand-
ing) or Mbak (younger woman) and Bapak (older man, or one of higher
standing) or Mas (younger man) are used to assist the reader in discerning
the gender and age or status of the litigant under discussion. In the Supreme
Court journal Varia Peradilan, full litigant names are published. However, in
this book those names are also withheld.

The published court cases used in this book form only a small part of the
data, and as such should be understood as supplementary to the unpublished
records. These cases would be read primarily by the judiciary, and by Indo-
nesian scholars and students of law. At times of strict state control, they
could also provide a broader national signal of the way in which the state
required the law to be applied. Like unpublished records, these cases are not
catalogued in any systematic way and the cases I have collected were largely
those pointed out to me by Indonesian legal specialists. Again, I do not
use these as a quantitative indication of all published cases but employ them
to illustrate particular discourses and gender ideologies that were publicly
disseminated during the rule of the New Order.

My book focuses on formal court-based negotiations of divorce, but also
acknowledges that court records represent only one aspect of divorce nego-
tiations for Indonesians. First, for some Indonesians, marriage and divorce
would have been negotiated entirely without contact with state institutions.
These occurrences are not analysed in this book, and remain a topic for
further research, especially in urban Java. Second, court transcripts do not
show the level and nature of pre- and out-of-court negotiations in divorce,
and it is for this reason that I have used other sources such as oral history
and newspaper reports.

Other printed sources – newspapers and fiction

Newspapers were both directly and self-censored under the New Order, and
at key moments of crisis newspapers were often banned. Using censored
texts as historical sources requires careful attention to the possible silences.
However, following historian Cyndia Clegg, I also find such texts to be useful because they allow us to ‘locate not only where power resides but what instabilities exist in the grounding of that authority’. Issues relating to marriage and divorce, adultery and failure to comply with new marriage laws were frequently reported in the Indonesian press throughout the period studied, suggesting this issue was deemed socially and politically significant. I use newspaper reports therefore both to examine the anxieties of the New Order regarding potential weaknesses in the rubric of the nation, as well as to glean a deeper understanding of marriage and divorce behaviours that were occurring within and outside the court system.

The primary newspapers consulted for this study were *Kedaulatan Rakyat*, *Kompas*, *Sinar Harapan* and *Pelita*. While *Kompas* is a national broadsheet dealing with both national and international issues and directed at an educated readership, the remainder focus on domestic issues and are directed at a middle- and working-class readership. *Kedaulatan Rakyat* is the main local newspaper for the Yogyakarta province, and so was the chief newspaper resource for my study. Newspaper evidence was gathered through manual searches (no catalogue was available) and sometimes through files of clippings kept at my sponsor university’s library or NGOs. Where possible, I sampled newspapers around key dates of the introduction of marriage legislation (1974 Marriage Law, 1975 Marriage Law Implementing Regulations, 1983 Civil Servants’ Marriage Regulations, 1989 Religious Judicial Matters Law, 1991 Compilation of Islamic Laws).

Fiction is a tangential source for this study, which I use primarily in the final chapter of the book to provide a range of representations of identity. As with newspaper sources, I understand fiction to be constrained by the political climate under which it was written, but also extremely valuable in terms of its depictions of dominant gender ideologies.

**Oral history**

Oral history was an important source for this project, as it enabled me to garner alternative narratives to those found in the written record. I interviewed judges, NGO workers, officials from the marriage counselling organization BP4 (Badan Penasihat, Pembinaan dan Pelestarian Perkawinan, Marriage Guidance, Counselling and Preservation Board) and marriage registration offices (Office of Religious Affairs, Kantor Urusan Agama, KUA) and divorced women. These interviews offered insight into individual interpretations of state, religious and cultural gender ideologies, as well as providing a different perspective to information found in the court record.

The practice of oral history by Western scholars in developing countries does pose ethical dilemmas. In feminist research, there has been a risk of presuming that commonality as women between researcher and subject can transcend ethnic, class, religious and power differences. This is not the case, as anthropologists Daphne Patai, Judith Stacey and Dianne Wolf argue.
particular, Wolf notes, the researcher may obtain benefits from her fieldwork (academic recognition, employment, financial remuneration) that do not accrue to her informants. They concur, however, that such challenges are not a reason to abandon cross-cultural research, but rather require feminist scholars to be self-reflexive and aware of their partiality. Such concerns were very much a part of my own research experience, but this was mediated by a belief that a process of respectful cultural exchange contributes towards inter-cultural understanding, a benefit that extends beyond the life of the project.

Bearing these concerns in mind I felt that, in a post-authoritarian context, it would be insensitive as a foreign researcher to subject individuals to an interrogative interview and record the proceedings (although many Indonesian researchers do record interviews, the power dynamic in such a situation is considerably different). I therefore deliberately eschewed the ‘oral history’ technique, using instead the method pioneered by anthropologist Clifford Geertz, of making field notes of all encounters and quoting from these field notes. Quotes attributed to informants are not verbatim, but reflect my memory of these conversations, noted down immediately. This methodology in many cases yielded details that informants might otherwise have been reluctant to provide if they knew their words were being recorded. In keeping with accepted ethical standards, all names of people interviewed for this book have been replaced with pseudonyms, with the exception of people delivering public lectures and seminars.

**Methodology**

This book is a microhistorical, qualitative study which uses anthropological and historical techniques. As mentioned in the preceding sections, the research methodology was necessarily haphazard, and impeded by the limited time allowed for the research itself, compared with the large amount of time required to engage with Indonesian bureaucratic and administrative procedures. A year was spent processing visa requirements, and many more months were spent in Yogyakarta submitting research permission requests and progress reports to various government departments. An anthropological approach, in which months were spent building contacts, was pivotal to the archival aspects of the study as it was only through these contacts that I was able to set up interviews with court officials or access court records. Of course, both the records made available by court officials and the information garnered through interviews was influenced by my identity as a relatively young, unmarried Western woman. I am therefore self-reflexive in my analysis of oral history sources in particular, indicating how my own subject position might have shaped the interview.

The monograph uses the field of law to investigate the nexus between gender and power. ‘Law’ in this book refers to legislation, the concomitant apparatus (courts, judges, court officials) and users (litigants, witnesses). It can also
refer to non-state legal systems, such as religious and customary legal structures. Laws regulating personal status are especially informative, because they reflect state visions of citizenship, and familial and national rights and obligations. Moreover, the manner in which such laws are interpreted (by those implementing the law and by the citizens who use it) can illustrate the ambiguities inherent in these concepts, as well as the possibilities for agency and resistance.

In describing this study as a ‘microhistory’, I am following the Italian historian of the Renaissance Carlo Ginzburg, who pioneered this method. Ginzburg describes this method as the examination of the minute detail of an historical event, situated within its broader social, historical and political context. The benefit of this technique is that it acknowledges that ‘any social structure is the result of interaction and of numerous individual strategies, a fabric that can only be reconstituted from close observation’.68 Similarly, by closely examining the machinations of state apparatus, and the character of individual litigants’ interactions with the state, I am able to offer a more nuanced picture of the operation of, and resistance to, state power in Indonesia in the late twentieth century.

My study is focused upon Java, and therefore I do not presume that Javanese divorce practices by any means reflect the practices of other indigenous communities in Indonesia. However, by comparing state discourses which emerged through national-level laws with local responses, I will contribute towards scholarly understandings of how local communities might have engaged with, and resisted, nationalizing and homogenizing state projects.

**Book structure**

The research for this project posed particular challenges, which consequently have necessitated a creative approach towards analysis. Because I was unwilling to impose my own research frameworks and requirements upon under-paid court officials who graciously gave up their time to provide me with research material, I needed to take a discursive approach. This entailed identifying broadly important concepts in Indonesian society, such as shame, rights and obligations, and identity, and exploring how these discourses were played out in the field of divorce. I use this microhistorical approach to draw wider conclusions about the operation of gender ideologies in Indonesian society, and their application to the constitution of state and social power. Because of the research methodology, and the questions I developed to approach an analytically challenging data-set, the structure of this book departs from a traditional historical study. The sources themselves are complex; thus a structure in which a finite set of questions are introduced, followed by literature review, discussion of methods and sources and then a quantitative discussion of data, is not possible here. Instead, I have arranged the book according to six key themes which are explored in depth
in each chapter. My overarching question deals with how women, men and the state responded to and used the Marriage Law. However, each chapter then explains particular literature and sources relating to the selected theme, and explores a set of sub-questions which relate to my overarching question. I have also been eclectic and multi-disciplinary in my use of secondary literature, drawing from anthropologists, legal scholars, historians, sociologists, demographers and cultural theorists, in an effort to extend the work beyond traditional disciplinary boundaries.

The book is divided into three parts. Part I outlines the legal and cultural frameworks regulating divorce in Indonesia, focusing on their connections with the maintenance of state power. I address colonial, post-colonial, religious and customary legal systems. The first chapter examines how colonial and post-colonial states have constructed women in law, seeking historical continuities in these constructions. This leads to Chapter 2, which scrutinizes the role of gender in determining access to marital property in the different legal systems. It also establishes ‘property’ as a term which encompasses both economic and cultural capital. In both chapters, but particularly in Chapter 2, I am not attempting to provide an exhaustive history of Indonesian law or property. These are in themselves enormous topics. Rather, I am providing an overview of issues which have not been researched in any depth as they relate to women, marriage and divorce, and with reference to the Marriage Law in particular. In doing so, I also press my own arguments about how female legal subjectivity, and the general concept of property, may be understood differently if viewed through the lens of gender. Moreover, no discussion of divorce can occur without (at the very least) a rudimentary understanding of legal frameworks and property regulations. These two chapters therefore provide an essential conceptual basis for the subsequent chapters which analyse state, religious and cultural discourses that were associated with divorce, how this influenced the ways in which women used different legal systems, and what tangible and intangible benefits women sought to obtain in divorce.

In Part II, I analyse two important discursive implications of divorce: the discourses of shame, and of right and obligations. I have selected these two categories to analyse divorce for specific reasons. Shame, and its association (or not) with divorce in Indonesia is an issue that has long been debated by scholars. Fieldwork informants frequently commented on the greater shame of divorce for women. Other scholars have noted that shame and divorce is an urban phenomenon. However, for a concept that is so pivotal to the experience of divorce, its historical continuities or changes have been little analysed. The issue of rights and obligations, similarly, has long been considered key to understanding many Asian societies and is absolutely central to an Islamic understanding of marriage and gender order. Neglect of marital rights and obligations also form the basis of most Indonesian divorce cases, both Islamic and otherwise. However, as with the discourse of shame, notions of rights and obligations and how they were used by litigants or the
state has not yet been greatly investigated. To address these issues, I use court records, newspaper reports and oral history. Chapter 3 investigates whether the New Order state attempted to construct divorce as an act of national shame. It also examines the influence of the state upon litigants (especially women) to co-opt or subvert state discourses of shame. Chapter 4 analyses state attempts to shape concepts of rights and obligations in marriage, and asks what implications this had for women’s divorce settlements and how women and men could use these discourses to their advantage.

Finally, Part III explores two elements of personhood that may be affected by divorce: agency and identity. These two chapters extend upon the analysis in the preceding sections of the book. In particular, I aim to assess under what circumstances women can have agency in divorce, and how their identity might be affected by it. In Chapter 5, I examine women’s agency in divorce, investigating how women employ a range of strategies to achieve their goals, encompassing adherence and/or resistance to state discourses. The final chapter explores the implications of divorce for women’s and men’s constructions of local, religious and national identity. I investigate how individual citizens defined themselves in the context of negative actions such as divorce, and suggest that their actions might have contributed towards the construction of hegemonic and counter-hegemonic national identities.

My study challenges dominant analyses of the New Order by examining how the state used gender relations to establish its legitimacy. I will argue that the ways in which individual women and men used state apparatus may reveal the degree of legitimacy that they accredited to the state, and that they may have shaped the state as much as the state attempted to shape its citizens. Throughout my study, I will also attempt to highlight key historical moments for women, and investigate whether existing historical chronologies of Indonesia are in fact gender-specific, and therefore do not adequately reflect women’s experience of social and historical change. Finally, I have remained attentive in my analysis to the possibility, as Geraldine Heng argues, that:

\[\text{rights historically granted to women by patriarchal authority in order to accomplish nationalist goals and agendas do not necessarily constitute acts of feminism, though as practices of power, the granting of such rights may function, both initially and today, to the very real advantage of women.}^{69}\]

In other words, as my book will demonstrate, the implementation of state power has not been monolithic, and women have often sought ways to use and circumvent state goals to their own benefit.
Notes

Introduction


2 E. Martyn, The Women’s Movement in Post-Colonial Indonesia: Gender and Nation in a New Democracy, London: Routledge Curzon, 2005, pp. 41, 123; S. Blackburn, Women and the State in Modern Indonesia, Cambridge: Cambridge University Press, 2004, pp. 130–1. The Indonesian women’s movement, from the 1920s onwards, played a major role in securing a unified marriage law, as both Blackburn’s and Martyn’s work details exhaustively. Blackburn also argues, however, that the New Order was keen to de-politicize Islam, and to harness women’s organizations to its development agenda which included family planning. I agree with Blackburn’s basic proposition that marriage law reform, while it was in part responsive to women’s activism, also suited the regime’s broader goals of establishing centralized control over the Indonesian archipelago. This book extends upon that proposition by examining how, in practice, the state attempted to exercise that control.


4 Blackburn notes that from the colonial period onward, the Indonesian state did not aggressively pursue the protection of women’s individual interests, preferring to leave matters relating to the care of widows and divorcees to familial, ethnic and religious communities. For example, the colonial government attempted to eradicate child marriage in the early twentieth century, but eventually abandoned these efforts when it became clear that male-led communities opposed this. I contend, therefore, that the New Order decision to regulate marriage, even in the face of opposition, is a unique event in the history of state regulation of families in Indonesia, and an extremely important event in the history of the New Order itself. See S. Blackburn and S. Bessell, ‘Marriageable Age: Political Debates on Early Marriage in Twentieth-Century Indonesia’, Indonesia 63, April 1997, pp. 107–41; S. Blackburn, ‘Women and Citizenship in Indonesia’, Australian Journal of Political Science 34/2, 1999, pp. 191–2.
5 Article 27 of the 1945 constitution granted equal political and civil rights to all citizens. However, prior to the 1974 Marriage Law separate regulations continued to govern marriage for Indonesian Christians, Europeans and Chinese. ‘Native’ Indonesians were subject to customary (adat) and Islamic law. This point is discussed in further detail in Chapter 1.

6 ‘Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk’, ‘Undang-Undang Nomor 32 Tahun 1954 Tentang Penetapan Berlakunya Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk Di Seluruh Daerah Luar Jawa Dan Madura’.

7 I. Chalmers, Indonesia: An Introduction to Contemporary Traditions, Melbourne: Oxford University Press, 2006, p. 102. At the 1971 census, 87.5 per cent of Indonesia’s 118 million inhabitants were Muslim. At the 2000 census, 88 per cent of 200 million people were recorded as Muslim.


12 As suggested in previous pages, I argue throughout this book that divorce itself was contrary to state ideals of femininity, family and citizenship. This does not imply that all citizens who divorced necessarily consciously understood their actions to be contesting the state; presumably few (if any) women and men think about highly personal, and distressing, life events such as divorce in these terms. But because the New Order was so involved at a legislative and administrative level in attempting to shape families, divorce did inevitably constitute an affront to those state efforts. Consequently, the responses of judges, and the changing strategies of litigants, provide an extremely useful case study of the nuances of power between women and men, and between the state and its citizens.


15 S. Blackburn, ‘How Gender is Neglected in Southeast Asian Politics’, ibid., p. 27. Blackburn reviewed nine books on Southeast Asian politics, which included Indonesia, as well as Malaysia and Vietnam.


18 S. Blackburn, ‘Gender Interests and Indonesian Democracy’, *Australian Journal of Political Science* 29/3, November 1994, p. 557. Again, this is a point that feminist scholars have been making insistently for at least the past two decades. Blackburn puts this particularly well with regard to Indonesia when she notes that the fact that women are almost invisible in politics does not mean, however, that they are not affected by the state and its policies. Different regimes serve gender interests and affect the construction of gender in different ways. In Indonesia, much interest revolves around the shift from a military-dominated regime to one controlled by civilians, which must in itself have important consequences for gender interests.


20 Locher-Scholten, ‘Marriage, Morality and Modernity’.


22 Ibid., p. 228.


29 Ibid., p. 27.

30 This also resonates with Diane Wolf’s argument, that the subordination of female Javanese factory workers was directly related to the creation and maintenance and wealth and power for male industrialists and corrupt government officials. D. L. Wolf, ‘Javanese Factory Daughters: Gender, the State and Industrial Capitalism’, in Sears, *Fantasizing the Feminine in Indonesia*, pp. 155–6.


34 H. D. Muttaqien, ‘Perkara Perceraian Akibat Perselingkuhan Di Pengadilan Agama Yogyakarta Tahun 2003’, Lembaga Penelitian, Universitas Islam Indonesia, Yogyakarta; unpublished, 2003, p. 3. This paper provides an example of how research questions are guided by the available statistics. Muttaqien investigated the number of divorces caused by affairs, producing a figure of 14.67 per cent, and concluded that the community needed to seek ways to eradicate such behaviour and preserve marriage.


After the military crushed an alleged communist coup in 1965, Sukarno remained the nominal head of state. He formally transferred power to General Suharto in 1967. Following the Asian financial crisis and riots which led to the deposition of Suharto in 1998, B. J. Habibie became interim president of Indonesia. Democratic elections for members of parliament were held in 1999. Parliamentary members then selected the new president, Abdurrahman Wahid. In 2001, the plenary parliament (Majelis Permusyawaratan Rakyat, People’s Deliberative Assembly) passed a vote of no confidence in Wahid, and he was replaced by vice president and Indonesian Democratic Party of Struggle (Partai Demokrat Indonesia Perjuangan) leader Megawati Sukarnoputri (the daughter of former president Sukarno) in 2001. In 2004, the first full democratic elections were held, in which Indonesians voted directly for parliamentary members and the president, resulting in former military leader Susilo Bambang Yudhoyono taking office.


See Appendix II for a detailed list of all organizations consulted. All individuals interviewed for this project have been accorded pseudonyms.


Hooker, ‘The State and Syariah in Indonesia 1945–95’, p. 98.

Nonetheless, a specifically legal analysis of the differences between the two systems, in particular with regard to divorce regulations, remains a topic which would benefit greatly from further research.

60 K. Sen and D. T. Hill, Media, Culture and Politics in Indonesia, South Melbourne: Oxford University Press, 2000, p. 53. For example, 43 of the country’s 163 newspapers were banned after the 1965 coup, 12 newspapers after the January Disaster (Malari) riots of 1974 and a further seven after the student protests of 1978.


63 BP4 was formerly known as Badan Penasihat Perkawinan dan Penyelesaian Perceraian, Marriage Counselling and Divorce Resolution Board.


66 J. Stacey, ‘Can There Be a Feminist Ethnography?’, in Gluck and Patai, Women’s Words, p. 117.


1 Gender and law: shaping female legal subjectivity


5 Haverfield, ‘Hak Ulayat and the State’, pp. 43–4. In using the concept of legal systems, I follow Rachel Haverfield, who argues that ‘a better approach to artificially dividing custom is to regard as “legal” all factors that contribute to the maintenance of rights and obligations in a given society’.


7 For a detailed analysis of Indonesian fatwa (legal directive based on reasoned analysis of Islamic jurisprudence, the Qur’an and Hadis) referring to women, marriage and divorce from the 1920s onward, see Chapter 3 of Hooker, Indonesian Islam. There are countless ethnographies of the encounter between adat and the state; see, for example, J. Thontowi, ‘Law and Custom in Makasar Society: The Interaction of Local Custom and the Indonesian Legal System in Dispute Resolution’, PhD thesis, University of Western Australia, 1997; H. Slaats and K. Portier, Traditional Decision Making and Law: Institutions and Processes in an Indonesian Context, Gadjah Mada University Press, 1992; C. Warren, Adat and Dinas: Balinese Communities in the Indonesian State, Kuala Lumpur: Oxford University Press, 1993.


12 Ibid., pasal 103–7, 10–13.

13 Ibid., pasal 108–9, 19–32, 86. The code also contained contradictory provisions regarding women’s property rights. Article 105 specified that a husband could not sell his wife’s private property without her permission, but marriage was presumed to create community of property unless otherwise agreed. Article 124 granted the husband rights to sell marital property, which might incorporate the wife’s private property, without her prior permission.

14 As defined in the Introduction, I use ‘agency’ to denote an ability to act with the aim of producing a positive outcome for the agent. Chapter 5 provides a more detailed analysis of this concept.

Notes


17 Lev, Islamic Courts in Indonesia.

18 E. Martyn, The Women’s Movement in Post-Colonial Indonesia: Gender and Nation in a New Democracy, London: Routledge Curzon, 2005, p. 123; S. Blackburn, Women and the State in Modern Indonesia, Cambridge: Cambridge University Press, 2004, p. 114. Existing scholarship dealing with the Marriage Law, which has drawn upon women’s movement archives and interviews, has identified that urban women often found it difficult to divorce prior to 1974. However, my research suggests that not all women found it difficult to pursue divorce before the introduction of the Marriage Law. I address these nuances in Chapters 3 and 4.


21 ‘Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk’, ‘Undang-Undang Nomor 32 Tahun 1954 Tentang Penetapan Berlakunya Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk Di Seluruh Daerah Luar Jawa Dan Madura’.

22 ‘UU 22/1946’, pasal 3, ‘barang siapa yang melakukan akad nikah atau nikah dengan seseorang perempuan’, ‘jika seorang laki-laki yang menjatuhkan talak atau merujuk …’

23 Martyn, The Women’s Movement in Post-Colonial Indonesia, pp. 137–44.


27 Martyn, The Women’s Movement in Post-Colonial Indonesia, p. 144.


30 ‘Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan’, penjelasan umum (general elucidation) 4e. ‘As the aim of marriage is to create a happy, eternal and prosperous family, thus this law adheres to the principle of restricting the occurrences of divorce’ (‘Karena tujuan perkawinan adalah untuk membentuk kehidupan yang bahagia kekal dan sejahtera, maka Undang-Undang ini menganut prinsip untuk mempersulit terjadinya perceraian’).


Perkawinan ialah ikatan lahir bathin antara seorang pria dengan seorang wanita sebagai suami isteri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa.

All citizens are in an equal position before the law and government and are obliged to respect the law and government without exception. (Segala warga negara bersamaan kedudukannya dalam hukum dan pemerintahan dan wajib menjunjung hukum dan pemerintahan itu dengan tidak ada kecualinya.)

Hak dan kedudukan isteri adalah seimbang dengan hak dan kedudukan suami dalam kehidupan rumah tangga dan pergaulan hidup bersama dalam masyarakat … (3) Suami adalah kepala keluarga dan isteri ibu rumah tangga.

Suami wajib melindungi isterinya dan memberikan segala sesuatu keperluan hidup berumah tangga sesuai dengan kemampuannya. (2) Isteri wajib mengatur urusan rumah tangga sebaik-baiknya. (3) Jika suami atau isteri melalaikan kewajibannya masing-masing dapat mengajukan gugatan kepada Pengadilan.


Kitab Undang-Undang Hukum Perdata, pasal 213.


Ibid., pasal 31–4.


‘PP ’, preamble part b, ‘bawna Pegawai Negeri Sipil wajib memberikan contoh yang baik kepada bawahannya dan menjadi teladan sebagai warganegara yang baik dalam masyarakat, termasuk dalam menyelenggarakan kehidupan berkeluarga’.

Ibid., pasal 3, 6–8, 15, 17.


See Chapter 5 for more on agency.


See Chapter 5 for more on agency.


Basyir, Hukum Perkawinan Islam, p. 88; ‘UU 7/89’, pasal 66(2), 73(1), 5–6. Basyir defines syiqaq as ‘a fissure in the marital relationship, lack of compatibility between husband and wife such that it is feared divorce will occur’ (‘retak hubungan perkawinan, tidak ada persesuaian antara suami dan isteri sehingga dikhawatirkan terjadi perceraian’).
56 Ibid., p. 72. ‘Orang laki-laki pada umumya lebih matang berpikir sebelum mengambil keputusan daripada orang perempuan yang biasanya bertindak atas emosi. Dengan demikian, apabila hak-hak talak diberikan kepada suami, diharapkan kejadian perceraian akan lebih kecil kemungkinannya daripada apabila hak talak diberikan kepada isteri.’


58 Komplasai Hukum Islam, Seri Pustaka Yustisia, Yogyakarta: Pustaka Widyatama, 2004, pasal 5, 15, 116, 132. Provisions on minimum age for marriage, grounds for divorce, registration of marriage were identical even in wording to the Marriage Law. Minimum age for marriage was 16 for women, 19 for men (with parental permission required up until the age of 21); divorce was to be filed in the woman’s legal domicile, except if she left home without her husband’s permission.

59 K. Nasution, ‘Draf Undang-Undang Perkawinan Indonesia: Basis Filosofis Dan Implikasinya Dalam Butir-Butir UU’, *Unisia* XVI/II/48, 2003, p. 130; Komplasai Hukum Islam, pasal 3. These are Arabic terms. The definition provided by Nasution was a household ‘which is full of peace, calm, love and affection’ (‘yang penuh kedamaian, ketenteraman, cinta dan kasih sayang (sakinah, mawaddah dan rahmah’).

60 Komplasai Hukum Islam, pasal 77, 79.

61 Ibid., pasal 80, 83–4. The husband’s obligations: ‘Suami wajib memberi pendidikan agama kepada isterinya dan memberi kesempatan belajar pengetahuan yang berguna dan bermanfaat bagi agama, nusa dan bangsa.’ The wife’s obligations: ‘Kewajiban utama bagi seorang isteri ialah berbakti lahir dan batin kepada suami di dalam batas-batas yang dibenarkan oleh hukum Islam’ [ayat (sub article) 1]; ‘Isteri menyelenggarakan dan mengatur keperluan rumah tangga sehari-hari dengan sebaik-baiknya.’ [ayat 2].


63 ‘Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga’, pasal 3–4. Article 3: ‘Penghapusan kekerasan dalam rumah tangga dilaksanakan berdasarkan asas: (a) penghormatan hak asasi manusia; (b) keadilan dan kesetaraan gender; (c) nondiskriminasi; dan (d) perlindungan korban.’ Article 4: ‘Penghapusan kekerasan dalam rumah tangga bertujuan: (a) mencegah segala bentuk kekerasan dalam rumah tangga; (b) melindungi korban kekerasan dalam rumah tangga; (c) memulihkan kesejahteraan yang harmonis dan sejahtera.’

64 Ibid., pasal 1, 2, 4, 5, 44, 45, 49.


*Kaum perempuan kini boleh bernafas lega. Kekerasan dalam rumah tangga yang korbannya kebanyakan perempuan dan anak-anak sudah tak lagi menjadi*
wilayah pribadi tetapi bergeser ke wilayah publik, setelah DPR mensahkan Rancangan Undang-Undang (RUU) Penghapusan Kekerasan Dalam Rumah Tangga (KDRT) menjadi UU pada Selasa (14/9) lalu. Itu artinya, suami tidak bisa lagi semena-mena mencaci maki, menampar atau memberi ‘bogem mentah’ pada istrinya, bila tidak ingin bersentuhan dengan hukum.


71 ‘Pembaharuan Hukum Islam’. ‘Toh, nanti masyarakat yang bakal menolak.’


2 Divorce, property relations and power

1 R. Haverfield, ‘*Hak Ulayat* and the State: Land Reform in Indonesia’, in T. Lindsey (ed.) *Indonesia: Law and Society*, Leichardt, NSW: Federation Press, 1999, pp. 43–4. See Chapter 1, in which I use Haverfield’s definition of law as any factor which contributes to the maintenance of rights and obligations.


18 Ibid., p. 180.
Divorcees have also often been identified as among the poorest sections of society.


J. Pemberton, *On the Subject of ‘Java’*, Ithaca: Cornell University Press, 1994, p. 204. Pemberton analyses the traditionalization of wedding rituals under the New Order. He understood this to be part of a broader process of cultural domestication, which could ‘admit potentially unruly practices only to enframe them as examples of “traditional rituals” performed for the sake of an ever more “Beautiful Indonesia”’.

D. S. Lev, ‘The Supreme Court and Adat Inheritance Law in Indonesia’, *American Journal of Comparative Law* 11/2, Spring 1962, pp. 206, 9, 12; B. Ter Haar, *Adat Law in Indonesia*, New York: AMS Press, 1948, pp. 182, 8–90, 93. Ter Haar was based in the Netherlands Indies. He was part of a group of Dutch adat scholars (also including Cornelius van Vollenhoven in the Netherlands) who from the 1920s onwards lobbied the colonial government to abandon the use of uniform codes and allow the application of adat law. Ter Haar also emphasized the adaptive nature of adat and therefore the need for flexibility in the court.


Geertz, *The Javanese Family*, pp. 50–1. Geertz illustrated this point with an anecdote of a woman who left her husband to marry another man. Most of the property in the marriage was her own, given to her by her parents, but registered in the name of her first husband, who then refused to allow her to resume possession of the property. The village head resolved this dispute by choosing not to divide the property, but rather putting it in trust for the couple’s three children who were living with neither parent but with a grandparent.


Moors, *Women, Property and Islam*.

Basyir, *Hukum Perkawinan Islam*, p. 57. Basyir cites Surat Al-Baqarah 233: ‘and fathers are obliged to provide sufficient food and clothing for their wives and children, by honest means’ (‘dan ayah berkewajiban mencukupkan kebutuhan..."
36 Husbands and wives are considered to have mutual obligations to provide conjugal access. This injunction has its basis in numerous *Hadis*. A commonly cited *Hadis* on this theme narrates the story of a close friend (*sahabat*) of the Prophet Muhammad who devoted himself entirely to fasting and praying. The Prophet reminded the follower that by this devotion, he was ignoring the conjugal rights of his wife, who would be caused suffering by such neglect; *Shahih al-Bukkhari*, Juz IV, 157, 105 cited in N. Umar, ‘Agama Dan Kekerasan Terhadap Perempuan’, *Jurnal Demokrasi dan HAM* 2/1, 2002, p. 62.


38 Ibid., pasal 1(f), 97. ‘Harta kekayaan dalam perkawinan atau syirkah adalah harta yang diperoleh baik sendiri-sendiri atau bersama suami isteri selama dalam ikatan perkawinan berlangsung dan selanjutnya disebut harta bersama, tanpa mempersoalkan terdaftar atas nama siapa pun.’

39 Ibid., pasal 49.

40 Ibid., pasal 86–7.


45 ‘Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan’, pasal 37.


47 ‘Peraturan Pemerintah Nomor 10 Tahun 1983: Izin Perkawinan Dan Perceraian Bagi Pegawai Negeri Sipil’, pasal 8 (4), ‘Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Perubahan Atas Peraturan Pemerintah Nomor 10 Tahun 1983 Tentang Izin Perkawinan Dan Perceraian Bagi Pegawai Negeri Sipil’, pasal I (4). PP 10/1983 prevented wives who filed for divorce from claiming alimony. However, an exception was made for wives who requested divorce because their husbands wish to marry polygamously, in which case the wife retained her right to alimony.

emerging trend to recruit women as Religious Court judges, but this was a slow process that met with some opposition. D. S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, Berkeley: University of California Press, 1972, p. 110.

3 Initial approval comes from the provincial-level BAPPEDA (*Badan Perencanaan Daerah*, regional planning board), and then from the *kabupaten* (district) BAPPEDA, and then from its equivalent agency at the *kecamatan* (sub-district) and *kelurahan* (village) levels if fieldwork is to be conducted. Each agency requires proposals, lists of intended informants and questions before approval to conduct research is granted, and requires a research report to be submitted at the completion of the project.

4 Different courts imposed different restrictions. The Yogyakarta State Court, for example, would allow students to view a maximum of four cases. At the Sleman State Court, personal contacts enabled me to access an unlimited number of cases.


6 Ibid., p. 11.

7 N. Sullivan, *Masters and Managers: A Study of Gender Relations in Urban Java*, St Leonards: Allen and Unwin, 1994, pp. 84–6. Sullivan argues that Javanese boys are socialized from a young age to assume public roles in the community, which she compares to the paralysing shyness that strikes young women when they find themselves in situations involving adult male officials and dignitaries.


10 Keeler, ‘Shame and Stage Fright in Java’, pp. 156, 9–60.


21 Jones, Marriage and Divorce in Islamic South-East Asia, p. 208; Cammack et al., ‘An Empirical Assessment of Divorce Law in Indonesia’, p. 98.


24 Wolf, Factory Daughters, p. 217. A number of anthropologists have noted incidences of divorces organized at the behest of the needs of the community. Wolf relates an anecdote of a husband in her field site in rural Central Java in the 1980s who was always having affairs, including when his wife was pregnant with their second child. The villagers initially threatened the husband with physical violence, but finally took him before the village head, where it was agreed that a divorce would occur after the birth.

25 For a more detailed discussion of legal education programmes, see Chapter 5.


27 ‘Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk’, ‘Undang-Undang Nomor 32 Tahun 1954 Tentang Penetapan Berlakunya Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk Di Seluruh Daerah Luar Jawa Dan Madura’.

28 The division between Religious and State Courts was inherited from the Dutch, who established formal religious courts (priesterraad) in Indonesia in 1882. The jurisdiction of these courts was limited to marriage, divorce and inheritance and their decisions were not binding until they had been ratified by a judge in the

29 *Islamic Courts in Indonesia*, p. 150.

30 ‘Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan’, 1974, *penjelasan umum* (general elucidation) 4e.

31 For example, in a case from the Yogyakarta Religious Court in 1975, the wife filed for divorce on the basis of her husband not providing maintenance. The divorce was granted after two hearings over two weeks, and in the absence of her husband. ‘170/1975/PA.Yk: Ny E. v. Saudara P.’ Pengadilan Agama Yogyakarta, 1975.


33 ‘UU 1/1974’, *pasal* (article) 1.

34 ‘Surat Edaran Mahkamah Agung Nomor 3 Tahun 1981 Tentang Perkara Perceraian’.

35 These grounds were detailed in ‘Peraturan Pemerintah Nomor 9 Tahun 1975 Tanggal 1 April 1975: Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan’, *pasal* 19f.


Plan, noting that villagers lacked general legal knowledge and so often ‘took the law into their own hands’ (main hakim sendiri).


Di Daerah Istimewa Yogyakarta, masih ada warga masyarakat yang belum memahami Undang-Undang Perkawinan, bahkan masih ada yang menganggap enteng … Di Kotamadya Yogyakarta sebagai ekses dari ketatnya pasal-pasal dalam UU Perkawinan menimbulkan kejadian-kejadian yang bersifat negatif a.i.l. adanya ‘kumpul kebo’ yaitu hidup sebagai suami isteri namun tidak kawin nikah karena tidak dapat memenuhi persyaratan untuk kawin. Kenyataan mereka sudah melaksanakan kehidupan sebagai suami dan isteri. Juga ada gejalanya akan timbulnya kebiasaan ‘kawin kampung’ yaitu diketahui dan diakui oleh para tetangga meskipun tidak mendapatkan surat kawin yang sah.

43 Pak Ahmad, interview, Yogyakarta, BP4 Departemen Agama Yogyakarta, 2 December 2004. The basis for the acronym changed a number of times, initially standing for ‘Marriage Counselling and Divorce Settlement Board’ (Badan Penasihat Perkawinan dan Penyelesaian Perceraian), later becoming ‘Marriage, Dispute and Divorce Counselling Board’ (Badan Penasihat Perkawinan Perselisihan dan Perceraian) and in its most recent incarnation, ‘Marriage Guidance and Preservation Counselling Board’ (Badan Penasihat Pembinaan dan Pelastarian Perkawinan), an alteration that tellingly removed all reference to divorce.


45 Nakamura, Divorce in Java, p. 46.

46 ‘Peraturan Menteri Agama Republik Indonesia Nomor 2 Tahun 1990 Tentang Kewajiban Pegawai Pencatat Nikah’, pasal 20(3).

47 Pak Adnan, personal communication, Lembaga Konsultasi dan Bantuan Hukum, UII, Yogyakarta, 18 February 2005.


51 ‘UU Perkawinan Di Jateng Tak Alami Hambatan’, Kedaulatan Rakyat, 3 November 1975. The head of the Central Java provincial Department of Religion reported that there had been no obstacles to the implementation of the Marriage Law and its Implementing Regulations, enacted in October 1975.

52 D. T. Hamami, ‘Langkah Menuju Pemasyarakatan UU Perkawinan’, Pelita, 7 August 1985. ‘Dan adanya suatu pandangan nilai budaya sosial disebabkan masyarakat kita, yang mewajarkan ‘perceraian’ sebagai sesuatu hal yang tidak tercela, yang tidak kurang dominannya, dalam menghambat memasyarakatkan Undang-Undang Perkawinan itu sendiri.’
53 As paraphrased in ‘Keawaman Hukum Wanita’, Sinar Harapan, 9 April 1981. The presentation was entitled ‘Peran Wanita Dalam Mengingkatnya Kesadaran Hukum.’


54 ‘Tragedi Cinta Dan Keluarga’, Kedaulatan Rakyat, 17 September 1979. ‘Dan paling menyesal adalah Sm karena ia telah kehilangan kegadisannya.’ In these and other reports, people’s names were abbreviated to two or three letters, a journalistic practice to preserve anonymity.


Ledak tangis Gin saat mendengar putusan tersebut baik halilintar menyambar disiang bolong. Tidak hanya malu terhadap masyarakat desanya, namun yang menjadikan perasaan Gin hancur, perutnya yang sudah membengkak lima bulan. Tanpa hadirnya suami hal itu dirasakan merupakan aib baginya. Apalagi ketika mendengar bahwa Sup yang dulu mengaku sebagai pegawai negeri, ternyata hanya tukang parkir di salah satu jalan di Yogyakarta.


61 Bu Mardhiyah, interview, Yogyakarta, BP4, Departemen Agama Yogyakarta, 28 October 2004. ‘Dia mengorbankan diri, namanya gentle.’

As stated in the Introduction, this was the only court which could provide early records, and the years were selected on the basis of availability.


Geertz, *The Religion of Java*, p. 245.


It also raises questions regarding the extent to which men acknowledged the authority of the state in mediating divorce, a point that will be further discussed in Chapter 4.

The year 1999, rather than 1998, has been selected as the end point for the section dealing with the New Order, as this was when democratic elections were held to replace the interim government of B. J. Habibie. See Introduction.


‘256/Pdt/1989/PA.Btl: Mas D. v. Ny S.’

Pemohon tidak dapat membuktikan dalihnya justru yang terbukti adalah sebaliknya, yaitu pemohon telah tidak memenuhi kewajibannya sebagai suami, dengan tidak memberi naikkah 19 bulan kepada Termohon sehingga Pemohon dalam kasus ini ada pihak yang berusaha, oleh karena itu sesuai dengan pasal 10f PP 9/1975 maka permohonan Pemohon ditolak.


Ibid. Case notes from LKBH-UII filed with original court decision.

Bahwa setiap kali Penggugat datang menemui Tergugat guna membicarakan kelangsungan rumah tangganya untuk hidup bersama serta demi masa depan anaknya, Tergugat sama sekali tidak pernah menanggapi dan justru Tergugat marah-marah.

Ibid. Because of the state's emphasis on the shame of divorce and the necessity for courts to at least appear to limit the avenues for obtaining it, litigants were pressed into recriminations that revealed intimate and embarrassing details of their marital history. See for example ‘104/G/1989/PA.K: Mbak C. v. Mas S.’ Pengadilan Agama Kota Yogyakarta, 1989; ‘79/Pdt.G/1988/PN.Yk:
Ibu T. v. Bapak O. Pengadilan Negeri Yogyakarta, 1988; ’152/1987/PA.Yk: Mbak T. v. Mas S.’ Pengadilan Agama Yogyakarta, 1987. In these cases the wives accused their husbands of gambling, deserting them at the birth of their child and visiting prostitutes. The husband in the second case accused his wife of being a bad mother and successfully won custody of the child, indicating the difficulties which court emphasis on recrimination and shame posed for women.

Orang kota lebih ekspresionis, tidak ada basa-basi, gak malu di depan hakim, tapi orang desa malu di depan hakim ... Orang desa lebih realitis, minta cerai aja. Kota emosional, menunjukkan yang jelek-jelek. Itu perbedaan desa dan kota.

80 Pak Salim, interview, Yogyakarta, Pengadilan Agama Sleman, 4 November 2004.


Bahwa Pemohon tidak ada kecocokan dengan Termohon karena Termohon bersifat riya (pamer) ingin dipuja orang lain, berbangga dengan wiraswastanya dan membandingkan penghasilan antara Pemohon dan termohon, memberatkan harta daripada rumah tangga serta dibert nasehat/saran tidak diperhatikan.

82 Ibid., salinan putusan, 7. ‘Termohon setelah berdagang di pasar Wonosari tidak menjiwai sebagai ibu rumah tangga dan tidak memperdulikan Pemohon sebagai suami.’

83 Ibid., 21.


87 ‘Bahwa dari sekitar tahun diperlakukan dengan tidak baik oleh Tergugat. Penggugat lebih baik dian, mengalah dan menutupi persoalan rumah tangga kepada keluarga dengan harapan rumah tangga Penggugat kembali dan tetap bertanggung jawab juga dan utuh.’


89 I acknowledge (as I have outlined earlier in the chapter) that divorce was frequent among the Javanese peasantry. However, the perception of the small sample of women whom I interviewed, who were from middle-class and working-class backgrounds, was that divorce in the past was rare and taboo. In stating this, I am not suggesting that it is empirically true. Rather, I provide these comments as an illustration of the permeability of memory, and the influence of contemporary discourses on shame upon perceptions of the past.

90 A nyai is the wife of a kyai, a male Islamic religious authority who is often a head of an Islamic school, or pesantren. Lies Marcoes argues that the nyai ‘owes her influence in the first place to the status of her husband (or her father, who in many cases also was a kyai), but may considerably increase her status by her own efforts’. Marcoes distinguished a nyai, who ‘cannot be separated from her husband’s charisma and prestige’ from an ustazah, who is an independent female religious teacher in her own right. See L. Marcoes, ‘The Female Preacher as a
91 Mas Teguh, personal communication, Yogyakarta, 26 August 2004.
93 Bu Firyal, interview, Yogyakarta, 30 July 2004. ‘Orang yang bercerai dianggap jelek, paling wanita – menganggap buruk pada isteri.’
95 Bu Ndari, interview, Yogyakarta, 8 December 2004.
96 Bu Trias, interview, Yogyakarta, 7 January 2005. ‘Awal pernikahan ada komit, tidak berantakan selama tidak ada WIL/PIL. Saya kan memegang komit saya.’
97 Bu Ratna and Bu Dominika, personal communication, Yogyakarta, 3 December 2004.
100 Mbak Trisna, interview, Yogyakarta, 29 August 2004. ‘Lebih terhormat berpisah mati daripada cerai hidup.’
101 Bu Mardhiyah. ‘Suami omong cinta, tapi kasar [omong kotor, kasar], itu bukan cinta.’ ‘Dalam komunikasi yang baik siapa saja bisa didamaikan, dimusyawarah.’

4 Marital rights and obligations

7 N. Sullivan, Masters and Managers: A Study of Gender Relations in Urban Java, St Leonards: Allen and Unwin, 1994, pp. 33, 146. Some of Sullivan’s middle-class informants flatly denied their own money-making activities such as sewing, cleaning, selling home-cooked food, because it was important to their own sense of identity that men be seen as providers.


12 ‘Masalah Pembantu Rumah Tangga’. ‘Dipandang dari segi penghormatan pun akan lebih terhormat dari pada babu.’


Presiden Soeharto menyerukan kepada kaum ibu yang tergabung dalam Dharma Wanita agar menghindarkan atau mencegah perbuatan yang mendorong suami melakukan hal di luar kemampuannya, lebih-lebih lagi dengan jalan tidak halal. ‘Perbuatan-perbuatan semacam itu,’ kata Presiden, ‘bukan saja merugikan nama baik dan kebahagiaan kehidupan keluarga yang bersangkutan, tapi juga akan menurunkan martabat dan kewibawaan korps pegawai negeri dan pemerintah pada umumnya.’

15 Ibid., p. 8.

*President meminta agar kaum ibu menyadari bahwa kehidupan keluarga yang berbahagia jelas tidak ditentukan oleh kemewahan hidup secara material, melainkan banyak ditentukan oleh kemampuan membina keluarga sejahtera lahir dan batin.*


Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, pasal (article) 30.

'Suami isteri memikul kewajiban yang luhur untuk menegakkan rumah tangga yang menjadi dasar dari sususunan masyarakat.'

The Five-Year Development Plans (Repelita, Rencana Pembangunan Lima Tahun) were approved by the legislative parliament, the People’s Representative Council, Dewan Perwakilan Rakyat. The Guidelines for the Nation (Garis Besar Haluan Negara, GBHN) were released by the executive parliament, the People's Deliberative Assembly, Majelis Permusyawaratan Rakyat.


Ibid., pasal 80. 'Bermanfaat bagi agama, nusa dan bangsa.'

Ibid., pasal 80–4. 'Kewajiban utama bagi seorang isteri ialah berbakti lahir dan batin kepada suami di dalam batas-batas yang dibenarkan oleh hukum Islam.'


Ibid. ‘Mengatasi keadaan dan mencari penyelesaian secara bijaksana serta tidak bertindak sekenang-wenang.’

Bu Firyal, interview, Yogyakarta, 30 July 2004.


It should also be noted that marriage certificates include the ta’lik talak conditions, which if contravened by the husband enable the wife to request that talak divorce be pronounced by the Religious Court. Conditions which would enable the wife to make such an application include if she is deserted for two consecutive years, if her husband fails to provide maintenance for three months, if her husband beats her, or if he fails to take care of her for six months. These criteria are derived from Islamic law, or fiqh, but are also encompassed in the state interpretations of husbandly obligations listed in the front pages of
marriage certificates (for example, the husband’s obligation to provide maintenance for his wife).


34 See the Introduction for an overview of the relationship between Islam and the state.


37 Ibid., pp. 63–5. ‘Namun istri harus pandai menggunakan waktu di luar rumah seminimal mungkin, sekadar diperlukan untuk memenuhi keperluan-keperluan yang memang telah dizinkan suami.’ Women’s obligation to obey ‘disertai syarat-syarat yang tidak memberatkan istri’.


39 Ibid., p. 47.

Rumah tangga islami didirikan di atas dasar hak dan tanggung jawab bersama. Al-Qur’an telah menunjukkan aturan hidup berumah tangga, yaitu isteri mempunyai hak yang sama, seperti kewajiban yang menjadi tanggung jawabnya. Namun lelaki mempunyai satu derajat lebih tinggi, yaitu menjadi pemimpin keluarga atau pemimpin dalam masyarakat dan negara.


Kaum laki-laki itu adalah pemimpin bagi kaum wanita, oleh karena Allah telah melebihkan sebahagian mereka (laki-laki) atas sebahagian yang lain (wanita), dan karena mereka (laki-laki) telah menafkahkan sebagian dari harta mereka.


Kalimat ‘qawwam ala mar’ihi’ bermakna dia bertanggung jawab mengayomi seorang perempuan. Jadi laki-laki bertanggung jawab mengayomi perempuan yang menjadi bagian dari tanggung jawabnya dan tidak ada hubungannya dengan satu pihak superior dan pihak lainnya inferior.

For a more general debate on the translation of this verse, see Barlas, ‘Believing Women’ in Islam, pp. 186–7. Barlas argued that the correct translation of the verse describes men as ‘those who provide a means of support’. This refers to a desired state of affairs, where only some men have been given more economic advantages than some women, and does not signify the superiority of men over women, nor does it ascribe household leadership to men.


46 Wolf, *Factory Daughters*, pp. 60, 214–30. Wolf’s work on rural Javanese women and household strategies in the early 1980s reveals multiple marriages, women’s occasional refusal of parental choice of spouse, requests for divorce, and generally fluid family formations. This differs somewhat from the urban context which Blackburn and Martyn write about (as they also point out). Wolf’s depiction of rural women’s choices regarding marriage and divorce in the early 1980s would seem to demonstrate some continuity with the material I am analysing for an earlier period in Wates, the mid to late 1960s.

47 As stated in Chapter 3, the Wates Religious Court was the only court that could provide records pre-dating 1975, thus precluding an urban comparison in this section. Years were selected on the basis of availability of records.

48 Of these exceptions, two were filed on the basis of the husband’s insanity, and the third suit was filed by the KUA, requesting the invalidation of the husband’s second marriage, because his second wife was the sister of his first wife, a forbidden marriage partner in Islam; ‘11/1965/PA.Wates: Ny S. v. Mas T.’ Pengadilan Agama Wates, 1965; ‘14/1965/PA.Wates’: Pengadilan Agama Wates, 1965; ‘56/1967/PA.Wates: KUA Kalibuwang v. Bapak W.’ Pengadilan Agama Wates, 1967.


‘162/1975/PA.Yk: Ny P. v. Saudara H.’ Pengadilan Agama Yogyakarta, 1975. In Religious Courts, the claimant always pays the court costs. In State Courts, the judges will determine who pays the costs. It is usually the ‘loser’ of the case, but sometimes costs are divided between the two litigants.


As explained in Chapter 3 and the Introduction, 1999, the year when democratic elections were held, has been selected as the end point for my analysis of the New Order’s state regulation of marriage.


Baha ternyata pada saat-saat sekarang ini pihak Tergugat tidak lagi memenuhi kewajibannya sebagai seorang suami terhadap isterinya dan anaknya yaitu tidak memberi naftkah untuk hidup sehari-hari; bahwa disamping tidak memberi naftkah isteri dan anak, bahkan Tergugat malah menjadi beban berat bagi penggugat karena hanya sering pulang malam lalu pergi dan jarang ada di rumah; bahwa penggugat sudah berulang kali minta pada Tergugat dengan secara baik agar supaya ingat tanggung jawabnya sebagai seorang suami terhadap isteri dan anak, tetapi tidak pernah digubris.


This case was listed on a register of ‘research cases’ as an example of ‘Chinese divorce’ (Perceraian Tionghoa). The register is routinely provided to students.
conducting research for their final year thesis at the busy central Yogyakarta State Court. As such projects are frequently empirical and quantitative in focus, I suspect it was included as a stereotypical illustration of the contributing factors to Chinese divorce, particularly gambling. Ironically, the case reveals the same uses of discourses of rights and obligations which appear in Muslim and Christian divorce cases during the same period.

73 Lembaga Konsultasi dan Bantuan Hukum, Universitas Islam Indonesia, Legal Aid and Consultation Institute.

Termohon telah berusaha mengesampingkan naluri dan perasaannya sebagai seorang wanita dan seorang isteri yang dengan rasa ikhlas telah memperbolehkan Pemohon untuk menikah lagi asalkan pernikahan antara Pemohon dengan Termohon tetap utuh, hal tersebut merupakan suatu pengorbanan yang teramat besar dan mendalam dari seorang isteri kepada suaminya dalam usahanya untuk mempertahankan rumah tangganya.

76 '164/Pdt.G/1999/PA.Yk', berita acara pemeriksaan (proceedings of investigation), 12 April 1999. ‘Tidak bersedia untuk dicerai dengan alasan apapun.’ ‘Memperbaiki keadaan rumah tangga sampai keluarga menjadi harmonis kembali.’ ‘Prinsip saya kawin sekali tidak mau terjadi perceraian.’
77 Ibid., letter from Bapak A. to Ibu T., 28 October 1999.

The last pages of this decision were missing, so I do not know whether there were any female judges on the panel. As all other cases in the Wonosari sample were decided by an all-male panel, it is probable that this case was heard by the same panel.
80 Ibid., salinan putusan, 16.
81 Ibid., salinan putusan, 5.
sebaik-baiknya dengan Pemohon barangkali dapat dicari titik temu antara keduaanya kemudian dapat dibangun rumah tangga yang rukun dan bahagia. Namun, fakta menunjukkan bahwa ketika pemohon pulang dari Korea termohon tidak mau diajak berhubungan suami isteri bahkan Termohon meninggalkan Pemohon di rumah Termohon dan mengontrak rumah di Jalan Wonosari. Fakta menunjukkan bahwa tidak ada itikad baik dari Termohon untuk memperbaiki rumah tangganya dan karena itu Termohon termasuk isteri yang nusyuz.

83 For example, a male kyai in central Yogyakarta explained that men’s obligations were to protect, provide for and lead the family, and women’s role was to guard the family’s reputation, care for children and wash the clothes. Pak Hamid, interview, Yogyakarta, 30 July 2004.
84 Bu Arum, interview, Yogyakarta, 11 December 2004. ‘Mengabdi suami, tanggung jawab sebagai ibu rumah tangga, suami harus menafkahi keluarga.’
86 Bu Firyal.


87 Bu Ndari, interview, Yogyakarta, 8 December 2004. ‘Sama-sama, suami mencari naftkah, saya harus membantu. Suami harus mengerti, memberikan tanggung jawab dalam hal materi dan kasih sayang.’
89 Mbak Trisna, interview, Yogyakarta, 29 August 2004.


90 Mbak Trisna, interview, Yogyakarta, 30 September 2004. ‘Meninggalkan kewajiban sebagai isteri, nusyuz.’
93 Bu Novi and Bu Utari, interview, 2 June 2004. ‘Kewajiban perempuan – tak ceritkan kesulitan.’
94 Derita Di Balik Harmoni; Yogyakarta: Rifka Annisa Women’s Crisis Centre, c. 1999, p. 46. ‘Saya memang harus mengalahkan harga diri saya sendiri sebagai seorang isteri … biarlah saya yang hancur tetapi jangan anak-anak saya yang hancur.’

5 Women’s agency: acquiescence, co-optation and resistance

1 By this, I do not mean that women have identified a particular gender ideology and made a conscious decision to publicly accept or reject that ideology in the court. That is clearly too deterministic. Rather, I am suggesting that certain
gender ideologies were accorded currency by the state, or by male religious or community leaders. Women's actions in seeking divorce (which were of course necessarily self-interested), and the discourses they employed in the court, can be analysed in light of these gender hegemonies in order to understand which strategies were most effective.


5 Parker, ‘Introduction’, pp. 9, 12.


12 Ibid., p. 278.

13 Ibid., p. 275.


16 Ibid., p. 163.

17 Geertz, The Religion of Java, p. 245.

18 These cases were: 1965: 7; 1967: 48, 50, 53, 56; 1973: 3–5, 9, 19.

19 I argued in Chapter 3 that this was expressed through the phrase rela diputus kalah, that is, ‘willing to be adjudged to have lost’, or sudah merelakan diri, ‘has submitted oneself [to the court]’. For example, ‘7/1965/PA.Wates: Ny W. v. Mas K.’ Pengadilan Agama Wates, 1965.


22 Peletz, Islamic Modern, p. 130.


bilang terima isteri kedua, yang penting melihat anak. Laki-laki ingin nikah lagi bukan hal yang harus dibesar-besarkan. 'Kita sebagai wanita harus menerima.'

26 Polygamy, and its role in influencing women's decision to divorce, is an extremely important issue which is beyond the scope of this book. This is an area which would benefit from further research.


32 Bu Widya, interview, Yogyakarta, 10 August 2004.

33 Bu Novi, interview, Yogyakarta, 22 October 2004. Rifka Annisa was established in Yogyakarta in 1993. Its primary aim is to assist women who are victims of domestic violence (which is defined by the organization as psychological and ‘financial’ abuse as well as physical and sexual abuse). It has broadened its outreach since 1993, providing legal aid to any woman who requests it, as well as counselling services and setting up a community education centre in the Gunung Kidul district, south of Yogyakarta city. For details see Rifka Annisa, ‘Profil’, available at www.rifka-annisa.or.id/profil.php (accessed 2 February 2006).

34 I use the term ‘feminist’ here advisedly, acknowledging that while feminism is most certainly not monolithic, and is a term not palatable to all groups in Indonesian society, there are NGOs, of which LBH APIK is one, which characterize themselves in terms that do align with some of the ideologies of Western feminism. The organization, which was founded in 1995 by seven female lawyers including the well-known Nursyahbani Katjasungkana, states its aims as follows:

LBH APIK Jakarta is an institution that aims to create a fair, prosperous and democratic society, along with creating equality between men and
women in all aspects of life, whether that be political, economic, social or cultural. We aim to achieve this goal by creating a legal system that has a female perspective, that is a fair legal system that can be seen from the relationships of power in society – especially female–male relationships – by constantly working to eradicate gender inequality and injustice in all its forms.

LBH APIK Jakarta adalah lembaga yang bertujuan mewujudkan masyarakat yang adil, makmur dan demokratis, serta menciptakan kondisi yang setara antara perempuan dan laki-laki dalam segala aspek kehidupan, baik politik, ekonomi, sosial maupun budaya. Tujuan ini hendak dicapai dengan mewujudkan sistem hukum yang berperspektif perempuan yaitu sistem hukum yang adil dipandang dari pola hubungan kekuasaan dalam masyarakat – khususnya hubungan perempuan – laki-laki – dengan terus menerus berupaya menghapuskan ketidaksetaraan dan ketidakadilan jender dalam berbagai bentuknya.

(LBH APIK, ‘Profil LBH APIK’, available at www.lbh-apik.or.id/profil.htm [accessed 8 June 2006])


1 Bagaimana cara bagi kekayaan menurut hukum jika isteri yang memaksa minta cerai. Sedangkan ibu tiri saya tidak turut mencarinya?

2 Apakah dibenarkan oleh hukum tindakan ibu tiri saya yang membuat surat perjanjian tanpa sepenuhgetahuan ayah?

3 Apakah Kepala Desa berhak turut campur dalam masalah surat perjanjian ini karena dia yang mengesahkannya?

4 Bagaimana mengenai surat perjanjian yang pembuatannya tanpa diketahui BP4 (Pengadilan)? Apakah perjanjian itu sah?

5 Apakah saya (atau ayah saya) bisa mengajukan tuntun ke Pengadilan Agama mengenai kasus di atas?

40 These letters were retyped by staff at LBH APIK and filed, undated, with the responses. As they did not retain the original clippings, I cannot reference the newspaper issue in which they appeared, but rather have referenced them as an unpublished collection.


49 This was noted by a female State Court judge. Women who sued for divorce and also requested a property settlement often met with community disapproval and were deemed presumptuous, a sentiment encapsulated in the phrase *udah dicerai, masak minta-minta*, [‘she is] already divorced, how can [she] dare to ask [for more]?’ Bu Tuti, interview, Yogyakarta, 24 February 2005.

50 E. Sundari and M. G. Sumiarni, ‘Perlindungan Dalam Pelaksanaan Hukum Terhadap Posisi Wanita Dalam Perceraian Di Daerah Istimewa Yogyakarta’, *Justitia Et Pax* 20/12, 2000, pp. 67–8, 70–1. The Marriage Law simply states that ‘the Court may compel an ex-husband’ to pay maintenance (‘Pengadilan dapat mewajibkan kepada bekas suami’). The exact date range for this study was not explicated. The authors noted at one point that they had selected some cases from 1988 and 1997 from each court. Universitas Atma Jaya is a prominent private Catholic university in Yogyakarta.

51 Mas Bambang, personal communication, Yogyakarta, 14 October 2004, Bu Novi.


54 A. Jamil, ‘Strategi Penangan Perkara Perceraian Dan Harta Bersama Di Pengadilan Agama’, Lembaga Konsultasi dan Bantuan Hukum, UII, Yogyakarta, 18 February 2005. A Yogyakarta lawyer and academic, Abdul Jamil noted in this public seminar that this strategy is employed by both men and women, sometimes because they genuinely still wished to remain married to their spouse, and at other times out of a desire to prevent their spouse marrying another person.

55 ‘Drs’ and ‘Dra’ are abbreviations of *Dokterandus* (for men) and *Dokteranda* (for women) respectively, indicating that the title-bearer has obtained a postgraduate degree roughly equivalent to a Master’s.


57 ‘251/Pdt.G/1993/PA.Yk’, permohonan talak (request for talak divorce), p. 6. ‘That the respondent’s regret as detailed in point 18 turned out to be just lip service, rather the respondent’s bad disposition got worse’ (‘Bahwa penyesalan
Termohon seperti dalam point 18 tersebut ternyata hanya di bibir saja dan perangai buruk Termohon ternyata malah menjadi berkembang’.

58 Ibid., jawaban atas permohonan cerai (response to divorce request), p. 5. ‘Bahwa ternyata Pemohon belum puas dalam memfitnah Termohon, seolah-olah Termohon adalah wanita yang serba hina dan tidak punya harga diri sama sekali.’

59 Ibid., jawaban atas permohonan cerai, 6. ‘Bahwa seharusnya yang tidak tahan hidup adalah Termohon, namun berhubung Termohon adalah seorang istri yang sederhana maka dengan rasa iklas berkorban dan mengabdi kepada suami dan anak.’

60 Ibid., jawaban atas permohonan cerai, 7. ‘Kemudian jika mereka mentaatimu, maka jangalah kamu mencari-cari jalan untuk menyusahkannya.’

61 Ibid., jawaban atas permohonan cerai, 8. ‘Apakah seorang istri yang telah begitu berkorban baik lahir maupun batin dengan setia menjaga keutuhan rumah tangga, harus dengan begitu mudah dicerai oleh hanya karena suami bosan dan terlena dengan wanita lain.’


64 This case also illustrates how the Islamic Religious Court system and the civil State Court system overlap, even for Muslims. Although adultery is also regulated by Islamic law, there are no state legal frameworks which allow for such a case to be pursued in the Religious Courts. However, adultery is regulated by the Criminal Code (article 279), enabling both Muslims and non-Muslims to press charges against adulterous spouses in the State Courts (which deal with criminal matters, as well as civil law which encompasses non-Muslim marital issues). Such an overlap necessitates a macro-analysis of state gender ideologies as they apply to all religions. This is an enormous task and this book has attempted to make only a preliminary contribution.


Menimbang, bahwa mengenai tuntutan sebagian gaji dari Tergugat Rekonpensi untuk Penggugat Rekonpensi selama menjadi janda, karena dalam hukum Islam tidak ada kewajiban seorang beka suami memberikan nafkah kepada bekas isteri selama menjadi, lagi pula ketentuan sepertiga gaji dari seorang PNS kepada bekas isterinya adalah kewenangan dari atasan PNS yang bersangkutan maka tuntuan ini dikesampingkan.


69 ‘Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan’, pasal 35, 7.


71 See, for example, ‘1448 K/Sip/1974: Bapak H. v. Ibu L.’ in S. Soimin (ed.) Himpunan Yurisprudensi Tentang Hukum Perdata, Jakarta: Sinar Grafika, 1996. In this case concluded in 1976, the husband claimed that according to Batak (North Sumatran ethnic group) adat, divorced wives have no claim to marital property. The Mahkamah Agung found that the Marriage Law allows an equal
division of marital property and granted half of the property to the wife. Moreover, there was written evidence of a church ceremony, but no written proof of an adat ceremony. The judges claimed that as a customary marriage could not be proven, the husband’s denial of the wife’s property claims on a customary basis could not be admitted.

73 Ibid., salinan putusan, 9. ‘Barang gono-gini adalah barang yang diperoleh kedua belah pihak suami-isteri selama dalam Perkawinan walaupun uang pembelinya berasal dari mana.’

Pendapat ini tidak benar sama sekali; sebab tidak kurang-kurang orang tua memberi sesuatu barang atau memberi suatu modal kepada anaknya pada saat anaknya itu sudah berumah tangga (dikawinkan) dengan menantunya dan barang/modal itu kemudian merupakan barang gawan si penerima pemberian dari orang tuannya itu. Tidak kurang-kurang pula bahwa barang gawan dijual kemudian dibelikan lagi barang yang lebih disenangi, sehingga barang yang dibeli dari hasil penjualan barang gawan itu tetap berstatus barang-gawan. Demikianlah hukum adat yang berlaku. Padahal timbuhnya barang gawan ini di dalam/selama pemilik barang gawan kawin dengan suaminya/isterinya.

75 Ibid.


76 Ibid.


79 Ibid., salinan putusan, p. 5. ‘Anak-anak telah teracuni sikap ibunya yang meremehkan Bapaknya.’
80 Ibid., salinan putusan, pp. 8–16.
81 Ibid., salinan putusan, p. 23.
This practice has been recorded in numerous ethnographic accounts of Javanese marriage arrangements. See, for example, J. Berninghausen and B. Kerstan, *Forging New Paths: Feminist Social Methodology and Rural Women in Java*, trans. B. A. Reeves, London: Zed Books, 1992, p. 117.

Bu Sarwendah, interview, Yogyakarta, 11 December 2004. ‘Sholat, dia akan menjadi baik, tapi kalau habis tiga kali, akan hilang lahir batin apa pun, hambar.’

6 Modernity, religion and nation: divorce and the production of gendered identities

1 E. Locher-Scholten, ‘Marriage, Morality and Modernity: The 1937 Debate on Monogamy’, in E. Locher-Scholten (ed.) *Women and the Colonial State: Essays on Gender and Modernity in the Netherlands Indies, 1900–1942*, Amsterdam: Amsterdam University Press, 2000, pp. 187–218, 196. Locher-Scholten discusses the unsuccessful 1937 Marriage Ordinance bill, withdrawn through Islamic opposition. It was to allow voluntary registration of a monogamous marriage (for any religious group including Muslims), with divorce only possible if obtained by court order. This registration was compulsory for European women (i.e. those women legally defined as European) married to Indonesian men. Locher-Scholten describes this push to legislate for monogamy, with special focus on European women, as

part of a civilizing offensive, which drew elite women and men more firmly into the sphere of Western family life. The expansion of modernity implied the Westernization of the Indonesian elite, which would strengthen the colonial state, with the family as its cornerstone.

(Ibid., p. 196)


5 H. Geertz, *The Javanese Family: A Study of Kinship and Socialization*, New York: Free Press of Glencoe, 1961, pp. 135–7. At a 2005 seminar at the legal aid NGO, LKBH-UII, the speaker noted that if a client was opposed to divorce he would ask them the following question: ‘What is better? To divorce without sin? Or to withstand a household that constantly sins because the husband and wife’s obligations are not fulfilled?’ (‘Apa yang lebih baik? Cerai tanpa dosa? Atau rumah tangga dipertahankan berdosa terus karena kewajiban suami-isteri tidak dipenuhi?’). Pak Adnan, personal communication, Yogyakarta, 18 February 2005.


7 Ibid., pp. 110–12, 20–1.


9 See also my discussion of this concept in the Introduction.


12 Ibid., p. 17. See also G. Heng, “‘A Great Way to Fly’: Nationalism, the State, and the Varieties of Third-World Feminism’, in M. J. Alexander and C. Mohanty

14 Martyn, *The Women’s Movement in Post-Colonial Indonesia*, p. 34.


18 Heng, “‘A Great Way to Fly’: Nationalism, the State, and the Varities of Third-World Feminism”, p. 33. Heng argues that accusations of Westernization and/or modernization have been frequently employed against Third World feminist movements by male nationalists. Anxieties about modernity, Westernization and the concomitant social change have therefore historically been inextricable from fears about changing gender roles, in both the Western and the developing world.


20 Chalmers, *Indonesia*, p. 125. See Chapter 4 of this volume for an overview of religious diversity, as well as the state pressure exerted upon adherents of local religions to convert to a world religion.

21 Ibid., pp. 5–6, 16–19, 135.


27 Chalmers, *Indonesia*, pp. 112, 40. Buddhism was recognized as an official religion in 1983. Confucianism was originally accepted by the Indonesian state as an official religion in 1965, but this recognition was revoked in 1979.

Christianity were: 117/Pdt.G/1992/PN.Yk, 11/Pdt.G/2003/PN.Slm; from Christianity to Islam: 67/Pdt.G/2000/PA.Yk. Cases in which the husband converted from Islam to Christianity were: 15/Pdt.G/1998/PN.Slmn; and from Christianity to Islam: 136/Pdt.G/2002/PA.Yk and 152/1987/PA.Yk. These were the only cases in my entire data-set (of 151 unpublished cases) that explicitly referenced religious differences in the marriage and divorce.

29 ‘Tragedi Cinta Dan Keluarga: Orang Tua Gugat Putrinya Agar Cerai’, Kedaulatan Rakyat, 1 November 1989. ‘Namun sayang, di antara mereka membentang jurang yang menurut orang tua mereka terlalu dalam.’

30 G. W. Jones, Marriage and Divorce in Islamic South-East Asia, Kuala Lumpur and Melbourne: Oxford University Press, 1994. Jones provides a detailed survey of these changes.

31 ‘67/Pdt.G/2000/PA.Yk’.

32 Ibid.

33 ‘117/Pdt.G/1992/PN.Yk’.

34 ‘11/Pdt.G/2003/PN.Slmn’. ‘Orang tua sangat marah dikarenakan saya murtad dari agama saya (saya Islam pindah Katholik) dan saya lebih berat mengikuti suami daripada orang tua, dikarenakan cinta saya terhadap suami.’


36 Ibid., berita acara, 10 March 2003. ‘Ya, saya mendapatkan dispensasi dari Gereja sehingga bisa menikah di Gereja. Saya kurang paham apakah yang dimaksud dengan Pernikahan di gereja hanyalah pemberkatan saja, karena bagi saya pernikahan itu “sakral” bukan cuma symbol saja.’

37 Brenner, The Domestication of Desire.


40 I. F. Widianty, ‘Tinjauan Hukum Terhadap Perkawinan Di Bawah Tangan Di Kalangan Mahasiswa Menurut Undang-Undang No. 1 Tahun 1974 Di Daerah Istimewa Yogyakarta’, unpublished undergraduate thesis, Universitas Islam Indonesia, 2000, p. 51. In this thesis Widianty uses the term kawin dibawah tangan (’underhand marriage’) to refer to a marriage that was publicized and legal according to Islam but not registered at the KUA, and kawin siri to refer to a secret marriage that was therefore invalid in Islamic terms.

41 Pak Mohammad, interview, Yogyakarta, 10 August 2004. A judge at the Yogyakarta Religious High Court explained that there are two meanings to the term kawin siri. In Islamic terms, it means that the marriage was not attended by witnesses and so is invalid. In legal terms (used for the purposes of Religious Courts in Indonesia), it refers to a marriage that was not registered with the KUA.

42 ‘Pelaksanaan UU Perkawinan Perlu Penanganan Cermat’, Kedaulatan Rakyat, 17 March 1983. The Yogyakarta Regional Parliament’s Special Commission E on Social Welfare (KESRA, Kesejahteraan Rakyat) found in 1983 that unregistered marriage was rampant in the Yogyakarta region, and that this threatened to ‘emerge as the norm’ (akan timbulnya kebiasaan kawin kampung). See Chapter 3 for a more detailed discussion of the findings of this Commission and the reporting on this issue. D. T. Hamami, ‘Langkah Menuju Pemasyarakatan UU Perkawinan’, Pelita, 7 August 1985. Hamami reported that villagers frequently married according to Islamic law only, because they thought that the Marriage Law contravened divine law.
47 Ibid., pp. 412, 5. ‘Keadaan seperti itu tidak dapat dibiarkan terus, sebab apabila didiamkan tentu akan menimbulkan dampak negatif, baik berupa kelabilan rumah tangga maupun terganggunya ketenteraman dan keamanan masyarakat, bahkan lebih jauhnya stabilitias nasional akan terganggu.’
48 Ibid., p. 412. ‘Kedudukan keluarga sebagai unit terkecil dari masyarakat yang sangat fundamental dan mempunyai arti serta peranan penting bagi keberhasilan pembangunan manusia seutuhnya.’
50 In making this statement, I am of course aware that unregistered marriage is also a function of poverty, and/or a lack of knowledge of state requirements. However, the cases I discussed here were of men who had registered their first marriages and then refused to register subsequent marriages in order to avoid state restrictions on polygamy. Furthermore, the legislation released on this issue refers to men and women paying bribes to engage in polygamy, or inter-religious marriage, or in order to obtain divorce. In other words, some citizens actively attempted to manipulate state regulations on marriage, in manners that were quite contrary to state intent. It is this sort of behaviour that I am referring to when I say that some unregistered marriage constituted a resistance to the state.


55 ‘Rhoma Irama: “Saya Memakai Undang-Undang Allah”’, Forum Keadilan XII/5, 8 June 2003, p. 14. ‘Yang penting bagi saya, perkawinan itu halal secara agama.’ Itu kan ketentuan Peraturan Pemerintah (PP) Nomor 10, bukan PP Allah. Saya memakai Undang-Undang Allah.’ Irama, in his reference to PP 10 is erroneously citing PP 10/1983, the Civil Servants’ Marriage Regulation which requires civil servants to obtain the permission of their superiors to engage in a polygamous marriage. The Marriage Law UU 1/74 also requires all men to obtain the permission of their first wife and the Religious Court before they may marry polygamously.
57 Ibid., p. 24. ‘Ia bahkan bersedia menjadi isteri kedua tanpa menuntut pemberian na'fak lahir batin pada suami, karena yang ia butuhkan hanya status sebagai isteri.’
58 R. E. Elson, ‘Constructing the Nation: Ethnicity, Race, Modernity and Citizenship in Early Indonesian Thought’, Asian Ethnicity 6/3, October 2005, pp. 145–60. Elson details the debates of early Indonesian nationalists, including Sukarno, Hatta and the Budi Utomo and Sarekat Islam organizations, regarding what should constitute an ‘Indonesian’ citizen and state. With few exceptions, this was often based upon a Malay–Muslim identity, and excluded Chinese and Arabic residents, as well as those of mixed race.
59 Chalmers, Indonesia, p. 23.
60 Feminist scholars have, however, provided some incisive analyses of the operation and use of gender within the male-dominated nationalist movement. See particularly Frances Gouda’s insightful examination of male nationalists’ attempts to create a gender-neutral nationalist rhetoric, which was used to subvert Dutch metaphors of colonial parental control of indigenous subjects. F. Gouda, ‘Good Mothers, Medeas, or Jezebels: Feminine Imagery in Colonial and Anticolonial Rhetoric in the Dutch East Indies, 1900–1942’, in F. Gouda and J. Clancy-Smith (eds) Domesticating the Empire: Race, Gender, and Family Life in French and Dutch Colonialism, Charlottesville: University Press of Virginia, 1998.
63 Jones, Marriage and Divorce in Islamic South-East Asia, p. 24. Jones notes that literacy rates in Indonesia rose from 27 per cent in 1960 to 66 per cent in 1980. When these statistics were further analysed according to gender and age, older women exhibited lower literacy rates than men, and young people in general benefited from compulsory primary school education from the mid-1970s and so demonstrated higher literacy rates.
64 ‘KITLV (Royal Netherlands Institute of Southeast Asian and Caribbean Studies)’, available at www.kitlv.nl/ (accessed 19 July 2006). Photocopies of these books were obtained from KITLV. I conducted a similar search of the online catalogue of the National Library of Indonesia, which revealed 27 titles, all of which were academic or Islamic texts. This absence of fiction dealing with these topics does not imply that such novels do not exist. Rather, it is a reflection of the difficult issues facing developing countries gathering and maintaining literary collections.
65 Clearly this monograph makes no claims to be a literary study, and it was not possible to read all examples of fiction on women and divorce. The examples
I chose to read are necessarily selective, and intended to enrich and support the focus of the book: that is, court records. A systematic examination of all literature on divorce would necessitate a separate study.

66 M. D. Sutojo, *Djanda Muda Haus Tjinta*, Tasikmalaja: n.p., c. 1950. Javanese names ending in ‘o’ are generally male names. However, this could also be a pseudonym or a woman taking on the name of her husband. Although Javanese traditionally have only one name, some women after marriage are referred to in public using their husband’s name as, for example, Ibu Widodo, Mrs Widodo, the wife of Widodo.

67 Ibid., p. 15.


68 Ibid., p. 28. ‘Lupakah engkau akan djandjimun sendiri, untuk memperlakui aku sebagai istri dalam pengertian modern? Tidak menurut konsepsi kuno, dimana dunia seorang istri dalam rumah tangga hanya terbatas dari lingkungan sumur dapur dan kamar tidur!’

69 Ibid., p. 32.


75 ‘Apa Dan Siapa: Nurhayati Dini’. ‘Menikah, dan mengikat diri, untuk apa?’


N. D. Adyasaputra, “‘Sex Dengan Ex,’” Kumpul Kebo Gaya Modern’, Sinar Harapan, 10 May 1986. The English translation of this title doesn’t fully convey the sense of the Indonesian phrase kumpul kebo, which means literally ‘living together like buffaloes’, a socially disapproved but not unheard-of practice.

Masyarakat kitapun sekarang sudah tidak begitu peka lagi dengan hal-hal yang demikian. Sudah dianggap biasa, merupakan pembawaan zaman, yang tidak perlu lagi diributkan. Umumnya orang menganggap sebagai urusan pribadi, yang tidak perlu dicampuri fihak luar, selama tidak sampai menimbulkan heboh dan merusak ketenteraman lingkungan. Juga apabila kemudian terjadi kehebohan di sekitar hubungan yang tidak resmi itu pun biasanya dapat didamaikan secara kekeluargaan, dengan ikut serta kewenangan pengurus RT, atau RW. Dalam hal ini, biasanya dapat dibereskan dengan jalan ‘kawin tangkapan’.

Ibid.

82 ‘H. Amidhan: “Mut’ah Dan Siri Melanggar Undang-Undang”’. ‘Ibu karena mereka meniru orang barat, dan bagi orang barat itu dianggap biasa saja.’
84 Brenner, The Domestication of Desire, p. 248. Brenner also cited one of Hawari’s presentations. At the time of her writing he was a psychiatrist and member of the medical faculty of Universitas Indonesia.
88 Ibid. p. 19. ‘Maka tidak adil bila setelah Tergugat baru tiga tahun kawin dengan isteri kedua yaitu tahun 1966 maka tanah tegal, perkara dan rumah dianggap hukum barang gono gini Penggugat Tergugat karena alasan yang menganti rugi Tergugat sudah dengan isteri kedua.’
Penggugat tetap berusaha untuk mempertahankan dan tetap bertindak sebagai kepala rumah tangga yang bertanggung jawab, sehingga sampai lahir 4 (empat) orang anak.’ Namun ternyata Tergugat semakin berani dan sangat menghina kepada Penggugat, Tergugat sangat egois dan sombong yang menganggap Penggugat sebagai seorang/keluarga yang terhina.’


91 The enactment of religious identity has become a key marker of one’s level of modernity in contemporary Java. This sometimes produces unusual results. A young kyai who conducted exorcisms of Javanese spirits in Yogyakarta informed me that before he agreed to cast out the spirits, he would always seek an assurance from his clients that they would abandon such Javanist beliefs and henceforth follow a ‘pure’ (murni) form of Islam, before proceeding to exorcise the same supernatural creatures (mahkluk halus) that he had exhorted his clients to reject all belief in. Mas Adi, personal communication, Yogyakarta, 7 June 2004.

‘92 ‘52/Pdt.G/2003/PN.Slmn’, salinan putusan, p. 5. ‘Saya tidak bersedia dicerai dengan alasan untuk kepentingan anak-anak, agar anak-anak tersebut dapat hidup baik dan wajar, karena masih mempunyai ayah dan ibu; Adapun suami saya tidak mau kumpul serumah dengan saya, saya tidak berkeberatan.’

93 Ibid., berita acara, 15 July 2003. ‘Saya sebagai wanita yang dianggap lemah oleh suami saya hanya untuk tambal butuh, setelah tua saya dicampakkan begitu saja (di buang begitu saja).’

94 See Chapter 3 for a brief overview of the decline in divorce rates in Java from the 1950s. Bu Mawar, interview, Yogyakarta, 30 July 2004; Bu Nur, interview, Yogyakarta, 28 February 2005; Pak Wibowo and Bu Eni, personal communication, Yogyakarta, 10 November 2004.


96 Bu Nur. ‘Dulu, menikah, kan, sekali aja.’ ‘Nggak lagi depend, lebih berani daripada kalau saya gantung kepada suami.’

97 Pak Wibowo, personal communication, Yogyakarta, 29 May 2004. This conversation was in English.

Conclusion


2 This is a relatively new area of scholarship. The work of Timothy Lindsey and M. B. Hooker provide particularly useful analyses of the complexities of the Indonesian legal system, with Lindsey’s work focusing on issues of governance, and Hooker on the influence of colonial legal codes and Islamic and adat law. M. B. Hooker, Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws, Oxford: Clarendon Press, 1975; T. Lindsey (ed.) Indonesia: Law and Society, Leichardt, NSW: Federation Press, 1999.


4 As I have argued in the Introduction and throughout this study, state control is an extremely complex phenomenon, and there are many ways in which it is exercised (for example, through family, marriage, education, access to land,
citizenship and taxation). This book has attempted to demonstrate how the particular case of marriage was harnessed by the state.

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