

5 The Islamic Court of Bulukumba and Women's Access to Divorce and Post-Divorce Rights

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Bulukumba is a *kabupaten* (district) on the south-eastern edge of the province of South Sulawesi.¹ The Islamic court is located in the sub-district Ujung Bulu. From Makassar, the capital city of South Sulawesi, it is a 153-km and four-hour-ride to the east along a sometimes bumpy coastal road. In 2009, Bulukumba had 394,746 inhabitants of whom 394,397 were registered as Muslim. At present, the 1,155 square km of Bulukumba's area consists of ten *kecamatan* (sub-districts) 27 *kelurahan* (town quarters) and 99 *desa* (villages). Bulukumba is largely an agrarian district: 67 per cent of the working population are farmers; 14 per cent are involved in trade; 8 per cent work in (governmental) services; and 5e per cent in industry.²

1 Introduction

This case study of the Islamic court in Bulukumba, South Sulawesi, is part of a broader research about the relationship between the state, Islam and society in Indonesia. It contributes to Dr Nurlaelawati's research that concerns the role the Islamic court plays regarding women's and children's rights. Based on field work that I conducted from May to August 2011 in Bulukumba this case study looks at the role that the (state) Islamic court plays in Bulukumba's society and focuses on whether women access the court in divorce and post-divorce matters, in which cases and why (not).

As elsewhere in Indonesia and the Islamic world, Bulukumba has issued so-called Sharia byelaws that attempt to regulate public morality and especially (Muslim) women's dress. Through looking at women's

1 The district of Bulukumba has a long history of Dutch rule, which started several years after the Bungaya treaty of 1667. Shortly afterwards, the VOC erected fortress Boele Comba.

2 *Bulukumba dalam Angka 2010*, Pemerintah Kabupaten Bulukumba, 2011.

agency in divorce, I will assess whether those regulations concerning the public sphere signal a stronger control over women in the private sphere. A second focus in this study is the relationship between rules and practice, or in this case rights and practice. Does the fact that, according to Indonesian family law, Muslim women and their children have rights to support and marital property also mean that they can achieve those rights in practice? Through qualitative and quantitative data acquired during a four-month fieldwork period, I try to answer this question and place the answer in the social and cultural context of the women concerned. Finally, this case study looks at the role of the judge, and especially whether the use of judicial discretion is favourable or unfavourable to the women and children involved.

Below I will first give a historical background of Bulukumba, its Islamic court and the Sharia byelaws, before I turn to the main subject of the study, the contemporary Islamic court of Bulukumba and its role in providing divorce and post-divorce rights to women.

2 Bulukumba, its Islamic Court and its Sharia Byelaws

2.1 THE ISLAMIC COURT FORMALLY ESTABLISHED IN SOUTH SULAWESI

On 17 August 1945 Sukarno and Mohammad Hatta proclaimed the Republic of Indonesia. To the disappointment of some Islamist groups the Indonesian Constitution of 1945 was not based on the Sharia but on the Pancasila which in one of its pillars speaks of 'the belief in one God' and did not specifically mention Islam. Nonetheless, the Indonesian political and legal system is not secular and gives ample room for Islamic institutions. In 1946 the Ministry of Religion was established which became a bulwark of politicians of the Muslim parties and a supporter of Islamic courts.³ Even though a strong faction of non-Muslim political parties in the national Parliament wanted to do away altogether with the Islamic court, the Muslim parties succeeded in preventing this from happening. Eventually a national Islamic court system was set up by the central government in Jakarta.

In the late colonial period, the Dutch only recognised Islamic courts in Java, Madura and South Kalimantan and consequently in South Sulawesi – where Islamic courts had existed,⁴ but were not formally

3 Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (Berkeley: University of California Press, 1972).

4 *Regeeringsrapporten over de Mohammedaansche Rechtspraak op de Buitenbezittingen*

recognised by the Dutch; it was adat courts that formally were competent to adjudicate on cases pertaining to marriage and divorce. Government Regulation 45/1957 regulated that all districts outside Java ought to set up an Islamic court – including regions where previously no Islamic courts had existed – with competence in marriage and divorce matters. The Marriage Law of 1974 formally and legally established the Islamic court's competence in Muslim marriage and divorce, a competence which was broadened with inheritance and *waqf* (religious endowments) matters in 1989 and Sharia economics in 2006. As a result of the Government Regulation of 1957, Islamic courts were set up in each district in South Sulawesi.

2.2 THE DARUL ISLAM AND THE INCORPORATION OF THE MILITARY IN THE TRADITIONAL ARISTOCRACY

When the Dutch decided to recognise Indonesia's independence in 1949, the guerrilla warfare that marked the independence struggle in South Sulawesi was far from over. The Indonesian national army did not incorporate all the guerrillas that had fought against the Dutch, meaning that many dissatisfied fighters roamed the countryside of South Sulawesi. In 1951, Sukarno turned the Indonesian federation into a unitary republic, which – especially outside Java – met with strong resistance. Moreover, contrary to what the more Islamist guerrilla groups had hoped for, the Indonesian state did not become an Islamic state based on Sharia. When Kahar Muzakkar decided to join the Islamic rebellion of the Darul Islam and become its leader in South Sulawesi, he attracted substantial support from these dissatisfied guerrillas.

In the end, it took the Indonesian forces 14 years to defeat the Darul Islam rebellion in South Sulawesi. In 1965, Kahar Muzakkar was killed by Indonesian forces in an ambush. The same year saw the failed communist coup which was followed by the wiping out of the communist party and the coming to power of General Suharto. Gradually, a new military order was installed in Indonesia. In South Sulawesi the new military elite merged with the old aristocratic elite. As a result, the old patron–client relations between the aristocracy and their followers survived the New Order and remained the power base of the ruling clans of South Sulawesi.

Even so, the imagined local history of the Darul Islam remained attractive for those regional Islamists who opposed the customary base

gen commissioned by circularir 1876 No. 7276/8576 of the Department of Justice. Adatrechtbundel I: 225–234.

for power as well as for those regionalists who opposed centralised power in Jakarta. As a result, Islamic values increasingly became part of the local identity of the Bugis and Makassarese in South Sulawesi, and when the New Order ended and regional identity politics started, Islamic values increasingly became part of local political discourses.

2.3 ISLAMISATION OF POLITICS IN SOUTH SULAWESI AFTER 1998

After the fall of Suharto in 1998 Islamist ideas that had been repressed came to the surface. In 2000, the Preparatory Committee for the Implementation of the Sharia in Indonesia (Komite Persiapan Penerapan Syariah se-Indonesia, KPPSI) was founded during a meeting in Makassar with the participation of representatives of all major Muslim organisations (the NU, Muhammadiyah, the MUI, the ICMI, the HMI, the DDI and others) and a variety of prominent figures including Jusuf Kalla (vice-president of Indonesia between 2004 and 2009), the president of the Partai Islam seMalaysia (PAS), the deans of Universitas Muslim Indonesia and the Law Faculty of Universitas Hasanuddin, and the infamous Abu Bakar Ba'asyir.

Not surprisingly, the main point on the KPPSI's agenda was the incorporation of Sharia-inspired regulations into the legal system of South Sulawesi. Politically, the KPPSI took, and still takes, an anti-New Order and anti-corruption stance. Sharia will increase law and order, so the argument goes. Moreover, the KPPSI argued that the Sharia policy for Aceh has opened up the legal possibility for a further 'shariatisation' of regions with a traditionally strong Islamic character.⁵

The members at the first meeting agreed to establish the Laskar Jundullah, a paramilitary organisation that could be used to pressurise politicians to adopt Sharia-inspired regulations and to oversee their enforcement. Furthermore, in an act of symbolism, Abdul Azis Kahar Muzakkar, the son of the executed Darul Islam leader of South Sulawesi, was chosen as head of the executive board of the KPPSI.

The KPPSI lost its political legitimacy due to terrorism allegations against some of the members of Laskar Jundullah after several bomb attacks hit Makassar in the years 2000 to 2004, as well as the latter's alleged involvement in the interreligious conflict in Poso in the same period.⁶ The Sharia agenda of the KPPSI, however, was taken up by the

5 Michael Buehler, *Democratization and Islamization: Indonesia's non fundamentalist sources of Shari'a law*. Paper presented at the AAS Annual meeting, Atlanta, USA, 3–6 April 2008.

6 Ibid.

mainstream political parties in South Sulawesi that typically are headed by members of the local aristocracy.

Michael Buehler sheds light on the possible political motives for the Islamic turn of the nobility.⁷ First, the Sharia agenda includes regulations concerning the management of *zakat* (mandatory charity). Those *zakat* regulations introduced a fixed *zakat* tax on the salaries of civil servants, which ensures a steady flow of money intended for Islamic charity. Through the distribution of Islamic charity money, the district heads can play their traditional role as patrons by creating and capitalising on pyramidal hierarchies in the Islamic networks. In return for the prioritisation of Islamic matters and an increase in funds the religious figures (*ustadz(a)* and *ulama*) are expected to act as brokers for those in power. As of 2007, all Buginese and Makassarese majority districts had enacted Sharia-inspired regulations, Bulukumba being one of the first.⁸

2.4 BULUKUMBA'S SHARIA BYELAWS

The district head of Bulukumba for the years 1995–2005, Patabai Pabokori, a high noble and KPPSI member since its establishment in 2000, has actively promoted and introduced Sharia byelaws in Bulukumba. Since 2002, Sharia byelaws have been introduced concerning prohibitions on alcohol,⁹ the management of Islamic charity (*zakat*, *infaq* and *sedekah*),¹⁰ Muslim dress-codes in governmental buildings¹¹ and the ability to recite the Qur'an set as a requirement for marriage, secondary school and certain positions in the bureaucracy.¹²

In addition to that, 12 *desa percontohan* (model villages) or *desa Muslim* (Muslim villages) were established (at least one in each sub-district), the apparatus of which is expected to encourage 'adherence to the Sharia in every day life of the inhabitants of the village' and to set the example for other villages in the sub-district. The introduction of Sharia byelaws in Bulukumba has attracted media attention,¹³ and the move by the Muslim

7 Michael Buehler, 'The rise of shari'a by-laws in Indonesian districts: an indication for changing patterns of power accumulation and political corruption', *South East Asia Research*, 2008, 16 (2): 255–285.

8 Michael Buehler, 'The rise of shari'a by-laws in Indonesian districts', 2008.

9 Local regulation No. 3 of 2002.

10 Local regulation No. 2 of 2003.

11 Local regulation No. 5 of 2003 and local regulation No. 6 of 2005.

12 Local regulation No. 6 of 2005.

13 See for example Gamal Ferdhi, Nurul H. Maarif, 'Depancasilaisasi Lewat Perda si', *The Wahid Institute edisi VII*, in: *Gatra*, edisi 24/XII, 29 April 2006; Subair

village council of Padang – as one of the first places outside Aceh – to implement caning as a penalty for close proximity with the opposite sex (*khalwat*) in 2005 was even taken up by the National Commission for the Elimination of Violence against Women (Komisi Nasional Anti Kekerasan Terhadap Perempuan, Komnas Perempuan) in 2009.

In 2007, Bulukumba's Sharia politics reached the national newspapers once again when desa Padang wanted to introduce the punishment of amputation for theft. This time, the district government intervened and declared that caning and amputations are illegal under Indonesian law and the deputy-bupati stated that since 'Bulukumba is not an independent republic' the practices are illegal in Bulukumba.¹⁴ According to a female activist from the village, who had testified for Komnas Perempuan in one of the caning cases, no new caning punishments have taken place since.¹⁵

Students of the Teachers Academy for Islamic Studies (Sekolah Tinggi Agama Islam, STAI) Al-Gazali, who have assisted me with my field work, told me that district head Patabai Pabokori's successors (AM Sukri Sappewali (2005–2010) and Zainuddin Hasan (2010–present)) indeed are more moderate with regard to Sharia policies, even if the Sharia byelaws remain in force. They explained to me that this can be partly explained by the collapse of the Laskar Jundullah who used to act as some kind of 'Sharia police'. Although I had not been in Bulukumba before 2010 and I cannot compare the situation with that in 2005, I did notice that in at least one Muslim village there were Muslim women who did not wear a veil in public and, moreover, did not object to being interviewed by a male Western researcher and a male research assistant without a male relative being present – acts which can be considered to be contrary to the aim of Muslim villages implementing Sharia values in the every day life of the villagers.¹⁶

Such experiences give the impression that the height of the *syariasasi* (shariatisation) in Bulukumba is behind us. Moreover, if Michael Buehler's analysis is right, then the local elite was interested not so much in the *syariasasi* itself, but more in the patronage networks they could build through the process. This is not to say that the Sharia byelaws

Umam, 'Formalisasi Syarat Islam Perjuangan Ahistori: Belajar dari Bulukumba dan Luwu', *the Wahid Institute*, Edisi 1, November 2005–February 2006.

14 Abdul Manan and Irmawati, 'Bukan Republik Bulukumba', *Tempo*, Edisi 41/xxxvi/03, 3–9 December 2007.

15 Interview with Bu Esse of the local women's organisation Sipakatua Sipakalebbi, 9 November 2010, Bulukumba.

16 My own observation during an interview with Bu M in desa Muslim Balong, kecamatan Ujung Loe, Bulukumba, 23 July 2011.



Islamic Court of Justice, Bulukumba

are without effect. Government offices implement the veiling obligation in government buildings and refuse to help unveiled Muslim women.¹⁷ Due to public pressure, the abovementioned female activist from desa Muslim Padang, currently always wears a veil in public, whilst before 2003 she never did so.

2.5 THE ISLAMIC COURT AND THE SHARIA BYELAWS

The Islamic court of Bulukumba also implements the veiling regulation, although no visible signs are displayed explicitly instructing women to do so. Pak Muhammad Rusydi Thahir, the head of the Islamic court of Bulukumba in 2010–2011, is an outspoken proponent of the Sharia byelaws. According to him, they will bring benefit to the community (*kemaslahatan*) as Allah will reward good conduct. He did not look favourably on gender activists and the researchers of Komnas Perempuan, who, he said, came to Bulukumba for a few days in 2009 and, based on very little knowledge, wrote a long and judgemental report.¹⁸

¹⁷ Interview with Nurlaila Umat, an official of KemenAg Bulukumba, Urusan Agama Islam, 3 August 2011.

¹⁸ Interview with Pak Muhammad Rusydi Thahir, the head of the Islamic court of Bulukumba, 9 November 2010.

As a consequence of the veiling policy, women who do not wear a veil on a daily basis will put on a veil before entering the court and take it off again on leaving. In the 100 plus hearings studied for this research, I observed only one occasion when an unveiled woman was able to enter the courtroom. It concerned a woman of high status whom the clerks (and the judges) clearly did not dare to correct. On another occasion, an unveiled woman who came to the Islamic court as a witness and had not brought a veil with her was requested by the assistant-clerk to put on a *mukenah* (praying dress for Muslim women) instead, before entering the court room.

3 The Islamic Court of Bulukumba and Women's Divorce Rights

3.1 DIVORCE IN BULUKUMBA: RIGHTS AWARENESS AND WOMEN'S AGENCY IN DIVORCE

Although it perhaps seems to make sense to start with marriage and proceed with divorce, I will focus on divorce in Bulukumba first, as divorce is the research object through which the position and functioning of the Islamic court is assessed. Marriage, on the other hand, is made subsidiary to divorce and is only examined in so far its local characteristics are relevant to divorce and post-divorce rights in Bulukumba.

There are no statistics about the divorce rate in Bulukumba and a short fieldwork period does not provide enough data to calculate the probability in a given year that a marriage will end in divorce. Therefore I use an alternative way to calculate the divorce rate, that is by dividing the number of divorces in a given year with the number of marriages in the same year. According to the annual report of the Islamic court of Bulukumba of 2008, 426 divorce requests were registered that year. The same year, 3,700 marriages were concluded and, thus, the divorce rate of Bulukumba in 2008 was about 11.5 per cent, which is slightly higher than the national divorce rate of 10 per cent for that year.

In the year 2008, 345 of the divorce cases were *gugat cerai* cases, i.e. divorce cases filed by the wife. This means that 81 per cent of the divorces were petitioned by the wife, which is a high number considering the fact that the Marriage Law of 1974 stipulates that male divorces also require court permission and that the *talak* (repudiation) has to be uttered before a judge. In fact the Marriage Law turned the male *talak* right into a judicial divorce, meaning that both men and women have to petition the Islamic court in order to obtain a legal divorce and that the same divorce grounds apply to both. In 2009, 447 divorces took place, of which 364

(or 81.4 per cent) were filed by the wife. A total of 3,982 marriages were registered that year, setting the divorce rate at 11.2 per cent. In 2010, the numbers were 519 divorces of which 392 (75.5 per cent) were filed by the wife.

In fact, in South Sulawesi women's agency in divorce seems to go far back. Matthes paraphrases the *hoofd priester* or penghulu (the highest local official on Muslim affairs in colonial times) of Makassar who asserted that during his career he had received dozens of men, but hundreds of women who had come to him seeking divorce.¹⁹ Although there is a possibility that many men at that time did not go to the penghulu because under Islamic law they had the right to divorce their wife without the involvement of anyone else, the large difference between male and female clients in this anecdote indicates that, indeed, more women divorced their husbands than vice versa.

The outcomes of a Divorce Survey indicate that women in Bulukumba indeed do not consider divorce to be a male thing.²⁰ To the statement, 'the right to divorce is with the husband' an overwhelming 76 per cent of respondents did not agree and an additional 10 per cent did not agree at all, compared with a mere 8 per cent that agreed with this statement. Conversely, women in Bulukumba know that they have the right to divorce their husbands as 60.8 per cent agreed and 36.7 per cent very much agreed with that statement. Most of the women (66.7 per cent) believe that they do not have to 'buy' a divorce through the *khul* procedure (a consensual divorce procedure in Islamic law in which women can offer (part of) the bride price to their husband in return for a divorce), compared to 16.6 per cent that believed returning (part) of the bride price (*mahar*) is the correct means for a woman to secure a divorce if the husband initially does not agree to ending the

19 B.F. Matthes, *Bijdragen tot de ethnologie van Zuid-Celebes* ('s Gravenhage: Gebroeders Belinfante, 1875), 45.

20 A survey concerning divorce and divorce rights was conducted among 120 respondents in four subdistricts. In order of distance from the courts they are: Ujung Bulu, Gantarang, Bonto Bahari and Bulukumba, spread over four villages and four kampung (town quarters). The targeted sample group consisted of divorced Muslim women, preferably with children, but not necessarily divorced formally at the Islamic court. Unfortunately, in some villages in Bulukumba it was difficult for the surveyors to find the targeted number of divorced women with children (15 respondents per village or hamlet). To be able to reach the target of 15 respondents a number of married women (21) who had experienced a divorce from a previous marriage were included as well as a number of divorced women who did not have children. The latter respondents had to skip some of the questions regarding child support.

marriage. Women are thus well aware that they can divorce on legal grounds bypassing Islamic or adat procedures.

The picture above demonstrates a strong awareness of women's rights to divorce. However, that awareness does not correlate with a perception of the equality of the sexes. Patriarchy is the norm. A staggering 97 per cent of (all female) respondents agreed with the statement that the husband is the leader of the family. The public role of men, including as the head and provider of the family, however, can backfire, as the next example will demonstrate.

One of the divorced women whom I interviewed as part of the qualitative research very much resented the passive and unambitious behaviour of her husband. After marriage she and her husband had to live in the house of her parents-in-law as they were still incapable of maintaining a household of their own. She was eager to move out some day, but her husband did not put much effort into establishing their financial independence. The couple lived mostly on the support of her husband's parents and, to make matters worse, her husband liked to gamble and drink *ballo* (a local-brewed palm wine). She had warned her husband that if he did not give up these money-wasting habits she would leave him. When, one night, he came home late, smelling of alcohol she exploded. '*Saya cambuk dia, pake tongkat*' (I caned him with a stick), she said proudly. Not long after this incident, she filed for divorce at the Islamic court.

The story above indicates that women in Bulukumba possess a lot of authority and independence within the family, although a clear division of roles is still the norm. A good Buginese or Makassarese husband is expected to be ambitious and to do all he can do for the improvement of the family's status and position.²¹ Women, on the other hand, are the main decision-makers of the household and the family, especially in conflict situations.²² If the husband does not act as he is supposed to do, the wife will stand up to him, often backed by her kin, and, ultimately, she will even leave him.

Moreover, in the Buginese-Makassarese bilateral kinship system, women do not have to depend economically on their husband in divorce situations because they can always rely on support from their own

21 Nurul Ilmi Idrus, '*To take each other*': *Bugis practices of gender, sexuality and marriage*, PhD Thesis, Australian National University, 2003; H.Th. Chabot, *Kinship, status and gender in South Celebes* (Leiden: KITLV Press, 1996).

22 Birgitt Röttger-Rössler, 'Shared responsibility: Some aspects of gender and authority in Makassar society', *Bijdragen tot de Taal-, Land- en Volkenkunde*, 2000, 156 (3): 521–538.

kin and their own inheritance. Since women are considered to be the status-bearers of the kin group, in the middle and higher classes the husband's status and position may in fact be jeopardized by divorce as his status and career, for a large part, has been built through his wife's status and family network.²³

The latter dependence on the wife's network will only apply when the husband is not a member of the same kin group. Although I cannot present figures here, I have observed during the interviews and courtroom observations that today a considerable number of marriages in Bulukumba are marriages between (second, third, etc.) cousins, arranged by the parents or other family members. Marrying within the kin group traditionally assures the parents that there is no difference in status between the spouses and that land remains within the extended family. In the words of H.Th. Chabot, the goal of cousin marriages is 'keeping the blood pure and the goods together'.²⁴ Moreover, arranged marriage demonstrates that parents have an obedient daughter, a characteristic of a woman looked upon favourably.²⁵ That said, arranged marriages in South Sulawesi do not appear to be more stable than other marriages.²⁶ In the nineteenth century, B.F. Matthes gave an account of the penghulu of Makassar who observed that arranged marriages without consent of the spouses often led to unhappy marriages, adultery and divorce.²⁷

The arranged marriages I have observed were concluded at a very young age, thereby increasing the instability of the marriage. One of the women I interviewed had been married off to her first cousin just after she had finished primary school. Her husband was only a few years older. Although clearly she was a minor at the time of the marriage, the imam desa provided her with an official marriage certificate. The marriage only lasted a year, according to her, because her husband 'still acted as a child' (*'Alasannya kayak anak-anak dulu, suamiku'*) and was always going out with his friends leaving her at home alone. She being only 13 years of age, she and her family decided to go to the Islamic court to divorce. She did not have to return half of the mahar as is required by law in unconsummated marriages. Indeed, her husband had not asked her to, because 'she was still family'.

To summarise, in the patriarchal society that is Bulukumba, female agency in divorce, as reflected in the outcomes of the survey, can be

23 Ibid.

24 Chabot, *Kinship, status and gender in South Celebes*, 1996: 230.

25 Idrus, 'To take each other', 2003: 236–237.

26 Idrus, 'To take each other', 2003.

27 Matthes, *Bijdragen tot de ethnologie van Zuid-Celebes*, 1875.

explained by cultural factors. Those cultural factors ensure a larger socio-economic independence of married women than one would expect from the traditional roles most women play – even in arranged marriages.

3.2 WOMEN'S REASONS FOR DIVORCE

Let us now turn to the reasons for divorce. Women's reasons for divorce do not necessarily correspond with the legal grounds for divorce in the statistics of the Islamic court. The statistics are made by the clerks on the basis of a short screening of the court files. 'Continuous quarrelling' is the easiest legal basis for divorce to be established.²⁸ Case law even holds that a divorce action in itself is proof of marriage breakdown. Therefore, most clerks will not bother to register other reasons women had to divorce if there is no legal reason to do so (an example of the latter is questioning the husband's moral behaviour in a child custody dispute). Therefore, in court statistics the legal ground of 'continuous quarrelling' absorbs many other reasons women had to divorce.

The survey I held among 120 respondents provides a more reliable picture of the main reasons for divorce. In the questionnaire I adopted a set of reasons for divorce that are similar to the standard grounds in the annual reports of the Islamic court. They are: 'no harmonious relationship', 'my husband had another woman or wife', 'economic reasons', 'domestic violence', 'no offspring' and 'pressure from a third party'. The respondents were asked what the real reasons for divorce were and, unlike the statistics of the grounds for divorce in the annual reports of the Islamic court, they could give multiple answers to make sure that the specific reasons women had for divorce were not simply absorbed by the broad reasons for divorce.

As the outcomes suggest, many women provided multiple answers and, in particular, many combinations occurred with the answer 'no harmonious relationship'. 'No harmonious relationship' tops the list with 36.7 per cent of the respondents giving it as their single answer. A further 40 per cent mentioned it as one of their answers. 'My husband had another woman or wife' was given by only 5 per cent as the sole reason for divorce. However, another 26.7 per cent mention it as one of the reasons, mainly in combination with 'no harmonious relationship'. 'Domestic violence' is mentioned by 8.3 per cent, the same number as 'economic reasons' and 'pressure from a third party'. Finally, 'no offspring' is at the bottom of the list of reasons and is mentioned by only 7.5 per cent of

28 Article 19 (f) of Government Regulation 45/1975.

the respondents. Thus, the main reason for divorce is a lack of harmony between the spouses, followed by adulterous behaviour.

Research in Indonesia and elsewhere has indicated that a young marriage age increases the chance of a divorce occurring.²⁹ Hence, the survey assessed the age of the respondents when they married for the first time. In Bulukumba, 12.5 per cent of the respondents had been married before the legal age for women to marry, i.e. 16 years. More than half of the respondents had been married before the age of 20. Almost 90 per cent of the respondents were married at the age of 25 years or younger. The mean age for the first marriage of the respondents in Bulukumba is 22.4 years, which is lower than that in South Sulawesi (23.6 years).³⁰

When people in Bulukumba marry below the legal age, they do not seem to go to the Islamic court to ask for dispensation (*dispensasi kawin*). In 2010, no such cases were listed. This is rather surprising as 12.5 per cent had been married below the legal age, whilst 98.3 per cent of the respondents answered that the marriage had been officially registered. There are three possible explanations: under-age marriages remain unregistered until the legal age is reached, they are registered by the Offices of Religious Affairs (Kantor Urusan Agama/KUA) the institution under the Ministry of Religion which is responsible for Muslim marriage registration without prior dispensation from the Islamic court, or they received a fake marriage certificate but were unaware of that.

An *isbat nikah* (a court's confirmation of the legality of a marriage) provides a legal means to register informal marriages that were concluded in accordance with religious requirements. In 2010, the Islamic court of Bulukumba received 43 *isbat nikah* requests (compared to 499 divorce cases). Most *isbat nikah* cases are related to rights of wives of civil servants: spousal support after a divorce or pensions of widows after their husbands have passed away. Most of these informal marriages had been concluded before the Marriage Law of 1974 came into force. Nonetheless, registration of informal marriages concluded after 1974 also occurs and in some cases under-age marriages are legalised in order to make the legal consequences of the divorce formal, and more specifically the legal rights of the wife and children born out of the unregistered marriage.

29 Gavin W. Jones, 'Which Indonesian women marry youngest, and why?', *Journal of Southeast Asian Studies*, 2001, 32 (1): 67–78; Philip Guest, 'Marital dissolution and development in Indonesia', *Journal of Comparative Family Studies*, 1992, 23 (1): 95–113.

30 Gavin W. Jones, *Marriage and divorce in Islamic South-East Asia* (Kuala Lumpur: Oxford University Press, 1994), 80.

In addition to young marriage, the practice of *merantau*, or husbands who migrate for work, seems to contribute to the divorce figure. In the interviews I held in desa Tamatto in the Ujung Loe subdistrict, several divorced women informed me that the reason for divorce had been that the husband had left South Sulawesi to work and had never sent any money back. In two cases the husband had also informally married a second wife. When the women found out about this they divorced their husbands.

Finally, women's agency in divorce may also be related to *sirri* (honour, status, shame). Confronted with the high percentage of women filing for divorce, Prof. Nuril Ilmi Idrus of Hasanuddin University in Makassar explained to me that it is indeed the custom that women file for divorce, since in Buginese culture women are considered the honour-bearers of the family. If a husband cannot keep up her standard he will be divorced. Moreover, according to Prof. Idrus a Buginese woman will avoid being divorced by her husband and try to convince him to let her divorce him, so that her *sirri* and also that of her kin remains intact.

To summarise, we have seen that in Bulukumba 75–80 per cent of divorces are filed by women. Divorce is usually caused by intimate, rather than material or economic, reasons. An underlying reason for the problems in the intimate sphere might be the young age of marriage, although in Bulukumba the mean marriage age is above the Indonesian average. Most divorces occur because of the fact that the spouses do not connect well, resulting in quarrels. Those quarrels in many cases are worsened by adultery, (unregistered) polygamy or economic conditions and can even turn violent. However, as the caning example demonstrates, the passivity and socially negative behaviour of the husband have an economic component. Drinking and gambling by the husband costs money and has financial consequences for the family. Women in Bulukumba, being assigned the role of honour-bearers, household managers, and being supported by their kin, are generally sufficiently empowered to break out of an unhappy or disgraceful marriage.

3.3 JUDICIAL DIVORCE: THE ONLY SOCIALLY ACCEPTED DIVORCE IN BULUKUMBA

The introduction of the Marriage Law in 1974 meant that a divorce must be brought before the court to be formally recognised. Through the Divorce Survey I could assess to what extent the state has managed to put this message across to its citizens in Bulukumba. The results indicate

that in Bulukumba there is sufficient awareness that divorce requires a judicial process and that most divorces are indeed concluded at the Islamic court.

Seventy-two per cent of the respondents had divorced at the Islamic court, compared to 25 per cent who had not. The surveyors have indicated that at least some respondents among this 25 per cent had not divorced in the Islamic court, but their husbands had – sometimes without their knowing. In reality, the percentage of formal divorces may be even higher as the question concerned was probably too ambiguously formulated in terms of discerning whether the women themselves physically went to the court to divorce. However, the figure of 72.5 per cent already indicates that Bulukumba has a relatively low number of informal divorces as compared to the 50 per cent of informal divorces estimated for the whole of Indonesia.³¹ To be able to divorce formally, you have to be formally married first. In Bulukumba formal marriage is the norm. A total of 98.3 per cent of the respondents answered that they had registered their first marriage at the Office of Religious Affairs (Kantor Urusan Agama, KUA).³²

The numbers above indicate that both the right to divorce and the fact that divorce has been turned into a judicial proceeding are publicly known. This is reflected in the figure of 91.7 per cent of the respondents that were aware that one needs to obtain a divorce certificate (*akta cerai*) to be formally divorced. Twenty-five per cent of respondents however, think that a formal divorce can also be arranged at the KUA. Perhaps this reflects the local reality in which KUA or village officials provide mediation and ‘legal aid’ services and help with the paperwork of a divorce process. The main sources of knowledge about the Islamic court as the place to file a divorce are family and friends (38 respondents), the neighborhood head (Ketua RT) and village officials (*aparatus desa*) (14 respondents), the KUA (12 respondents), or they knew it themselves (ten respondents).

Semi-structured interviews with 15 divorced women also confirmed a high level of awareness. Bringing a case to the Islamic court is considered the only way to divorce by most informants. This is reflected in the following answer to the question why the informant went to the Islamic court to divorce and did not divorce informally: ‘[t]he reason [to divorce]

31 R. Michael Feener and Mark E. Cammack, *Islamic law in contemporary Indonesia: ideas and institutions* (Cambridge, Mass: Harvard University Press, 2007).

32 Non-Muslims have to register their marriages at the civil registry offices (Kantor Pencatatan Sipil) which fall under the responsibility of the Ministry of Justice and Human Rights.

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

Another woman relates divorce at the Islamic court with custom (*adat-istiadat*):

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

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

Researcher: Yes.

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

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

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

Even if the marriage had an informal status, women prefer an official divorce in order to obtain a clean status. Bu Karmila had been married for nine years and two children were born of the marriage. The marriage had an informal status because the KUA refused to provide the couple with a marriage certificate, since her husband was still registered as married to someone else. Bu Karmila clarified that her former husband had indeed been married before, but had been divorced by his first wife through the Islamic court. According to Bu Karmila, the first wife did not want to cooperate with the remarriage and kept the divorce papers to herself. When, after nine years of marriage, Bu Karmila found out that her husband had been adulterous she wanted to divorce him formally so that she might obtain official divorce papers and be free to remarry formally in the future. The Islamic court advised an *isbat nikah* procedure, through which the marriage is formally recognised first, after which the divorce can take place.

It remained unclear why the husband had not received a divorce certificate before. To go deeper into this problem would be speculation and beyond the point I want to make: that formal divorces through the Islamic court seem to be the norm in Bulukumba, and informally divorced women are stigmatised. Women are very much made aware

that they had better divorce at the Islamic court, or else they will be considered 'stained women' and not suitable for remarriage.

Because of this stigma and in addition to its judicial role, the Islamic court of Bulukumba is able successfully to fulfill two important roles with regard to divorce: first, the role as registrar of divorces, as part of civil registration of the state; second, providing clear, 'uncontaminated', legal identities to women, so that they become appropriate marriage candidates in their communities. The stigma on informal divorce seems to have a cultural component, but probably is mainly caused by the fact that governmental institutions such as the KUA implement the regulations with regard to divorce and polygamy. That is to say, they are strict on issuing marriage certificates to men (and women) who are still registered as married. Through the stigma on informal divorce, a chain of formality is promoted: formal divorce enables a formal remarriage, which in turn facilitates birth certificates for children born out of a second marriage, making the latter formal heirs, etc.

4 The Islamic Court of Bulukumba and Women's Post-Divorce Rights

Above I have established that the Islamic court is the main forum for divorce in Bulukumba, making divorce very accessible to women. The Islamic court plays an important role in civil registration and endows women and children with a clear marital status as part of their legal identity. Good access to the Islamic court does not automatically mean that post-divorce rights are just as accessible for women. As I have argued elsewhere the role of the Islamic court in settling disputes concerning post-divorce rights is seldom fully assessed.³³ In this section I will look into the role of the Islamic court of Bulukumba in providing access to post-divorce rights.

The focus here is on the frequency of post-divorce cases that have been brought before the court and the reasons for a woman to take or not take a case to the court. Therefore, this part represents research on access to justice, rather than a legal analysis of post-divorce cases. To start with, the number of post-divorce cases that are brought before court is difficult to establish. Most of the post-divorce cases registered by the Islamic court are part of, and filed as, divorce cases. Thus, such cases are

33 A.W. Bedner and S.C. van Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', *Utrecht Law Review*, 2010, 6 (2), 175–191. <http://hdl.handle.net/1887/15745>.



Waiting in front of the courtroom, Bulukumba

not registered as post-divorce cases and it would require going through the divorce register books to establish case-by-case whether post-divorce (counter)claims were part of the petition. Having said that, the number of cases at the Islamic court of Bulukumba that include post-divorce claims for the years 2008 and 2009 are as follows:

4.1 SPOUSAL SUPPORT RIGHTS

First of all, the spousal support rights can be subdivided into three components: unpaid due maintenance (*nafkah yang lampau*), the gift of consolation (*mut'ah*), and maintenance during the three-month waiting period for the wife (*iddah*) in which the wife may not remarry in order to establish whether she is pregnant (*nafkah iddah*). *Nafkah iddah* in fact constitutes the wife's right to maintenance during the *iddah* after her husband's *talak*. During those three months, the marriage can still be reconciled (*rujuk*) without a new marriage ceremony having to take place, provided the status of the divorce is non-final (*raji'i*).³⁴ In contrast, under Indonesian Muslim family law, all women-filed divorces are immediately final (*ba'in*) meaning that the wife has no rights to maintenance in the

³⁴ A third *talak* that takes place within the same marriage is immediately a final divorce.

three-month waiting period (which still applies in order to establish whether or not the woman is pregnant by her now ex-husband).

According to the register of the Islamic court in Bulukumba, in 2008 a total of 14 women made spousal divorce claims in a total of 426 divorce claims (3.3 per cent). However, it is more sensible to compare spousal post-divorce claims with the number of male talak divorce cases since women lack *mut'ah* and *nafkah iddah* rights in women-petitioned divorce cases. Thus, in 2008 14 claims divided by 81 talak divorces multiplied by 100 per cent means that 17.3 per cent of women claimed spousal post-divorce rights in talak cases. The percentage of women making spousal divorce claims at the Islamic court for 2009 is thus 3.1 per cent of the total number of divorces and 16.9 per cent of the total of talak divorces.

When the spousal post-divorce rights are subdivided the picture is as follows: in 2008 there were 12 and in 2009 seven *nafkah yang lampau* claims. In 2008 there were six, and in 2009 seven *nafkah iddah* claims. Finally, in 2008 there were two, and in 2009 six, *mut'ah* claims.

The Divorce Survey also assessed the claiming behaviour of women during the divorce process. In the Divorce Survey 19 of the 87 respondents that had divorced at the Islamic court answered that they had claimed spousal divorce rights. Sixteen of the 19 claims made by the respondents were endorsed by the court, although only five entirely and 11 not entirely. The survey thus indicates a much higher percentage (22 per cent) of women claiming spousal post-divorce rights than appears from the analysis of the 2008 and 2009 court registers (respectively, 3.3 and 3.1 per cent). It can be an indication that in the past it was more common to claim spousal post-divorce rights. The age of the respondents in the Divorce Survey varied from 18 years to 72 (median age 33.5 years) and they were not necessarily divorced recently. However, this explanation is unsatisfactory.

The main explanation for the large discrepancy between the number of formally registered claims and the number of claims that the respondents had stated they had made can be largely explained by the tendency of judges to settle disputes informally during the divorce process. As I have observed in the courtroom on numerous occasions, informal settlements are not only reached during the (since the Marriage Law of 1974) mandatory mediation session, but also at every other stage of the divorce process. Such agreements between the parties are not registered in the court files, but often have been reached after the involvement of a judge. Therefore, it is likely that many of the respondents had made a claim during a divorce hearing at the Islamic court which was informally negotiated by the judge and which led to an agreement between the two

parties, but which was not formally part of the court judgment and not registered in the register books.

The Divorce Survey also assessed the reasons why respondents had not claimed their spousal post-divorce rights. Forty-six respondents had not claimed spousal rights and 35 of them gave a reason for this. The reasons for non-claiming can be divided into five categories. The first category is 'no need for support'. Nineteen respondents gave an answer that can be put into that category. Seven answers can be put into the category 'I did not want to delay the divorce process'. Four answers can be categorised as 'I did not want to go through the trouble'. Four respondents gave as a reason 'the claim would not have been endorsed'. Finally, in the category 'others', one of the respondents was in absentia during the divorce process at the court.

A respondent whom I interviewed as part of the qualitative part of the research provided insight into why she did not claim any post-divorce rights. According to her, one of the clerks (*panitera*) who had assisted her during the process had dissuaded her from claiming any post-divorce rights:

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

4.2 CHILD SUPPORT

The second post-divorce right I will deal with here is child support (*nafkah anak*). In Indonesia, the father remains legally responsible for the maintenance of his legal children, no matter who has custody over them. Women can make child support claims in divorce cases filed by themselves or their husbands.

In 2008, seven women, or 1.6 per cent of the total, claimed child support. In 2009, the numbers are slightly lower, six child support claims or 1.3 per cent. One must realise that those percentages are based on the total number of couples that were divorced at the Islamic court of Bulukumba. Of course, not all of them had children. Still, I think the numbers will give a good indication of the number of women who make child support claims, since in Indonesia it is normal to have children

shortly after marriage, usually within two years after marriage.³⁵ The percentages of 1.6 in 2008 and 1.3 in 2009 do not reflect actual numbers, but rather indicate that few women make formal child support claims at the Islamic court.

The Divorce Survey reveals much higher numbers of women who claim child support rights. Twenty-three of the 64 respondents who had addressed the Islamic court to divorce and had children answered that they had claimed child support from the father. According to 21 of the respondents, their claims had been endorsed by the court, although in 12 cases only partly. The large discrepancy between formally registered claims and claims that the respondents in the survey had believed they had made can be explained along the same lines as the discrepancy above regarding spousal post-divorce rights claims. Judges prefer to settle disputes informally during the divorce process and strive for an agreement between the parties, since they hope that such agreements will be better implemented. Those agreements are not formalised into court orders and are not part of the formal judgment of the court.

In the Divorce Survey, 33 respondents gave a reason for their non-claiming behaviour. Eight respondents gave an answer that can be categorised as 'no need for support'. Four respondents thought that the claim 'would not be endorsed'. Four respondents 'did not want to go through the trouble'. Three respondents 'did not want to delay the process'. Falling into the category 'others', three respondents did not make a child support claim because the husband had custody of the children and one was in absentia during the divorce process.

The examples above indicate that the advice and interventions of actors within the Islamic court play an important role in the claiming behaviour of women with regard to post-divorce rights. The Islamic court personnel have a preference for informal agreements, and push women's claims outside the realm of the court. Even when the claim is formally made in the court, the judge will attempt to negotiate an agreement with both parties.

4.3 COMMUNAL MARITAL PROPERTY

The third post-divorce right I have assessed is communal marital property (*harta bersama*). In Bulukumba the Islamic court registered seven *harta bersama* claims in 2008 and nine in 2009. This denotes a percentage of 1.6 per cent in 2008 and two per cent in 2009. All but one of those *harta*

35 Minja Kim Choe, Shyam Thapa, and Sulistinah Irawati Achmad, *Early marriage and childbearing in Indonesia and Nepal* (Honolulu, HI: East-West Center, 2001).

bersama claims are included in the divorce action itself, rather than filed as a separate action after the divorce has come into effect.

The Supreme Court has recently attempted to encourage people who want to claim harta bersama to start an action after the divorce has been recognised. It issued an instruction in 2010 (Petunjuk Teknis, Juknis) in which the Islamic courts were requested to convince claimants to reach an agreement during the mediation stage or make a separate claim after divorce. Harta bersama claims potentially postpone the divorce itself when they become part of the divorce action since the communal property often still has to be established by the court in the field. Moreover, when a relatively high amount of property is at stake, the chance of appeal increases and consequently also of a postponed divorce. Whether the interventions of the court personnel are successful remains to be seen. A separate action after the divorce means that one has to pay the court fees twice. When mediation has been unsuccessful, it remains to be seen whether the parties are willing to postpone the harta bersama claim and finish the divorce suit first, before claiming their rights before court.

Outside the realm of the court, only a minority of the divorced couples in Bulukumba make informal agreements on communal property. The Divorce Survey reveals that 15 or 12.5 per cent of all 120 respondents had made an arrangement with their husband concerning marital property and 64 did not (40 respondents chose not to answer this question). Forty-six respondents provided reasons for not seeking a marital property arrangement with the husband. Nineteen respondents answered that they 'did not need the marital property'. Thirteen respondents said that 'there was no marital property'. Seven respondents gave an answer that can be categorised as 'I did not want to delay the process'. Three respondents 'did not want to go up against their ex-husband'. Four claims fell into the category 'other reasons', including a respondent's reason that her children would get her part of the marital property in the future.

The latter kind of agreement is illustrative of other cases in Bulukumba in which the rights of the spouses themselves are subordinate to the rights of the children. In the following interview with a respondent it becomes clear that judges sometimes side with the wife and encourage the husband to refrain from claiming his formal rights to half of the marital property for the sake of the children who (most commonly) reside with the mother.

Interviewer: So he turned up and then he asked for, he immediately asked for, he claimed, communal marital property?

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

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

Respondent: A house.

Interviewer: This house?

Respondent: This one.

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

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

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

Respondent: It was not divided.

With this quotation I intend to illustrate two things: firstly, the Islamic court considers the living conditions of children in its judgments, in this case whether they have a place to live; secondly, women with children are more inclined to defend property rights. Property seems to be considered more essential for the future of their children than child support arrangements.

4.4 BRIDE PRICE (MAHAR)

The fourth and last post-divorce right I have looked at is the bride price or mahar. Mahar is the bride price paid by the groom to the bride. The mahar remains the property of the wife after divorce, at least if the marriage is 'consummated'. When this is not the case because of the unwillingness of the wife to sleep with her husband, half of the mahar must be returned. In 2008, 11 women, or those in 2.6 per cent of all divorce cases, filed a mahar claim. In 2009, 9 or 2 per cent of the women involved in a divorce case made a mahar claim.

A special feature of Bulukumba and South Sulawesi in general is that the bride price is often given in non-movable goods (e.g. a plot of land, standing trees on a plot of leased land, a house) rather than in money or gold. This makes the mahar cases in South Sulawesi more complicated. The goods will represent a customary value in 'Real', this referring to the currency of Saudi Arabia. The amount is based on the status of the bride and is thus traditionally linked with the amount of noble blood the wife possesses.³⁶ Women often insist that the mahar is handed over to them, since they need it as mahar for the future marriage of their

³⁶ Chabot, *Kinship, status and gender in South Celebes*, 1996.

sons. Sometimes the former spouses make an arrangement in which the father keeps the land in his possession but promises to use it as their sons' mahar in the future.

4.5 ENFORCEABILITY OF COURT ORDERS

If you look at the execution and enforceability of court orders, a mixed picture occurs. With regard to spousal support for the three-month waiting period, implementation is facilitated by the Islamic court, since husbands are pushed by the court to pay in advance the entire sum established in the court order, after which the husband may utter the talak before the court.

In contrast, child support implementation depends on the ex-husband's goodwill. Many women complained that their ex-husbands did not provide the support established in the court order. Although there is a legal mechanism for collecting debts in the law, the Islamic court of Bulukumba has never (yet) enforced a child support court order through that procedure.

Somewhere in the middle is the enforcement of court orders concerning marital property, which can be effective but is relatively expensive. According to estimations by the chief clerk, enforcement requires about 1 million rupiah in court fees and, depending on the expected resistance, additional payments (to police, sometimes military) of at least 4 million rupiah. The current chief clerk had a good reputation in getting court orders enforced. According to him, the network of his father, who was a high ranking officer in the armed forces, helped him to obtain information about the expected resistance. Moreover, he combines a tough appearance (he is a tall, strong man, from the infamous Jeneponto area), with an understanding for the context.

For instance, he told me that in many cases the persons involved would respond with violence to the threat of force by the police. Therefore, he said that he tends to give people a last chance, although there is no legal necessity to do so. Together with someone from the police he will visit the location in person and try to convince the person who is ordered to hand over the property concerned to do so voluntarily. He said that many people respond to the last chance to avoid the shame of a forced foreclosure. In another case he postponed the enforcement and gave the person the chance to harvest the rice first. According to the chief clerk, such a humane approach greatly facilitates enforcement of court orders.

4.6 SATISFACTION CONCERNING SUPPORT

In the Divorce Survey I asked whether the women concerned were satisfied with the contribution of the father of their children in terms of child or spousal support. A mere 8.5 per cent of the respondents were satisfied with the father's contribution and 40 per cent were dissatisfied. The image of post-divorce rights presented above already indicated that child support is unenforceable and apparently many fathers do not pay enough support in the eyes of their ex-wives.

Nonetheless, the background of this dissatisfaction appears to be more of a moral issue than an economic necessity: 72 per cent of the respondents stated that their economic situation had actually improved after the divorce. One of the main reasons for this improvement may be that divorced women and their children generally return to their parents' care. If no swift remarriage takes place, divorced women may be encouraged to leave the area and find employment in the factories of Makassar or are recruited to work abroad whilst leaving the children in the care of the grandparents. The working opportunities for divorced women may contribute to the improvement of the economic situation of the women concerned (and regional economic development), even for those women who – if they had the choice – would have preferred to continue playing the traditional role of housewife.

5 Conclusion

The Sharia byelaws in Bulukumba have a historical component as they echo the aspirations of the Darul Islam movement in South Sulawesi (1951–1965). In 2011, the Laskar Jundullah had left the streets (although with the foundation of a local branch of the FPI this might have changed), but the Sharia byelaws were still very much upheld in government offices and – as the veiling incident has shown – in the Islamic court. With regard to family law issues, the Sharia byelaws seem not to have any negative influence on women's rights. The Islamic court of Bulukumba is effective in making divorce for women accessible since almost all women who petition for a divorce at the Islamic court are successful. A majority of the women in Bulukumba divorce formally, through a court decision. The status of women in informal divorces is considered stained and they may have difficulties remarrying, whereas remarriage for formally divorced women is much more accessible.

The lion's share of divorces – about 80 per cent – are petitioned by the wife. The reasons for divorce that women mentioned in the Divorce

Survey are: a lack of harmony (76.7 per cent), adulterous behaviour or informal polygamy (31.7 per cent), domestic violence (8.3 per cent), economic reasons (8.3 per cent), pressure by the family (8.3 per cent) and no offspring (7.5 per cent). The cultural context of a strong bilineal kinship system facilitates divorce as well. A good husband is expected to be ambitious and to do all he can to improve the family's status and position.³⁷ However, if the husband does not act as he is supposed to, the wife will stand up to him, often backed or pressured by her kin, and unless the situation improves, she will eventually leave him.

With regard to the use of judicial discretion, in cases where the children reside with the mother, it appears that judges may pressurise husbands into agreements which allocate a larger portion of marital property to the wife. However, the use of discretion can also have negative consequences for the rights of women. First of all, women are discouraged by judges from claiming their rights and encouraged to come to an informal agreement which often remains unenforceable through the court system. Secondly, the amount of child and spousal support in the court order is often lower than what was claimed as the judge will tend to follow the husband's counterclaim, in order to have more chance of the support being paid by him.

A major obstacle in achieving post-divorce rights is that, generally speaking, enforcement of court orders is problematic. Enforcement of spousal support is well-facilitated, but only when it concerns the three-month waiting period. Child support orders are considered unenforceable by the judges and, at the time of writing, no single case has (yet) been enforced by the Islamic court of Bulukumba. Finally, enforcement of property cases is relatively expensive due to a mix of formal court fees and informal payments to police and others. The execution of child support court orders is problematic and most women are dissatisfied with the father's support for their children after divorce.

Still, women with children can cope economically after a divorce as they are supported by their kin, mostly their parents, until they remarry. Additionally, many divorced women who did not work during their marriage, leave the area to work (abroad) for a period of time, leaving the children in their grandparents' care in order to contribute to the household income. Hence, women in Bulukumba cope with the financial consequences of a divorce because they have access to the safety net of their kin and access to labour – much less so because of access to the Islamic court. Nonetheless, to most of those women access to the

37 Chabot, *Kinship, status and gender in South Celebes*, 1996.

Islamic court still is essential as a formal divorce is a social necessity if one intends to remarry in the future and start a new family. Thus, one may conclude that for most women in Bulukumba access to the Islamic court is not so much a means to access their post-divorce rights but much more an essential condition to have access to a potential future remarriage.

