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Public and private dichotomy in the legal system: Indonesian women's access to justice when dealing with domestic violence

Rika Saraswati
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PUBLIC AND PRIVATE DICHOTOMY IN THE LEGAL SYSTEM: INDONESIAN WOMEN’S ACCESS TO JUSTICE WHEN DEALING WITH DOMESTIC VIOLENCE

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SH (UGM), CN (UNDIP), M.HUM (UGM)

This thesis is presented as part of the requirement for the Award of the Degree of Doctor of Philosophy of The University of Wollongong

November, 2014
Thesis Certification:

I, Rika Saraswati, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Rika Saraswati
November 2014
Abstract

The study aims to provide an analysis of the experience of Indonesian women in accessing resources (which are available in various spaces, particularly in the family law system and the criminal law system) and to what extent the available resources become a powerful means for these women to access justice. The findings of the research, thus, is expected to reflect an examination of how power is exercised in and through various spaces; and how the spaces (and their boundaries) are defined, defended, and contested based on the Indonesian women’s perspectives and identities.

The research presented in the thesis used a qualitative methodology. There were 18 respondents recruited from two groups: first, 14 Indonesian women from Semarang, Central Java (Indonesia); second, four Indonesian women from Sydney and suburbs, New South Wales (Australia). The findings have demonstrated that regardless of their identities, Indonesian women victims in this study have pursued their access to the justice system through accessing resources and by going from one resource to another, from one space to another, and from one legislative framework to another, in which each of these elements has its own power to be contested. The experiences of Indonesian women victims of domestic violence in Indonesia have demonstrated that the negative responses mainly come from the police sector. The presence of bribery, corruption, and often a ‘friendship’ between the police involved and the perpetrator (and/or identification with his situation rather than that of the woman) became the primary cause of such a lack genuine assistance to the women in their attempt to access justice. The Family Law system, either in part or simultaneously (or serially) through several avenues, was approached by the respondents regardless of the response from the Criminal Justice System. However, respondents in Indonesia must first consider their identities (such as religion, whether a wife of state employee, and the reason for filing for divorce) before accessing the Family Law, because the legislation which is provided by the state differs according to those factors. This is very different from the experience of countries such as Australia which because of the basically secular nature of its legislation has a far more universally applicable approach to marriage and divorce. In Indonesia, women who fail to consider their various identities (religion, even husband’s employment) will probably lose in regard to what in theory are their rights in the context of domestic violence.
To My Parents and My Children
‘Household of *shakinah marwadah* (a happy family) must be borne by two and cannot be charged to the wife only, but the public (still) demanded that wife must satisfy her husband…’

MI, the respondent, Indonesia

‘[At] the police, first I was laughed at because they argued that the violence experienced by me had no evidence. Probably psychological violence is not considered as a threat…’

Y, the respondent, Indonesia

‘I want to be protected; I did not want to be hurt. Where is the law? My husband did not obey the agreement; I did not accept such treatment…’

SS, the respondent, Indonesia

‘For some [points], I agreed with what the court has decided, but also I disappointed for the law that allowed my daughter to have access to her father who [had] been involved in violence…’

ML, the respondent, Australia

‘We then went to the mediator provided by the government. We did not go to the court or a lawyer because it is expensive…’

L, the respondent, Australia

‘Victims of domestic violence who experience accumulated violence did not get justice, because justice is for those who possess money. That’s what happened…’

ID, the respondent, Indonesia
Acknowledgments

This work is a reflection of many years of study and research on domestic violence issues experienced by Indonesian women in Australia and Indonesia. Their struggle in accessing justice has inspired me to examine their experiences in this thesis. This thesis reflects my own academic work and ideas, and is my sole responsibility, nevertheless I have to acknowledge that it could not have been written without help and support from a number of people.

I would like to thank the following people for their help, advice, encouragement, and also their friendship. First of all I would like to express my sincere gratitude to my main supervisor: Dr Nadirsyah Hosen for his excellent supervision, invaluable guidance, patience and encouragement throughout the course of this thesis. Gratitude is also extended to my previous co-supervisor: Dr Richard Mohr with whom I shared early ideas of this thesis in the first year of its preparation.

I would like to express my thanks to Professor Luke McNamara for his academic support in sharing ideas on this thesis; Senior Lecturer (and family law specialist) John Littrich for his academic support in sharing knowledge of the Australian legal system, particularly that dealing with Family Law and domestic violence, to enrich my knowledge and the thesis. I would like also to express my appreciation to Mrs Elaine Newby, editorial assistant at University of Wollongong, Faculty of Law, for her wonderful job in editing the final draft of this thesis.

In gaining respondents I have been very ably helped in different ways by many persons. I owe a great debt of gratitude to Hana Pramukti (the coordinator of Indonesian Welfare Association), Nia Downer (the coordinator of Indo Care (Indonesian-Australia Aged Care), and Evarisan (the previous coordinator of the Semarang Legal Resources Centre for Gender Justice and Human Rights (LRC-KJHAM) Semarang, Indonesia, and Venatius Hadiyono (a lawyer at Faculty of Law, Soegijapranata Catholic University, Semarang, Indonesia), for their invaluable assistance in giving me access to their organisations in terms of obtaining the respondent. My wholehearted thanks are due to Indonesian women both in Australia and Indonesia for their willingness to be respondents and to share their experience in this study. Without their help this thesis would not have been completed. I am also indebted to everyone who helped and supported me during the time I studied and
lived in Wollongong. However, I must mention Abu Nomen M Atahar Ali, Linda Godfrey and Gregory Godfrey, Elaine Newby who have made my life far from my country more pleasant. Thanks for your support and wonderful friendships.

My own family deserves more than can possibly be mentioned here. I offer my heartfelt gratitude to my son Alun Samodra, and my daughters, Kidung Pelangi and Bening Embun Pagi, for their unconditional love. I hope this thesis will be a source of encouragement for you, and for those who come after you, making your belief in goals stronger and easier to attain. Finally, I wish to express my sincerest gratitude to my late father Kadarusamsi MEd, my late mother Raden Ayu Sri Deworini, and my sisters, Sita Suryawati and Rina Anggraini. Every word typed in this thesis was inspired by their love and affection.
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<th>Description</th>
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<tr>
<td>ADVO</td>
<td>Apprehended Domestic Violence Order</td>
</tr>
<tr>
<td>AIFS</td>
<td>Australian Institute of Families Studies</td>
</tr>
<tr>
<td>ALRC</td>
<td>Australian Law Reform Commission</td>
</tr>
<tr>
<td>APVO</td>
<td>Apprehended Personal Violence Order</td>
</tr>
<tr>
<td>AVO</td>
<td>Apprehended Violence Order</td>
</tr>
<tr>
<td>Bawesda</td>
<td><em>Badan Pengawas Daerah</em>/<em>Regional Regulatory Body</em></td>
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<tr>
<td>BKD</td>
<td><em>Badan Kepegawaian Daerah</em>/<em>Regional Employment Body</em></td>
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<tr>
<td>BWS</td>
<td>Battered Woman Syndrome</td>
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<tr>
<td>CEDAW</td>
<td><em>[United Nations] Convention on the Elimination of All Forms of Discrimination against Women</em></td>
</tr>
<tr>
<td>CLS</td>
<td>Critical Legal Studies</td>
</tr>
<tr>
<td>Indo Care</td>
<td>Indonesian-Australia Aged Care</td>
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<tr>
<td>IWA</td>
<td>Indonesian Welfare Association</td>
</tr>
<tr>
<td>Jamkesmas</td>
<td><em>Jaminan Kesejahteraan Masyarakat</em>/<em>Public security for the poor</em></td>
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<tr>
<td>Korpri</td>
<td><em>Korps Pegawai Negeri Republik Indonesia</em>/<em>Corps of Civil Servants of the Republic of Indonesia</em></td>
</tr>
<tr>
<td>KK</td>
<td><em>Kartu Keluarga</em>/<em>Family Card</em></td>
</tr>
<tr>
<td>KHI</td>
<td><em>Kompilasi Hukum Islam</em>/<em>Compilation of Islamic Law</em></td>
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<tr>
<td>KUHP</td>
<td><em>Kitab Undang-Undang Hukum Pidana</em>/<em>Penal Code</em></td>
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<tr>
<td>KTP</td>
<td><em>Kartu Tanda Penduduk</em>/<em>Identification Card</em></td>
</tr>
<tr>
<td>LRC KJHAM</td>
<td>Legal Resources Centre on Gender and Human Right</td>
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<tr>
<td>NESB</td>
<td>Non-English Speaking Background</td>
</tr>
<tr>
<td>PA</td>
<td><em>Pengadilan Agama</em>/<em>Religious Court</em></td>
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<tr>
<td>PAM</td>
<td><em>Perusahaan Air Minum</em>/<em>Water Corporation</em></td>
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<tr>
<td>PADV</td>
<td>Partnership against Domestic Violence</td>
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<tr>
<td>PGRI</td>
<td><em>Persatuan Guru Republik Indonesia</em>/<em>Teacher Unions of the Republic of Indonesia</em></td>
</tr>
<tr>
<td>Polwiltabes</td>
<td><em>Kepolisian Wilayah Kota Besar</em>/<em>Police Head Quarters</em></td>
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<tr>
<td>PP</td>
<td><em>Peraturan Pelaksana</em>/<em>Implementing Regulation</em></td>
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<tr>
<td>PPT</td>
<td><em>Pusat Pelayanan Terpadu</em>/<em>Centre of integrated services</em></td>
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<td>WHO</td>
<td>World Health Organisation</td>
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DETAIL OF PRIOR PUBLICATION

Part of this thesis is based on material that has been published. The detail is as follow: Rika Saraswati, ‘Justice and the Identities of Women: The Case of Indonesian Women Victims of Domestic Violence Who Have Access to Family Court’ (2013) 1 Forum on Public Policy: A Journal of the Oxford Round Table 1, 15-9. (‘Justice and the Identities of Women’).
CHAPTER 1
INDONESIAN WOMEN AND DOMESTIC VIOLENCE LAWS:
AN ISSUE OF PUBLIC AND PRIVATE DICHOTOMY IN THE LEGAL
SYSTEM AND ACCESS TO JUSTICE

This chapter, particularly in the introduction, describes briefly the paradigm shift in the legislative approach towards the issue of domestic violence, the effect of domestic violence laws on women’s autonomy, and the rationale for selecting Indonesian women as the subject of the study. The research questions, then, as the heart of the research will be presented in the next section, which contains the main question and the three sub-questions, framed by a discussion of the experience of Indonesian women regarding domestic violence cases in the context of relation between law, power and ‘space’,¹ as especially revealed by exposing the causes of domestic violence, the coping strategies adopted by the women affected and their access to resources as the way to empower themselves, and their multiplicity of identities as Indonesian women (in terms of ethnicity, class or religious or ethnic group and so on) in making decisions dealing with accessing justice. The following sections, then, present the objectives and the structure of thesis.

1.1. Introduction

One of the forms of violence against women is domestic violence. The violence is caused by the imbalance of power between women and men within family sphere which occurs in most parts of the world² and it has become an important issue due to an

¹ ‘Space’ is capable of carrying diverse meaning, especially when conceived in relation to human beings, social and political life. In this study, ‘space’ is defined as particular ideas, persons, and the concept of ‘public’ and ‘private’ spheres. Thus, space is not just a place where things happen, but it represents a specific site in which the link between public-private spaces and other norms/values, such as legal, social and culture are conceptually bounded and locally constituted. See Nicholas K Blomley, Law, Space and the Geographies of Power (Guildford Press, 1994).

² Violence against women has been recognised within the United Nations as a problem: In 1993, the United Nations adopted the Declaration on the Elimination of Violence against Women, GA Res 48/104.
increasing recognition of its impact on the domination over and discrimination against women and children by men. Of particular interest is the legal viewpoint taken of such violence. Historically, physical chastisement of wives and children was accepted in the Classical civilisations of Rome and Greece and elsewhere. In the West, male battering of women within the private sphere of family life was generally untouched by law because it occurred in the private sphere. Under English Common Law, for example, a man could not generally be punished for beating his wife or children. Case law over many years and spanning several continents demonstrated that the legal system operated specifically to protect a man’s right to chastise his wife and children by physical

UN GAOR 48th sess, 85th plen mtg. Supp No.49, UN Doc A/RES/48/49 (19 December 1993) which included in Articles 1 and 2 reference to the harm caused by such violence (physical, sexual and psychological, among others) and the threat of violence in both the public and private sphere. Domestic violence has been singled out as a particular form of such violence: United Nations Resolution on the Elimination of Domestic Violence against Women, GA Res 58/147; UN GAOR 58th sess, UN Doc A/Res/58/147 (19 February 2004). Domestic violence is defined as ‘a violence that occurs within the private sphere generally between individuals who are related through blood, intimacy or law’ (Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, submitted in accordance with Commission on Human rights resolution 1995/85, UN Doc E/CN.4/1996/53 (5 February 1996); and it has many different forms, including physical, psychological, sexual violence and threats of such acts, coercion or arbitrary deprivation of liberty. It also includes economic deprivation and isolation which affects a woman’s safety, health and welfare. See also, World Health Organisation, WHO Multi-country Study on Women’s Health and Domestic Violence against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses (WHO, 2005). This was based on a survey of 48 populations from around the world between 1982 and 1999, in which women reported being physically assaulted and psychologically abused by their intimate male partner (between 10% and 69%), and in one-third to over one-half of cases the woman was sexually abused. See also World Health Organization, World Report on Violence and Health. (WHO, 2002).


violence. The issue of domestic violence was seen as an issue between a husband and a wife or an issue within a family and not as a crime; and until the comparatively recently, the state was reluctant to be involved due to this public and private dichotomy. It is this dichotomy which was challenged by the feminist movement in the late 1960s but moreso in the 1970s, and, as a result, the paradigm of domestic violence changed from a family issue in a private space to a social and a legal matter within public spaces, and indeed a criminal matter, such had been the impacts of change on the laws governing domestic violence.

Domestic violence has been recognised as a social problem against women throughout the world. The United Nations issued Human Rights conventions which are related to this matter, such as the Convention on the Elimination of All Form of Discriminations against Women and the Convention on the Rights of Child. Many countries have ratified and adopted these conventions in their national legislation, and studies have also been undertaken on domestic violence, and promises have been made by politicians; however, improvement to the law is (according to the United Nations) very slow in coming and judges continue to apply inadequate laws and ignore the problem of domestic violence. The United Nations has identified several legal issues in regard to domestic violence and insisted that these should be addressed. Among these are the use of definitions of domestic violence that are limited to physical violence, inadequate legislation or a lack of regulations to implement the legislation that does exist, and the inappropriate sentencing of perpetrators of violence who often receive

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lenient sentences that do not reflect the gravity of the crime.  

In regard to the legal aspects, the scope of domestic violence is contested within the public/private sphere and criminal/family law because it is not merely a criminal matter and regulated by criminal law but it has also has linkages with family law (which deals with divorce, child custody and visitation, and property issues), as well as a multitude of links to administrative law (which relates to welfare, public benefits, immigration, employment and housing issues). The use of criminal or civil law in instances of domestic violence has prompted long-standing debates due to the different approaches to and impacts of women’s empowerment. For instance, the criminal justice system provided by the state has, according to feminists, extended state intervention and affected women’s self-dependence. On the other hand, civil law is seen by such feminist as more appropriate for women because it gives more space for women’s self-dependence. However, civil law in particular family law is also problematic because not all women are self-dependent, and state intervention under criminal legislation continues to exist at a certain level due to the law itself.

Regardless of the enduring feminist debate over the legislation and the complexity of the laws provided by the state, the aims of the laws are to support and help women as the victims of domestic violence; and, in the long term, legislation is expected to contribute to a change in the mindset of society, in particular women’s

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8 United Nations, above n 3.
9 While feminist and other scholars have long debated the values and limits of the no drop prosecution rule, the conversation has been limited to only two distinct interests: safety and autonomy. Those who support no drop prosecution and other devices that remove decision makers’ discretion in domestic violence cases argue that women are safer under such a rule because it prioritizes punishing and deterring the perpetrator over any other consideration. Feminists who oppose no drop rules contend that the legal regime’s enforcement of criminal statues without regard to victim’s wishes undermines their autonomy, and thus is a paternalistic and disempowering policy. See Tamara L Kuennen, ‘Private Relationship and Public Problem: Applying Principles of Relational Contract Theory to Domestic Violence’ (2010) 2 Brigham Young University Law Review 515, 515–517; Leigh Goodmark, ‘Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases’ (2009) 37(1) Florida State University Law Review 1, 27–32.
mindset. It is a common in modern society that law is used to bring about social change; nevertheless, law is not generally associated with change as it can often simply serve to reinforce the status quo. Even if the goals are ‘progressive’, feminist have questioned the extent to which domestic laws help women as in certain instances such legislation has disempowered the victims of domestic violence.10 Such circumstances have shown that domestic violence laws sometimes cannot be expected to overcome the violence. Furthermore, the victims’ attitudes are often opposed to the aims of the domestic violence legislation as provided by the state. Studies have found that when facing domestic violence women were more likely to disclose the violence to persons or bodies other than those provided by state law; and they often felt reluctant to ask for help from formal institutions because of individual and cultural reasons.11 A discourse on the basis of the assumption that state intervention through criminal justice system policies, particularly mandatory arrest and no-drop maintains that domestic violence laws disempower women and ignores the autonomy of women victims, and may profoundly disadvantage women from diverse backgrounds and marginalised women. Although the aims of the laws are to give a punishment to the perpetrator and to provide a protection to the victims, not all victims propose that their abuser to be sentenced. Feelings of love or affection for the perpetrator, a lack of the financial independence, and an awareness of the children well-being as well as a sense of shame for failing to maintain family harmony may be part of the grounds for their reluctance to proceed further legally against their abuser, though they may have called on police at the time the violence

The criminal justice system protects the victim by removing and punishing the perpetrator. However, one should bear in mind that there is no uniform experience of women victims, and this approach, according to feminist anti essentialists, seems inappropriate for implementation in regard to all women victims due to the individual factors involving the women themselves and the many factors surrounding them either in the private or public space (or spheres) that intersect and interplay in any given instance and experience of the female victims.

Studies on the function of domestic violence laws as to whether they empower or disempower women have been produced by scholars, mostly in the United States, and the remainder in developing countries. A study focused on Indonesian women, however, is rare; therefore this study will explore Indonesian women’s perspective of this discourse in order to obtain a deeper knowledge of the experience of women victims or women survivors from diverse cultural backgrounds. The general aim of this study is that it is expected to contribute to legal knowledge by examining the relations between law, power and space and women’s access to justice in terms of cases of domestic violence. The study is conducted from the women’s perspective and examines the role of current domestic laws in regard to whether they can provide solutions for

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women victims or not. The findings may support or refute the feminist hesitancy over the function of domestic violence laws as a legal tool to help women victims due to the lax of the justice system to respond adequately to the issue, a failure feminists believe is a reflection of patriarchal systems that deny women equal access to law.

In addition, the study focuses on the perspective and experience of women victims because they are the persons who are really engaged with the resources (both formal and informal), each of which inevitably has a relationship with law, power and spaces. Moreover, women’s experiences in accessing resources are an essential element of empowerment. Although empowerment has not been defined clearly, scholars have conceptualised empowerment as ‘the capacity of people to improve their lives is determined by their ability to control their environment, namely having power’. The term of ‘power’ as developed by Michel Foucault to refer to empowerment and as dynamic rather than oppressive will be deployed in this study. It relates to the circumstances of the victims of violence who, generally speaking, are involved in a power dynamic. Battered women have usually been portrayed as powerless; nevertheless, it is believed that they can be empowered when they have adequate access to formal and non-formal resources, which in turn will give them power to make decision based on their needs.

The experience of and the ability to access resources as a solution for the violence become the main discussion in this study, since the obstacles which are derived

14 Michel Foucault described power as a disciplinary power (modern power). He argued that power does not come from above but from below. It comes from the multiplicity of social institutions and relationships, and it is exercised in diverse form; power gives rise of knowledge, and both element are interrelate to each other; power is relational in that an individual only ever holds power because of their position within a set of relationships. In the case of individuals who lack of power, it is seen as giving the potential to resist the power relationship in which they are located; power is positive and productive rather than negative and limiting. See Alison Stone, An Introduction to Feminist Philosophy (Polity Press, 2007); Gutiérrez, DeLois and GlenMaye, above n 13, 534.
from internal and external factors of the victim, within different spaces private and public remain as impediments to what might be envisaged as a lasting solution. The ability to access resources is the way that the victims of domestic violence to access justice. Access to justice may be defined most narrowly as access to the courts or legal proceedings; and the law is supposed to be applied equally in all situations and to all persons regardless of their identities.\textsuperscript{15} Further, Llyod argues that there is a gap between formal and substantial justice because justice requires equality of treatment in accordance with the classifications laid down by the rules, but it says nothing about how people should or should not be treated.\textsuperscript{16} Therefore, special arrangements in favour of the poorer or the vulnerable of the community are needed to enable them to seek justice on an equal footing with those who posses natural, social, or economic advantages.

Conceptions of justice may vary from age to age. For instance, the work of Michael Walzer insisted that the family constitutes a significant ‘sphere of justice’ and has specific references to power imbalances between the sexes and discrimination. At the beginning of Spheres of Justice, Walzer outlines the aims of his theory:

\begin{quote}
I want to argue ... that the principles of justice are themselves pluralistic in form; that different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and that all these differences derive from different understandings of the social goods themselves-the inevitable product of historical and cultural particularism.\textsuperscript{17}
\end{quote}

Thus, the definition of justice may have been defined differently because it is plural, historical, cultural and spatial and made by human beings. Therefore, the definition of justice may have been defined differently by the victims of domestic violence on the basis of their interests and specific cases.\textsuperscript{18} Coker has defined ‘justice’

\textsuperscript{16} Ibid.
\textsuperscript{17} Michael L. Walzer, \textit{Spheres of Justice} (Basic Books, 1983).
\textsuperscript{18} Rika Saraswati, ‘Justice and the Identities of Women: The Case of Indonesian Women Victims of
as a condition which:

… can only prevail in a society free of domination and violence against women. This concept includes holding the abuser accountable, affording all parties due process, ensuring that the survivor’s claims are heard, treating people fairly and respectfully, and guaranteeing equal access…

Perhaps the most tenacious use of the term of justice is that people (in this context is women victims of domestic violence) should get what they deserve.

In the beginning, this study will explore through an ‘ecological’ framework for the causes of violence experienced by Indonesian women within marriage. The ecological approach is chosen to examine domestic violence against Indonesian women as such violence is caused not only by a patriarchal system but also by other various factors. These factors which are derived from different spaces might intersect to each other and perpetuate the violence. By understanding the causes of the violence, the responses of Indonesian women in making an effort to obtain the resolution through their own strategies and efforts to access resources (both formal and informal) can be better understood. Given that the degree to which a female victim is able to adopt strategies and the extent of her access to resources have a correlation with power, the coping strategies of and efforts to access resources by Indonesian women are expected to reveal the types of resources in the different spaces which are (or are not) more helpful and empowering to women victims in their choices and decision making. The study’s specific aim that is based on the concept of empowerment is to examine to what extent women victims of domestic violence in Indonesia have access to formal and non-formal resources when making choices and decisions regarding to bring instances of such a violence to the court or not. Lastly, this study will examine whether the


multiplicity of identities of Indonesian women have significant effects on the strategies, choices and decisions that they made. According to anti-essentialist feminists, violence against women is not only derived from the patriarchal system but also from women’s various identities; consequently, the responses, choices and decisions over the violence might differ from individual to another due to their identities. These identities exist in women’s lives and have been simultaneously shaped culturally, structurally, politically, historically and legally. These factors, once again, emphasise the relation between law, power and space.

The relation between law, power and space seems likely to be common in Indonesian women’s life; however, as a concept it seems rarely applied or may not have been deployed specifically in the study of domestic violence cases. The material below will be used as preliminary evidence and at the same time as the reason for the selection of Indonesian women as the subject of this research study in regard to this relation. This evidence will also be used to examine the research findings.

There are five reasons that Indonesian women were selected as the subject of this study: first, the vulnerability of Indonesian women to abuse when compared with Indonesian men; secondly, the individual woman’s identities as sources of oppression or violence; thirdly, the oppression of women as culturally, structurally and legally justified by the state through the marriage and divorce law; fourthly, the sense of shame established by the state and the culture that so affects women’s self-confidence in the event of domestic violence; and lastly, studies focused on Indonesian women and the influence of their identities in the case of domestic violence are infrequent. The following is more detailed account of the reasons.

In relation to the first reason, namely that Indonesian women are more vulnerable to having experienced intimate partner violence rather than are Indonesian
men;\textsuperscript{20} studies on domestic violence in Indonesia have found that Indonesian women of various different ethnicities, socio-economic and social status, age, education, religion and religiosity have experienced being abused by their husbands.\textsuperscript{21} Although data and exact figures on domestic violence issues are difficult to obtain in Indonesia, the figures reported in the media and from official government sources as well as non-government organisations (NGOs) have demonstrated the rise of the incidence of domestic violence in Indonesia, and the victims mostly are women.\textsuperscript{22}

Although there are no specific studies dealing with domestic violence issues involving Indonesian women and men as immigrants dealing with domestic violence issues (for instance in Australia), studies on immigrant women have found that immigrant women are generally more vulnerable to domestic violence than men, and to domestic violence from their immigrant male partners because of the more highly traditional patriarchal system and the nature of the cultural background that the immigrants have brought from their countries of origin. In addition, in the destination countries immigrant women might be expected to inevitably encounter multiple barriers due to the diversity of the community to which they come and differences in culture, language and the legal system; and such barriers might make them more vulnerable to


\textsuperscript{21} Ibid.

\textsuperscript{22} An article in Harian Pikiran Rakyat [People’s Daily Thoughts] (December 6, 2007) stated that 173 cases out of 263 cases of violence which were handled by the Independent Volunteer Network (jAri) in the period April 2002 - June 2007 were issues of domestic violence. In addition, 83 cases out of 140 cases of violence are handled by LBH within four months at the beginning 2007 were domestic violence matters. Furthermore, the data from the National Commission had demonstrated that 82 % of the 20,391 cases of violence involved domestic violence cases. These data are only a small part of the phenomenon of ‘iceberg’. Reports from several NGOs also illustrates the raise of the number of domestic violence cases from year to year. See the full text in http://hukum.kompasiana.com/2013/06/27/kdrt-kekerasan-dalam-rumah-tangga-569012.html
abuse than immigrant men.\textsuperscript{23} Nevertheless, it should be noted that the incidence of domestic violence for non-migrant women in Australia also remains high. The Sydney Morning Herald, for example, reported that:

One woman dies every week from domestic violence in Australia in 2014. In New South Wales, 24 women were killed last year in domestic-related incidents. Of all homicides in NSW, 42 per cent are domestic. One woman is hospitalised every three hours across the country.\textsuperscript{24}

In relation to the second reason namely that each individual Indonesian woman has a plurality of identity in regard to her background (such as ethnicity, religion and religiosity, gender, sexual orientation, socio-economic status, education, age, disability, fertility or infertility, pregnancy, nationalism, that can be a source of oppression or violence), those identities may affect the experience of domestic violence (its frequency, nature and degree of cultural acceptability) and a woman’s and her community’s response to it. The plurality of identities, according to anti-essentialist feminists, affects women’s experience of and their resistance to oppression or violence. It means that violence against women, including domestic violence, is not only caused by a patriarchal system but also comes from other factors such as ethnicity, religiosity, education, age, social statues, degree of nationalism, and gender and sexual orientation. This is postulated against the views of feminist essentialists who argued that women’s oppression derives from the inequality of gender relationship.\textsuperscript{25} In this respect, Kelly D.


\textsuperscript{25} Kelly D Weisberg, a legal post-feminist, has argued that ‘essentialism constitutes the view that all women are alike, sharing a common “essence” or certain “essential” traits that differentiate them from men. Essentialism is characterised by central assumptions: first, the meaning of gender identity and the experience of sexism are similar for all women; and second, any differences between women are less significant than the traits women share in common’. See Kelly D Weisberg (ed), \textit{Feminist Legal Theory:}
Weisberg, a legal-postfeminist, has argued that:

The primary anti-essentialist critique is that feminists have taken the experience of white middle-class women to be representative of the experiences of all women. In so doing, it may be argued, they obscure women’s diversity. Anti-essentialism captures a paradox at the heart of feminism: any attempt to talk about all women in terms of what women have in common undermines attempts to assess the significance of women’s differences.26

Anti-essentialist feminists argue that an individual woman’s identity is formed by various factors, including ethnicity, religiosity, education, age, social statues, nationalism, gender and sexual orientation. Given that the identity of individual women differs from one to another, differences of understanding, experience, strategy and decision to access the legal institutions in the case of domestic violence will occur. In this respect, Anne B Denis insisted that the plurality of identities will create the plurality of oppression and that violence or oppression against women will have different forms. However, at the same time, the plurality of oppression will create several forms of resistance from women by use of their own identities of ethnicity, religiosity, education, age, social statues, nationalism, gender and sexual orientation.27

The opinion mentioned above is appropriate for Indonesian women, who are basically from a multicultural community; their individualities are undoubtedly shaped by those identities; and these identities adhere to every individual Indonesian woman.28 Due to the differences in identities between individual woman, their experience of domestic violence are consequently and inevitably different from one to another, as well as their strategy of resistance, regardless of wherever they are.29 For instance,
Indonesian women who are Javanese-Moslem and Indonesian women who are Chinese-Confucianist may adopt different strategies to resolve violence against them for the purpose of getting the best or most appropriate settlement in their respective context; the former may go to court to sue the perpetrator and the latter may go to an NGO to obtain a warning to the perpetrator. Different avenues are taken because the majority identities of ethnicity and faith identity-Javanese and Moslem—may have a role of power and significance as a majority culture in Indonesia that establishes a woman’s degree of self confidence rather than the minority identities (in the Indonesian context) of Chinese and Confucianist. Therefore, it is important to analyse the women identities and their influence in order to understand the experience, the strategy adopted, and the decision to access justice regardless of whether their option was to bring the matter before the family court and/or the criminal court.\(^3\)

In relation to the third reason, namely that Indonesian women have also been culturally and structurally shaped through a discourse of conventional femininity as a woman and a wife within both the private and public sphere. It is noted that generally this is perceived as a discourse of oppression that renders women vulnerable to domestic violence and where lesser status is reinforced by marriage and divorce laws.\(^3\) This discourse is justified by the state through family law, that is, the Marriage Act of 1974 (Indonesia),\(^3\) which ascribes different legal rights and obligation to men and women; and which tends to regulating women’s marital role as subordinate to that of men.\(^3\) As a consequence, women have no significant power within the family and

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\(^3\) Ibid.
\(^3\) The marriage is defined as spiritual and physical union between a man and a woman as husband and wife for the purpose of creating a happy and eternal family based on Almighty God. It should be noted
On the other hand, anthropologists who have examined the lives of Indonesian women have reported that, traditionally, many women have had considerable power, particularly economic power, within the family domain and in market trading. A study on marriage and divorce in Indonesia in 1996 showed that Indonesian women have considerably power within the family and society. Some three decades earlier, in ‘The Javanese Family’ Hildred Geertz argued that Javanese women have power within family as they have control over domestic finance, and also in the public sphere due to their activities in market trading. Such power has given them opportunity to file divorce easily. Others studies on Indonesian women’s strategies in dealing with the patriarchal state structures to their advantage have been produced in anthropological studies of court use in Sumatra in 1970s and 1980s by Herman Slaats and Karen Portier, and Keebet von Benda Beckmann. These studies have shown that women litigants are often able to select from different legal avenues with which to engage, so called ‘forum that religious marriages must be registered with the Office of Religious Affairs and other marriages with the Civil Registry Office. Also, intending spouses must adhere to the same religion (Islam, Hindu, recognised Christian Denomination) if being married in Indonesia (interfaith marriages legally entered into elsewhere can however be registered). Although initially intended to restrict polygamous marriage and permit inter-religious marriages and embody greater marriage equality, the law as revised during its formulation permits polygamy under restricted circumstances (eg childlessness and permission of both women) but contains no specific clauses permitting inter-religious marriages. See, eg, Kelly Buchanan /Library of Congress, Indonesia: Inter-Religious Marriage (July 2010) <http://www.loc.gov/law/help/religious-marriage.php>; See also Grace V. S. Chin. ‘Imagined Subjects: Polygamy, Gender and Nation in Nia Dinata’s Love for Share’ (2012) 13(3) Journal of International Women's Studies137, 140. Available at: http://vc.bridgew.edu/jiws/vol13/iss3/10.

The Marriage Act also ascribes different legal rights and obligations to men and women, whilst the rights and status of wife within the different obligations (and one could argue hierarchical status are defined in article 31 for the spouses but an identical right is maintained in article 34. Article 31(3) states that the husband is the head as of the family and the wife is a housewife or homemaker. The obligation of the husband as outlined in article 34(1) is to resource the household to the best of his ability (art 34 (2). Each is allowed to file a court suit should the other spouse fail to fulfil his or her responsibilities: art 34 (3).

Kate O’Shaughnessy, Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law (Routledge, 2009).


O’Shaughnessy, above n 34.

Hildred Geertz, Keluarga Jawa (Grafiti Press, 1983). Note: the original English language text was first published more than two decades earlier: Hildred Geertz, The Javanese Family: A Study of Kinship and Socialization (Free Press, 1961).
shopping’, and use whichever state, religious or customary law is the most advantageous to them. In 2000s, Sulistyowati Irianto’s research on Sumatran women who had been living for years in Java found the similar pattern of ‘forum shopping’ in court use to access to marital property and inheritance.\(^\text{38}\)

Those studies examined that the state or other local power structure might attempt to elicit particular behaviour from its constituents; on the other hand, those women of diverse background may also attempt to manipulate the state or local power structures or play one power structure off against the other. Findings on what Indonesian women confronted in previous research and the strategies taken by them well exemplify the fact that Indonesian women are familiar with legal issues and have the ability to empower themselves because they have good access to resources, particularly access to court.

The issue of domestic violence may be more problematic for Indonesian women who live in Australia because of differences in the culture as well as in the legal system that they encounter there compared to that with which they are familiar in Indonesia. There is a general opinion that the culture of people from western countries (such as Australia) is described by concepts such as individualism, independence, autonomy and separateness, and ever-increasing secularism; meanwhile people from non-western countries, for example Indonesia, are described as collectivist, interdependent,

\(^{38}\) In the context of legal pluralism a person can deploy one or more of the applicable legislative sources to rationalise and to legitimise their decisions or attitudes based on their knowledge about the correlation between power and its interactions. During conflict, contesting parties implement various norms and access forums based on their interpretations in order to support their claims. This process is thus called ‘forum shopping’. The ability to implement the legislation depends on the power and the social relations between the claimants. The interaction in society of those with different social identities that lack legitimisation via certain legislation can result in the emergence of a tendency to deploy state law and its implementation by the state. See Kebet von Benda-Beckman, *The Broken Staircase to Consensus: Village Justice and State Court in Minangkabau* (Foris 1984); Sulistyowati Irianto, *Perempuan Antara Berbagai Pilihan Hukum: Studi Mengenai Strategi Perempuan Batak Toba Untuk Mendapatkan Akses Kepada Harta Waris Melalui Proses Penyelesaian Sengketa* [Women among the Various Legal Options: A Study on the Strategy of Batak Toba Women to Access Inheritance through the Dispute Resolution Process] (Yayasan Obor, 2005).
The third world women are, thus, often defined as religious and not progressive, family/domestic oriented and tending to traditionally lower status, sometimes regarded as legal minors and generally without sufficient consciousness of their rights, often illiterate, backward, but also in some contexts sometimes as revolutionary. Meanwhile Western women are described as secular, liberated and having control over their own lives. Such typologies, even if not completely true, may have no effect on Indonesian women in their home country because they are familiar with the norms and customs (and, as shown above, able to use them to their advantage); moreover, they are part of the community. On the other hand, Indonesian women who are or have been living in Australia might confront difficulties in disclosing the violence due to cultural barriers, the unfamiliar and very different legal system, and a lack of language with all the difficulties at all levels (informal and formal) that this presents.

In order to diminish such barriers, states have issued special policies and laws. Although Australia and Indonesia have different legal systems, these countries, in general, have similar policies to address domestic violence issues, for instance by admitting that domestic violence is the main problem in family matters and that such violence leads to social, economic and legal consequences. Both countries have

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40 Chandra Talpade Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’ (1984) 12 (3) Boundary 2, 333, 335. She has described the shortcoming of viewing the world through ‘western eyes’ with western feminism and culture as the ‘primary referent’ (334) and ethnocentric (352–3) which necessarily devalues the diversity of experience in the ‘other’. She has also observed that what is described as ‘typical’ of western women tends to overstate the commonality in the West, and because the feminist movement in the West to empower women from the oppression of the patriarchal system and inequality in the gender relationship in the Western context, its use as the primary reference is understandable but the overgeneralisations in relation to that context have also resulted in a perhaps even greater overstatement of the commonalities within the ‘other’ and a view that the ‘other’ is essentially ‘homogeneous’ (eg 333–5, 350–1), a view accompanied by a tendency to overgeneralisation (eg 346–7). The legacy of such an approach is to also see women as primarily victims in the culture that is ‘other’ (338–40); and to fail to engage deeply in the subject matter to make more authoritative observations: (349). Indeed, at times, the discourse of western writers tends towards or is essentially neo-colonialist (349,351–2). See also Leti Volpp, ‘Talking “Culture”: Gender, Race, Nation and the Politics of Multiculturalism’ (1996) 96 Columbia Law Review 1573, 1578.
acknowledged that the victims of domestic violence mostly are women (and children) regardless of cultural background.\textsuperscript{41} race, ethnicity, age and socio-economic status of the victim.\textsuperscript{42} In order to eliminate domestic violence, specific policies in regard to legal matters have been adopted, such as the enactment of domestic violence legislation, improvement of relevant legislation and regulations, and the establishment of supporting institutions, victim services and even training for judges. Nevertheless, the persistent view of the decision-makers in court that divorce and domestic violence are separable matters continues to exist. It occurs because the argument is made that they belong to different jurisdictions.\textsuperscript{43} Judges in both countries have a similar point of view that criminal law/public law and family law/civil law are quite distinct areas.

In Australia, according to the Family Law Council, family violence is caused by

\textsuperscript{41} In Western countries, for instance Australia, people (both men and women) are described in terms of concepts such as individualism, independence, autonomy, agency and separateness. On the other hand, in Eastern countries or non-Western countries, for example Indonesia, people are described as collectivist, interdependent, \textit{sembled}, communal and relational. However, there is material for and against this concept. See Kashima et al, above n 39, 935.

\textsuperscript{42} The majority of studies showed that women are more vulnerable to being the victim of domestic violence than men. In Australia, cultural, social belief and practices can impact on a woman’s ability to report her experience. See Australian Law Reform Commission and NSW Law Reform Commission, \textit{Family Violence A National Legal Response (Final Report)} (Australian Government, NSW Government, 2010). In Indonesia, according to Geertz, the relationship in a Javanese family shows that a man and a woman have an equal power in and duty to their marriage. This equality makes some women are brave enough to take a decision to live separately: Geertz, above n 37. Nevertheless, O’Shaughnessy argued that divorce for a Javanese family remains shameful and a woman as a wife keeps trying to the family integrity in spite of violence: O’Shaughnessy, above n 34.

\textsuperscript{43} In Australia, the ‘no fault’ basis for divorce (evidenced by separation for 12 month) has indirectly neglected the history of spousal abuse, particularly during the Act’s first twenty years of operation. The Australian government improved the Family Law Act in 1995 by making a new regulation to ensure that consideration be given in regard to violent spouses in relation to children’s matters related to divorce (that is, in regard to access and custody issues) but it means that women’s experience of domestic violence is still ‘irrelevant’ to divorce proceedings and they may remain feeling disenfranchised. Whilst it has been said that a significant number of women falsely allege violence by former partner/spouse to enhance their chances of custody or ‘care and control’ of their children, other women may be reluctant to reveal violence for fear of being accused of false allegations or manifesting ‘parental alienation syndrome’ or as being ‘failed parents’ themselves and risk not gaining custody/care and control of their children. Domestic violence still is not a priority to be addressed in that forum because domestic violence is a criminal matter. Full ref Australian Institute of Family Studies, See http://ww.aifs.gov.au/institute/pubs/resreport15/chapter1.html. Blindness to domestic violence also occurs in Indonesia. Judges feel reluctant to recognise and use the term domestic violence in divorce cases as domestic violence is a matter which is governed by criminal law and pertains to public law, while divorce is a matter proceeded with in the area of civil law. In fact, several grounds of divorce in the \textit{Marriage Act} 1974 could be classified as types of domestic violence similar to those contained in the \textit{Elimination of Domestic Violence Act} 2004. See Saraswati, ‘Justice and the Identities of Women’, above n 18.
actions and behaviours which can be categorised as criminal offences but the system between the criminal justice and the family law does not have connection, yet (family) violence itself is not something to be confined, conceptually, to the realm of criminal law. In Indonesia, violence within a marriage relationship which is often revealed as grounds for divorce is rarely actually considered in judge’s decisions. Judges at both the Religious Court (for Moslem divorces) and the State Court (for other divorce applications) have argued that violence within the family in a divorce case should be brought to the criminal court; the family court does not have jurisdiction to address the case. These opinions indicate the tendency of the judges’ mindset over the dichotomy between the public and the private law in dealing with domestic violence regardless of the legal system. Such a stance has been criticised as one that should no longer be maintained, rather change should be effected in order to meet the sense of injustice of the victim of domestic violence. Moreover, it probably disadvantages women as the victims because their basic needs and safety will not be guaranteed properly by the

state; and it affects the level of resistance by women to taking these legal avenues. The possibility of women using such legal proceeding as the last resort remains high; nevertheless, they might take legal proceedings only as a final resort and as a result of ‘forum shopping’ in regard to their cases if, when reconsidering their situation they come to the conclusion that such proceedings would be likely to be better suited and more profitable to their situation.

In relation to the fourth reason for selecting Indonesian women as the subject for this study, namely that through the Marriage Law, the state has also established a sense of shame for Indonesian women that affects women’s self confidence in the event of domestic violence and prioritises maintaining family harmony despite the violence, research has indicated the importance of the concept of shame in domestic violence and its exploration in term of state legislation and culture is important here, given the government reinforcement of the concept. According to Kate O’Shaughnessy, referring to Indonesian cases that deal with divorce, ‘shame’ is a multilayered concept ‘which encompasses both positive notions of proper behaviour and the negative emotions associated with reduced status…[and] is, further shaped by factors such as gender, religion, geographic location and historical time period’, 48 as well as by the state’s interest. Studies on divorce and shame found that shame was used by the state to restrict divorce; however, it built on existing negative cultural constructions of the female divorcee. It is believed that the state employed the concept in order to control the relationships between men and women both in the private and the public sphere, and included expectations of how women are supposed to behave. For example, in the New Order Era (Orde Baru, 1966–1998) shame was so constructed that female initiated

48 O’Shaughnessy, above n 34, 61.
divorce was regarded as shameful.\textsuperscript{49} Moreover, being a widow is also stigmatised by the public (though less so than a divorced wife).\textsuperscript{50} Unsurprisingly the concept of shame has been indicated as one of the barriers that women face to disclosing their marriage problems, in this instance domestic violence. As a consequence, they refuse to report the case to police or bring the case before the court, and continue to keep silent, regarding the violence as a private or family matter and shameful for them and their families. At the present time, this concept continues to exert influence on and within Indonesian women since it has been culturally and legally embedded. O'Shaughnessy argued that changes in the divorce record regarding reasons for divorce in the period between 1960s and 2005s ‘were a reflection of a change in public expression of shame rather than the underlying gender hierarchy of the shame’.\textsuperscript{51} As the simple of ta’lik talak formula (which allowed a Muslim husband divorce his wife speedily and without any contestation and had survived into the late 1970s)\textsuperscript{52} appeared to be superseded at least in part (although conditional divorce does maintain its presence under the Marriage Act 1974), more explicit reasons were supplied at the time of application (or repeated as embodied in the marriage contract). On the part of men there were claims of a wife publicly insulting the husband or of a wife’s infidelity whilst women’s claims centred on failure to support the wife and children and accusations of violence or a lack of religious instruction by the husband, but the judgment tended to highlight the need for men to retain their higher status. It is in the same period that divorce rates fall from the figures

\textsuperscript{49} This is despite the fact that such a divorce can only be initiated where the husband has failed to fulfil his responsibilities, yet the wife is made to feel ‘shame’ as if it is in fact her fault that he has abandoned her, or fails to maintain her and the children etc.

\textsuperscript{50} O'Shaughnessy, above n 34, 88. Indeed the State even promoted the concept of the widow who devoted herself to the children rather than remarrying: 70. A ‘model wife’ and ‘model mother’ of the 1970s to the 1990s did not divorce: 69–70.

\textsuperscript{51} Ibid 89.

\textsuperscript{52} For an historical account of ta’liq al talaq in the Indonesian context, see Hisako Nakamura, \textit{Conditional Divorce in Indonesia} (Occasional Publications No. 7 (Islamic Legal Studies Program, Harvard Law School, 2006).
as high as an estimated 50 per cent in the 1950s.\textsuperscript{53} Practice, however, varied markedly, with few divorces being female initiated between 1977 and 1989 in West Java but almost gender equal initiated divorce in a study encompassing Muslim divorce in the 1970s in a section of the capital.\textsuperscript{54} Divorce also became seen as ‘shameful to the nation’,\textsuperscript{55} further increasing women’s guilt in regard to initiating divorce proceedings. The culture of shame can lead to concealment of violence.\textsuperscript{56}

The final reason for selecting Indonesian women for this study is \textit{the rarity of studies that focus on Indonesia women’s experience in dealing with domestic violence as immigrant women in other countries}. Hence the selection of Indonesian women victims who are living in particular country, in this instance Australia, becomes relevant. Studies on immigrant women are predominantly produced in the United States,\textsuperscript{57} Canada,\textsuperscript{58} and Australia.\textsuperscript{59} Of the studies, many are focused on the experience of women from diverse backgrounds, particularly women from Asia and South Asia (such as Vietnam, China, Phillipines, Thailand, Malaysia, Korea, Cambodia) and the Indian subcontinent (India, 

\textsuperscript{53} O’Shaughnessy, above n 34, 63.
\textsuperscript{54} Ibid 64, where the author refers to studies. One study by Gavin Jones found the level as low as 5% (though some were believed to be initiated by men at the behest of their wives), and a ‘micro study’ by Hisako Nakamura in a district of Yogyakarta found equal percentages in its low divorce culture: Gavin W Jones, Yahya Asari and Tuti Djuartika, ‘Divorce in West Java’ (1994) 25(3) \textit{Journal of Comparative Family Studies} 395; Hisako Nakamura, \textit{Divorce in Java: A Study of the Dissolution of Marriage among Javanese Muslims} (Gadjah Mada University Press 1983). See also W Gavin Jones, ‘Which Indonesian Women Marry Youngest, and Why?’ (2001) 32(1) \textit{Journal of Southern Asian Studies} 67, 68–70.

\textsuperscript{55} O’Shaughnessy, above n 34, 67.
\textsuperscript{56} Ibid 84.

\textsuperscript{57} Erez, Adelman and Gregory, above n 12, 45–9. See Miller, above n 12, 114; Maguire, Sigal and Perrino, above n 12, 404; Sumter, above n 11, 17; Lee and Hadeed, above n 12, 145–47; Menjivar and Salcido, above n 11, 899–900; Yick and Oomen-Early, above n 12, 1089.

\textsuperscript{58} Shirwadkar, above n 12, 861. See also Ghosh, above n 12, 59. See Ahmad et al, above n 12, 275. See Sajnani and Nadeau, above n 12, 46.

Bangladesh and Pakistan); however, studies involving Indonesian women as the subject, especially in Australia, are infrequent. It might be that the number of Indonesian immigrants is not as high as that for immigrants from other countries\(^{60}\) (though it ranked tenth as a source of permanent arrivals in 2005–2006)\(^{61}\) and certainly Indonesian marriage or intermarriage rates in Australia are lower than for immigrant women from other countries.\(^{62}\) In addition, discussion in a study focused on women’s experience in cases of domestic violence in different legal systems is also infrequent. Most of the studies dealing with domestic violence focused on mobilisation via the women’s movement\(^{63}\) and government domestic violence policy.\(^{64}\) In Indonesia, the prevalent studies focus more on the triggers and type of domestic violence rather than on the demographic of the victim, the pattern, and multiple identities of women victims.\(^{65}\)

1.2. Research Questions

Scholars have conceptualised empowerment as ‘the capacity of people to improve their lives which is determined by their ability to control their environment,'
namely, having power. Empowerment has been determined to be a process in which clients obtain resources through a personal, organisational, and communal approach that enables them to gain greater control over their environment and to attain their aspirations in order to reduce their powerlessness. In the context of domestic violence, empowerment will involve the women victims in a power dynamic which itself stems from one person or group of people having power over others, in this case of husband over wife, of (more generally) male over female. By being actively and consciously engaged in the power dynamic rather than passive objects of its existing structural dynamic that simply reinforces the status quo, women are expected to gain power (often through an increased awareness of their situation, that is, their collective rather than isolated and isolating experience, and their ability to change the prevailing dynamic) in access to resources, both formal and non-formal. It is believed that the raising of bargaining power and access to resources affects the women victims’ capability to make their own choices and decisions. Furthermore, the women’s newly-discovered or rediscovered autonomy to make choices, in turn, will increase their security. However, obtaining the power and resources might also bring difficulties to women victims due to

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the unconducive circumstances in which they find themselves and which had placed them as class subordinate to men. Thus, access to resources and attaining power becomes a ‘luxury’ for battered women. It is undeniable that a lack of access to information and financial resources may make accessing power and further resources more difficult for battered women that suffer those disadvantages compared to those who have access to both information and financial resources.\(^7\) Moreover, since historically, structurally and culturally power is held by men, access to power and resources might remain difficult for women.

Law, either criminal or family, is a type of formal resources which is provided by the state and which is expected to improve the women victim’s ‘agency’ in and for their own life. It means that state intervention through laws and its various supports and agencies has a role in enhancing the ability of women to make choices and decisions to resolve an abusive marriage relationship. Although law is not the only resource available to resolve the violence, law remains an important referral resource for women victims because it offers more certain legal solutions in comparison to the outcomes of other resources. The women victims, however, sometimes feel reluctant to access the laws, both family and criminal law, due to internal and external factors which are contained in cultural, structural, and individual values and norms. The values and norms which are intertwined with each other and channelling their power within certain spaces have influenced the cognitive and behavioural functioning of women victims in regard to making choices and decisions. Thus, the intertwining of such values and norms reveals the correlation between law, power and space confronted by women victims in accessing resources to obtaining the best solution for their cases.

\(^7\) The opportunity of marginalised women to access resources and power is less than that of white or wealthy women since they lack information and financial support. See Jyl Josephson, ‘The Intersectionality of Domestic Violence and Welfare in the Lives of Poor Women’ (2002) 61(1) *Journal of Poverty* 1, 5–10; Busch and Valentine, above n 66, 82–102.
Law as a representation of power is always established and interpreted within certain social contexts. According to Foucault, power is not simple but a complex weave of interrelationships, where the role (both of the empowered and disempowered) is socially constructed.\(^\text{71}\) For Foucault, power is not legally centred on the state or certain individuals and institutions but rather is a ‘system…[where] domination and … exploitation intersect and support each other, but do not coincide’\(^\text{72}\) Nevertheless whilst recognising that interplay and rejecting the purely individual agent view of action, he notes that the implementation of power sometimes is very delicate and ambiguous as every individual ‘has at their disposal a certain degree of power’ and is able to channel power to ensure certain goals, whether those of the state or broader culture (as the individual is influenced by internalised greater societal consciousness and values and interacts with these),\(^\text{73}\) or of the individual in their particular circumstances (for example, food, shelter companionship). Hence the individual retains the role of channelling the power in the required space. For instance, the distinction between public and private spaces which has affected the oppression of women showed the phenomena of the correlation between law, power and space. Moreover, historically and geographically the dichotomy has driven people to believe that public space is hierarchically superior to and on an oppositionally higher level than private space. Public and private spheres are basically spaces in which power, including law as the representative of power, operates and influences women victims in their access of resources. Men, who are mostly active in the public sphere by doing something economically are deemed worthier than women who are who generally engaged in

\(^{71}\) Hardy and Leiba-O’Sullivan, above n 68, 458.


\(^{73}\) Ibid 72 and generally.
unremunerated household affairs; economic activities are seen as done in the public space and consumption activities are seen as done in the private sphere. As a consequence, the private space depends on the income derived from the public domain. Thus, in this construct to be regarded as ‘equal’ to men, women must be equally involved in public domain income producing activities; otherwise their activities are necessarily dependent. In many places around the world (and in very many countries up until comparatively recent times), the law has traditionally treated women in the family or private space as ‘object’ without even legal rights to their own property. Their legal rights as the consequence of marriage were (and in some places still are) embedded in the husband as the household head. These circumstances have perpetuated and justified domestic violence or its toleration. However, the early feminists of the late 19th century and the feminist movement of the latter part of the 20th century challenged this ideology and situation. As a result, domestic violence became the concern of the state to intervene through legislation in order to support the victim and to prevent recurrence of the violence.

Domestic violence laws provided by the state are expected to achieve the paradigm shift of domestic violence from private matter to criminal conduct and subject to public scrutiny. Legislation, however, does not automatically change the mindset and the attitude of its society. For instance, women are very likely to disclose the violence but not to domestic violence services as such or to police, rather they disclose to family or friends or to more general ‘helping’ services (including general practitioners,

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74 Winter, above n 4. See also Sealey, above n 4; Lisa Young and Geoff Monahan, Family Law in Australia (LexisNexis Butterworth, 7th ed, 2009). See Judith E Tucker, Women, Family, and Gender in Islamic Law (Cambridge University Press, 2008); Amira El Azhary Sonbol (ed), Women, the Family, and Divorce Laws in Islamic History (Syracuse University Press, 1996).
75 In Australia, eg, Young and Monahan, above n 74, 18.
76 Ibid.
relationship counsellors, drug and alcohol services and so on). They might seek help there for symptoms of the violence (depression, injury) or a perceived cause (spouse or partner’s alcohol abuse) or how to deal with the abuse; but feel reluctant to seek police or legal intervention. Victims may not seek help due to blaming themselves for the violence or for cultural reasons. The reluctance of victims to cooperate with police officers and state prosecutors so as to enable the prosecution and conviction of the perpetrator forms a barrier to law enforcement (where legislation is in place). On the other hand, law enforcement sometimes also forms a barrier due to attitudes exhibited by representatives of the legal apparatus, such as police and judges. Police and judges are reluctant to prosecute the perpetrators as the violence occurs within the family. In response to these obstacles, many states have adopted policies of mandatory arrest and no-drop prosecution within their criminal law. These policies render police the primary gatekeepers of the criminal justice system in a response that is reactive rather than proactive in nature, with police relying heavily on citizens to initiate complaints and to report suspected crime. Meanwhile, family law has tried to provide services such as

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78 Keys Young, ‘Against the Odds’ above n 77.

79 Reason such as: ‘shame and embarrassment, fear of escalating violence, desire to keep the family together, feelings that they are to blame for the violence, a sense of self reliance and independence’. Keys Young, ‘Ending Domestic Violence? Program for Perpetrators’ (Full Report, National Crime Prevention (National Crime Prevention Attorney General’s Department, 1999), For text, see <http://www.crimeprevention.gov.au/Publications/family_Violence/Documents/Full_report.pdf>. Report also cited in Office for Women Policy, above no 73. See Menjivar and Salcido, above n 9, 898.


injunctions and mediation. However, the family law response is criticised because of its ineffectiveness and unpopularity when compared to a mandatory arrest policy. This is largely due to the family law processes available. The purpose of giving autonomy to women victims in decision making remains difficult to achieve since the power imbalance continues to exist as the abuser is continually present in the mediation process, and when an injunction is sought from a court and served on a perpetrator, the woman victim who sought the injunction often remains vulnerable to assault (or may even be at increased risk); however, such an injunction is often seen as a step towards safety (and empowerment) as it may forbid violent actions by the person named or prohibit the perpetrator’s presence, although the process does not involve the presence of police until it is breached. Hence the argument for mandatory arrest and no drop prosecution policies which, whilst viewed as paternalistic and as overtly disempowering the women victims by taking the decision out of their hands, does seek to ensure their safety in the face of what may be continued intimidation and the heightened risk of ongoing and/or escalating violence. As Jackie Barron observes, civil law primarily aims to protect the women victims, while criminal law aims to prosecute and punish the offender.

It is argued that criminal intervention alone may not be the ultimate cure for domestic violence cases, instead an issue emerges which relates to what constitutes the best interest of domestic violence victims themselves and whether the state intervention

82 Jackie Barron, ‘Your Legal Rights’ in The Survivor Handbook: Full Version (Woman’s Aid (UK) revised edition, 2009)16 et seq. For text, see women’s aid.org.uk website <women’s aid.org.uk>
83 According to Donna Coker ‘Mandatory arrest policies require that police arrest whenever there is probable cause to believe that a crime of domestic violence has occurred, even if the victim opposes arrest; meanwhile, no drop prosecution policies require that prosecutors refuse to drop charges against a domestic assailant whenever there is evidence that a crime of domestic violence took place, regardless of the desire of the victim for prosecution’: Donna Coker, ‘Crime, Control and Feminist Law Reform in Domestic Violence Law, above n 4, 806; see also Erin L Han, ‘Mandatory Arrest and No Drop Policies: Victim Empowerment in Domestic Violence Cases’ (2003) 23(1) Boston College Third World Journal 159, 16; Jeannie Suk, ‘Criminal Law Comes Home’ (2006) 116(1) The Yale Law Journal 1, 8.
84 Barron, above n 82, 16.
in criminal law represents excessive state control of women victims. The critique has insisted that these policies disempower victims of domestic violence by removing choice from the victim and imposing a penalty on the perpetrator that she may not desire be imposed. By removing choice from the victim, the state has controlled and intruded upon the autonomy of victim-similarly to the batterer/perpetrator (if not as obvious physically).\textsuperscript{85} Such analysis demonstrates the need for change in the legal system to fulfil women’s interests and needs in cases of domestic violence. Feminists insisted that the legal system remains patriarchal, for example, either (i) by using the public/private dichotomy or (ii) by imposing its will over and above the wishes of the female victims. In the first, by placing the operation of law squarely in the public space and, at least rhetorically, removing itself from the ‘private space’ of personal life and the family, the legal system created a distinction between a public sphere of life, which is the proper arena for legal or social regulation, and another, fundamentally different, personal sphere, which is somehow outside the law’s or society’s authority to regulate. In the second approach, law intrudes into the private sphere but in a manner that perpetuates male hegemony rather than seeking to respond to the expressed wishes and choices of the women victims, thus further undermining their agency and autonomy.

Such findings have caused hesitation by some feminists over the usefulness of domestic violence laws as a tool to help women victims;\textsuperscript{86} therefore, such assumptions need to be examined, particularly from women’s perspective in order to determine the causes. However, the women’s perspective cannot be generalised because of the differences in women’s experiences which vary from one woman victim to another. This includes the particular causes of domestic violence; women’s responses to and strategies

\textsuperscript{85} Han, above n 83, 178–83.

adopted in relation to it; their expectations in regards to it; and their opportunities for choice and so on. The differences are caused by their goals, interests, priorities, and also their background of multiple identities. Therefore, there will be further discussion as to what extent the laws can transform the mindset and attitudes of women as victims, and on women’s expectations of the laws provided by the states. Also examined will be the extent to which a sense of justice about domestic violence issues has influenced women’s perspectives of access to justice through the state provided domestic violence laws.

The dynamic process by which women access the laws and justice may not be easy due to the law itself, as the legislation, institutions and apparatus each has power which is laid down and is to be enforced within the parameters set. Law is not merely a definition which states the terms of reference of action or situations within society, but also designates certain social roles and also facilitates their maintenance by empowering certain individuals or groups. All sorts of these functions inevitably need power and space to be deployed.

Power itself is generally defined as the ability to make others conform to one’s wishes; meanwhile, some definitions conceptualise power as a set of strategies employed to accomplish one’s goal. Therefore, regardless of the meaning, power is central to the human condition since it has drawn human beings into power relationships with persons (and group of persons) being relatively powerless or powerful parties. Basically, there is no individual who is totally powerful or completely powerless because she/he has control in some measure over resources, from personal, to social, political, financial and/or institutional, or some combination thereof. These resources figure significantly in the complex social interactions which are recognised as the power process; and the power process imposed on the powerless (such as consciousness
raising as to their residual or other ability) in order to encourage them to mobilise their own resources and recognise the worth of their own assets must overcome the internalised barriers created by the dominant groups’ negative evaluations. Therefore, the exercise of power involves the deployment of resources which are available in the relevant spaces. In another words, space is needed and vital to the deployment of resources.

Space is basically not static. According to Henri Lefebvre, space is developed through a ‘unitary of space’ that consists of three intertwined elements of physical space (nature), mental space (formal abstraction about space) and social space (the space of human action and conflict). The three forms of space combine together to produce a complex spatiality. Given that the spaces are imbued with ideological and political content, the resulting relationship between them varies over time. Through these three forms of space, the relations between law, power and space are created. Given that the three forms of space create different results and vary over time, space has a significant effect on the creation of inequality of circumstance or marginalised peoples. This is due to space being a crucial means through which social identities and distinction are created and maintained; here, the focus is on the power relations that shape how space is claimed, occupied, used, regulated to the benefit of some and the detriment of others. In dealing with domestic violence, the dichotomy of public and private has created such inequality. It seems hardly surprising since space is not a given neutral but rather is continuously produced through socio-spatial relations. Nevertheless, given that space is always changing and space is not a real or objective phenomenon which is experienced and understood in a similar manner by individuals, and that each individual potentially possesses a unique understanding of his/her surrounding, and that this understanding is

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shaped by the mental processes of information gathering, knowledge and organisations so the chance of the victim of domestic violence being equal is wide open. By associating law, power and spaces in the case of domestic violence, the main question in this study is:

To what extent do the relations between law, power and spaces affect the empowerment of Indonesian women to access justice in the legal system dealing with domestic violence?

The main question is expected to explore how power is exercised in and through spaces, and how spaces (and their boundaries) are defined, defended, and contested based on Indonesian women’s perspectives. Further, it will show the effort of Indonesian women to penetrate the sociolegal construction (as a consequence of the relations between law, power and spaces) from the family level through other levels such as neighbourhood, communities and the state. The main question, then, leads to the other sub-questions below.

Historically, the right of man to beat his wife originated in the development of ideas of marriage. A wife had an obligation to obey her husband and largely became a husband’s property and had no legal right within family. The man’s right to chastise his wife has been recognised since the era of Rome; a woman, throughout her life, was supposed to remain under the power of father, husband or guardian; a female could do nothing without a male’s permission. The male dominance and female subjugation continued as the paradigmatic of the patriarchal family structure throughout history to the present. The structure has led to the relegation of women to a less powerful position

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within family (and the society); as the result, the violence toward women that occurs within a marriage relationship occurs often and often remains unpunished.

The problem of domestic violence as a public matter (rather than a private one) was picked up strongly by feminists in the late 1960s and 1970s and it has impinged on the idea of the appropriate manner in which to approach domestic violence, that being to treat it as a crime, rather than as a behaviour that was defined as ‘different’ and not liable to sanction, this latter outcome merely because of its location in the private family sphere (but if committed elsewhere and against a non-family member or intimate other would be viewed as a crime). It was this inconsistency and the plight of battered women and their families that the feminist movement initially addressed. The gradual change in views on such violence, in turn, affected the regulation of the matter. According to Frances Olsen, the intervention, the so-called ‘protection’ intervention, aims to protect the vulnerable within the family sphere. The states, then, adjusted to such a change of view by pursuing remedies and justice in regard to the matter through family and criminal law. However, the implementation of the laws is not proceeding smoothly because of obstacles that are derived from legal system which remains inadequate in regard to domestic violence cases. Further, domestic violence issues remain contested as public/ private sphere and criminal/family law dichotomies continue to exist in communities. Some people continue to argue that as the abuse occurs within family, by a husband toward his wife (or conversely) it is a family matter; therefore, the family itself has to overcome the abuse (whether physical, psychological, sexual or economic, for example) as a family matter; and the state should not intervene. Even to the victims of abuse, it may appear that it might be better for the abuse to be treated as a family

matter due to any number of reasons, such as considering the financial dependency of the victim (and her children) on the abuser, and thus striving to ensure the welfare of the children by keeping the family intact, while preventing the repetition of the violence or other abuse, and attempting to maintain the harmony of the family. Whether a certain level of violence will be considered a family matter or a public matter may depend on the women victims’ perspective; the point on which such an evaluation pivots differs from woman to woman. The woman’s perspective of the violence as a public or private matter may impinge on their response, the strategy adopted and, in turn, the decision whether or not to access domestic violence laws. Moreover, women’s perspectives on domestic violence or abuse as a private or family matter (and the degree of acceptability of particular levels and types of such abuse) has been socialised and views embedded by religion and culture, and it is even sometimes also justified by the state through legislation.

From the legal aspect, the dichotomy between criminal law and family law has emerged as a problem in the implementation of law, particularly in dealing with domestic violence and other legislation which is connected with it. Studies have found that the dichotomy has created difficulties for the victims in accessing justice because of the complexity of the legal system. For example, women (and children) as victims of domestic violence need to go to a minimum of two different courts proceedings (criminal law and family law courts) which differ from each other. In addition, as a public issue, domestic violence involves numerous public agencies such as police, prison service, hospital, courts, mediation services, state child welfare agency, social security, children’s school (teachers and counsellors); and involves a number of issues,

including disputes related to custody and guardianship. The different legal systems and agencies have different approaches and this causes significant anxiety and distress for the parties involved. In addition, the law itself through its apparatus has also established a view as to victim behaviour that is in accordance with stereotypical ideas related to how a female victim is supposed to behave, and which is usually constructed by the discourse of conventional femininity.

The discourse has a significant role in constructing both the law and individual women’s perceptions of themselves which affects the understanding of the experience of male violence. Further, the patriarchal system constructs women victims as passive and weak; it shapes a certain attitude, characteristic behaviour and experience of individual women of domestic violence. As a result, women are more likely to share their experiences of violence to family or friends (a lateral, mutually supportive, generally female environment), but they may often feel reluctant to ask for help from official police/court channels that are generally in a vertical power relationship and generally male, or to seek assistance even from official domestic violence services due to individual and cultural reasons. Some studies have even found that women have argued that the domestic violence against them is not abusive conduct. Indeed, victims blamed the violence on themselves due to their failing in their duties as a good mother.

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93 Wilcox, above n 47, 1013.
94 Baker, above n 31.
95 Ibid.
96 Krug et al (eds), above n 77, 96. See also, Keys Young, Against the Odd’, above n 77.
97 The reasons are various such as shame and embarrassment, fear of escalating violence, desire to keep the family together, feelings that they are to blame for the violence, a sense of self reliance and independence, the strength of gender role as good wife and mother. Further, See Keys Young, ‘Ending domestic violence? Program for Perpetrators (Full Report, National Crime Prevention (Attorney General’s Department, 1999), cited in Office for women’s Policy, Discussion Paper on Domestic and Family Violence Strategic Framework, New South Wales Government: Department of Premier and Cabinet, Office for women’s Policy, 2008). See also Edna Erez, ‘Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective’ (2003) 4(2) Western Criminology Review, 155,155–169; see also Samson Tse, ‘Family Violence in Asian Communities: Combining Research and Community Development’ (2007) 31 Social Policy Journal of New Zealand 170, 175.
and wife. The ground of violence overlaid on the traditional gender role of women as a ‘good wife and mother’ exists to this day. It demonstrates that there is still an expectation that women should assume the conventional feminine position of wife, mother, and the relationship-keeper in the maintenance of relational harmony in a private domain. If they assume that position of overall responsibility for marital harmony, any breakdown reflects poorly on them (rather than the abusive spouse). The discourse of conventional feminity, according to Foucault, together with a practice of shame in both law and women’s individual lives, also has a significant role for the formation and the perpetuation of power relations in society. He insisted ‘These power relations produce perceived universal truths, against which an individual judges herself, and which inform the way in which an individual construct the world and themselves within it.’ For instance, the dichotomy between private and public has determined the appropriate domains for women and men (and thus express their gender identity and role). Individual women are, in turn, judged by the law as either normal, or conversely, deviant if they fail to adhere to these standards.

These facts confirm that men held power and privilege over women in personal life. Women were dominated by men not only in the private sphere of family but also in the public sphere, and in the construction of gender roles as well as the private and public distinction entrenched over decades and which affected the community’s mindset, including women’s mindset.

The change of individual mindsets on domestic violence as a crime or public

98 Menjívar and Salcido, above n 11, 868.
101 Foucault, ‘Questions on Geography’, above n 72, 94. See also Baker, above n 31.
102 Baker, above no 31.
matter is important as a bridge to community connectedness and social change. The change might not rely on the law itself because of many influential factors, such as religiosity, ethnicity, race, education and culture in its many aspects have a role to play in the construction of women’s and society’s mindset at large. Further, studies have found that domestic violence exists not only because of the existence of the patriarchal system but also because of other elements of women’s identities such as race, class, religion, cultural, sexual orientation, and politics. These factors are intertwined, one with another; and it sometimes perpetuates the violence. Study on intimate partner violence in women’s experiences in South Asian countries found that women remain subordinate to men in all realms of life due to the traditional patriarchal system which combines with other factors such as cultural, legal and political to aggravate the situation. Therefore, based on the description mentioned, the first sub-question is:

What are the causes of domestic violence against Indonesian women and to what extent have the causes perpetuated the violence?

The answer to this question will be provided by further information about the experience of Indonesian women of domestic violence being obtained by investigating the causes of domestic violence through an ecological framework. An ecological framework is used because this approach insists that the cause of domestic violence is not merely triggered by the patriarchal system but also other factors, both individual and non-individual. Although the ecological approach never mentions space in its analysis, the existence of layers within an ecological approach (such as microsystem, macrosystem, exosystem and mesosystem) represent the spaces in which power has

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been laid down and how it has affected the relations between women victim as the ‘powerless’ and men/agencies/institutions/communities as the ‘powerful’ parties. Each layer whether from individual or non-individual factors may have significantly different effects on women victims, from one to another. Individual factors include the woman’s or perpetrator’s experience during childhood, the woman’s perspective on domestic violence and her expectations of what the marriage relationship should be; non-individual factors include the responses from family, social networks, institutions and communities. The women victims might have negative and positive responses at the same times; and these responses can influence the next steps for the women victims in their determination of the strategies to be used when confronting the violence.

According to Dutton, Goodman and Bennett, ‘[S]trategic responses are defined as help-seeking and other types of behaviors battered women employ to protect themselves and their children from domestic violence.’ The coping strategy taken by battered women to solve domestic violence may differ from victim to another. This occurs because women have different experiences based on their identities, such as class, race, ethnicity, and the form of domestic violence itself. A study on women’s strategies in facing domestic violence largely assumed that battered women were unwilling or unable to leave their abusive partner. Further, many studies on women’s decisions to leave or stay in an abusive relationship noted that the decisions were interconnected with many reasons, such as financial dependence, fear of retaliation, fear of losing children, a lack of support from friends and family, the availability of support

106 Menjívar and Salcido, above n 11, 902.
107 Dutton, Goodman and Bennett, above n 105, 90; Finn, above n 69.
and the existence of agencies provided by the state as well as the constant hope that ‘he might change’. Even in the most gender equal countries in the world (such as Sweden), gendered violence such as domestic violence continues to exist; and women as the victims, whether they stay or leave the abusive relationship remain feeling stupid, ashamed and blaming themselves for the violence. Furthermore, in developing countries being a single or unmarried woman is an added barrier for women wishing to leave an abusive relationship as this status is social and culturally unacceptable and shameful for women.

In addition, a study on coping strategies and the resistance deployed by women victims of domestic violence found those women’s attempts to reduce or diminish violence utilised an interplay of both private and public resources, and formal and non-formal resources. By implication, resources provided by either the state and/or private sources, through private markets, social networks and communities are the key levers enabling resistance and coping strategies. It meant that women who experience domestic violence manage a range of complex strategies of resistance, such as asking for the perpetrator to stop the violence, temporarily leaving the place of violence, asking help from friends and neighbours, reporting the violence to police, seeking a protection order and professional help from domestic violence support groups or agencies. Although there is no single strategy that is the most effective in all situations, many women victims are able to reduce the frequency or severity or eliminate the violence through implementing tactics such as those. Nevertheless, there are difficulties that are inevitable encountered by battered women in order to determine the strategy; and these

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111 Everton-Moore, above n 100.
circumstances are not surprising since society’s prevailing patriarchal system leads to unequal power dynamics in relationships of men and women both in public and private spaces. 112

According to Mary Gilfuss et al, in the public sphere, men have the advantage over women in all aspects of life with societal sanction and support for the use of violence against women in order to secure and maintain dominance. Those larger structures of inequality are then applied in the private domain where men secure greater privilege, have greater control over resources and do not view women as their equals.113 Moreover, this structure has placed women at greater risk than men, especially women of colour, immigrant women and poor women who often face discrimination, coercion and violence when they seek help from public institutions.114 These difficulties make women prefer to keep silent and keep the case as a private matter rather than to bring it to the attention of public authorities.115 It seems that this division of the private and public spheres cannot guarantee women’s safety in domestic violence cases; and this circumstance confirms a view that ‘battered women are battered three times, once by the batterer, a second time by society and finally by the legal system’.116 These observations illustrate why women may have difficulties in determining the strategy to overcome domestic violence; however, some of them are able to establish an appropriate strategy for themselves. The authors of the WHO World Report on Domestic Violence and Health observed that the majority of battered women are not passive

112 Ibid.
114 Ibid.
victims but, in the contrast, tend to adopt strategies to ensure their safety and that of their children.\footnote{117 Krug et al, above n 77.}

Further, it is undeniable that the state has an important role in socialising domestic violence as a public matter through the law, mainly criminal law and family law. The laws, then, are expected to change the mindset of the community (including women). However, there is a doubt expressed within feminist writing about the functioning of domestic violence laws in the state’s attempt to help women who experience domestic violence to achieve justice.\footnote{118 Ruth Lewis et al, ‘Protection, Prevention, Rehabilitation or Justice?: Women’s Use of the Law to Challenge Domestic Violence’ (2000) 7(1-2) International Review of Victimology 179.} Regardless of the hesitation of a number of such feminists, the law and its institutions may be chosen and deployed by women (often as the last resort) for their particular case. As the last resort, they may bring their cases to court either family court or criminal court in order to ensure justice. Access to justice is a woman’s right, but various factors in addition to gender often prevent or inhibit them from gaining access to the legal system on an equal basis with men. Such factors include age, race, marital status (for example, a de facto relationship as opposed to a state recognised marriage), family responsibilities (for example, whether children are involved in the relationship, and also whether they too are being directly injured by the partner), cultural background (including religious background and current degree of religiosity), sexual orientation and disability.\footnote{119 Australian Law Reform Commission, Equality before the Law: Justice for Women Report No.69 (Pt 1) (1994) 2.4.} The decision to use the courts may also depend on women’s considerations about the availability of the resources and whether it would be advantageous to utilise those particular resources in their case.

The resources, particularly information about state provided domestic violence
laws, may have been accessed by women through their linkages whether it come from their inner circle or outer circle, such as the workplace, extended family, or peer network, social institutions (such as the police, courts and social services). The options available to a woman are affected by factors beyond her control, such as the attitude of the community (and her own family) toward domestic violence, resources available for abused women, her access to financial resources, social and legal support; hence, it is unsurprising if the strategic responses that are taken by battered women to solve domestic violence may differ from one woman to another.

The ability of women to access resources in order to improve their lives in regard to domestic violence is a form of empowerment. The theory of empowerment will be deployed for four reasons. First, the theory has been used to discuss domestic violence cases. Secondly, it is acknowledged that the power relation is a significant factor dimension that creates both ‘powerlessness’ and ‘powerfulness’ (powerless or relationally disempowered and the powerful or relationally empowered, respectively), although proponents also insist that nobody is really totally powerless. The theory proposed access to resources as the way of reducing ‘powerlessness’ by improving women’s bargaining position because resources are sources of power; by obtaining power the powerless are expected to become more ‘powerful’. Lastly, the resources mentioned by the scholars of empowerment are available at all system levels in communities. It meant that sources and power in the theory of empowerment are also socio-spatial constructed factors; therefore, it is relevant to the discussion on the

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relations between law, power and spaces.

In accessing resources and adopting strategies based on the resources accessed, it is expected that the victims of violence make decisions. The inquiry question becomes whether the decisions made by the women victims were influenced by their identities or not. The inquiry emerges because Indonesian women in this study have various identities. Given that Indonesian women victims of domestic violence (like other such victims) have varying multiple identities, the theory of intersectionality will be deployed in regard to the next sub-questions for two reasons. First, it relates to power that has been laid down within identities. The identities will compete and intersect with one another and the dominant identity may have significant influence on the decision. Secondly, it is believed that the power within the identities has oppressed women at a certain level; nevertheless, there is an optimism in an anti-essentialist feminist perspective whereby these identities can be used as an avenue for resistance. It is necessary to determine whether and which identity as a variable has a significant effect on the decisions made by Indonesian women victims of domestic violence, as in certain cases the shape of identity is influenced by the values and norms which consist of and coexist with violence; and such values and norms have been constructed by existing power relations in certain spaces. These accounts have been developed by Crenshaw through the theory of intersectionality and by anti-essentialist feminists. These theories reflect on the role of power that is laid down within the identities and where these intersect with each other, which, in turn, has influenced the oppression of women in different spaces and create women’s powerlessness, or conversely, give the women opportunities to change the power relation, reduce oppression and make them

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more powerful.

The facts have also shown that all women do not experience domestic violence in the same way, because domestic violence is caused by several dimensions other than simply gender, such as race, class, sexual orientation, colonial or intercultural experience, religion and religiosity, disability, pregnancy or fertility status, relative income status or education level, and nationality. Such circumstances of vulnerability affect the safety of women within the private domain, result in discrimination in the public domain, and insensitivity at the hands of law enforcement and other helping agencies.\(^{124}\) Women from minority group such as immigrants, particularly those who are non-english speaking (in the context of English speaking majority populations), and of a different race or culture, or sexual orientation, are also more vulnerable to being battered or subjected to violence and other forms of abuse than men. Moreover, a woman may blame herself. She may also be treated differently by others if she is white or black, poor or wealthy, a prostitute or a housewife, married or defacto, a citizen or an undocumented immigrant.\(^{125}\) In addition, there is a misleading presumption that the culture of minority or immigrant from the third world is more sexist and patriarchal than Western cultures. ‘The representations of minority women are often considered be representative of their country of origin or a third world culture.’\(^{126}\) As a consequence, the incidents of violence in the Third World or immigrant communities are thought to characterise the cultures of entire nations\(^{127}\) while instances of domestic violence occurring within the dominant culture are thought to be examples of deviant behaviour.


\(^{125}\) Ibid.

\(^{126}\) Leti Volpp, ‘Feminis versus Multiculturalism’ in Natalie J Sokoloff and Christina Pratt (eds), Domestic Violence at the Margins: Readings on Race, Class, Gender, and Culture (Rutgers University Press, 2005) 39.

\(^{127}\) Ibid.
rather than characterising that culture.\textsuperscript{128}

Further, Denis recalled that the identity of individual women is not singular but plural, and includes such identities as gender, sexual orientation, religion, ethnicity, education, age, social status, race and nationalism. The plurality of identities plays a significant role in creating compound oppressions within individual women. This opinion is contrary to that of the feminist essentialists, who posit that the oppression of women is caused solely by the gender relationship. Denis has insisted that the oppression based on patriarchy and race or ethnicity may have different intensities at any particular time, with the oppression which is caused by patriarchy sometimes not as strong as the oppression which is caused (for example) by race or ethnicity.\textsuperscript{129} Hence, the strategies against the oppression are various as they address the identities of gender, sexual orientation, race, ethnicity, religiosity or nationalism. This notion will lead to a greater understanding of the strategy of resistance taken by Indonesian women who have different ethnic and religious backgrounds.

An example is given by Danardono (as mentioned above), where in the case of sexual abuse, Javanese woman/Moslem undoubtedly sue the perpetrator in court, while Indonesian Chinese woman/Confucianist ‘merely’ sought help from a non-governmental organisation to admonish the perpetrator.\textsuperscript{130} Javanese and Moslem as the majority identities compared with Chinese and Confucianist may give more opportunity to individual women belonging to the former group to access justice rather than women from the minority ethnic and religious group. The strategy adopted by Chinese women-Confucianist is considered safer by those persons than making contact with the legal apparatus. The reluctance to contact the formal legal apparatus is largely due to the

\textsuperscript{128} Ibid 41.  
\textsuperscript{129} Denis, above n 27, 453–467.  
\textsuperscript{130} Danardono, above n 29.
majority cultures (represented by Javanese and Islam) that have long shaped the gender practices of minority culture. Regardless of interaction between majority and minority cultures, these women have utilised their identities of gender, ethnicity and religion against sexual abuse to confront the oppression or violence against them. Based on the description above the second and the last sub-question is:

*To what extent do the identities of Indonesian women victims influence their accesses to resources and their decision in response domestic violence?*

The answer to this question will detail what kind of personal strategies are adopted by Indonesian women, and what formal and non-formal resources are accessed by them. Further, it will elaborate upon women’s considerations in making individual choices and decisions, including the main reasons for those choices and decisions, and the influence of the women’s multiple identities. Therefore, the reason why an individual Indonesian woman has selected a particular strategy and form of resistance from the diverse strategies and forms of resistance available is expected to give further information about her identity, a woman’s interests and goals, and the obstacles she encounters when accessing the resources. Further, the role of the non-formal approach (parent, sisters/brothers, relatives, friends, priest, imam and so on) and formal approach, which are available in different spaces, will also be examined.

The plurality of women’s identities will probably influence the process of making choices and decisions, including the decision to use court proceedings (and in which court: family law or criminal law court) as the last resort to access to justice, and the reasons for those decisions. Hence, the decision whether to bring the violence before the court or not, the coping strategy adopted based on resources and power, and the exploration of the causes of domestic violence against women as mentioned above in the sub-questions are basically discussing law, power and spaces from the women
victims’ perspective. Law, power and space are three elements which cannot be separated from each other because power exists in law and space, and law and space exist because of power; and it seems more appropriate to treat the relations between law, power and space as interwoven rather than in terms of the effect of one upon another. 131

In summary, in this thesis there is a primary question and two sub-questions to be addressed:

Primary question:

To what extent do the relations between law, power and spaces affect the empowerment of Indonesian women to access justice in the legal system dealing with domestic violence?

Sub-questions:

1. What are the causes of domestic violence against Indonesian women and to what extent have the cause perpetuated the violence?
2. To what extent do the identities of Indonesian women victims influence their accesses to resources and their decision in response domestic violence?

1.3. Objective

The study aims to provide an analysis of the experience of Indonesian women in accessing resources which are available in various spaces, particularly the public legal space of family and criminal courts. It stems from their understanding of domestic violence as family/private or criminal/public issue, their experience of domestic violence and the causes of the domestic violence against them. By understanding their experience and the causes of domestic violence, then, the coping strategy they adopt will be elaborated through their approach to resources both formal and non-formal; the approach which, in turn, will lead them either to bring the matter to court or not. The

131 Blomley, above n 1.
reason to bring the matter before court and the courts chosen becomes important information that needs to be explored further. The findings of the research, thus, is expected to examine how power is exercised in and through spaces; and how the spaces (and their boundaries) are defined, defended, and contested based on the Indonesian women’s perspectives and identities. Further, it will examine the effect of power developed by Foucault in regard to women’s empowerment; and to what extent the power that reverberates from household through to other scales such as neighbourhood, city/communities and to the state which can be both a source of oppression and give opportunities to women to empower themselves. Further, by understanding the relations between law, power and space in the case of domestic violence, the questions of whether the domestic violence laws have a significant role as the agent of social change or not and whether the existence of domestic violence laws perpetuate the violence can be addressed, as can the issue of the impact of such violence still being widely regarded and treated as a private matter, which diminishes the quality of support and protection experienced by domestic violence victims.

Given that being abused can be experienced by all women regardless of their identities, a specific analysis of Indonesian women’s access to justice when dealing with domestic violence will be undertaken with the analysis being deployed based on the religiosity, ethnicity, country of residence, education, age and socioeconomic factors. These identities might influence the women victims’ experience, personal strategies, access to both formal and non-formal resources, and use of court proceedings either in the family or criminal court as a last resort.

As has been mentioned above, Indonesian women are culturally and structurally shaped by the discourse of conventional femininity which imposes certain behaviours on women within the private and public spheres, such as being a ‘good woman and
wife’, and being passive and weak. However, based on anthropological studies on gender relationships, Indonesian women, particularly Javanese women, have considerable economic power within both the domestic and public sphere. As a result, they can file for divorce easily. Moreover, they were able to utilise their identities to their advantage among the complexities of the plurality of Indonesia’s legal systems. These facts are expected to be extremely useful in conceiving the ways in which Indonesian women victims of domestic violence encounter and resolve domestic violence.

The basis of thinking involves considering feminist anti-essentialist positions that postulate that various identities themselves, rather than gender relation and patriarchy, could pose another dominant sources of oppression or violence against women. At the same time, women can use their identities as the strategy to resist the violence against them. In the case of domestic violence, such a strategy could be used by Indonesian women wherever they are, but the situation might be reasonably expected to affect the nature of the strategy selected to some extent, but this will be explored. Thus, this study will elaborate how Indonesian women with a background of diverse identities may selectively utilise their identities to respond to instances of domestic violence either in Indonesia or Australia. The different settings of the study between Australia and Indonesia may not affect the ability of Indonesian women to employ their identities in the case of domestic violence since Australia, like Indonesia, claims the status of a multicultural state. Furthermore, these countries also provide support through family law and criminal law, though their implementation differs. However, the plurality of identities of Indonesian women could also become barriers for them in their access to justice. In this respect, Beckett and Macey have argued that:

Multiculturalism does not cause domestic violence, but it does facilitate its continuation
through its creed of respect for cultural differences, its emphasis of non-interference in minority lifestyle and its insistence on community consultation (with male, self-defined community leaders). This has resulted in women being invisibly, their needs ignored and their voices silenced… ¹³²

Thus the attitudes of majority cultures have long served to shape the gender practices of minority cultures. Majority institution may directly impose mainstream gender biases onto minority cultural communities, where it might appear that multiculturalism has resonated with and offered support for gender hierarchies in minority cultures; or alternatively where there is a degree of dissonance between majority culture and minority practice, some might say a misguided approach to multiculturalism which preferences perceptions of tradition (and its maintenance) over women’s experience may serve to disadvantage women within the minority culture (as outlined by Beckett and Macey above), sometimes even more so than in their home countries where a degree of familial and other support may available. Therefore, indications of the strengths and weaknesses of Indonesian women that are created by their identities and the constraints acting upon them because of these identities will be obtained to evaluate whether the identities have a significant roles in the way women respond to domestic violence and access justice when dealing it.

1.4. Structure of the Thesis

The content of the thesis is in three parts. The first part will introduce the basis of the thesis and consists of three chapters. Chapter 1 ‘Indonesian Women and Domestic Violence Laws: An Issue of Public and Private Dichotomy in the Legal System and Access to Justice’ will provide the introduction to the study and the reason for selecting Indonesian women as its subject, the circumstances of women and legal issues in the

¹³² Clare Beckett and Marie Macey, ‘Race, Gender and Sexuality: The Oppression of Multiculturalism’ (2001) 24 (3-4) Women’s Studies International Forum 309, 311.
case of domestic violence in Australia and Indonesia; the research questions, objectives, and significance, and the research methodology adopted. The methodology section will discuss research design, ethics approval, research sites and subjects, sampling process and analytical data. Chapter 2 ‘Law, Power and Space: The Opportunity of Women to Access to Resources and Justice Dealing with Domestic Violence Cases’ will explore the legal issues dealing with the relationship between law and women. It discusses the neutrality of law and women’s experiences; law, power and spaces: the opportunity of women to make choices; Greek thought on the dichotomy between private and public which affected the relegation of women to private sphere; and the last, family malfunction and state intervention. Chapter 3 ‘Legislation Dealing with Violence within the Family: Change and the Effect on Women’s Rights’ will explain the terminology, the reasons for domestic/family violence, and the paradigm shift of the legal system relating to domestic violence issues.

The second part of the thesis consists of a further three chapters. Chapter 4 ‘The Causes of Domestic Violence and Indonesian Women’s Experiences: An Ecological Approach’ will elaborate the type of violence and the causes of domestic violence against Indonesian women based on an ecological approach. Chapter 5 ‘Access to Resource and the Justice System: The Interplay between The Identity of Indonesia Women Victims of Domestic Violence and Various Aspects of Social Environment’ will discuss the interplay between the identity of Indonesian women victims of domestic violence and various aspects of social environment in order to determine whether the identity of Indonesian women victims of domestic violence affected their opportunity in accessing resources and justice.\textsuperscript{133} Further, it will discuss the relationship between the influence of women’s identities on their choices and the decisions to utilise a formal

\textsuperscript{133} Saraswati, ‘Justice and the Identities of Women’, above no 18.
approach and therefore access family and/or criminal court (as the last resort). The third part of the thesis consists of Chapter 6 ‘Conclusion’ will sum up the findings, and reflections, and put forward recommendations based on the previous chapters.

1.5. Significance

This study fills a vacuum in academic literature by providing an important insight into legal theory and its implementation in domestic violence cases, particularly in regard to Indonesian women’s experience of domestic violence by deploying an approach of the relationship between law, power and space. The relationship between law, power and space becomes the important element for women victims of domestic violence in accessing justice.\textsuperscript{134} It occurs because law as a representation of power is always established and interpreted within a certain social context and also within a certain space. Power exists because it is accorded by culturally determined parameters sometimes acknowledged, other times endured, but often reinforced by or exemplified in formally framed legal rights. Thus only certain institutions and individuals are entitled to various rights and powers; however, women are frequently classified as ‘second class’ in the ‘world’ of men, (where women’s roles are essentially seen as derivative or supportive and subsidiary to those of males, or whose roles are measured against a male standard, again reinforcing the hierarchy of male ascendancy); sometimes they may have no equal right to access power as do men.

The thesis will also examine the relationship between law, power and space in the obstacles and the chances encountered by Indonesian women victims of domestic violence. These do not merely flow from the laws, but also from the power and the spaces in which these elements are channelled. The discussion on the relationship between law, power and space is also undertaken to illustrate the complexity of the

\textsuperscript{134} Ibid.
causes, strategies, choices and decisions for women dealing with domestic violence that occur because of the intertwining of these elements. Such intertwining has shown that there is basically not a single cause of domestic violence against women, for example patriarchal system, but rather that there are other factors, such as legal institutions, legal staff and the legal system itself which all occur in certain spaces; and women struggle and manoeuvre within these spaces to access justice. The discussion on the relationship between law, power and space is to complement the discussion of other theories (such as the ecological framework approach), and theories of empowerment and intersectionality. Though they may never mention ‘space’ as the discourse in domestic violence, these theories discuss power, and the factors surrounding women victims of domestic violence (which are basically socially structured within certain spaces), and the law due to it dealing with domestic violence.135

Further, the interaction between women victims, law and space is expected to give the women victims chances to have more access to resources and power. The expectation is not exaggerated since the space in this context not only is a real space or has a physical nature but also has an abstract meaning as a strategic creation of or perceived need for room to manoeuvre, to negotiate and to challenge existing structures and controls which have been established by state, communities or other authority as the power holder.

135 Crenshaw insisted that systems of power and oppression operated independently or simultaneously, and the dynamics of each may exacerbate and compound the consequences of the other. However, her theory is criticised because it is not clear whether intersectionality should be conceptualised as a ‘crossroad’ or as a dynamic process. It is not at all clear whether intersectionality should be limited to understanding individual experiences, to theorising identity, or whether it should be taken as a property of social structures and cultural discourses. See Natalie J Sokoloff and Ida Dupont, ‘Domestic Violence: Examining the Intersection of Race, Class and Gender-An Introduction’, in Natalie J Sokoloff and Christina Pratt (eds), Domestic Violence at the Margins: Readings on Race, Class, Gender, and Culture (Rutgers University Press, 2005) 2; Kathy Davis, ‘Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful’ (2008) 9 Feminist Theory 67, 67–71; Dorthe Staunæs, ‘Where Have All the Subjects Gone? Bringing Together the Concepts of Intersectionality and Subjectification’ (2003) 11(2) NORA - Nordic Journal of Feminist and Gender Research 101, 101–110; Heise, above n 120, 264.
Although the laws which are provided by states are undeniably there to support and help women as the victims of domestic violence to meet their needs and secure their safety, the system sometimes does not work properly and optimally due to the victims’ behaviour and/or the nature of the system itself. Victims sometimes resist or refuse intervention by the system-law apparatus into their private matter for some reason/s. The reasons sometimes seem individual and irrational to the apparatus; often only in an extreme case will the victim contact support agencies to seek help. On the other hand, the law apparatus as the part of the system, in certain cases is sometimes reluctant to become involved due to cultural reasons as well. These circumstances seem to perpetuate the view that family or domestic violence is a family matter.

Based on such circumstances, this study aims to give specific descriptions from Indonesian women’s perspectives which are expected to provide a different nuance on this legal issue. Moreover, by comparing the experience of Indonesian women victims living in Indonesia and those of such women in another country, for instance in Australia, findings about whether the legal system works or not and whether this is caused by the victim behaviour or the system itself will be obtained. Based on the findings, therefore, recommendations for improvements that may be made that may involve legal, structural and cultural dimensions. However, the findings cannot be implemented as a generalisation for all domestic violence cases due to the qualitative approach of the study. The finding of any pattern of domestic violence and the strategies taken by Indonesian women, however, is expected to provide further information not only for Indonesian women but also women at large in order to prevent the violence and encourage the adoption of appropriate strategies. These findings, in turn, are expected to increase the awareness of communities so that they are able to improve their services for the prevention of the violence, for supporting and helping the victims.
1.6. Research Methodology

This section will discuss how and why the research was undertaken, and the logistics of the research, including the setting, the selection sample, the recruitment, ethical requirements and the basic demographics of respondents. The following section of this chapter covers the means used to acquire responses from respondents for the study and details how and why the research was undertaken. The section on ‘how the research was undertaken’ will describe the empirical research which has been conducted in Australia and Indonesia. It will also include the approaches adopted and the obstacles to obtaining respondents. The research was undertaken as it is expected that the findings from empirical research will provide the answer to the proposed research questions.

1.6.1. How the research was undertaken

This section will briefly outline the empirical research conducted, the qualitative method adopted and the selection of respondents. The empirical research was conducted between August 2011 to January 2012 in two countries, Australia and Indonesia. Prior to doing fieldwork, research ethics approval was obtained as required from the Human Research Ethics Committee of the University of Wollongong. The researcher processed the application in April 2011, and it was approved by the Committee at the end of July 2011. Following receipt of approval, the empirical research was undertaken in Australia between August and November 2011, and in Indonesia between December 2011 and January 2012. In August 2011, the researcher contacted a number of Indonesian people in Sydney and Wollongong in order to obtain information about Indonesian women who had experienced domestic violence. Fieldwork was conducted in Australia over four months, and in Indonesia for 2 months. Before conducting the research in Indonesia, the researcher made contact initially with a person in the Semarang Legal Resources Centre for Gender Justice and Human Rights (LRC-KJHAM) to ensure access to
information about Indonesian women victims of domestic violence.

The research presented in the thesis used a qualitative methodology. A qualitative methodology can be seen as an alternative to the quantitative paradigm that currently dominates research in the human and social sciences. Qualitative approaches are generally concerned with exploring, understanding and describing the personal and social experiences of participants and trying to capture the meanings particular phenomena hold for them. An attempt is usually made to understand a small number of participants' own frames of reference or views of the world rather than trying to test a preconceived hypothesis on a large sample. Thus, qualitative research studies have typically tried to provide rich, detailed narrative reports of the perceptions, understandings or accounts of the participants in relation to the topic in question rather than obtaining a statistically significant numerical result. The process of qualitative analysis involves engaging in the interpretation of verbal material, usually as interview transcripts or written accounts from participants or as field notes from participant observation. Qualitative approaches are particularly useful when the topic under investigation is complex, dilemmatic, novel or under-researched and when there is concern with understanding processes, not measuring outcomes.136

In exploring women’s experience of domestic violence and their access to justice, a qualitative methodology enabled the researcher ‘to access the rich and complex processes that comprise an individual’s lived experience’.137 Moreover, as Sharp also observes, such methods ‘identify and describe the complexity of social

phenomena and break open for inspection underlying perceptions and expectations’,\textsuperscript{138} further quoting from Marshall and Rossman:

One cannot understand human actions without understanding the meaning that participants attribute to those actions—their thoughts, feelings, beliefs, values, and assumptive worlds; the researcher therefore needs to understand the deeper perspective captured through face to face interaction…\textsuperscript{139}

A qualitative approach suits the purpose of this research which is ‘to understand the world from the subject’s point of view’, ‘to unfold the meaning of people’s experiences’; and ‘to uncover their lived world prior to scientific explanations’\textsuperscript{140}.

Hence, the only proper avenue for obtaining the very private information from these respondents is through using a phenomenological approach. Phenomenology is a qualitative methodology that seeks to uncover the meaning and essence of given phenomena. Phenomenological inquiries focus on interviewing and gaining an understanding of the participants’ experiences; it is essentially concerned with individual experience.\textsuperscript{141} The quantitative method is an inadequate method to elicit such information which is usually hidden behind statistical data. Although a quantitative approach may provide questionaries and obtain some information, it does not permit the depth information that is obtained using a qualitative approach.\textsuperscript{142}

Qualitative methodology is often associated with small sample sizes which are gathered through an in-depth interview on the basis of the chosen topic. The findings of a specific study by using this methodology will not be generalisable, but will apply only to the specific population under investigation. Therefore, much lower numbers may be

\textsuperscript{138} Ibid.
\textsuperscript{139} Catherine Marshall and Gretchen B Rossman, \textit{Designing Qualitative Research} (Sage Publications, 1999).
\textsuperscript{140} Steinar Kvale, \textit{Interviews: An Introduction to Qualitative Research Interviewing} (Sage Publications, 1996).
involved in this type of study in order to investigate fully the chosen topic and provide information rich data.\footnote{143}

The researcher in this study limited the discussion of domestic violence to heterosexual relationships, and the number of respondents that were taken from Indonesian women who experience domestic violence in Semarang, Central Java (Indonesia) and Indonesian women who experience domestic violence in Sydney and suburbs, New South Wales (Australia). Respondents were chosen not only on the basis that they had experience of domestic violence, but also their identities such as religion, ethnicities, age, education and the place of residence (Australia or Indonesia). Indonesian women are undeniably culturally and structurally shaped by the discourse of conventional femininity which imposes certain behaviour on women within both the private and public sphere, such as being good woman and wife, being passive and weak. Though studies of anthropologists on gender relationship have revealed that Indonesian women, particularly Javanese women, had economic power within the domestic and public sphere that enables them to file for divorce easily, the culturally and structurally shaping is often reinforced by religious tenets that direct women away from that path. However, the anthropologists have argued that by using and playing their identities Indonesian women were able to get the most advantageous result from the complexities of the legal plurality of Indonesia’s legal systems.\footnote{144}

In order to obtain the information from Indonesian women about their experience of accessing justice when dealing with domestic violence, the in-depth interview is the method selected. To obtain women’s understandings about domestic violence as a private or public issue and their perceptions of ‘husband’ and ‘wife’, the

\footnote{143}{Carol Grbich, \textit{Qualitative Research in Health: An Introduction} (Sage Publications, 1999).}
\footnote{144}{Brenner, above n 35, 19; see Geertz, above n 37; see Benda-Beckman, above n 38; see also Irianto, above n 38.}
researcher selected semi structured questionnaires as her tool. The ‘story telling’ method, in turn, is deployed to explore the experience of domestic violence, the various strategies adopted and any resistance to respond to the violence, and their decision to bring the matter to court. Interviews were conducted in Australia and Indonesia. In the interview participants recounted their experience of domestic violence, response and strategy adopted to overcome domestic violence and their access to justice. The interviews were audio tape recorded (with consent as noted below) and professionally transcribed.

1.6.2. Why the research was undertaken?

The research was undertaken in order to obtain the data that were needed to answer the research questions. The primary research question in the study is:

To what extent do the relations between law, power and spaces affect the empowerment of Indonesian women to access to justice in the legal system dealing with domestic violence?

Enquiring into the relations between law, power and space dealing with domestic violence cases is important to women victims because it correlates with the empowerment issue. The relations between law, power and space influence the process of empowerment and visa versa. Empowerment is one of the main issues of feminist thought dealing with domestic violence matters because of the general assumption that women in domestic violence relationship are ‘powerless’. Empowerment is basically an effort to make some one more powerful, of leaving behind a state of relative if not absolute powerlessness. In another word, empowerment entails a process of change. People who exercise a great deal of choice in their lives may be very powerful. According to Kabeer, ‘choice implies the possibility of alternatives, or the ability to choose. The ability to exercise choice can be thought of in terms of three interrelated
dimensions, namely ‘resources (pre-condition), agency (process) and achievements (outcomes)’.

The first dimension of power is ‘access to resources’. Resources include not only material resources in the conventional economic sense, but also the various human and social resources which serve to enhance the ability to exercise choice. There are multiplicities of social relationship that are ‘conducted in the various institutional domains; the rules and norms that govern distribution and exchange in different institutional arenas will influence the exercise of power in accessing resources’. The women victims often face difficulties in accessing resources due to the structures put in place by the source of authority (government, culture) through rules, norms and institutions. The rules and norms give certain actors authority over others in determining the principles of distribution and exchange so that the distribution of ‘allocative’ resources tend ‘to be embedded within the distribution of ‘authoritative’ resources-the ability to define priorities and enforce claims’.

The second aspect of power relates to ‘agency’ and is the ability to define one’s goals and act upon them. Agency is not only about observable action, but also encompasses the meaning, motivation, and purpose that individuals bring to their activity. Agency can be operationalised as decision making in the social sense, but it can take a number of other forms, such as bargaining and negotiation, deception and manipulation, subversion and resistance.

The ability to exercise choice in the framework of empowerment is focused on

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146 Ibid
147 Ibid
148 Ibid.
women as the victims of domestic violence. The bottom-up approach rather than top-down approach was chosen in order to explore the ability of women victims to penetrate the structure made by the authority or the communities, and to exercise choices as to the solutions that are available in spaces either private or public. Space itself is not a merely empty space but it contains a number of abstracts (value, belief, knowledge, norms, law, religion and so on) and real materials (court, police, people, house and so on) which intersect with each other. The materials within spaces will compete with or support each other which, in turn, provides the possibility of alternatives in determining choice, strategy and decision by women victims. Therefore, the relationship between law, power and space is very useful in explaining the way women exercise choice in order to access not only the resources but also justice in case of domestic violence.

Therefore the bottom-up approach is significantly relevant for the research design as has been mentioned above. By deploying the qualitative method and in-depth semi-structured interviews in order to obtain the information from Indonesian women who have experience with domestic violence issues, the sub-questions (which have been mentioned) are expected to be answered.

Those sub-questions will explore information about the women’s knowledge of domestic violence, their experience of domestic violence, their access to public institution and access to court. Gaugeing women’s knowledge of domestic violence necessitates collecting data regarding their knowledge of what is ‘domestic violence’, their understanding of its causes, their perception of whether it is a public and/or private issue, their understanding of domestic violence as a criminal law and/or family law matter, and their perceptions of the relationship between gender role and domestic violence.

Then, to establish further women’s experience of domestic violence involves
collecting data related to the type of domestic violence suffered, their efforts to seek help and advice from third parties, and their decision to leave or to stay with the abusive partner. The women’s experience of domestic violence also includes: their experience in accessing public institutions; their decision whether or not to bring a case to the available public institutions, and, if so, which public institutions they had accessed and why; their treatment by the staff of public institutions and any discrimination that they may have perceived to have occurred during the processing of their case; and any obstacles that they experienced in accessing those institutions, and the way in which respondents overcame them.

As a consequence, issues covered in the interviews include the following women’s experiences: access to court (including their efforts to settle before any court appearance), their decision to contact a solicitor, their expectations of solicitors, their decision to take the case to court, their expectations of the court, and their satisfaction with the progress and outcome of the case. Moreover, based on the individual story provided by the respondent, the researcher obtained information about the responses, strategies and access to the relevant legal institutions dealing with domestic violence in the different legal systems and cultural settings. By interviewing Indonesian women who have diverse identities as their background, the different points of view in dealing with domestic violence issues and accessing justice can be explored.

1.6.3. The logistic of the project
1.6.3.1. Setting

In Australia, Wollongong was initially planned to be the area from which the interviewee population was drawn, but because little available information on Indonesian women as the victims of domestic violence was there available, which, resulted in difficulties in finding respondents, the area was then changed to Sydney and
suburbs. Finding respondents in Australia was far more difficult than in Indonesia. In Indonesia, the researcher has interviewed a number of Indonesian women in Semarang who are involve in a support group that is organised by the Legal Resources Centre on Gender and Human Right (LRC KJHAM). The major causes of difficulties in finding respondents in Australia have been identified by the researcher as: (i) the small number of Indonesian women population who live in Australia or are married to Australian men; (ii) the culture of shame of being a victim of domestic violence and the belief in the importance of keeping the family in harmony which remain embedded in Indonesian women; (iii) the culture of Indonesian people which predominantly blames women for any violence, thus adding to the shame factor which deters attempts to seek assistance; and, (iv) the fact that there is no support group for Indonesian women in Australia provided by Indonesian Embassy in Canberra or by the various Indonesian consulate offices around Australia or by the community (other than the potential for counselling within the Indonesian Welfare Association in Maroubra, a suburb of Sydney) which would leave women victims feeling isolated, ashamed and preferring to keep silent rather than to disclose or share the violence with others.

1.6.3.2. Sample selection: Why Indonesian women?

It has been mentioned above in the introduction that there are five reasons that determined that Indonesian women would be the subject of the study: (a) the vulnerability of Indonesian women as domestic violence victim; (b) the plurality of identities of women as sources of oppression or violence; (c) the oppression of women which is culturally, structurally and legally justified by the state, particularly through marriage and divorce as structured under the Marriage Law; (d) the sense of shame established by the state that affects women’s self-confidence and self-reliance in the event of domestic violence; and lastly (e) a lack research focused on Indonesian women.
who experience domestic violence in regard to their multiplicity of identities (see page 10–23).

1.6.3.3. Recruitment

There were 18 respondents recruited from two groups: first, 14 Indonesian women who had experienced domestic violence were drawn from Semarang, Central Java (Indonesia); second, four Indonesian women who had experienced domestic violence were drawn from Sydney and suburbs, New South Wales (Australia). The respondents were recruited through fieldwork that was conducted in two locations, Australia and Indonesia. As has been mentioned above in the research design section, the field research was undertaken in two stages in Australia from August to November 2011, and in Indonesia from December 2011 to January 2012.

The first stage of field work was conducted in Australia. The researcher had made contact with the Indonesian community in Wollongong for instance friends, students, Indonesian permanent residents and so on in order to obtain prospective respondents. A potential Indonesian respondent who had been physically abused woman by her Australian husband had been indicated to the researcher; however, she refused to be involved in the study. Reasons given were that she wanted to move on and get on with her life. Respecting her refusal, the researcher did not make any request that she participate. After spending a month in Wollongong seeking informants and information, the researcher found little information about Indonesian women as the victims of domestic violence. Mostly Indonesian informants (both women and men) in Wollongong told the researcher that they never heard of abused Indonesian women in Wollongong and Australia at large; they had an assumption that abused Indonesian women within Indonesian families in Australia are rare. According to what they had heard, the informants argued that (on the contrary) abused women were more frequent
in Australian families than in Indonesia families or families of other nationalities.

The difficulties in finding Indonesian women as victims of domestic violence in Wollongong forced the researcher to obtain the information from other cities and resources. The researcher found an article about the Indonesian Welfare Association Inc. (IWA) in Sydney in Indo magazine.149 The IWA has some programs aimed at Indonesian communities. One of their programs is domestic violence counselling. Based on the advertisement in Indo, the researcher then, had made contact with the coordinator of the Association several times in order to get further information about the program and the prospective respondents for the study. Aside from the Association, the researcher had also corresponded with a retired Indonesian woman interpreter, the coordinator of the Indonesian Community Council in Sydney, a representative of the Indonesian Embassy in Sydney, Indo Care (Indonesian-Australia Aged Care), and made other personal contacts via the telephone. There were two ways of accessing the prospective respondents from these institutions: first, by attending a meeting provided by the institution and the researcher then seeking actively respondents from among those attending; and secondly, by being given the name of prospective respondents by a persons from these institutions (after that person had received permission from the potential respondent to do so).

In the first method, the persons in these institutions had asked the researcher to come to the meeting or other activities which are regularly organised by those institutions in order to obtain the prospective respondents in a very open way. The

149 Regarding their services, see ‘IWA: Indonesian Welfare association: Welfare’ a category that specifically includes ‘domestic violence’ and ‘counselling’< http://welcome.to/indowelfare>. Funded by the Commonwealth Department of Immigration and Citizenship, the Indonesia Welfare Association Inc (IWA) is a ‘not-for profit community service organisation for Indonesian migrants’, and provides settlement services at Burwood and Bondi Junction. It offers services and also referral to mainstream services. Common challenges faced by the Indonesian migrant community include immigrant issues, language difficulties, unemployment, domestic violence and family relationship problem: See Burwood Community Welfare Services Inc, ‘Outreach Services’<http://www.bcw.org.au/page.php?pageid=26>
institutions, for instance the Indonesian Welfare Association Inc, and Indo Care (Indonesian-Australia Aged Care) conduct meetings and/or activities every two or three weeks in Sydney suburbs, such as Campsie, Alexandria, Maroubra, and Punchbowl. The researcher explained the background and the aims of the study, the researcher’s expectation from the attendant after the explanation, and her expectations of those who desired to be participants, as well as her expectation in regard to the study, both for the short and the long term. By attending the meeting and getting involved in their activities, the researcher was to become more at ease in approaching members of the communities. Although friendly conversations were easy to be conduct, finding prospective respondents for the study remained difficult. In the following meetings, the members informed the researcher that they have a friend, friend’s friend, or a member of her family who had experience of domestic violence but that they had refused to become involved in the study due to the shame attached and because it was a private matter. (This illustrated the level of shame women felt in regard to domestic violence and their belief that it was a ‘private matter’ not to be revealed but this did not make finding respondents any easier for the researcher).

From the information provided by members of these Indonesian communities, the researcher believes that domestic violence is often experienced by Indonesian women in Australia regardless of the husband’s nationality. It was estimated that at least eight Indonesian women would had been respondents if they had had no objection to telling their stories or sharing of experience at that time. However, due to such obstacles the researcher only obtained four respondents in a four-month span of fieldwork (August-November 2011). Three of them were obtained through this method. The remaining respondents were acquired through another method, outlined below.

The second method of obtaining respondents involved contacts within the
various organisations approaching prospective respondents with whom they had contact and asking whether their names could be supplied to the researcher for follow up. The name supplied basically came from their previous personal contacts (such as family member, friends or neighbours). Before giving the certain names to the researcher, these organisation personell had made contact with the potential respondents and secured their permission to disclose their names to the researcher. Using this method, the researcher obtained two additional names, and both of them indicated that they were willing to be interviewed. However, after calling and sending text messages to these persons, only one was ready to share her experience. The researcher had tried to contact the other but she seemed not yet ready to share her experience after all. She was not explicit in her refusal, but from reasons that she stated, the researcher could understand that there was a subtle rejection. Though her objection was not declared explicitly the researcher respected it for a number of reasons: it was the woman’s right not to be involved as a respondent in the study as it was voluntary; it was her right to withdraw her willingness at any time; and it is common for victims to change their mind in regard to sharing experience of domestic violence with others due to a lack of psychological readiness, the shame involved or the desire to forget.

The second stage of the fieldwork was undertaken in Semarang, Indonesia. Before going to Indonesia, the researcher had made initial contact with a person from the Semarang Legal Resources Centre for Gender Justice and Human Rights (LRC-KJHAM) for her attempt to obtain a number of abused Indonesian women as respondents. After arrival in Indonesia, the researcher visited LRC-KJHAM and again explained the aims of the study. The staff members of this institution welcomed her and asked the researcher to present the proposed research to the staff and prospective respondents who were members of a support group. The aim of the presentation to the
staff was to convince the institution that the study was beneficial for the institution in particular, and the community at large; moreover, the study would not harm or exploit the respondents.

A presentation to members of the support group aimed to explain the purpose of the study and the expectations of the researcher of the members, some of whom might choose to be respondents in the study. The support group is a division under LRC KJHAM and its members are women who have experience of domestic violence. These women prefer to call themselves as ‘survivors’ not ‘victims’. The use of the former term implies increased agency on their part and decreased and decreasing levels of powerlessness. Their activities not only include regularly attending a meeting that is organised by themselves, but also giving support to the other members based on the case and their own experiences. The members of support group consists of active and passive members and they comes from various socio-economic, age, educational, ethnic and religious backgrounds. After giving an explanation of the aims of the study to the members of support group, the researcher offered them copies of the participant information sheet. The researcher then asked them to read the document, and if they did not understand it to query any information in it, and then to return it if they were ready to be involved in the study as a respondent. There were 20 women who attended the meeting, and 13 returned the forms.

In addition, the researcher had made contact with a respondent who was not the member of support group. The information regarding this respondent had been obtained from the legal aid section of Faculty of Law, University of Catholic Soegijapranata, Semarang, and was crucial for the aim of the researcher to fulfil the goal of obtaining Buddhist Indonesian women victims of domestic violence for the study. Unfortunately, the researcher was unable to secure any Hindu Indonesian women as respondents.
The reasons for such criteria were the need to reflect the multiplicity of identities of Indonesian women and ensure that diverse aspects of Indonesian women were represented, such as religion, age, education, ethnic, education, as well as country of residence. Religion is the major factor chosen in regard to these women because Indonesian people are well known as religious people. Conduct in relation to marriage and divorce, even reactions to domestic violence may have been influenced by their religion’s doctrines and their degree of religiosity.

1.6.3.4. Outline for respondents

Indonesian women victims of domestic violence as the respondents in the study were given the explanation of the goal of the study which is to ascertain the common experiences of women in situations of domestic violence and in accessing justice as provided by legal mechanisms and institutions. The researcher gave the participant information sheet to be read and to be understood, including some typical questions dealing with the matter. Prospective participants were encouraged to freely participate in the study. Respondents were also given the explanation as to what was to be expected during the interview process, such as the interview would be done ‘face-to-face’ and it would be recorded using an audio recording device. Their identity would be recorded; however, it would be protected and treated sensitively and respectfully. Participants would also be allowed to bring a person to support them during the interview; their participation in this research was voluntary and they could withdraw the participation at any time and withdraw any data that had been provided; the decision to participate or not to participate had no bearing on their case, and had no affect on their claims, entitlements, services or legal proceedings.

1.6.4. Participants: Informed

Respondents who participated in this research have been given information of
any potential risks with the method involved. They were also advised that they were free to decline to participate, and would be able to withdraw from the project at any time or to retract information they have provided without any adverse effect on them. The study potentially could affect participants’ welfare, rights, beliefs, perceptions, customs and cultural heritage; however, this had been be addressed through a participant information sheet and consent form. These forms had been designed to protect participants’ privacy and confidentiality, so the study had no effect on participants’ claims, entitlements, services or legal proceedings. In addition, participants may withdraw their participation from the study at any time and any data that they had provided would be deleted. The following part of the chapter outlines how women as participants were fully informed of these aspects of the research.

1.6.4.1. Risks

Respondents in this research had been reminded that there was always a risk to experience emotional distress, such as feeling sad and perhaps weep. If they experienced such feelings they had the right not to complete the interview process, or to decline to provide an answer to any questions, and/or to discontinue their participation at any time. They could also request that interview process be postponed and have it conducted again at another times. They could also request the researcher to visit them with the counsellor at a place that they considered safe. Respondents in this research were entirely voluntary and were thoroughly advised of the nature of the methods to which they were to be subject. Respondents were not in a dependant relationship on me.

1.6.4.2. Consent

Potential respondents in this study were invited through a letter of invitation. The letter described complete details about the aims of the project and the research’s expectation. At this stage, once the project had been fully explained and they had had
the opportunity to ask question to clarify their involvement (were provided both verbally and via a ‘participant information sheet’). Consent itself was acknowledged formally by way of a signed consent form. This form contained written information about the project and assurances of both confidentiality and disassociation from their cases. Through the act of signing the consent form each respondent acknowledged that they had received a full explanation of their involvement with the project. A copy of the letter of invitation to participate, the participant information sheet, and consent form are appended in appendices A, B, and C respectively.

1.6.4.3. Withdrawal of Consent

Respondents were also advised that they had the freedom to discontinue participation at any time. It also informed them that there were no adverse effects on any participants who choose to withdraw this consent. Respondents who chose to withdraw their consent during the process of an interview were entitled to withdraw data concerning themselves by having the audio tape recording erased and any note destroyed. There was also no transcription of their identity as the participants did not identify themselves on the recording. Although all participants were made aware of the difficulties of data withdrawal in the information sheet and consent form, no participants requested withdrawal of her participation at any time during the research.

1.6.4.4. Confidentiality

The privacy of the individual respondent was protected by advising them in the Participant Information Sheet and Consent Forms of the intention to use the data collected from them in interviews in an academic PhD thesis. Respondents in this research were assured a high degree of confidentiality. Interviews were recorded on

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150 Sharp, above n 135, 99–100.
151 Ibid.
152 Ibid.
audio tapes, which were transcribed and then kept securely in a locked cabinet in the researcher’s office. The consent form which is given in writing was also kept in the same place. Respondents were made aware that only myself as the principal researcher and my supervisor would have access to the raw data, and each of us would treat it as confidential. Respondents were also informed that the data collected from this project would be used for the purpose of writing a PhD thesis and may be presented at academic conferences or published in journals and/or books; however, the respondents would not be identified in any way.

1.6.5. Basic Demographics of Respondents in the Research

The demographic data below is based on information provided by respondents. It covers 18 women as victim of domestic violence. The age distribution of respondents is as follows: four aged from 20 to 30, five aged from 31 to 40, six aged from 41 to 50, two aged from 51 to 60, and one aged 61 or over.

Respondents have various educational backgrounds from failing to finish elementary school to university educated. Six persons did not finish their elementary school; four graduated from junior/high school, and five from university. Ethnicity of the respondents is generally Javanese (twelve respondents), and the rest of them are five Chinese respondents, one Batakene (Northern Sumatra) respondent and one Manadonese (Sulawesi) respondent.

Islam, therefore, is the dominant religion among the respondents. Nine out of eighteen respondents are Moslem; seven are Christian (three of which are Christian (no denomination supplied) and four are Catholic); and the remaining two respondents are Buddhist.
### Table 1.1 Respondents Details

<table>
<thead>
<tr>
<th>Participants and place of living</th>
<th>Age</th>
<th>Religion and ethnic</th>
<th>Type of job</th>
<th>Type of abuse</th>
<th>Perpetrator</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>SS, Semarang, Indonesia</td>
<td>44</td>
<td>Muslim, Batak</td>
<td>A worker in a private company</td>
<td>Psychological, physical and economic</td>
<td>Husband</td>
<td>From early marriage, for approx. 20 years</td>
</tr>
<tr>
<td>MR, Semarang, Indonesia</td>
<td>44</td>
<td>Muslim, Javanese</td>
<td>Bridal decorator</td>
<td>Psychological, physical and Economic</td>
<td>Second husband</td>
<td>From 3 years after marriage for approx. 15 years</td>
</tr>
<tr>
<td>GI, Semarang, Indonesia</td>
<td>47</td>
<td>Muslim, Javanese</td>
<td>Carrier in the traditional market</td>
<td>Psychological and physical</td>
<td>Husband</td>
<td>From early 20s after marriage for approx. 2 years</td>
</tr>
<tr>
<td>RB, Semarang, Indonesia</td>
<td>50</td>
<td>Muslim, Javanese</td>
<td>Small entrepreneur</td>
<td>Physical and economic</td>
<td>Husband</td>
<td>From early 29s after marriage for approx. 3 years</td>
</tr>
<tr>
<td>GE, Semarang, Indonesia</td>
<td>50</td>
<td>Muslim, Javanese</td>
<td>Park keeper</td>
<td>Physical, psychological and economic</td>
<td>Second husband</td>
<td>From early 2 years after marriage for approx. 30 years</td>
</tr>
<tr>
<td>MI, Semarang, Indonesia</td>
<td>48</td>
<td>Muslim, Javanese</td>
<td>House wife and volunteer in a women’s crisis centre</td>
<td>Physical, psychological, sexual and economic</td>
<td>Husband</td>
<td>From early marriage for approx. 27 years</td>
</tr>
<tr>
<td>PJ, Semarang, Indonesia</td>
<td>42</td>
<td>Muslim, Javanese</td>
<td>House wife</td>
<td>Psychological, physical and economic</td>
<td>Husband</td>
<td>From early 20s after marriage for approx. 2 years</td>
</tr>
<tr>
<td>IN, Semarang, Indonesia</td>
<td>34</td>
<td>Muslim, Javanese</td>
<td>Worker in a private company</td>
<td>Psychological and economic</td>
<td>Husband</td>
<td>From early marriage for approx. 7 years</td>
</tr>
<tr>
<td>FA, Semarang, Indonesia</td>
<td>43</td>
<td>Christian, Chinese</td>
<td>House wife</td>
<td>Physical, psychological, sexual and economic</td>
<td>Husband</td>
<td>From early marriage for approx. 25 years</td>
</tr>
<tr>
<td>AN, Semarang, Indonesia</td>
<td>26</td>
<td>Moslem, Javanese</td>
<td>Dress maker</td>
<td>Psychological and economic</td>
<td>Husband</td>
<td>Before and after marriage for approx. 2 years</td>
</tr>
<tr>
<td>ID, Semarang, Indonesia</td>
<td>52</td>
<td>Catholic, Batak</td>
<td>Property entrepreneur</td>
<td>Physical, psychological and economic</td>
<td>Husband</td>
<td>From early marriage for approx. 20 years</td>
</tr>
<tr>
<td>EL, Semarang, Indonesia</td>
<td>44</td>
<td>Catholic, Javanese</td>
<td>Retired pharmacist</td>
<td>Physical, psychological and economic</td>
<td>Husband</td>
<td>From early marriage for approx. 19 years</td>
</tr>
<tr>
<td>Name, Location, Country</td>
<td>Age</td>
<td>Religion, Ethnicity</td>
<td>Profession</td>
<td>Psychological Status</td>
<td>Marital Status</td>
<td>Duration of Marriage</td>
</tr>
<tr>
<td>------------------------</td>
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<td>---------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>Y, Semarang, Indonesia</td>
<td>32</td>
<td>Buddhist, Chinese</td>
<td>Small entrepreneur</td>
<td>Psychological and economic</td>
<td>Husband</td>
<td>From early marriage for approx. 9 years</td>
</tr>
<tr>
<td>V, Semarang, Indonesia</td>
<td>31</td>
<td>Buddhist, Chinese</td>
<td>Food entrepreneur</td>
<td>Psychological and economical</td>
<td>Husband</td>
<td>Before and after marriage for approx. 10 years</td>
</tr>
<tr>
<td>ML, Sydney, NSW, Australia</td>
<td>30</td>
<td>Catholic, Indonesian Chinese</td>
<td>Student</td>
<td>Physical, psychological and economic</td>
<td>Husband</td>
<td>From early marriage for approx. 7 years</td>
</tr>
<tr>
<td>L, Campsie, NSW, Australia</td>
<td>29</td>
<td>Christian, Indonesian Chinese</td>
<td>Student</td>
<td>Psychological</td>
<td>Husband</td>
<td>From early marriage for approx. 4 years</td>
</tr>
<tr>
<td>SR, Sydney, NSW, Australia</td>
<td>29</td>
<td>Christian, Indonesian Chinese</td>
<td>Student</td>
<td>Psychological and economic</td>
<td>First husband</td>
<td>From early marriage for approx. 10 years</td>
</tr>
</tbody>
</table>
| PH, Belmore, NSW, Australia | 67  | Catholic, Manado | Retired beautician | Psychological and sexual | First and second husband | First husband: from early 7 years after marriage for approx. 10 years  
Second husband: from early marriage for approx. 1 year |

Source: Interviews with respondents between August 2011 and January 2012

Most of the respondents at the time of interviewing were employed, for example as a bridal decorator, small economic entrepreneur, park keeper, volunteer at a centre of integrated services, or property entrepreneur. Three out of them are students, and two out of the remaining respondents are retired (namely a retired assistant pharmacist and retired beautician). Only four are Indonesian women living in Australia and the remaining fourteen live in Indonesia. The respondents’ marital status varies; most of them (fifteen) are divorced, three of the eighteen are married, and two are in the midst of divorce proceedings.
CHAPTER 2
LAW, POWER AND SPACE: THE OPPORTUNITY FOR WOMEN TO
ACCESS RESOURCES AND JUSTICE DEALING WITH DOMESTIC
VIOLENCE CASES

2.1. Introduction

This chapter discuss the theoretical framework of the relations between law, power and space dealing with women’s opportunities to access resources and justice in the event of domestic violence. In the beginning, the neutrality of law and women’s experiences will be described in order to give further insight into the idea of the neutrality of law and how it affects women’s lives, and how in turn, women’s lives affect their access to available resources both in private or public spaces. There is an assumption that by accessing resources in these spaces women will have power and control to obtain their goals and achieve their purposes; however, debate has been raised over whether women become more powerful or not when they access these spaces (which have been divided into ‘private’ and ‘public’). This matter will be described in the next section which is about feminist debate over the dichotomy between the public and private, a debate that eventually led to state intervention in what had been regarded as purely a ‘family matter’ and characterised as ‘private’.

There is a general agreement that relations between men and women are constituted within a particular set of power relations. The power relations between men and women are considered as a subordinate/dominant relation. Given that gender relations exist in every institution, and in many cases constitute a fundamental structure

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1 Nicholas K Blomley, Law, Space and the Geographies of Power (Guildford Press, 1994); see also Donny Danardono, Mengharmoniskan atau Menstabilkan Praktek Kuasa? Keterkaitan Kuasa, Hukum dan Ruang [To Harmonise or Stabilise the Practice of Power? The Relations of Power, Law and Space] (2006) 13(3) Jentera 57, 57. In this study, Danardono discussed the relations of power, law and space to examine the idea of law as a tool to harmonise the plurality within communities.
within the institution, the subordinate-dominant relations, then, affect the social and legal practices in different spaces; and the effect of such relations is mostly disadvantageous to women. The subordinate-dominant relations are claimed by radical feminists as due to men’s exercise of power over women in a way that harms women by preventing them from themselves choosing how to live their lives. However, difficulties have emerged in relation to this claim since it does not take into account the other kinds of power relations that exist in society, for instance class and race. Radical feminism also simplifies the position of women to that of victims of male power and can never explain the fact that some women are able to exert power over some men. These circumstances have triggered feminist attempts to discover the different factors that have caused the pattern of subordination to evolve into different forms within different societies and disciplines by deploying the theory of power developed by Michel Foucault. In contrast to the feminist accounts that power is negative and limited, Foucault argued that power is ‘positive’ and ‘productive’. Power is at work throughout all social relationships and is exercised in diverse forms. Power, in modern societies, never prevents people from acting or making choices, and gives people the ability to choose responsibly between options. Thus, this study, based on the theory of power developed by Foucault, will examine whether or not the theory is applicable to


3 The radical feminist account that oppression is merely caused by gender relations has been challenged by other feminists. Heise, for instance, argued that violence against women in the family domain is caused by external factors, so-called ecological factors which consists of various layers, and uses an ecological framework used to explore the causes of domestic violence against women. Another theory on the causes of violence against women is proposed by Crenshaw through ‘intersectionality’. Intersectionality consists of various factors, such as gender, race, sexuality and other women identities which intersect with one another and affect the different form and level of violence against women. Further, anti-essentialist feminists challenged the essentialists who argued that women’s experience is a unitary one and it can be isolated and described independently of race, class, sexual orientation, and other realities of experience. See Lori L. Heise, ‘Violence against Women: An Integrated, Ecological Framework’ (1998) 4 *Violence Against Women* 262, 263; Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’ (1991) 43(6) *Stanford Law Review* 1241.

4 Stone, above n 2.
Indonesian women who have experienced domestic violence, bearing in mind an assumption that oppression has affected the women victims of domestic violence (as being seen and seeing themselves) as weak, passive and powerless persons, but that it has also nevertheless encouraged women victims to resist at the same time.\(^5\)

Foucault argued that law is a representation of power and a form of knowledge (episteme) which has new paradigm as a disciplinary power; thus, power is intertwined with knowledge, and it is constructed within a network of constantly shifting social factors operating in any given society. Law, then, is not described by reference to institutions or institutional forces anymore, but by the myriad local and particular interactions which constitute society. Society itself exists in space, and space itself is produced continuously through socio-spatial relations that have made it not an objective structure but a social experience. Therefore, space is a product of cultural, social, political and economic relations which have shaped law and power, or conversely.\(^6\)

In the context of domestic violence, the relations between law, power and space have significant influence on understanding about the issue. Although domestic violence focused on the scale of the household, it has been argued that the household scale has a correlation to wider spatial scales. The passage of domestic violence law is an exemplification of this. Based on the United Nations *Convention on the Elimination of All Forms Discrimination against Women*, member states are supposed to regulate domestic violence through their national legislation, and diminish the cultural and structural discriminatory practices against women in all aspects.\(^7\) The existence of the

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\(^7\) *Convention on the Elimination of All Forms of Discriminations against Women* (CEDAW) art 2.
Convention has shown that there is an acknowledgment that special treatment, either through policies or regulations, is needed to accommodate the interests of women, and this includes women who are abused. Most of the countries in the world have ratified the Convention; however, as mentioned in Chapter 1, implementation is very slow in coming due to the definition of domestic violence being limited to physical violence, as well as a lack of legislation, and where such legislation exists, a lack of regulation to implement the legislation; and where both legislation and implementing regulations do exist, the perpetrators of such violence often receive lenient sentences that are not appropriate to the gravity of the crime committed. Despite lax implementation, law remains an important reference for people because law has a more certain procedure, system and result compared to other means of solving disputes. However, the solution itself sometimes is not satisfying due to the difference in legal behaviour, legal opinions and legal consciousness and those understanding that come from the women’s point of view. Moreover, it is exacerbated by the old concept of power and the legal principle of neutrality which inevitably remain and impact on the implementation of law. Therefore, the first section in this chapter presents a discussion on the neutrality of law and its effect on women’s experience, and to what extent the relationship between law, power and space influence the opportunity of women to play their role as a power agency able to derive benefits from the relationship in order to access to justice.

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8 There are 187 countries that have ratified CEDAW: United Nations, United Nations Treaty Collection (as at 1 November 2012). The United States has signed but failed to ratify the Convention, as is the case with Palau; Iran, Somalia, Sudan and Tonga have neither signed nor ratified, or acceded to the Convention. See United Nations, United Nations Treaty Collection (as at 1 November 2012). See <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsgno=IV-8&chapter=4&lang=en>.


10 Unsatisfying as the solution derives not only from the legal system itself, but also from the women’s point of view on the legal system. See Ute Gerhard, ‘Women’s Experiences of Injustice: Some Methodological Problem and Empirical Findings of Legal Research’ (1993) 2(3) Social & Legal Studies 303, 303–21.
The relationship between law, power and space leads to the next discussion on the public and private dichotomy. It is inevitable that the relationship between law, power and space has an important role in the persistence of the private/public dichotomy since the space is socially produced; and public/private dichotomy possess ‘spatiality’, a result of socio-spatial relations in which structure, culture and other factors are intertwined with each other within spaces, and, conversely, the spaces have also influenced the intertwined. Thus, socially produced space is denoted as possessing ‘spatiality’, thus while not all space is socially produced, but all spatiality is.\(^{11}\)

The discussion on the dichotomy of private and public space supported the account that the centuries long persistence of the spatiality of ‘public and private’ has affected the relegation of women to the private sphere and their oppression in that sphere, for example, in domestic violence. The relegation to and oppression of women in the private sphere became the concern of feminists in terms of whether the private/public dichotomy should be diminished or not. It is important because the distinction is the reflection of patriarchy and also to varying degree liberal values have affected the legal system. By placing the operation of law squarely in the public space and, at least rhetorically, removing itself from the ‘private space’ of personal life and the family, the legal system created a distinction between a ‘public’ sphere of life, which is viewed as the proper arena for legal or social regulation, and another, fundamentally different, ‘personal’ sphere, which is somehow outside the law’s or society’s authority to regulate. Thus, the basis of the public/private dichotomy is a power relationship between an individual woman and other parties (for instance: between a man and woman, husband and wife, state and family, family and criminal law, family and criminal court, individual woman and public institutions, communities

\(^{11}\) Hubbard et al, above n 6.
and other social networks) each of which element has its own values and norms, and occurs in different spaces. This being a given, it is understood that these issues have also correlations with law, power and space which, in turn, affects women (as the subordinated group within society) in their access to justice.

The dichotomy between public and private space, in turn, leads to a discussion as to what extent and for what reason state intervention in family matters is allowed. Generally speaking, state intervention in private or family matters is allowed if members of the family give permission. However, given the nature of domestic violence which often comprises acts that if undertaken in any other space against any person (particularly any person other than a family member) would be prosecutable, the boundary between public and family spaces has become highly contested. In a number of instances, state intervention has become compulsory despite the interests of and needs which may be expressed by women victims. Further, there is a changing phenomenon, a gradual acceptance of state intervention as being permitted when the family does not function well and results in harm to women and children as vulnerable family members.

2.2. The Neutrality of Law and Its Effect on Women’s Experiences

The idea of neutrality of law derives from legal positivism.\(^\text{12}\) The theory has argued that law is just and, therefore, it gives legal certainty only if it is neutral and objective towards the subjects of law. As a consequence, law is a closed system and autonomous. It is isolated from moral, religious, philosophical and political issues. Therefore, to examine law in correlation with its philosophical context by inquiring whether law is just or unjust seemed irrelevant. A law is law even if it is a bad law.\(^\text{13}\)

\(^{12}\) Margot Stubbs, ‘Feminism and Legal Positivism’ in D Kelly Weisberg (ed), Feminist Legal Theory Foundations (Temple University Press, 1993) 455. ‘Evidence or proof’.

\(^{13}\) Mario Jori, Legal Positivism: The International Library of Essays in Law and Legal Theory
For legal positivist theorists, legal certainty is achieved not only because the law is formed by the authorised institution, by following the prevailing legal system, but also by its capacity to scientifically cooperate with other sciences; and it works based on the rational observation or scientific method to legitimate various behaviours in society.14

Legal positivism is also influenced by the standard of ‘scientific proof’ which is supposed in certain ways to be objective and value free, and it was a standard for all knowledge as the 20th century value in regard to knowledge.15 The aim of scientific proof is to make social science neutral or free from subjectivity in order to achieve absolutism (or truth insofar as it can be known at any given point). Hence, any other hermeneutic (principle of interpretation) is not allowed and the quantitative method of science must be implemented in the social sciences. As consequence, the analysis and the conclusion of any research or deduction or inference from observations must be grounded on quantitative data analysis, otherwise its value will be diminished.

These accounts are criticised, however, because the method can not be implemented in regard to many values of life, such as consciousness, expectations, solidarity, justice or love. Such values can not be accurately measured and analysed quantitatively because the deployment of this scientific method can instead manipulate and simplify the life that it attempts to measure. Such a method can only attempt to measure what it views as behavioural manifestations of essentially interior realities or even of their conscious expression by the subjects of the research. Reality is always ‘beyond the door’.

15 Davies, above n 2.
Theorists of legal positivism have argued that legal certainty can only be achieved if law can objectively ‘capture’ the rights which exist within society, and then, legitimise them. For the purpose of changing the rights from socially manifested to legally governed, a change from the hermeneutic of neutrality (and the quantitative method) to a more investigative, more deeply aware hermeneutic that is characterised by the qualitative method is a must.

Law has also its own internal logic; so that the idea that law must be made by authority, legal research, separated from social issues and must be autonomous is the justification and explanation of legal positivism. Law in this context should be ‘law as it is’. Hart states that legal positivism is:

Firstly, that all laws are the command of human beings (that is, emanating from a sovereign); secondly, the contention that there is no necessary connection between law and morals that is, law as it is and law as should be; thirdly, the analysis of legal concepts should be distinguished from historical inquiry into the causes and origins of law, and should be separated from sociological inquiry into the relationship between law and other social phenomena; fourthly, positivism contends that the legal system is a closed, logical system in which correct legal decisions can be deduced by logical means from pre-determined legal rules, without reference to social aims, policies or moral standards; and finally, that moral judgment are unable to be established or defended as can statements of fact by rational argument, evidence or proof.16

It means that ‘law should only be derived from the “is”, that is, the experiential, factual, and scientific knowledge of the collective and not from the “ought” the imagined, fantastic, and religious assertions of the subjective. It means that law is formed without consideration of moral norms. The reason is due to the abstract nature of the ‘moral’ or morality, and to a recognition that for an understanding of morality to exist, interpretation is needed; and by its very nature, interpretation cannot be separated from subjectivity.17

16 Margot Stubbs quoted HLA Hart’s account of ‘what is legal positivism’, see Stubbs above n 12, 455.
Legal positivism is criticised by critical legal studies (CLS)\(^{18}\) because of the false assumption that the neutrality of law will assure people of justice.\(^{19}\) CLS have argued that neutrality and objectivity of law is a form of ignorance of the various forms of inequality within society. Neutrality can not accommodate a plurality of views of life and values which, in turn, affect the perspective of justice. Moreover, justice is not merely a matter of overcoming conflict between two persons even-handedly but must take account of various needs or interests of people who have diverse backgrounds.\(^{20}\) For instance, in the case of domestic violence, the criminal justice system seems to give a just outcome when the husband of a battered woman has been taken away from the shared home without her consent. However, for the woman victim, it may have significant influence on family life due to her financial dependency on the abuser. In the case of immigrant women, for example, the effect can be serious since the family may be financially, socially and legally extremely dependant on the husband.\(^{21}\) The absence of the husband may have significant impact on her status as an immigrant; her status may then become the target of police investigation rather than the violence. Immigrant women’s lack of skills and the language barrier may have impact on their ability to find employment; and a lack of understanding of the legal system may also become an obstacle to access to justice.\(^{22}\)

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\(^{18}\) Blomley, above n 1; see also Danardono, ‘To Harmonise or Stabilise the Practice of Power?’, above n 1, 61–2.


\(^{21}\) Women in relationship with men and whose immigrant status depends on that relationship are particularly vulnerable. Such a law must take into account their right to remain while independent of the violent spouse or they are vulnerable to a choice between staying with a violent spouse or possible deportation. A change of status re a visa is also used as a threat against the immigrant partner/spouse. See Heather L. Poole, *When Marriage is Not Enough: Facing Deportation Because of Your Spouse*, Article City, 23 August 2005 <http://www.articlecity.com/articles/legal/article_268.shtml>.

Further, CLS does not regard the law as a closed system and as having its own internal logic, because the formation and the implementation of law relates to and impacts on the social and political realities. CLS even argues that law and legal institutions, as a general theme, are political, and not politically neutral;\(^{23}\) CLS also insist that law is inseparable from the history.\(^{24}\) CLS has described law as a discourse in which certain rules and technical terms are deployed that are assumed to be true in order to give meaning to life together. In another words, the discourse is a strategy to enforce power despite the form of the source factors (state, gender, sexual orientation, race, ethnicity, age, education, nationalism and so on). The discourse theory is derived from Michel Foucault, and in his theory he has insisted that knowledge (for instance: law, history, medicine, pedagogics and so on) and power are not distinct and separate from one another.\(^{25}\) He has argued that truth and power are areas that are mutually dependent; that the truth is not a matter of how to make the theory the same as reality, but rather a matter of establishing a form of knowledge which consists of propositions in order to making it meaningful in the conversation. Hence, by accepting or by refuting a specific proposition (whether as an individual or a society), it means that a person or a society has acted in determining the value of that proposition to the person or the society: this is ‘...the politics of the scientific statement’. In another words, the truth of knowledge is a political discourse, or a matter of the practice of power.\(^{26}\) Further, power has been described as cumulatively creating ideas of what is acceptable or true within the

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Danardono, ‘To Harmonise or Stabilise the Practice of Power?’ above n 1.

particular system on the local or small scale. Foucault rejected power as a monolithic structure which has power and exercises that power in the form of government or the making and enforcing of laws. As a cumulatively created idea on the local or small scale, power will establish certain law based on the myriad local and particular interactions which constitute society; and, in such circumstances local activity will be able to contribute to and create authoritative statements from the bottom to confront the monolithic structure.  

In this respect, CLS has also insisted that law is not only a discourse but has a power to determine the social identities. The idea of neutrality, objectivity and universality is basically the way legal positivism covers or obscures the relationship between law and power in order to impress that law is not ambiguous, not contradictory, and cannot simply be distorted or modified by subjective interest. Whereas, in practice, law is reduced to the individual identities and the spaces of law (such as police officers, prosecutors, court and jail) in order to discipline such a variety of ambiguous individual and social identities. Thus, law cannot release itself from the ambiguity and uncertainty.  

The idea of the neutrality of the law disadvantaged women whose experiences differ from that of men, and created inequality between men and women before the law. As result, there is a demand that law should be designed by referring to women’s experience. Confronting women’s inequality before the law, the United Nations has striven to eliminate the practice by issuing the Convention on the Elimination of All Forms Discrimination against Women (CEDAW). Although the convention is not legally binding but merely morally binding on states parties, the presence of the

27 Ibid.

Convention through a wide range of affirmative measures is expected to affect substantive equality of women in all realms of social life. It reflects an awareness of the need for change in the traditional role of men and women in society and in the family in order to achieve full equality between them. The most sweeping obligation embodying this approach is found in Article 5:

State Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women...

CEDAW has prompted states parties to establish domestic violence law in their own countries in order to protect women victims and prevent the recurrence of violence. The law itself is evidence that law cannot be separated from social phenomena; thus, law is not neutral.

The neutrality of law is also criticised by feminists because it disadvantages women. Women’s experience becomes invisible before the law. Margot Stubbs argued that it occurred because legal positivism was established based on the liberal philosophy which presents the legal system as a neutral, independent and apolitical mechanism for resolving social issues. Under the positivist legal doctrine of the ‘Rule of Law’, people are assumed to be equal before the law and can expect from it a neutral and unbiased determination of their rights. However, Stubbs argues that in fact, no people are really equal before the law due to sexual and economic class relations in a capitalist society.29

Law is predicated on power which is associated with class and gender; and many patriarchal assumptions are displayed in the operation of law that make law no longer

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29 Stubbs, above n 12, 455.
The claims of the neutrality of law mean that the law has ignored the relationship between law and social reality in which women historically, traditionally and conventionally have been treated as a second class and as sexual objects. Society has traditionally placed women in an inferior or subordinate position to men, in a role which confined to the private sphere, to child bearing and child nurturing. Traditionally, the male is provider, the dominant figure in the family; and, as that figure, the husband has full powers of management over the family finances and exercises full parental rights over any children of a marriage. This conventional political, economic and physical power of men over women results in violence by the powerful against the powerless.

2.3. Making Connections: Law-Power-Space and the Opportunity of Women to Access Resources

2.3.1. The relations between Law, Power and Space

Generally speaking, law is defined as the set of rules consisting of legislation, institutions and apparatus that those in power lay down and enforce. Further, law can be both definitional (for example, by stating the terms of reference of domestic violence), status conferring (by designating certain roles, such as the role of husband and wife within a marriage relationship, the public official and so on), and facilitating

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31 Pincoffs, above n 13; see Sinha, above n 24. The researcher uses a very modern and Western definition of the law. Islamic law does not fit the Western idea of being laid down by ‘those in power’ as the core of Islamic law regarded by believers as ‘laid down by God’. Indonesia also participates in very different legal traditions – Islam and adat which have very different concepts of law (Adat -traditional law- had no legislator, and Islam has God as a legislator at the core of Islamic law). There are, however, different schools of thought on the interpretation of the Islamic Law (Shariah). Thus permutations of Islam and Islamic Law exist depending upon pre-existing culture, power constructs, and interpretation and emphasis between and within various Mathhab (schools of thought), and within the texts (centrally the Qur’an, but also Sunnah, collections of Ahadith and the relative importance placed on these and so on).
(by empowering certain individuals or group). These definitions and the implementations, of course, need power and spaces.

Initially, power was understood as economic and a ‘commodity’. Power existed because certain legal rights were given to only certain institutions and individuals who were then legally entitled to enjoy such rights and exercise such power. The power was seen as given to authorities to administer, usually in restrictive ways, in relation to themselves and others in order to achieve certain aims. Foucault disapproved of such account by arguing that the idea of power as a commodity which some people or class of people may ‘own’ is inadequate for contemporary society. He attempted to construct a new concept of power to be a type of discipline, and power appears in a new form as knowledge (episteme). Further, power is seen by Foucault as creative, technical and productive; and, it is not merely a negative sanction which stops or restricts oppositional developments. Hence, power is not legally centred on the state or certain individuals and institutions anymore. It exists in every space, belongs to every institution and individual, and these powers compete and intersect with each other, even support to each other. The implementation of power sometimes is very delicate and ambiguous as every individual is always ready to channel the power to ensure certain goals; and space is needed to channel such power. It can be described through the figure below.

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33 Carol Smart, Feminism and the Power of Law (Routledge, 1989).
Figure 2.3.1. A Space, Power and Law Approach to Empowering Women Dealing with Domestic Violence Cases

Given that power is having the ability to conform to the others’ wishes or employ a set of strategies to accomplish one’s goal; it means that power is central to the human condition since it has drawn human beings into power relationships, either being the powerless or powerful parties. Although there is no individual who is totally powerful or completely powerless in every and in all situations, it remains that someone has control to some measure of resources, and such control is derived from personal, social, political, financial and/or institutional power, or some combination thereof. These resources figure significantly in the complex social interactions which are recognised as the power process; and, the power process imposed upon the powerless can result in their mobilising their own resources, recognising the worth of their own assets and the need to overcome the internalised barriers created by the dominant groups.\(^{34}\)

To implement these powers, a certain of space is needed. Discussion on space, then, will lead to the understanding of the individual and social identities which have been made and controlled within particular spaces. Space is basically not static and it is

not a closed system because space is a product of interrelations. \(^{35}\) As the open system, space entails a certain degree of the unexpected and the unpredictable because it is constituted through a process of the interaction of the possibility of the existence of multiplicity. Thus, without space multiplicity would be impossible, and, conversely multiplicity would be impossible without space. \(^{36}\)

Such circumstances seem hardly surprising if one understands the way that space has been formed. According to Lefebvre, space is developed through a ‘unitary of space’ that consists of the three intertwined elements of physical space (nature), mental space (formal abstraction about space) and social space (the space of human action and conflict). The three forms of space combine together to produce a complex spatiality. Given the spaces are imbued with ideological and political content; the resulting relationship between them varies over time. Through these three elements of space the relations between space, law and power are created. Given that the three forms of space create different results and vary overtime, this means that space has a significant effect in the creation of inequality of circumstances or marginalised peoples. This occurs because space is a crucial means by which social identities and distinctions are created and maintained; thus, the focus in the power relations is on how space is claimed, occupied, used, and regulated to the benefit of some and to the detriment of others.

In the context of domestic violence, the spatiality of ‘public’ and ‘private’ has created such inequality; and, it seems hardly surprising since space is not a given neutral

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\(^{35}\) Doreen Massey, ‘Spaces of Politics’ in Doreen Massey, John Allen and Philip Sarre (eds), Human Geography Today (Polity Press, 1999) 279. She argues that: 1) Space ‘is constituted through a process of interaction’; it is ‘the product of inter-relations’; 2) space is to be understood as ‘the sphere of the possibility of the existence of multiplicity in the sense of contemporaneous plurality’, as the sphere in which distinct narratives co-exist’, as the possibility of the existence of more than one voice. Without space, multiplicity would be impossible; conversely, without multiplicity there can be no space. It means that interrelation occurs on the basis of the existence of plurality in which the multiplicity and space are co-constitutive; 3) space is seen as disrupted and as a source of disruption. See also Doreen Massey, For Space (Sage, 2005) 9 et seq.

\(^{36}\) Massey, ‘Spaces of Politics’, above n 35.
but rather is continuously produced through socio-spatial relations. Moreover, the socio-spatial relations are inextricably dominated by men in the vast majority of cultures and societies. Nevertheless, given that space is always changing and space is not a real or objective phenomenon which is experienced and understood in a similar manner by individuals, with each individual potentially possesses a unique understanding of his/her surroundings, and that this understanding is shaped by mental (and physical) processes of information gathering, the accumulation of knowledge or its loss and contact with organisations, the chances for the victims for domestic violence being or becoming equal is wide open.

The relations between law, power and space is chosen as the ground of the theoretical framework in this study because it gives an explanation about how power, including law, is exercised in and through spaces, and how spaces are defined, defended, and contested based on Indonesian women’s perspectives. This approach is chosen to complement and support the other theories, namely the ecological framework, empowerment and intersectionality. Generally speaking, the ecological framework and intersectionality discuss the causes of women’s oppression, and empowerment discusses how women as the victims of violence can change their lives by accessing and controlling factors surrounding them, namely power. These elements are socially and spatially situated, so that it is important to reveal the discussion on space to understand the dynamic process of power for women victims of domestic violence. The role of space in creating oppression and opportunity from the women victims’ point of views seems hardly recognised, although the interrelations between the individual women and multi-level system in the dynamic power is acknowledged. These theories, particularly the ecological framework and intersectionality, seem to hardly emphasis women as
active agents in the utilisation of resources and power within the very spaces which had oppressed them.

For instance, in Chapter 4, the ecological approach is chosen because it examines the cause of domestic violence in terms of various factors, such as individual, family, social-structural and socio-cultural factors, which are described as multiple layers. The ecological approach is deployed in this study to support the account that the causes of domestic violence are not merely patriarchy alone but also other factors within spaces which each contain power. The layers or spaces which oppress the victim of domestic violence never have been seen as the chance for the victim to empower themselves because the ecological approach seems merely to examine the causes of domestic violence and the effects of the multiple layers on women as victims of domestic violence rather than discussing them in terms of women’s response to the violence. Nevertheless, scholars have deployed this approach in the discussion on power and empowerment, and intersection dealing with domestic and other violence.

37 Initially, the ecological framework was developed by Urie Bronfenbrenner and revised by Belsky. The theory has been applied to the problem of domestic violence. The model can be used to explain or understand individual instances of spouse abuse and it conceptualises sociological space as consisting of different levels or systems, each of which is nested within the next. The framework consists of four levels namely: individual, family, socio-structural and socio-cultural. See Jay Belsky, ‘Child Maltreatment: An Ecological Integration’ (1980) 35(4) American Psychologist 320, 320–335; see also Lori E Weeks and Kristal LeBlanc, ‘An Ecological Synthesis of Research on Older Women’s Experience of Intimate Partner Violence’ (2011)23(4) Journal of Women and Aging 283, 289–300; Bonnie E Carlson, ‘Causes and Maintenance of Domestic Violence: An Ecological Analysis’ (1984)58(4) Social Service Review 569, 570; Bonnie E Carlson, ‘Mental Retardation and Domestic Violence: An Ecological Approach to Intervention’ (1997)42(1) Journal of Social Work Education 79, 80.


Then, the theory of empowerment in Chapter 5 will be deployed to discuss the access of women victims of domestic violence to resources and power. Resources and power are the two main pivotal elements crucial to the empowerment of the powerless because it is believed that the powerless become empowered when they gain access to resources. Oppression has created powerlessness and those who are ostensibly powerless are able exercising any residual power available in the relationship to gain access to resources, to thereby discover power by increasing their own awareness of oppression and possible choices and thus and/or in their opposition to that oppression, women discover and increase their power. Thus, empowerment theory emphasises the importance of helping the powerless to exert greater control and influence in their personal and professional lives (sometimes simply by making them aware of their power). This power and control are applicable at all systemic levels and must be considered in their cultural context. It has been shown that women’s empowerment processes require an examination of the various levels of the individual and social construction process in a variety of ecological and situational contexts, such as social, institutional, interpersonal and individual. Clearly, people who are victims of domestic violence are involved in a power dynamic which exists within spaces. Though the role of spaces in legal issues is hardly mentioned explicitly by scholars, some scholars have


41 Peled, et al above n 40.
deployed empowerment theory by connecting domestic violence issues with multi
layers such as intrapersonal, interpersonal, and institutional as the elements of the
ecological approach as mentioned above.\footnote{Khan and Hussain, above n 39, 239–53. See also Peled, et al, above n 40, Busch and Valentine, above n 40.}

In the same chapter (Chapter 5), the theory of intersectionality addresses the
most central theoretical and normative concern within feminist scholarship: namely, the
intersectionality is a useful tool to understanding the interaction of racism and sexism in
the experiences and lives of women of colour who are victims of domestic violence.\footnote{Ibid.}\footnote{Kathy Davis, ‘Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful’ (2008) 9(1) Feminist Theory 67, 67–85.} However, for other scholars intersectionality is confusing because ‘it is not at all clear whether intersectionality should be limited to understanding individual experiences in
order to theorise identity, or whether it should be taken as a property of social structures
and cultural discourses’.\footnote{Feminist scholars have long recognised the multiple aspects of individual identity and the complexity of the interactions between multiple forms of oppression and social hierarchy. Legal scholar Kimberle Crenshaw developed the idea of intersectionality to analyse the relationship between race and gender discrimination in the labor force and elsewhere. She also argued that intersectionality is also a useful tool to understand the interaction of racism and sexism in the experiences and lives of women of color who are victims of domestic violence. However, it is criticised by other scholars who argued whether intersectionality should be conceptualised as a crossroad (as ‘axes’ of difference) or as a dynamic process. Further, ‘it is also not at all clear whether intersectionality should be limited to understanding individual

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Despite the criticism, in the development of intersectionality scholars have broadened the discussion and it is not limited to women of colour but constructed it in more general terms which are applicable to any grouping of people regardless of the social divisions. Thus, this theory will not only underline the
significance of the intersection of race, ethnicity, caste, and citizenship status for
marginalised women but also highlight the full diversity of women’s experiences in
general terms.\footnote{Feminist scholars have long recognised the multiple aspects of individual identity and the complexity of the interactions between multiple forms of oppression and social hierarchy. Legal scholar Kimberle Crenshaw developed the idea of intersectionality to analyse the relationship between race and gender discrimination in the labor force and elsewhere. She also argued that intersectionality is also a useful tool to understand the interaction of racism and sexism in the experiences and lives of women of color who are victims of domestic violence. However, it is criticised by other scholars who argued whether intersectionality should be conceptualised as a crossroad (as ‘axes’ of difference) or as a dynamic process. Further, ‘it is also not at all clear whether intersectionality should be limited to understanding individual

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accordance with other wider identities or social divisions, this theory can be applied to this study for the purpose of examining the influence of Indonesian women’s identities on decision making related to domestic violence.

Given that all the theories mentioned above have been deployed in regard to domestic violence, it means that the theories are capable of being connected with this study on domestic violence laws, women’s experience, power and space because there is a correlation between ecological theory, empowerment and intersectionality that explains further about how power and law are exercised in and through spaces, and how the women’s experiences of domestic violence confront these dynamic processes within the relations between law, power and space. Thus, the ground theory of law, power and space is expected to assist examination of how the concept of power developed by Foucault affects the experiences, coping strategies, decision making and access to justice of Indonesian women dealing with instances of domestic violence in terms of scale that range from that of the household level to other scales, especially in those in public spaces, such as neighborhoods, city/communities and state.47

2.3.2. Law-Power-Space and the empowerment of women to access to resources

The life of human beings basically not only takes place within in time (history) but also in space (geography). Moreover, researchers have generally confirmed that space has marginalised the experiences and opinions of women in the process because

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47 Westlund, above n 40; Busch and Valentine, above n 40.
space has been shaped by the male’s point of view. The following examples show the ability of space to form law and law to form space for the purpose of establishing and controlling individual and communal identities which have occurred since the Classical Greek era until the European Medieval era (and to a lesser extent beyond). Colonisation and its affect on many aspects of the lives of human beings to date, particularly on women and other minority groups, not only socially, and economically but also legally, will also be covered.

Historically and geographically, the oppression of women occurs through dichotomy between the public and the private. The dichotomy has persisted since the Greek era and affects the relegation women to private space. The ideology of dichotomy, such as private/public, natural/civil and female/male, is (according to feminists) a construction of men who believe themselves to be superior to women. As Simone de Beauvoir wrote, the ‘representation of the world like the world, itself, is the work of men; they describe it from their own point of view, which they confuse with absolute truth’. The dichotomy is considered as natural or inevitable due to the gender roles of men and women which derive from postulates of nature and culture. A woman is recognised as a symbol of ‘nature’ itself, due to woman’s biology and [their] bodies. Her body is frequently envisioned as the (passive) ‘field’ that is sown with ‘seed’ by and from the male, the ‘crop’ of children becoming largely her responsibility in the home until they (generally male) were an age to enter the sphere of work. Her ability to

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48 Hubbard, above n 6.
50 Carole Pateman, The Disorder of Women: Democracy, Feminism and Political Theory (Polity Press, 1980). A woman’s nature is also often seen as less reliable, even unstable-her menses echoing in moon’s phases, but the flux rather than regularity being emphasised in the comparison just as the weaker light of the moon is compared to the stronger light of the sun.
bear and raise children was attributed to her (feminine) compassion, caring and her being (‘more naturally’) attached to infants. Again, these images repeatedly emphasise the ‘natural’, the ‘animal’, the ‘basic’ emotions, rather than the intellectual abilities of women or the organisational capacities or even the physical strength and fortitude necessary to fulfil the task set by motherhood. These ‘intrinsically feminine’ characteristics of caring, compassion and attachment are on the one hand seen as being ‘natural’ and bringing her into closer contact with nature; at the same time such emotions or characteristic are criticised as being of less worth than detachment, with women being characterised as being ‘overly emotional’ and ‘irrational’ (indeed too close to the ‘wild’) and thus unsuited to the ‘more important’ roles in society (which are them to be ‘naturally’ occupied by men). A man’s ability to do task in the workplace and politics is attributed to his ‘natural’ tendency towards the rational and his superior physical (and intellectual) ability rather than to education or opportunity afforded his gender in ‘his’ society. Men’s activities are identified as active (he ‘ploughs’\textsuperscript{51} the field both at home and in agricultural cultivation); he ‘creates’; he traditionally has dominated through his physical abilities and role in defence or aggression and rule in the world of work in politics (and home) and the culture continues to reflect that power relation. It is ‘his’ relationship with creation and the world. As a consequence, women and the domestic sphere thus appear inferior to the male activities and essentially ‘male’ culture.\textsuperscript{52}

The dichotomy itself is a characteristic of Greek thought pioneered by Plato and Aristotle.\textsuperscript{53} Greek thought had introduced the dichotomy between ‘the public’ and ‘the

\textsuperscript{51} ‘To plough’ in Indonesia refers to sexual intercourse. It is an expression used in Islam (Surah 2.223) as well as in the west.

\textsuperscript{52} Women’s nature has been used throughout history and, into present, to justify keeping the female sex in a position of political, social and economic inequality.

\textsuperscript{53} Aristotle argued that all members of the polis have contribution to the polis but the role of men and
private’ through the concept of the *polis* and the *oikos*. The *oikos*, the home or private sphere is a realm of inequality as it is a place in which a man exercises domination over his wife, children, servants and slaves; it is also the site of production and reproduction. On the other hand, the *polis* or public sphere is the locus of freedom and equality. The *oikos*, the primary unit of production, consumption and reproduction, not only becomes the place of the daily needs of life but also the basis of prerequisite for the *polis* where freedom and equality were (to a greater degree) exercised. Nevertheless, freedom and equality themselves were explicitly denied to those in the realm of the *oikos'/private sphere.  

women are different to each other with men are regarded as superior to women. Aristotle insisted that ‘women are systematically inferior to men in every respect anatomically, physiologically, and ethically; and the inferiority is a consequence of their metaphysical passivity’. Sissa, above n 14, 51. See also 65-70. In addition, Plato examined whether women should be educated the same as men to be equal to men; however, he concluded that education for being equal to men did not guarantee that women would perform equally: at 51. Socrates not only thought men superior to women but where women demonstrated superiority to men, men determined that the work was of less value (a tendency that survives to the present day): at 58-59. It was a view that Plato would have recognised for he saw women’s work as essentially derived from (and supportive of) the work of men and thus dependent on it: Ute Gerhard, *Debating Women’s Equality: Towards a Feminist Theory of Law from a European Perspective* (Rutgers University Press, 2001) 32 et seq. Plato distinguishes between the male creation of wealth in the public sphere and its (mere) utilisation in the domestic sphere. Sissa notes that these discourses ‘from Homer (eight century B.C) to Galen (first century A.D)’ have placed women as an object of knowledge; Sissa, n 14, 51). It is a view that has subordinated women to men in many respects. Hence, men have predominated in the public and private spheres. In the public sphere, men are able to construct norms which are mediated through law based on their own image; on the other hand, women are associated with domestic sphere and excluded from the rationality and authority in the public sphere. Therefore, it is said that the Greek society was a patriarchal society; and Greek thought has had significant influence to date on the way that society treats men and women based on their gender roles within the public and private spheres; See also the experience of Indonesian women, especially in Sumatra Island, in accessing property, See Kebet von Benda-Beckman, *The Broken Staircase to Concensus: Village Justice and State Court in Minangkabau* (Foris 1984); Sulistyowati Irianto, *Perempuan Antara Berbagai Pilihan Hukum: Studi Mengenai Strategi Perempuan Batak Toba Untuk Mendapatkan Akses Kepada Harta Waris Melalui Proses Penyelesaian Sengketa* [Women among the Various Legal Options: A Study on the Strategy of Batak Toba Women to Access Inheritance through the Dispute Resolution Process] (Yayasan Obor, 2005).  

Moreover, the dichotomy has driven people to believe that public space is hierarchically on a higher level than private space, and oppositionally positioned to it. Men who mostly actively participate in public spaces by doing something economically are viewed as worthier than women who mostly are concerned with household affairs. Most directly economically productive activities are now undertaken in the public space (with this transition occurring even in developing countries), and the private sphere has become dominated by consumption activities. As a consequence, the private space depends on the income derived from the public domain; and women first must ‘be equal’ to men to be involved in public domain activities yet their relegation to the private sphere has defined them as less than equal.

On the legal issue, the dichotomy has affected the women’s rights. Law long treated women in the family space as an object without legal rights to their own property. The legal rights of married women were ascribed to the husband, the ‘ruler’...
within family, as the consequence of marriage. The changes to improve women’s legal rights have been implemented to meet the demands of equality by feminists, but the substance of genuine ‘lived’ change in both public and private space comes far more slowly.

In Indonesia, for instance, since the beginning of the era of the Netherland Indies (Dutch East Indies), the Chinese as a minority immigrant population have been varyingly treated. First arriving in the 1400s and 1500s (perhaps earlier) many had intermarried and adopted local languages over time and become a (though still distinguishable) part of the community even before the beginning of European colonisation of the archipelago in the early 1600s. Further waves of Chinese immigration occurred during the colonial era, interrupted by restrictions. In the later part of the era of colonialism, in the ‘Old Order’ and the ‘New Order’ (mid 1960s –

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57 United Nation, Ending Violence against Women, above n 9.

58 Danardono, ‘To Harmonise or Stabilise the Practice of Power?’, above n 1.

59 For example, the Peranaken (early largely Hokkein settlers who intermarried and often adopted local languages and some customs)

60 In the mid1700s, restrictions were placed on Chinese immigration to the Netherland Indies (as later occurred in Australia). The second wave is dated 1839-1860, the third is dated to the first half of 20th century: Matheos V Messakh, The Tale of the ‘Peranakan’ Jakarta Post, 22 January 2009 http://www.thejakartapost.com/news/2009/01/22/the-tale-peranakan039.html where there reports observations by anthropologist Iwan Meulia Pirous regarding the ‘three waves’. The latter ones contributed the Totoks (later more culturally Chinese, Mandarin speaking) population.

61 Foreigners (including ‘Foreign Orientals’) were banned from buying land from indigenous Indonesian (pribumi) in 1870.

62 Increasing nationalism saw this minority (comprising about three per cent of the population) whether Christian or Muslim a target of both aggression and strong government assimilationist practices, particularly in the post-Independence era and most particularly during the anti-Communist era where Chinese were identified with Communism which was vigorously opposed by the government of the day (Soeharto). Much discriminatory legislation has since been repealed. Most recently strands of extremist Islam has also resulted in targeting of the Chinese community, among others. Even as recently as 2006, the position of Chinese Indonesian has been described as ‘vulnerable’: Immigration and Refugee Board of Canada, Indonesian: Reports of Attack against Ethnic Chinese, Christians and Non-Christians Alike: State Protection Available (2004-2006), 28 March 2006, IDN101030, http://www.unhcr.org/refworld/docid/45f1147482f.html. In such circumstances, the ethnicity of the party
late 1990s, they and their descendants had limited activities within community. With limited access to land and education, economic activities became the only opportunity to earn a living. Early colonial favour relative to the Indigenous Indonesian populations (see further below) gave way to an increasingly unfavorable situation in the late 1700s and for the region’s Chinese Indonesian population. Immigration was increasingly restricted immigration, and travel document requirements imposed, and there were even attempts to segregate the population in the 1800s and by the latter part restrictions were imposed on economic activities that had been previously permitted. This discrimination against Chinese Indonesians continued into the modern era whether against the more acculturalised Peranakan or the Totok population, and whether arising from resentment fostered by the Dutch. It was heightened particularly after independence, and particularly in the anti-Communist era where Chinese Indonesian loyalty was suspect. In some ways their position or treatment echoes that of women as those with power seek to control them. The assumption about these Chinese immigrants and their descendants (often regarded as temporary or foreign rather than as an intrinsic yet different part of a nation) is basically, reflected in a spatial strategy to control their identities and power. As a minority, Chinese Indonesian have been reported to have remained vulnerable to lingering discrimination (even after the repeal of many of the

is of greater concern than gender, though women and girls may be more vulnerable (for example to rape during the 1998 riots)
61 The ‘New Order’ of Soeharto (second president of post-Independence Indonesia)


62 Indeed their apparently being favoured by the colonial power and their success as traders, in mining and other enterprises and on the land resulted in growing resentment towards the Chinese Indonesians.

63 Danardono, To Harmonise or Stabilise the Practice of Power?, above n 1, 68.
laws that had previously legally entrenched discrimination). This is particularly so during times of upheaval or domestic economic crisis, during which times women and girls may then be particularly vulnerable (victims of a double discrimination). 67

Van Vollenhoven has documented 19 spatial adat laws as an example of such treatment in the era of colonialism in the Netherland Indies. Furthermore, to strengthen their power the colonialists wanted to change the social and political structure of the colonies to one based on the coloniser’s legal system, including its civil law, criminal law and other public laws. 68 These laws were given a higher position than indigenous laws. 69 Although the laws (which originally came from legislation in the colonial homeland) have been adopted, but unlike many other colonised countries, Indonesia’s existing living laws and its institutions (such as adat law and Islamic law, adat courts and religious courts) were accommodated to a degree and permitted to operate, and to date these continue to exist, 70 with some of the law experiencing a degree of hybridity.

The colonialists in Indonesia also divided the citizens into three groups. There were three strata broadly based on race, namely the Europeans who were ‘at the top’, the oriental foreigners (mainly Chinese) who were ‘in the middle’, and the indigenous Indonesians who ‘were at bottom’; 71 different laws and courts were deployed in regard

67 Immigration and Refugee Board of Canada, Indonesia: Reports of Attacks against Ethnic Chinese, Christians and Non-Christians Alike, above n 57.
68 Danardono, ‘To Harmonise or Stabilise the Practice of Power?’ above n 1, 68–9.
69 See C Fasseur, ‘V. Vollenhoven and the Struggle between Adat Law and Western Law in Indonesia’ in Jamie S Davidson and David Henley (eds), The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism (Routledge, 2007) vol 1, 50; see also Daniel S. Lev, ‘The Supreme Court and Adat Inheritance Law in Indonesia’ (1962) 11(2) American Journal of Comparative Law 205, 206.
70 Daniel S. Lev, Islamic Courts in Indonesia: A Study in The Political Bases of Legal Institutions (University of California Press, 1972)
71 According to article 163 of the Indies State Regulation-Indische Staatsregeling, all persons living in Indonesia had been classified into three groups: Europeans, Natives and Foreign Orientals. From this regulation emerges the principle of dualism (European as separate from the ‘Other’, in this case ‘Natives’ and ‘Foreign Orientals’), even pluralism (if one supposes that ‘Natives’ and ‘Foreign Orientals’ are not a subset of a single group); this operated not only in the substantive law but also in the organisation of the courts and their procedures, particularly in civil law. The division in the legal system affected not only the interrelationships between the three groups but also created a divided judicial organisation. This is a
to each of the groups.\textsuperscript{72} The laws and courts whether made by the colonists or ‘inlanders’,\textsuperscript{73} and particularly in regard to marriage, family and inheritance identified women inferior to men.\textsuperscript{74}

In regard to Australia, there was less effort at accommodation. For example, the first records of European mariners sailing into ‘Australian’ waters occurs around 1606, and includes observations of the land known as \textit{Terra Australis Incognita} (‘unknown southern land’).\textsuperscript{75} Later, despite the presence of Indigenous peoples, the British colonial authorities declared Australia \textit{terra nullius}, which removed any legal recognition of pre-existing Indigenous institutions.\textsuperscript{76} From the outset, the Indigenous peoples were denied any space officially to negotiate the terms of their existence. They were given no rights in land, and these events occurred in a context where Indigenous people had little protection,\textsuperscript{77} because, according to principles of British common law and property ownership, the Indigenous peoples (generally regarded as nomadic) were considered neither as having a concept of land ownership nor to own the land, and, therefore, Australia was considered ‘uninhabited’. Thus, the colonisation of Australia occurred under the legal aegis of terra nullius,\textsuperscript{78} and practices of dispossession emanated from the division maintained by recognition of separate traditions and rules applying to those traditions into the modern era under Pancasila. (Such accommodation is particularly strong in the ‘private’ sphere).

\textsuperscript{72} Suryadinata, \textit{Peranakan Chinese Politics}, above n 64; Suryadinata, \textit{The Culture of the Chinese Minority}, above n 64. See Lembong, above n 64, 48; Winarta, above n 64, 57.

\textsuperscript{73} A Dutch term for the many different cultures that were already in the Indonesian archipelago at the time of colonisation.

\textsuperscript{74} Several articles in \textit{Kitab Undang-Undang Hukum Perdata} or \textit{Burgerlijk Wetboek} (Civil Code) have contained regulations that stated that a wife had no entitlement to property, was subordinate to her husband, etc. Adat laws in most Indonesian regions have regulations that state that women have a lesser share than men in the inheritance of their parent’s property. Religious law and its court have had women subordinated to men, particularly in regard to divorce procedures. Such subordinations and discrimination, have been largely but not entirely removed through state policies and regulation.

\textsuperscript{75} Merete Borch, ‘Rethinking the Origins of Terra Nullius’ (2001) 32 \textit{Australian Historical Studies} 117, 117–9.

\textsuperscript{76} The British in Australia, New Zealand and British Columbia, were not alone in this practice: Spain treated the Sahara similarly.

\textsuperscript{77} Ann Curthoys. ‘Identity Crisis: Colonialism, Nation, and Gender in Australian History’(1993) 5(2) \textit{Gender & History}165, 166–8.

\textsuperscript{78} Borch, above n 75.
principle resulting in not only the physical removal of Indigenes from their land but the exclusion, control, and destruction of Indigenes both culturally, socially and legally. The landmass became a possession of the British crown. Such occupation and the heritage of British law brought by the colonisers continues to affect the certain sections of the community, especially women of Aboriginal and Torres Strait Islander background and people from non-English speaking backgrounds who have traditionally not been included among the law-makers to any significant extent. This combined with the origins of the legal system in English common law and resulted in legal institutions which often did not reflect the diversity of the community, and this, in turn, caused inequities in the legal system. For example, English common law long held that a wife had no entitlement to property within marriage since it belonged to her husband as the head of the family. On a separate note, de facto relationships (those often contracted in the early years of colonisation by settler males and Indigenous women) were not recognised for inheritance or other purposes until the late twentieth century.

These images are made within a mutuality supporting Foucault’s account of the relationship between power and knowledge. Western institutions represented by

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83 Whilst this protected the rights of women in legally contracted marriages and their children to support and inheritance, it exposed other women and their children to great discrimination.
colonialists had created the knowledge about non Western/Europeans, and the created knowledge was representative of European power and domination. These examples have shown that spatial strategies are adopted to control identities and power of the minority or the subordinated groups. The assumption that the Chinese is ‘immigrant’ has constructed over time a very different reality for Chinese Indonesians to that of other citizens; and the terra nullius doctrine allowed a land without (legal) ‘occupants’ to be occupied as if it had no occupants at all (that is, was uninhabited) despite the obvious presence of Indigenous people; and now as then the assumption of the subordination of women to men within family as in broader society creates a lived dynamic with broad repercussions for women and children and men.

Hence, it is also necessary to understand the power imbalance and the ability or inability of persons from the minority or subordinated groups to communicate in the certain spaces, particularly in public space. Again, it is necessary to explore how power is exercised in and through spaces, and how spaces (and their boundaries) are defined, defended, and contested from a certain scale to other scales.84

According to Blomley, law and space have a relationship to each other since their initial establishment.85 Law forms space, and this is established by certain socio-spatialities that exist at the same time. As consequence, according to him, a judge or subject of law is able not only to construct abstract distinctions between the public and private space, but also to mark the certain material spaces (workplace, home, street, court) and certain people (women, men, employee, citizen) which are encoded in different and distinct ways. In another words, social relations were constituted

84 An example was given by Danardono in Chapter 1 dealing with the effect of power imbalance on the ability and inability of person from the minority or subordinated groups to communicate or access resources in certain spaces, particularly in public space. See Donny Danardono, ‘Gender, Multikulturalisme dan Hukum’ [Multiculturalism] (Paper presented at the Revitalisation of Women Study Centre, Grand Hotel Wahid, Salatiga, Central Java, Indonesia, 9-10 December 2010) 5–6.
85 Blomley, above n 1.
simultaneously both spatially and legally. Legal and spatial interpretation have created legal and geographical constructions, all of which are fused to each other.\textsuperscript{86} It might be used to explain why special laws are established for a certain group of people based on abstract or arbitrary distinctions (for example, religion, ethnicity, race) and special material spaces also provided. In Indonesia, for instance, the Dutch colonists controlled the identities of Indonesian people through the law and its institutions (as has been mentioned above). The spatial policy that afforded a person certain law and institutions was established by regulating certain people based on their identities. For example, for the settlement of civil cases, the religious court is established for Muslim Indonesians and is based on the Compilation of Islamic Law, and the state court is established for Non-Muslim Indonesians, based on the Civil Codification or \textit{Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)}\textsuperscript{87}. As a consequence, prior to accessing certain courts the subject must prove his/her identity and a decision be made as to whether the case is appropriate for the particular court or not. If the parties are reluctant to bring their case before the state-provided court, there are other alternative means to settle the case, namely by utilizing \textit{adat} laws provided for certain communities based on a particular ethnicity. The decision or compromise reached as a result may not be recognised legally by the state but it will be binding on the parties. The \textit{adat} law is also inevitably a form of relationship between law, power and space; and it also controls the identities because it has own norms and values for the members of the relevant community.

In the case of domestic violence for instance, liberalism as the dominant political theory of the nineteenth and twentieth centuries contributes to the problem which

\textsuperscript{86} Ibid.
women faced. Liberalism’s doctrine of a ‘private sphere’ of life contributed to the idea that violence within the family is a domestic, private, family matter which is not the law’s business. The historical legacy which entailed a husband’s absolute right to sexual access irrespective of consent to his wife body; and his right to administer discipline and control economic and social relations of family members is a reflection of the construction of gender relations within the family as constructed by power relations, and each of those areas are ones where domestic violence is represented. By distinguishing between the public sphere of life which is legally regulated, and the private sphere of life which is largely legally unregulated, liberalism did not consider the problem of domestic violence. As a consequence, resistance emerged from parties in the domestic violence context in relation to taking actions against such violence: for instance, the reluctance of police to intervene in domestic violence disputes, the reluctance of women victims to launch proceedings or to give evidence against their partner, and the tendency of the court to avoid handing down sentences on perpetrators that reflected the seriousness of the crime as the result of the trivialisation of domestic violence issues. These examples have shown how the construction of law, power and space will influence domestic violence issues, not only in regard to the formulation of relevant legislation and its implementation and its interpretation of legal apparatus but also in regard to the mindset or attitudes of women and community.

As the pressure of the feminist movements developed at national and international level, so the state as a representation of power and with the authority to issue laws has established the law and provided the institutions in the criminal law and family law to deal with domestic violence issues. The establishment of domestic

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violence laws is grounded in the perceived common experience of women victims, whereas women’s experience of domestic violence is different for each of them because of women’s diverse backgrounds. As a consequence, the implementation of the law will have different effects and results for every woman victim of domestic violence; it means that the woman’s experience cannot be generalised.

The forms of domestic violence are also various; however, the understanding of domestic violence in the legal context has been (in Indonesia as elsewhere) initially mostly focused on physical violence rather than other forms, such as psychological, economic and sexual violence. Consequently, processing cases involving physical violence before the court (criminal court) is easier than for other forms of violence because of the affect on the woman’s physical appearance and the ability to document injuries. The legal apparatus of the criminal justice system will find greater difficulty in obtaining and providing the evidence for non-physical violence. By ignoring nonphysical violence, it means that law, power and space have controlled women identities because the opportunity to make a choice in order to settle the case is limited. The failure to recognise non-physical violence by including it in domestic violence legislation and thus its failure to enable women or the legal apparatus to launch proceedings in regard to instances of the non-physical violence may affect women’s willingness to initiate proceedings or undermine their trust in the state that is necessary for them to overcome their situation in order to access justice (even for the physical aspects of their abuse which may be in the victim’s mind, the less important aspect in circumstances where continual emotional, economic or sexual abuse exists, the last unrecognized in many legal regimes where access to wife’s body remains the ‘right’ of the husband). The different interpretations of legal apparatus and women as the victims of domestic violence on the issues have demonstrated that the legal world is one of
different legal spaces superimposed, interpenetrated, and mixed in human minds as much as in human actions’.\(^{89}\) The production and deployment of such law within such spaces, to locate a legal dispute, for instance within criminal/family law and criminal/family court, is politically significant because the choices made within each of them promote the expression of certain types of interests and disputes, and suppress that of others.

Legal practices undoubtedly affect social life, as well as sense of justice, within a certain place and certain people. The sense of justice works somewhat differently in individuals depending on such things as early life experiences, current physiological and psychological states, current motivations, expectations, and so forth.

Coker defines ‘justice’ as a condition which ‘can only prevail in a society free of domination and violence against women. This concept includes holding the abuser accountable, affording all parties due process, ensuring that the survivor’s claims are heard, treating people fairly and respectfully, and guaranteeing equal access before the law’.\(^{90}\) Justice may have been defined differently by the victims of domestic violence on the basis of their interests and their specific cases. Perhaps the strongest use of the term in this study is that women victims of domestic violence should get what they deserve.\(^{91}\)

Margaret Gruter gives an explanation of how the sense of justice works in and on the individual.\(^{92}\) There is no doubt that human behaviour is influenced greatly by experience and that much behaviour is learned. It is absolutely clear that individual and group behavior adapt to changes in the social and physical world because they are an

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\(^{90}\) Coker, ‘Piercing Webs of Power’, above n 40, 1009.


integral part of this ecological process. As the environment changes, within limits set by species-characteristic constraints, the behaviour of persons and groups also changes. These changes may have different outcomes; and, these outcomes are determined largely by behavior adopted by individuals and groups and the kinds of rules that they have made and followed. Thus, the effectiveness of law will be proportional to the degree to which the function of a particular law complements the function of the behaviour that the law intends to regulate. Individual legal behaviour is guided not only by the individual’s ability and willingness to participate in such behaviour, but also by his or her own sense of justice and by his or her response to the concept of justice held by the group to which he or she belongs. The effectiveness of all laws, old or new, finally will depend on the ability and willingness of individuals to change or adapt their behavior in compliance with the law.

Further, the legal behaviour is not simply deployed in a certain setting as it is interpreted in and through the setting. Hence, law and the sense of justice are produced in certain places; and those places, in turn, are partly constituted by legal norms. As a consequence, justice is not a product that is produced or distributed exclusively by the state. People experience justice and justice is not only in a form approved by the state but at the primary institutional setting of their activities, such as home, neighborhood, workplace and so on. This account is similar to the legal pluralist’s account that law is altogether more ambiguous and diffuses, existing in partial autonomy from the state. Law has to compete with other prevailing epistemes in the community so law needs power to be deployed. Hence, the state can only partly attribute power to certain characteristics or values, such as gender, sexual orientation, religion, race, ethnicity,

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93 Ibid.
94 Ibid.
95 Blomley, above n 1.
96 Ibid.
education, and nationalism. Representatives of particular characteristics also have different powers to interpret law based on their own interest. Thus laws as embodied values – moral certitudes or an indication of accepted behavior (the breach of which brings sanctions) or even ideals (such as ‘equality before the law’) – can be reinforced by community values or undermined by them (hence the sometimes sharp contrast between ‘law on the books’ and ‘law as lived’). It is a mutually dependent and interactive dynamic. The aspect of ‘power’ has made the law unable to be applied automatically to establish space where it operates (or conversely space establish law), because law and space are dialectically related. In this respect, Foucault has argued that:

Once knowledge can be analysed in term of region, domain, implantation, displacement, transposition, one is able to capture the process by which knowledge functions as form of power and disseminates the effects of power...Endeavouring...to decipher discourse through the use of spatial, strategic metaphors enables one to grasp precisely the points at which discourses are transformed in, through and on the basis of the relations of power.97

It means that the power/space relation is important because both are related to each other. Power is not simply to be seen as a constraining force, but is also facilitative. The exercise of power involves deployment of social resources, both allocative and authoritative; and to deploy both sets of resources, space is needed. Space is important to the deployment of resources because of the ‘phenomenon of time-space distanciation, or the ‘stretching” of a society in time and space”,98 and the deployment is mediated by various authoritative resources.99 Thus, ‘space is created out of the vast intricacies, the complexities, and the networks of relation at every scale, from local to global’.100 What makes a particular view of these social relations specifically spatial is their simultaneity. But such simultaneity is absolutely not in stasis because it is socially

97 Foucault is cited by Blomley, above n 1, 44. Note: the extract is from Foucault, ‘Question on Geography (elsewhere cited)
98 Massey, ‘Spaces of Politics’, above n 35.
99 Foucault, ‘Questions on Geography’, above n 26, 69–70.
100 Massey, ‘Spaces of Politics’, above n 35.
constructed. Moreover, as a result of the fact that space is conceptualised as created out of social relations, space is by its very nature full of power and symbolism, a complex web of relations of domination and subordination, of solidarity and co-operation.

By understanding the relations between law, power, and space, the neutrality, objectivity, and universality of law proposed by legal positivism are not convincing. These relations, in turn, might affect the experience of women in the legal system because law and spaces have been formed, organised and interpreted by patriarchy. Thus, the usage of power which is available in the space regardless of where it originated becomes an appropriate strategy for women in accessing justice. It is important because neutralising the law and the spaces is impossible due to the strength of the relationship between law, power and space.

The complex relations of domination and subordination, the networks of relation at every scale within space which interact with law and space may control women’s identities and, in turn, will influence women’s experiences, strategies adopted and decisions made regarding the solution of the problem they face. However, regardless of the choices taken by women it has been shown that women have power as do men; and, the opportunity for women to make choices exists, whether it is grounded in laws provided by state or in other sources, and it is a form of bargaining power utilised in order to improve their lives. However, choice is rarely neutral because it rests on a series of strongly gendered, racialised and class-based presumptions. In other words, the attribution of responsibility based on choice depends on other assumptions about gender, class, and race.

The use of the rhetoric of choice both invokes and reinforces the traditional

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101 Foucault, above n 26; see also Massey, above n 35.
102 Ibid.
liberal public/private divide. This divide has been central to the ways liberal societies have determined where and when the state should intervene and where and when women should befree from such intervention. It is important to note that the public/private divide has not been gender neutral: men have been more strongly identified with the public realm and women with the private. It means that while choice remains, it is shaped by beliefs about the legitimacy of the reigning social construction of power and yet has the function of re-shaping that construction. It is possible to accept that individuals make better, worse, and indifferent choices without absolving them from some responsibility for these decisions and at the same time, focus on the ways that inequitable preconditions for choice are created and maintained.

In addition, there is an assumption that victims of domestic violence are powerless; however, in many cases they have latent capacities to overcome their situations.\textsuperscript{103} Somewhat similarly to an architect who has capacities and powers but then, embedded in a physical and social world full of manifest constraints and limitations, fails to reconstruct her environment as she may be deterred from attempting to do so or have ‘picked the wrong site’ or ‘plan’\textsuperscript{104}. So too domestic violence victims also have to think strategically and tactically about what to change and where, about how to change what and with what tools\textsuperscript{105} in order to continue to live in this space by using all the capacities and tools they have such as their identities and their ability to access resources in order to gain more power. Women in such a scenario utilise effectively what power they possess in order to obtain greater power through access to resources within spaces.

\textsuperscript{103} Busch and Valentine, above n 40, 83–5.


The links between law and space are indissoluble; law is a representation of power drawn from society and law also reproduces society. Law as the representation of power is not simply to be seen as a constraining force but is also facilitative, for example by empowering certainty individuals or groups within certain spaces.\footnote{Massey, ‘Spaces of Politics’, above n 35.} Within a space all social practices involve the application of power. In this respect, Foucault has argued that space is a strategy of power,\footnote{Michel Foucault, \textit{Discipline and Punish: The Birth of the Prison} (Alan Sheridan trans, Penguin, 1980) [trans of: Surveiler et punir (first published, Gallimard, 1975)] (\textit{Discipline and Punish}).} and power itself is represented by law.\footnote{Foucault, ‘Questions on Geography’, above n 26.}

Hence, there is an important intercorrelation among space, power and law which affects the lives of women, particularly the lives of women victims of domestic violence, who are predominantly assumed to be powerless; the intercorrelation needs to be consciously examined in order to enhance women’s bargaining power within the imbalance of power present in an abusive relationship.

Further, by arguing that power is not simply an oppressive force but it has been transformed into new form as knowledge/episteme,\footnote{‘Knowledge is power’ is phrase attributed to Sir Francis Bacon (He was an English philosopher and has been called the creator of empiricism in 1600s). The phrase came from a Latin aphorism ‘scientia potestia est’). Francis Bacon, ‘Meditaciones Sacrae’ in The Works of Francis Bacon, Baron of Verulam, Viscount St Alban and Lord High Chancellor of England (new ed, printed for C and J Rivington, 1836, first published 1597) vol 10, 299, 308. Sometimes cited as ‘scientia potestia est’ (potentia). Similar expressions are found across a number of societies and across time (the type of knowledge valued may change from ‘religious’ (in Bacon’s context as well as that of today’s Islamic states) to ‘scientific’ or esoteric, but it is related to valuing knowledge and particularly specific knowledge or ‘wisdom’. Possessing relevant knowledge puts the holder in a position where they may choose to share or withhold that knowledge - it is a position of ‘power’ (traditional elders hold such power).} it means that such power may be more beneficial for women victims of domestic violence particularly in terms of gaining access resources and justice with such access then also serving to further increase their power through an accumulation of knowledge and through greater knowledge wisdom in its use. Moreover, since Foucault recalled that power as a knowledge/episteme is inextricably interrelated with space and law, it means that power is not solely occupied or allocated by the state anymore, but becomes something that everyone has. Hence,
this construct gives more opportunity for women to deploy power as an avenue to ensure access to justice because law and its power are understood as knowledge dependent and accessible; in this construct, power no longer is seen as acting simply as an instrument of oppression, where the subordinate group is exploited, and discriminated against on the basis of unhelpful stereotypes (be it on the basis of ethnicity or gender) but rather as an opportunity for change and reconstruction of the lived reality of women’s lives.\textsuperscript{110}

2.4. Dichotomy between the Public and Private: The Relegation of Women to Private Sphere and State Intervention in Family Dysfunction.

In the seventeenth century, discussion on the dichotomy between ‘private’ and ‘public’ already existed in western countries. It later becomes the main topic of philosophical discussion among Liberal, Marxist and conservative thinkers whose thought have been a central and concern of feminist theorists as well.\textsuperscript{111} The main focus of discussion is on the separation of and opposition between ‘the public’ and ‘the private’ in liberal theory and practice.\textsuperscript{112} However, the idea of dichotomy inevitably spread to other countries in the other parts of the world due to colonisation by western countries, although one might argue that the concept (without the name) was the lived experience in many cultures (such as ‘secret women’s business’ in Indigenous Australian traditions (among others), that are clearly gender based and developmentally

\textsuperscript{110} In the case of domestic violence, Westlund argued that abused women experienced pre-modern and modern forms of power side by side. She insisted that pre-modern power continues to exist in various parts of modern society in the world today. As result, abused women are also often compelled to turn for help to modern institutions where these institutions often victimise battered women by blaming the violence on them. From these circumstances have emerged questions of whether battered women will find resources to resist and to regain their autonomy or not through the concept of modern power as developed by Foucault. See Westlund, above n 39, 1050-5; Smart, above n 33; Sandra Lee Bartky, ‘Foucault Femininity and the Modernization of Patriarchal Power’ in Sandra Lee Bartky, Femininity and Domination: Studies and the Phenomenology of Oppression (Routledge, 1990) 93, 95-7. For the text see http://weber.ucsd.edu/~pmichelb/Bartky.pdf.


\textsuperscript{112} Pateman, The Disorder of Women, above n 50.
and cultural role related, and separate from ‘men’s business’ into which boys must be initiated to be worthy of respect (power)).

Basically, there are two different opinions in more recent years on the segregation of the public and the private which are contradictory to one another. Both opinions have their own argumentations to support the claims. The two groups are generally conceived as conservative and liberal feminist as opposed to radical feminist. By and large, feminists in the former group, which consists of conservative feminists (sometimes even those termed ‘maternal’ feminists) and liberal feminists, rejected radical feminist’ argumentations about the need to eliminate the distinction between public and private. The liberal and conservative feminist group has argued that the difference between the private and the public exists; and that the dichotomy itself has greatly affected the relegation of women to the private sphere and the welfare of women in society. On the other hand, the latter faction of radical feminism denied the importance of a difference between ‘private’ and ‘public’. Catharine MacKinnon, for instance, a powerful representative of radical feminism, challenged the distinction. She has argued that ‘the measure of the intimacy has been the measure of the oppression of women,’ as the private sphere of the family as ‘private’ becomes a space where


116 MacKinnon insisted that: ‘In feminist translation the private is a sphere of battery, marital rape, and women’s exploited labor; it is the central institution whereby women are deprived of (as men are granted) identity, autonomy, control, and self-determination’. See Catharine A MacKinnon, ‘Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence’ (1983) 8(4) Journal of Women in Culture and Society 653, 657; See also Annabelle Lever, ‘Must Privacy and Sexual Equality Conflict? A Philosophical Examination of Some Legal Evidence’ (2000) 67(4) Social Research 1137, 1137.
oppression occurs largely unchallenged; and thus becomes a reason for feminists to ‘explode’ the private,\(^\text{117}\) and, therefore the distinction should be eliminated.\(^\text{118}\)

Advocates of the elimination of dichotomy have argued that there are three reasons that can be proposed: indeterminacy, the fact that nothing is really private and that ‘the personal is political’ (as radical feminist MacKinnon famously maintained).\(^\text{119}\) In regard to indeterminacy, the radical feminists have insisted that there is no rational way to identify ‘what is private’ and ‘what is public’, hence it is indeterminable. However, many believe it is possible to identify and to agree upon what is private and what is public, although critics would argue that it is not always clear how that identification has been reached because it is often presented merely as a conclusion reached via inadequate or contested reasoning (for example, ‘nature’), and the critical literature cannot support this claim. According to conservative liberal feminists, however, the dichotomy between public and private has existed throughout human history and occurs in both Western society and non-Western societies.\(^\text{120}\)

In Western societies, in particular, the dichotomy between the public and the private has been seen as existing in three periods: before the industrial revolution, after the industrial revolution and in the post industrial society. Each period has a different situation. In the first period, although a dichotomy between the public and the private existed, an egalitarian atmosphere in the family also prevailed. In the next stages, particularly after the industrial revolution, the removal of the world of work from the

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\(^\text{117}\) MacKinnon, *Toward a Feminist Theory of the State*, above n 49.

\(^\text{118}\) Kelly, above n 115, 2, where the author quotes MacKinnon, who famously said: ‘…feminism has seen the personal is political. The private is public for those for whom the personal is political. In this sense, for women there is no private, either normatively or empirically…’ See MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press, 1989); See also Cheryl Hanna, ‘The Paradox of Hope: The Crime and Punishment of Domestic Violence’ (1998) 39(5) William & Mary Law Review 1505, 1538. See full text http://scholarship.law.wm.edu/wmlr/vol39/iss5/3.

\(^\text{119}\) Gavison, above n 114, 12–20.

household (and women from the fields of agriculture) is considered to mark the beginning of the relegation of women to the private sphere and their exclusion from the public sphere. For example, whilst power gradually extends beyond the traditional ruling classes, women are by and large excluded. Men, for example, gain the franchise first on the basis of property and wealth, and only later on the basis of their age-women of all classes, propertied or not, remained excluded. Participation in the public sphere, particularly after marriage, was often limited; women in the public services, for example, were often required to resign when they married. Such circumstances continue in the post-industrial, and it is a source of the feminist critique of the public and the private dichotomy. The relegation of women to the private is unjust because it burdens women with certain responsibilities, particularly that of raising children and for providing unpaid services in the home. Men are allocated a different burden: while they have less responsibility for child-rearing and housework, they are expected instead to earn a living outside the home. The situation is not merely one of division of work, however, regardless of personal suitability to the task - one is monetary rewarded.

121 It is worth recalling that in 1780 only 214,000 people or less than 3 per cent of the UK population (or about 8 million) satisfied the criteria to able to vote. The 1832 Reform Act enfranchised those males who could demonstrated that they owned property worth at least GBP 10 (about one in seven men), by the third Reform Act of 1884, all male homeowners gained the vote. Universal suffrage for men regardless of property-owning status and for women over 30 who satisfied property qualifications was not introduced until 1918. National Archives, The Struggle for Democracy. Getting the vote (ND) http://www.nationalarchives.gov.uk/pathways/citizenship/struggle_democracy/getting_vote.htm.

122 Before the industrial revolution, a distinction existed between public-politic and war, on the one hand, and private-family and household work on the other. The private through the family and household work has an important role to provide the necessary products for daily needs and for barter or commerce which were needed by the public. There were more egalitarian decision made in the household as the consequence of the mixture of work and family life. After the industrial revolution, the difference between the public and the private remained, but a further distinction emerged between the world of work, which had previously existed in the household had now been removed from the household, and the world of the family. See Gavison, above n 114, 21.


124 As John Stuart Mill observed as early as 1869: ‘…the principle which regulates the existing social relations between two sexes - the legal subordination of one sex to the other is wrong in itself, and now one of the chief hindrances to human improvement; and that it ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other’: John Stuart
whereas the other is not, making one gender financially dependent upon the other. The relegation also affects women’s participation in other aspects of the public sphere- Women are effectively excluded from the public sphere and its regulation of both public and private spheres. For instance, many regulations have excluded women politically by denying them the vote, preserved their legal status of dependency on the father or husband, limited access to finances and property, and until comparatively recently limited opportunity for women to participate in many professions (such as medicine, law, and politics).\textsuperscript{125} Even more contemporarily and in a number of countries, whilst women may even dominate a field in number, they may fail to be proportionately represented in the upper echelons of that field (a situation that cannot be totally ascribed to women’s work-life pattern).\textsuperscript{126} Again, although they have come to be numerically predominant in what have become regarded as ‘traditionally female’ fields of caring (nursing, medicine, various adjunct therapies) and education ( to a degree regarded as extensions of their ‘natural’ domestic functions of nurture), women also continue to be under-represented in occupations still regarded as ‘traditionally male’, including trades such as plumbing, car mechanics, carpentry, or in fields also regarded as ‘traditionally male’, for example mining, building, engineering.\textsuperscript{127}

The relegation of women to the private sphere also affects the protection of the interests of women.\textsuperscript{128} As early as the mid-1800s, British philosopher and economist John Stuart Mill in ‘The Subjection of Women’ argued that women would not be able to protect their interest if their lives continued to be confined purely to the small circle of

\textsuperscript{125} Smart, above n 33.
\textsuperscript{127} Ibid.
\textsuperscript{128} Mill above n 124, 36.
the family, with no experience beyond domestic life. Later authors, such as O’Donovan, agree: the absence of women from the public sphere affects women’s opportunity to function fully as citizens and their self-development. Moreover, the women’s absence from the public sphere also impacts on their political decision making. The situation is perpetuated because the public sphere became the world in which ‘history’ is made by the male and where the public sphere continued to be constructed as superior to the private sphere within which women ‘naturally’ (that is, by their very nature) were placed. Furthermore, women’s exclusion from the state prevents them from enjoying rights in the public sphere. Saigol argues that this occurs because the private sphere has been constructed around women’s duties rather than their rights, and the emphasis is constantly on women’s duties to the family. These arguments insist that a ‘family’ becomes a source of the exclusion of women from the public sphere because everything which has a relationship with domestic/family/private life is deemed a part of the private sphere and in accordance with nature (and observation of the natural world) the area of women’s activities and functioning. The family is, traditionally, the primary repository for the provision of the emotional, physical and developmental needs of its members. The women’s role in it is seen as to provide warmth and support to other family members: this too is deemed ‘natural’. The resulting dependency of women as well as children is also viewed as an acceptable

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129 Mill, in this context, discusses woman’s suffrage. He advocates the vote for women because it was necessary for the protection of their interests and it would enlarge the capacities of women in the public sphere. He disagreed with his father’s argument that women did not need the vote because their interests were subsumed in the interests of their father or their husbands. See Mill, *The Subjection of Women*, above n 124, 36. Mill saw women’s subjection as a sole relic of a by-gone era and contrary to progress: at 36.

132 O’Donovan, above n 130.
consequence. A family is always described as a place in which the family member can share love, harmony and cooperation. However, in fact, the institution itself is often far from being a peaceful place due to the conflict of the interests of family members; and sometimes the inability of family members to resolve the conflict. The process they use to resolve such conflict often involves a third party, such as the state.

State intervention in the family involves intrusion by the public sphere in the private sphere. State intervention through its policies and legal system in the family sphere is inevitable, particularly when the idea of welfare state emerged at the end of the nineteenth century and even more so as the twentieth century progressed. Its role in maintaining the divide in the periods preceding admits a crucial role, but the direction of that role was changing. This demonstrates that the family is a not a realm free of other institutions as it is heavily regulated and constricted in and by the law. The State has regulated many aspects of family life, for example in marriage law. The law defines who may marry whom and what requirements must be met in order to marry and the consequences of marriage and parenthood during an ongoing relationship; and it imposes significant policy directives in the context of its dissolution, whether by separation or divorce. The state also defines the responsibilities of a family and its members, and the role of the family in the larger society, as well as the role of the state in relation to the family.

Marriage is undeniably a source of subordination of women to men. Many experts supported this claim. Mill in ‘The Subjection of Women’ advocated equality in the marriage relationship between men and women, and equity in regard to property and wealth and in regards to ‘rights’ to their children. As it was, when a woman married everything she had become her husband’s, and he could dispose of it as he wished. If
she left, she could take nothing with her. He argued that the state of married women at that time resembled slavery because, once a woman married, the legal personality of the woman was subsumed in that of her husband. Moreover, custom and law also permitted a man to abuse his wife, often in the guise of ‘discipline’. In other words, a wife was the ‘actual bond-servant of her husband’. Further, Blackstone, in his ‘Commentaries on the Laws of England’ (published between 1765 and 1769) noted that ‘by marriage, the husband and wife are one person in law’, the ‘person’ in this context referred to the husband, and he represented his wife in any legal and economic respect. There was a marriage (conjugal) contract embodied in the marriage service of the established church in England in relation to the marriage between a husband and wife; however, Mill and later feminists believed that it was one that reflected a husband’s power over his wife, almost as of a slave-owner over his slave. Feminists said that a conjugal contract should be an agreement between two equal parties who negotiate until they obtain an agreement of mutual advantage. It is believed that such a proper conjugal contract will eliminate inequalities between men and women because the contract would be a manifestation of mutual agreement between two equal

135 Ibid; See also, Mary Lyndon Shanley, ‘Marital Slavery and Friendship: John Stuart Mill’s The Subjection of Women’ (1981) 9(2) Political Theory 229, 231. It should be not that men were able by law to discipline their wives, much as they were permitted to discipline their children or servants; see also Blackstone’s Commentaries on the Laws of England: Book the First: Chapter the Fifteenth: Of Husband and Wife, 430–3. Text available <http://avalon.law.yale.edu/18th_century/blackstone_bk1ch15.asp>. There were limits, but these were often routinely ignored.
138 Shanley, above n 135, 232.
139 The wife vowed to ‘obey’ the husband: Mill, The Subjection of Women, above n 104, 54. He conceded that in contrast to some earlier civilisation, the Church had insisted on consent, but noted that such consent could be the product of family pressure: at 54. A woman’s rights after marriage were not well-guarded.
140 Any additional agreement also generally reflected the traditional power relation as they could not exceed the provisions of law: Mill, The Subjection of Women, above n 124, 55–6.
individuals. Feminists argue that a proper contract would allow women to access a better civil life, one enjoyed to the same extent as their husband, because the interests of women would be included inside it.\footnote{Mill also argued that the revision of the marital contract would give women the same rights as men. See Mill, \textit{The Subjection of Women}, above n 124.}

By regulating individuals within the private-family sphere, the state contributes to the way that individuals construct their identities within society and establishes norms of citizenship and community; but it also defines what remains ‘private’. The state has an interest in the continued presence of the family institution because it plays a central and essential role in the society, in term of social stability, child rearing, care of older members (and in its current configuration, facilitating male participation in the workforce) and so on; the state maintains the family institution in order to establish and maintain the society as a whole. As a result, the family is not a neutral social, cultural or legal institution in society. Many radical feminists view its relational structure and patriarchal values as so toxic to women that it needs radically restructuring; although a number of ‘maternal’ feminists (sometimes disparaged by those whom they regard as more radical) re-envision the public/private divide, reasserting the central value of the family and essentially challenging the primacy given the public sphere.\footnote{See, eg. Jean Bethke Elshtain, \textit{Public Man, Private Women: Women in Social and Political Thought} (Princeton University Press, 1981). According to Kelly, Elshtain views radical feminists as overstating the extent of women’s oppression and victimization and ignoring examples of women as active participants, and posing solutions that would require almost fascist intrusions into the private sphere: Kelly, above n 115, 40–1.}

Jean Bethke Elshtain, for example, argues the value of the family as the basic unit of socialisation for human young and that it is the ‘maternal’ nurture that needs to be transferred to the public space and there be truly politically transformative. She has argued that family should be a realm generally free from state intervention, and a space where the needs of the children are prioritised as a key social value.\footnote{She does not support total non-intervention where there is domestic violence: Elshtain has argued that} The fact remains, however, that the
transformation of the public into a more nurturing space has not yet occurred and so intervention remains needed when the interests of vulnerable women and children demand it, particularly in regard to protecting women (and children) from male exploitation of the enduring unequal power relationship within the family.\textsuperscript{144} Therefore, the claim that ‘the family should be a private sphere’ (and one largely exempt from state intervention) is criticised by the radical feminists, who see the family as essentially oppressive, and requiring amendment as much as any other institution that oppresses women. They have argued that there is no social institution that is private, and that the family is basically social institution because it is heavy regulated by the state, for instance through regulation of marriage and divorce. Those defending the concept of the dichotomy and its preservation have insisted that the private is a self-regarding and should be free (from interference).\textsuperscript{145} ‘Self-regarding’ is describing the events of private life as merely personal, that is, what happens in private concerns only the family or its individual members and does not affect society at large. Radical feminists challenged this argument due to its distinction between self and other regarding activities, and its view that self-regarding activities (characteristic of the

\textsuperscript{144}The unequal family relationship between a woman/wife and a man/husband was explored by John Stuart Mill. He attributes its origin to ‘the law of the strongest’ rather than having any moral or reasonable basis: Mill, above n 124, 10–11. It is interesting to note that Mill was a contemporary and correspondent with the ‘Father of Evolution’ Charles Darwin and saw society as evolving rather than static: at 9–39, esp 9, 36. He argues that a married woman should have a legal personality independent of that her husband (contrary the assertion in Blackstone’s Commentaries that stated the then principle that ‘by marriage, the husband and wife are one person in law’); and the ‘person’ was represented by the husband. See Mill, The Subjection of Women, above n 124, 56; see Shanley, above n 135, 232.

\textsuperscript{145} Gavison, above n 114, 14. Re ‘free’ in term of self-regarding, see also John Stuart Mill, On Liberty (Walter Scott Publishing, first published 1859, 1901ed, 2011) 141. The text is available online by Project Gutenberg as Ebook as it out of copyright. Note: the private has also sometimes regarded free in terms of being ‘voluntary’. 

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home, for example) is beyond the jurisdiction of society.\(^{146}\) These assertions were rejected by radical feminists. Liberal feminist too would maintain that the influence of the woman in the home on shaping those in her care has profound impacts on the world beyond the doors of the home.\(^{147}\) In fact, private matters, within family affect both non-members and society at large, both positively and negatively. Elshtain, the representative of feminists in the conservative liberal group, also gives another example that of child rearing arrangements and pattern. She views this as an exemplification of how ‘private’ arrangements affect children in profound and complex ways. The way a family educates the children affects the development of their adult lives, the general form and expectations of their society in the future, the chances of particular family members regardless of the age, race, religion, social economic status to participate fully in the public world of work and politics, and in society as well.\(^{148}\)

More radical feminist would argue that the oppressive relation found in the home similarly impacts on the growing children and their views of the ‘proper’ role of women in society, and can serve to perpetuate a paradigm of violence and oppression in the family and beyond. For instance, for many centuries (even into comparatively modern times) a husband was able to abuse to his wife and children due to his right to ‘chastise’ or ‘discipline’ them, with a common a misunderstanding being that a ‘rule of thumb’ applied (in fact even severe beatings often went unpunished),\(^{149}\) yet such

\(^{146}\) John Stuart Mill, *On Liberty*, Harvard Classic (Collier&Son, first published 1859, 1909 ed). Note: this work was first published in 1859. The 1909 Collier & Son edition has been available on-line since 1993 as it is in the public domain.

\(^{147}\) See, eg, Elshtain, above n 142.

\(^{148}\) The argumentation above, particularly with regard to the children’s need issue, is argued by Elshtain who disagrees with the radical feminist solution to eliminate the distinction between the public and the private. Her reason is that the elimination of the distinction will threaten the existence of the private family-familial existence is a presuppositional feature of social existence, particularly for the children’s needs for long term and intergenerational ties with specific adults in order to develop and improve the skills needed to connect with other individual. See Elshtain above n 142; see also Gavison, above n 114.

\(^{149}\) See Chapter 1 above. See also Mill, *The Subjection of Women*, above n 124, 57–68, esp 62–5, where Mill details the abuse perpetrated by men on their wives with relative impunity. He writes: ‘[Even the]
conduct basically affects the safety and social lives of women and children, and the welfare of society at large. Studies have found a correlation between abusive relationships with problem regarding women’s and children’s safety, physical and psychological health, and involving social and economic costs.

Based on these examples private arrangement profoundly affect the public realm and its social structures; again, the interdependence between the public and the private exists and it is inevitable. It is also undeniable that what is private is determined by public norms and laws. The Family may be viewed as private but it is highly regulated by the state; the public (state) grants private arrangements by assuming and respecting an equal relationship between individuals, and leaves individuals an area in which they can act free from public interference; but as MacKinnon observed:

The law of privacy treats the personal sphere as the sphere of personal freedom. For men, it is. For women, the private is the distinctive sphere of intimate violation and abuse, neither free nor particularly personal. Men’s realm of private freedom is women’s realm of collective subordination.

Wilest male factor has some wretched women tied to him, against whom he can commit any atrocity except killing her, and, if tolerably cautious, can do that without much danger of the legal penalty. The wife alone ‘of grown persons can neither repel nor escape their [husband’s] brutality’ which is facilitated by ‘an excess of dependence’ and the ‘notion that the law has delivered’ a wife into their husband’s hands and ‘they are not expected to practice the consideration towards her which is required from them towards everybody else’: at 63-4. Thus in 1869 he writes of the first ‘feeble attempts’ by the state to (at last) curtail the power of the husband in the home: at 64. He record then how often these are stymied a situation that has extended in the vast majority of jurisdictions until well into the twentieth century and beyond.

Studies on the impact of domestic violence’ on women’s health issues reveal these are significant. Such violence may have immediate and long term effects on women’s health, including sexual and reproductive health, physical health, mental health, morbidity and mortality; see Benita J Walton-Moss et al, ‘Risk Factors for Intimate Partner Violence and Associated Injury among Urban Women’ (2005) 30(5) Journal of Community Health 377, 377–8.

Domestic violence also impacts on a woman’s life and finances, such as access to property. Previous studies have found that a married woman had no right to access property and assets in her own right in various jurisdictions. See Powell and Murray, above n 54; Dhawan et al, above n 54; Higgins and McCabe, above n 54; Bagshaw and Chung, above n 54; Hajjar, above n 54; Sandra Kopels and Marcie Chesnut Sheridan, ‘Adding Legal Insult to Injury: Battered Women, Their Children, and the Failure to Protect’ (2002)17(1) Affilia 9, 10; JoAnn Miller, ‘A Specification of the Types of Intimate Partner Violence Experienced by Women in the General Population’ (2006)12(12) Violence against Women 1105, 1119-20.

MacKinnon, Toward a Feminist Theory of the State, above n 49,168.
Liberal conservative feminists have also insisted that nothing in the family sphere is really ‘free’ (voluntary or independent of others). They argued that a person’s decision in the private sphere is not really grounded on her/his own wishes and preferences because external factors (for instance, opportunities, socialisation, expectations, resources and perceptions) which are generally created and reinforced by (male) persons due to the prevailing power relation will influence and constrain the decisions of those in the private sphere. Feminists argued that the ‘private’ is not really free because whatever the women’s choices for instance to marry and stay home rather than to work in a workplace, to leave or remain within an abusive marriage relationship are not really free choices. The choices are taken based on the selection of public norms which usually contain gender constrained norms, that is, what is appropriate and what is not appropriate to women – from the viewpoint of men. According to Ruth Gavison, the fact that many women feel happy (for example, to marry) and fulfilled in these ‘choices’ is not evidence that the ‘choices’ are themselves free. Rather, the women may have internalised and accepted the values presented by a male structured and male advantaging environment embodied in the culture and its prevailing norms. Foucault has argued that freedoms are illusory. Freedom which is associated with the self is, basically, a product of a particular art of government. Gavison writes: ‘[we do] not make ourselves through our own creative activities, but rather [we] construct ourselves in a way that is prescribed for us by technologies of self

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153 Gavison, above n 114, 17.
154 Peled et al, above n 40, 11.
155 Gavison, above n 114, 22; In this context, MacKinnon agrees, and notes that marital sexual relations are presumed to be entirely voluntary (unconstrained by societal norms, not prompted by a desire to maintain ‘marital harmony’ in an abusive relationship, or an effort to stave off other forms of violence, or unaffected by perceptions of ‘consent’ as a concept not available for wives, etc): See, eg, MacKinnon, above n 116, 184–5, 187–8. Even the availability of abortion can be used as yet another tool of oppression, when a pregnancy is desired by the wife but rejected by the husband, and the wife may be coerced into having the procedure undertaken. Hence it is the power relation that must be revolutionised.
sanctioned by the modern regime of power.’

In this respect, women have been induced by the society to believe that what they choose, that the choices they appear to make, are made as if free agents; therefore, ‘they will not rebel against their exploitation and oppression.’ Moreover, the enduring system that has given men superiority as breadwinners and sources of power and status is so structured that it makes women not free to ‘exit’ and they are therefore unable to negotiate the conditions of their relationships from positions of freedom and equality.

In the domestic violence context, for example, women’s decisions to leave or remain in an abusive relationship, and their choices whether to access justice or not have been influenced and constrained by external factors, such as public norm and laws. The dichotomy between the ‘public’ and the ‘private’ that comes from the political-patriarchal attitude has been imposed on society at large and the family sphere in particular. The idea of dichotomy, in general, is criticised by feminists because it relates to the relegation of women to the private and their exclusion from the public sphere. Furthermore, the dichotomy pervades all aspects of human life, from the personal to the institutional. Researchers have shown it to exist, for example, in domestic violence cases. Belsky in her ecological framework theory, which had been implemented in regard to neglected children, argued that domestic violence is caused not only by gender and patriarchy (as it exists in the home), but also by external factors such as family, institutions (including the justice apparatus), social structures and

\[\text{156 Gavison, above n 114, 22.}\]
\[\text{157 Ibid.}\]
\[\text{158 Ibid.}\]
culture at large.\textsuperscript{160} Those institutions and their values repeatedly intersect.\textsuperscript{161} For instance, the pressure from the public sphere on women to keep the marriage intact as the basis of the family and the cornerstone of society is also one of the forms of external factors which remains firmly rooted in society despite the presence of violence. The expectation of public norms to work to keep marriage intact is generally on women, not men, as the ‘private’ or ‘domestic sphere’ is where the burden of the maintenance of harmony falls largely on her. Such attitudes put women under considerable pressure that may not necessarily be shared by their spouse or partner.\textsuperscript{162} Moreover, there is a view that if a woman decides to leave the marital relationship such an action even where domestic violence exists is indicative of the woman’s failure to perform her expected roles as a good wife. Meanwhile, women who stay in abusive marital relationship may confront complexities and difficulties circumstances often not totally unlike those of those women who leave the abusive marriage relationship.\textsuperscript{163}

Studies have found that women’s economic dependence on the abuser, their concerns regarding the continuing welfare of the children, a lack of suitable alternatives (accommodation and income, for example), and cultural barriers often force the women

\textsuperscript{160} Belsky, above n 37, 324; see also Lori L Heise, ‘Violence against Women: An Integrated, Ecological Framework’ (1998) 4(3) Violence against Women 262, 264.


\textsuperscript{162} Talcot Parsons in ‘Family, Socialization and Interaction Process’ held that the functions which the nuclear family perform for society are essential. He maintained the importance of sex role differentiation within the family, arguing that the leader function had been divided into an expressive leader and an instrumental leader. Being an expressive leader became the mother’s duty because of the fact of pregnancy and child rearing; meanwhile, the father holds an instrumental leader, since he could not perform these functions but must go out to work; see Talcott Parsons and Robert F Bales, Family Socialization and Interaction Process (Routledge and Kegan Paul, 1956).

victims of domestic violence to stay in the abusive marriage relations. Another factor operating is fear: a woman’s choice of whether to leave or stay in an abusive marriage does not guarantee domestic violence will be over. After the marital breakdown, or during attempts to flee, the violence sometimes worsens. Therefore, it is unsurprisingly that women who had left their abusive partner often have decided to return to their abusive partner for their own reasons. Further, the regulations provided by state do not always encourage women to have charges laid against the perpetrator due to legal and cultural factors. This is caused by an idea of division introduced Aristotle which has affected the legal system, dividing it into the criminal and civil law systems. The systems differ, with different procedures, agencies and purpose which, in turn, affect the victim. The differences influence the response of law apparatus which sometimes has been described by the victims, at certain level, as not unsatisfactory or failing to satisfy their needs. Regardless of the existence of inappropriate regulations, as well as a lack of understanding by the legal/judicial apparatus on this issue, a lack of coordination between criminal and civil law, and the personal or cultural barriers of the victim, the circumstances are now such that they indicate that what happens


165 See also Carolyn Harris Johnson, ‘Filicide and Family Law: A Study of Filicide-Suicide Following Separation’ (2006) 44(3) Family Court Review 448. See also for recent NSW example: Candice Marcus, ‘Husband Killed Wife in front of 300 Guests, Court Told’ ABC News, 2 August 2012. See also Moe, above n 163; Bell, Goodman and Ann Dutton, above n 164.


inside family has become a public concern, although the understanding of the issues involved remains diverse. This phenomenon has shown that family can generate change in other institutions because the alteration of family pattern behaviour profoundly affects the welfare of public sphere. When those in the public sphere become more aware of the cost to the broader society of tolerating the violence in the ‘private’ sphere, the needless harm done, and importantly, do not see change as a threat to them, change is more likely. Interference by the state in family life or the private sphere is inevitable as the family and the state are interdependent on each other.

The third argument for the elimination of the distinction between the private and the public sphere is the feminist recognition that the ‘personal is political’, that is, the private space of women’s lives is already tacitly invaded by the state in terms of recognition/non recognition of the rights of women in that space (for example in regards to the regulation of marriage, access to divorce, and in some eras and areas to birth control an abortion, and the failure to recognise marital rape). Overt recognition that ‘the personal is the political’ is proposed as diminishing the root of women’s oppression within family. It is also a slogan recommended by Catharine MacKinnon—a well-known radical feminist thinker to address the complexities created by the distinction by eliminating the very distinction that had proven itself so harmful to women. For it is the private space that women are found to be the most vulnerable. It is here that violence that would be prosecutable in a street encounter frequently went unpunished. It is here that women are beaten and raped, oppressed in many ways, often with relative if not

1015, 1029.  
170 And yet as MacKinnon herself notes, women have raised ‘privacy’ as a justification for abortion rights. A right to the woman’s right to her body (her privacy- neither husband nor state as owner and decision taker for her- in reproductive choice decision-making. The area is not without is complexities. See, MacKinnon, above n 116, 191.
absolute impunity. The state defines this ‘private’ space as ‘inviolable’ for male freedom. The personal ‘space’ ‘is’ therefore politically determined. Thus she argued:

For women, the measure of the intimacy has been the measure of the oppression [of women]. This is why feminism has had to explode the private. This is why feminism has seen the personal as the political. The private is public for those for whom the personal is political. In this sense, for women there is no private, either normatively or empirically. Feminism confronts the fact that women have no privacy to lose or to guarantee. 171

Such recognition can be implemented in regard to matters which are caused by the dichotomy between the public and the private; it offers an opportunity to every woman to speak more about her experience in an unjust or unequal relationship within the family in order to disclose it to seek and enjoy justice public at large, and, finally, to decide what action will be taken in order to seek and enjoy justice in public sphere. Based on those decisions and actions, what was formerly regarded as the personal-private ‘the personal sphere of sexuality, of housework, of childcare and family life’ 172 will no longer be ‘personal’ because it has become political-public. Further, the inequality is a gendered inequality evidenced as dominance (male) and subordination (female). The social power of men over women extends through laws, even those that are ostensibly implemented in order to protect women as a part of the community (for example, working hours, employment restrictions but which nevertheless perpetuate a view of women as essentially ‘marginalized and second class workers’); 173 thus its benefits are doubted because an inequality would produce an inequality. 174 That the law derives its authority from reproducing women’s social inequality to men in legal inequality, is an exemplification of the gendered unequal power relation. According to

171 Ibid.
172 Ibid.
173 Ibid, 165.
174 Particularly those that arbitrarily restricted access to women on an irrelevant basis or a stereotyped presumption: such that a woman was unsuited due to her ‘lesser intellect’: see, eg. Mill, above The Subjection of Women, n 124, 91–6. The same persons confuse circumstance (lack of opportunity, lack of education, unhealthy enclosure, even fashion) with innate ability: at 91–6, 111–12.
MacKinnon, any division of power is intrinsically political;\textsuperscript{175} such is the seamless web of life.\textsuperscript{176} These inequalities affect women’s personal circumstances;\textsuperscript{177} hence, the only way to solve the ‘personal’ problem is through political means and political action.

The ‘personal’ becomes more visible through the method of ‘consciousness raising’ that was introduced by radical feminists. Its purpose is to make women’s experience of the ‘personal’ more visible. However, it is criticised as a mechanism used to perpetuate the unjust situation by obscuring the injustice in the structure and highlighting individual adjustment within the status quo.\textsuperscript{178} Radical feminists believed that the method, which is based on women’s experience, could be used as the main instrument to enable them to identify the problem of women’s subordination or inequality in their own lives.

MacKinnon has recommended the method of ‘consciousness raising’ as a useful method to trigger women’s awareness of their inequality either within domestic and personal life or public life. However, to raise women’s consciousness based on their own experience is not as easy as expected. It is possible that the consciousness raising in one woman and another differs one from the other. Since women have different experiences from one to another, the correlation between the degree of consciousness and material conditions in real life will also differ. Some women become critical of their experience of inequality and the others do not. The reason for the differences in consciousness is due to the multiple gendered practices which are influenced by ethnicity, class, family and work community where each practice consists of an embodiment of a power relation.\textsuperscript{179} This argument is contrary to the view that women,

\textsuperscript{175} MacKinnon, Toward a Feminist Theory of the State, above n 49, 160.
\textsuperscript{176} Ibid.
\textsuperscript{177} Ibid.
\textsuperscript{178} Gavison, above n 114, 21–22.
\textsuperscript{179} Carrie Paechter, ‘Power, Knowledge and Embodiment in Communities of Sex/Gender Practice’ (2006)
in general, have a similar experience of inequality which is caused by gender role and patriarchy. It also is critical of the resulting generalisation of the solution that has occurred on the basis of that assumption of similarity of experience of gender and patriarchy. This argument emerged because the context generally refers to ‘white (western) women’ and their experience and this seeming to be understood as able to represent that of all the women in the world.\textsuperscript{180} As a result, the experience of woman of colour and the third world women become difficult to comprehend.\textsuperscript{181} The presumption of the similarity of women’s experience is also rejected by those feminists who recognise the intersection of many factors (such as age, race, class, religion, politics and culture) have influenced the experience of women. Therefore, women’s experience, particularly in domestic violence cases, should not be over-generalised, nor proposed responses tailored to an environment other than that of the women involved.

In addition, ‘the personal is political’ and the notion of the elimination of the distinction between the public and private has been viewed by some as a misleading construct. Susan Moller Okin argued that the existing division of labour within the family mother as caretaker and father as breadwinner – obviously has shown how political an institution is the family. Such circumstances are not created solely by the family itself, but also by society. Therefore, the sphere of family and personal life is not

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\textsuperscript{29(1)} Women Studies International Forum 13, 14; see Mark Bevir, ‘Foucault, Power and Institutions’ (1999) XLVII (2) Political Studies 345, 347.
\textsuperscript{180} Mohanty, ‘Introduction: Cartographies of Struggle Third World Women and the Politics of Feminism’, above n 113, 5. She argued that, in general, there is an opinion that third world women are often located (or viewed) in term of underdevelopment, oppressive tradition, high illiteracy, rural, urban poverty, religious fanaticism and overpopulation. See also Chandra Talpade Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’, in Anne McClintock, Aamir Mufti, and Ella Shohat, Dangerous Liaison: Gender, Nation and Postcolonial Perspectives (University of Minnesota Press, 1997) 255; Aida Hurtado, ‘Relating to Privilege: Seduction and Rejection in the Subordination of White Woman and Women of Colour’ (1989) 14(4) Sign 833, 855. She compared the significance of the idea ‘the personal is political’ to communities of white women and women of colour in the US; and she found that women of colour have not had benefit from the state intervention. The state intervention has embedded their political consciousness that the public is personally political.
\textsuperscript{181} Audre Lorde, ‘Age, Race, Class and Sex: Women Redefining Difference’, in Anne McClintock, Aamir Mufti, and Ella Shohat, Dangerous Liaison: Gender, Nation and Postcolonial Perspectives (University of Minnesota Press, 1997) 374; Aida Hurtado, above n 180.
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separated and distinct from the rest of social life. Interconnections exist between the private and the public aspects of women, men and children lives but women’s lives are more detrimentally affected by these interconnections than are men’s.\textsuperscript{182} Okin assumed that a just society would not be able to be created without a just family. Marriage and family are currently unjust institutions; and these unjust institutions affect the creation of just society and vice versa. Therefore, she insisted that domestic life first needs to be just and to ensure its justice state intervention to reinforce the legal system in the ‘private’ sphere is needed.\textsuperscript{183} In the context of domestic violence, the family should be a subject to the same standard of justice as the broader society. In a just society, the legal system must guarantee the same opportunities for women and men to develop their capacities as human beings, to participate in political power and influence social choices, and to be economically secure. Those structure and practices must be paralleled in family life.\textsuperscript{184}

Okin recalled that the western political thinkers had traditionally never recognised justice as the problem of the division of the sexes, with women as the subject of justice. This began with Aristotle’s theory that had relegated women to a sphere of ‘household justice’. Household justice is a place ‘populated by persons who are not fundamentally equal to the free men who participate in political justice, but inferiors whose natural function is to serve those who are fully human.’\textsuperscript{185} Okin argues that family should be the central focus of the theory of justice because women and their point of view should be included inside the family as fully as men and their point of view will should also be taken into account as fully as that of men. Okin’s opinion is

\textsuperscript{182} Susan Moller Okin, \textit{Justice, Gender and the Family} (Basic Books, 1989); see also Susan Moller Okin, ‘Justice and Gender’ (1987) 16(1) \textit{Philosophy and Public Affairs} 42, 45.

\textsuperscript{183} Ibid.

\textsuperscript{184} Ibid.

\textsuperscript{185} Ibid.
grounded in the fact that family is the primary institution of formative moral
development and has the main responsibility of promoting the moral development of
children. Thus, sharing this primary role between men and women within the family is
needed because it will have a further positive impact on family members; the current
role division between men and women within the family is an obsolete pattern that must
be abandoned. By sharing roles, family members will share the experience of being a
physical and psychological nurturer and this will increase the capacity to identify with
and fully comprehend the viewpoints of others, and this is important to a sense of
justice. Okin emphasised that enhancing the status of women as caregivers will give
them access to a reliable source of income and it can decrease their financial
dependency on their husbands which is definitely as one of the causes of domestic
violence.

Betty Friedan insisted that the factors affecting women’s lives are systemic
rather than personal. She gives the example of when women battered in the home. When this occurs, it is not because each particular victim has triggered an unfortunate ‘individual’ tragedy; and when a woman feels constrained and bored in her home, doing nothing but waiting for her husband and children so that she may cater to their needs, it is not because these women fail, as individuals, to adjust to their natural feminine roles, social structures are involved and, social structures themselves are not simply ‘natural’ because they are person made; rather, the persons who have constructed them are male and such structures, consequently, benefit males. It means that within and between social structures and these structures and the individuals within them, there are power influenced relations. Foucault gives examples of such relations including production,

\[\text{\textsuperscript{186}}\text{Ibid.}\]
\[\text{\textsuperscript{187}}\text{Ibid.}\]
\[\text{\textsuperscript{188}}\text{Ibid.}\]
\[\text{\textsuperscript{189}}\text{Betty Friedan, }\textit{The Feminine Mystique} \text{(Norton, 1963).}\]
kinship, family, sexuality. These play at once a conditioning and a conditioned role. From such a complex interweaving emerge a general condition of domination of one over another. Therefore, according to feminists, by dubbing certain activities or choices as ‘personal’ they are doing so on based on perpetuating the status quo.

Elshtain argued, however, that the radical feminist solution to eliminate the distinction will threaten the existence of the private family and ‘entail nothing less than the destruction of our ability to function as social beings.’ She insisted that the empowerment of women could be done within the private sphere because women’s capacity as mothers and homemakers can have the most profound impact and be able to transform the conduct of politics; indeed, she believed that the quality of government and citizenship could be expected to improve and it would bring a re-evaluation of the private sphere and the activities conducted therein. Moreover, the absence of the public and the private dichotomy (whether achieved through a re-evaluation envisaged by the liberal conservative feminist or the ‘explosion’ of the divide anticipated by the radical feminists) will affect the policy maker: they would be unable to avoid the messy and contentious issues domestic violence for one that are currently labelled ‘private’.

Carole Pateman notes that the slogan itself is useful to discuss the interrelationship, particularly the existence of alleged differences, between the public and the private. She goes on say that ‘the personal should not be allowed to stop conversations, critique or accountability; the personal should not be seen as an improper theme for concern and possible public interference.’ It should be understood that

191 Foucault, ‘Questions on Geography’, above n 26; Mezey, above n 190.
192 Kelly, above n 115, 40.
193 Elshtain, above n 142.
social structures are involved in personal life and social structures are not simply ‘natural’ because they are person (male) made. The personal is political and nothing should be immune from public scrutiny, discussion, and accountability. Furthermore, she has argued that society must identify the symptom as part of a social problem and to recognise the responsibility of the structures for the personal problem. After the problem is visible, mobilising individuals to regard the situation as political, and enlisting the forces of political and social reform for change can be undertaken. She proposes equal parenting and equal participation in other domestic activities as a pivotal basis of the social reform for changing the established inequality in the relationship and the gender roles of women and men. This will in turn, she believes, create a change in the public sphere at large.

To sum up, the discussion on the dichotomy between the public and the private mentioned above has shown that there is an intercorrelation between the two spheres. A family is not a private sphere which is unconstrained or unaffected by the state; indeed, a family is heavily regulated by the states not only due to the state’s interest in keeping the family as the basis of society but also to protect the vulnerable within the family. Frances Olsen in ‘The Myth of State Intervention in the Family’ has insisted that state intervention is needed, particularly to protect the vulnerable within family because of family malfunction. State intervention is inevitable since the state has defined the family and sets the roles within the family; therefore, talking about intervention or non-intervention is meaningless. Moreover, ‘the state constantly defines and redefines the family, adjust[ing] and readjust[ing] family roles.’

196 Ibid.
198 Ibid.
The idea that the state can intervene, or should do so, in the family or not can hinge upon the belief that a natural family exists as distinct from legal regulations, created by God or by nature, not by law. As a consequence, the privacy of the family unit is not disturbed due to a belief that the family exists as a ‘natural’ human formation. The nature of the family is seen as having determined the relationship among family members as one that is ‘naturally’ dependent upon a husband, one where the husband is the juridical head of the family, entitled to control the wife and children both economically and legally. Olsen emphasised that, in fact, the policies of various states have defined and reinforced specific family roles and a particular hierarchy within the family but that these policies are often considered ‘non-intervention’, which fails to recognise the very important function of non-intervention (or failure to act) as opposed to intervention (acting). Indeed, a refusal to support the existing family hierarchy in law has sometimes been considered state intervention in the family.

For instance, the non-intervention concept which existed during the nineteenth-century bolstered the authority of the father/husband. For instance: the court was expected to grant a *habeas corpus* writ for a wife who left her conjugal residence and took the children with her. A writ could be issued to force her to return to the husband. Refusal to issue such a writ would be considered state intervention in the family.

Even into the twentieth century in much of the western world (including Britain, Australia, and the United States for example), a father was permitted to physically and

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199 Olsen, The Family and the Market, above n 197, 1505 (esp n 30, where the author supplies a number of US cases)
verbally chastise his wife and children in order to discipline them.\textsuperscript{201} Such behaviour would constitute a criminal offence if directed at a stranger; but such an offence was not valid in regard to persons who were bound by marriage and blood ties. The principle of the ‘private sphere’ as the personal domain of the husband was largely upheld by the provision (or lack thereof) in the criminal law in regard to domestic violence.\textsuperscript{202}

In the civil law, the doctrine of intra-family tort immunity also protected the husband and father from civil suit in regard to his behaviour if he beat wife or children.\textsuperscript{203} Today, such immunity has been widely abolished;\textsuperscript{204} and, at least theoretically, a husband can be subject to civil suit in relation to injury sustained by his spouse due to many forms of domestic violence (such as physical, sexual, psychological and economical spousal abuse. In practice, however, such a process is rarely launched unless in regard to a motor vehicle accident where such an eventuality is covered by insurance. Factors deterring action include further enraging an already violent spouse, the observation that any compensation would come from marital property, a lack of resources to launch a civil suit, inability of the spouse to fund any award granted and so on.\textsuperscript{205} Thus, while ‘highly unusual’ for the reasons supplied, such actions are possible as the parties were ‘not immune from the ordinary civil law’.\textsuperscript{206}

\textsuperscript{201} Ibid 1505 (esp n 31, US cases again supplied)
\textsuperscript{202} Although the same act can be liable to both criminal and civil prosecution, they are two distinct actions in law. For example, attempted murder is criminally prosecutable in the criminal court. Compensation for injuries resulting from such an action could be sought in a civil (tort) action. These actions occur in different courts. (if she then wanted divorce, custody of any children and so on, that matter would go to the family law court). See eg a 2010 Sydney Court case where a wife sued her husband for damage from injuries sustained during their marriage which she claimed she entered on a false understanding of her husband being not violent. See Kim Arlington, ‘Violent Husband Must Pay Wife $200,000’ Sydney Morning Herald, 9 January 2010 http://www.smh.com.au/national/violent-husband-must-pay-wife-200000-20100108-lyvh.html.
\textsuperscript{203} Just as it did if the husband/father was a driver of a car in which his family was injured, or he was negligent in regard to their care (or indeed where a wife injured her husband)
\textsuperscript{204} Olsen, ‘The Myth of State Intervention’, above n 197, 854.
\textsuperscript{205} See, eg comments by Professor Barbara McDonald, University of Sydney: Arlington, above n 202. Reference is made to two specific Australian cases, including one where over $500,000 dollars was awarded.
\textsuperscript{206} Ibid.
In terms of criminal prosecution, spousal abuse is frequently treated differently from other forms of personal violence, and it often goes unprosecuted. In addition, as in the case of some other forms of violence (particularly sexual assault), the victim often suffers an objectively unjustified but strong sense of shame (due to culturally determined values) and is reluctant to pursue the matter, even where support the judiciary does exist for prosecution. Where the law permits criminal prosecution but support from police, court officials, and health department officials and personnel is lacking, women are often discouraged from making the report necessary to initiate proceedings.

In most states, the problem of spousal abuse has been recognised as violence within family; but the conduct itself is categorised as criminal—a public matter. This aspect has created ambiguity where states regulate this matter into the law. By and large, but not always, states in many countries regulate this matter through two forms of law: family law and criminal law. The legislation involves different systems and agencies in regard to resolving the violence. However, these systems do not automatically resolve the problem of women who experience domestic violence. Studies have found that the different legal systems (which have different agencies and procedures) affect the choice of women in accessing those systems. Therefore, courts must frequently draw a line between protecting the individual family member and promoting family authority, and different courts would draw the line closer to one or the other of these extremes. Exactly where a court draws the line, or where it would be expected to draw the line, will affect power relations within the family, particularly for

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207 Epstein, above n 167, 1845.
208 Allen, Bybee and Sullivan, above n 169.
the vulnerable. The choices that courts have made will be based on policy considerations and the state cannot avoid making decisions that will influence family relations.

Olsen ascertained that the experiences of state intervention differ but often involve disappointment in regard to unmet expectations or some sense of violation of entitlement. Because the notion of state intervention depends upon a conception of proper family roles and these roles are open to dispute, almost any policy may be experienced by someone as state intervention. In many situations, someone’s expectation will be disappointed or sense of entitlement violated no matter what action the states takes or refuse to take. What the state does is sometimes so poor that people would rather it did nothing – which of course is not possible. For instance, in a domestic violence case, women often find an unhelpful service provider whether governmental (such as a mediation service, police officer, health worker, court official) or non-governmental (such as private counselling service) who convinces them avoid public intervention and encourage the women to attempt to resolve the problem by themselves. Moreover, public treatment of domestic violence is plagued by dubious uses of the notion of privacy. Individuals within the system who are committed to assisting victims of domestic violence face a daunting dilemma from the contradictions inherent in the dichotomy. The police are often extremely reluctant to interfere in domestic disputes, even when violence is allegedly due to the private nature of the marital relationship; family is often treated as a ‘sacred’ unit which must be preserved or at least left undisturbed. Violence within family is often minimised and treated as a

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211 Ibid.
213 Margaret Borkowski, Mervyn Murch and Val Walker, Marital Violence: The Community Response (Tavistock, 1983).
minor disruption. The attitudes of law enforcement personnel and the judiciary (such as police and judges) who have not altered their attitudes to this problem have been recognised as a major problem in resolving the violence. In this respect, judges have been recognised as the most unaware of and insensitive to the issue of domestic violence.\(^{214}\)

Nevertheless, in order to ensure that the family remains ‘private’ (at a level agreed by all members, not just the (male) head of household), protection from excessive state intervention into family life is necessary.\(^{215}\) The state should not intrude until certain behaviour passes some threshold; the state should provide safeguards for members. In this context, Olsen insisted that the protective intervention argument usually treats non-intervention as the norm and intervention as an exception. She argued that as long as the family is ‘healthy’ the law will not comes in; the law comes in when things in the family go wrong.\(^{216}\) Observations have shown that both state and family have a power to decide the point at which state intervention occurs (the point of intervention embarkation), and the specific ways in which they each operate must be respected. The state, through its constitution and other legislation, is also held to supply additional protection to family privacy by requiring a clear and convincing demonstration of certain behaviours that would be considered as sufficient triggers whether these behaviours are instances of physical, sexual abuse to justify state legal intervention in the form of criminal prosecution or the implementation of civil restraining orders; or behaviours (such as infidelity, desertion) where state intervention can occur in the form of divorce or legal separation.\(^{217}\) Hence, state intervention in

\(^{214}\) Kelly, above n 115.
\(^{217}\) Ibid.
family sphere has intensified its regulation and control of its citizens over time even in their daily (and what they may regard as ‘private’) activities.

The role of the state, therefore, is not only to protect the vulnerable within family or when the family malfunctions, but also to support the vulnerable by ensuring their rights before the law. Feminist legal theory has, in this respect, argued that women in the society often confront sex discrimination, gender oppression and sexual subordination before the law or during access to legal institutions. These problems become important due to women’s inequality but have been justified by their innate differences from men since the male experience and attitude have been set as the norm (by men) and, if women behave differently from the norm, they will be considered deviant.

The descriptions above have shown that the need for state intervention becomes necessary due to the inequality of bargaining powers and the prevalence of many prejudices and stereotypes that appear within family. Theoretically, such conception of interventionism and preventive maintenance of access to justice both within the family and the broader society is ideal, but it sometimes different from the reality. A little change in the public space will have little effect on women’s lives in the private sphere; therefore, the change in the public sphere should be accompanied by changes in private relationships and also by correlative changes in the interaction between public and private realms as well. It is asserted that discussion on domestic violence (linking it with state intervention within family institution and the dichotomy between public and

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218 Christine A Littleton, ‘Equality and Feminist Legal Theory’ (1987) 48(4) University of Pittsburgh Law Review 1043, 1045. She explained that sex discrimination is a form of inequality before the law that arises from irrational prejudices against women in public spheres, including the unjustified stereotypes to exclude women from obtaining employment and enjoying social activities. Gender oppression is a form of inequality before the law that arise from the limitation of women’s role in social life. Sexual subordination is a form of inequality that arises from the devaluation and disavowal of anything associated with women.
private sphere) cannot be separated from the context of the relations between law, power and space.
CHAPTER 3

LEGISLATION THAT DEALS WITH VIOLENCE WITHIN THE FAMILY: THE
CHANGES AND THE EFFECT ON WOMEN’S RIGHTS

3.1. Introduction

This chapter discusses the development of legislation in Australia and Indonesia dealing with domestic violence issues. The legislation in both criminal and family law will be explored in order to obtain greater understanding of the response of these states to the issue and their policies on the matter. Initially, the matter of definition will be addressed. The definition of domestic violence has a strategic role in determining whether certain behaviour can be categorised as violence or not, which, in turn, influences the policy adopted and whether to establish legislation, and if so, its nature and implementation. An understanding of the definition of domestic violence will not complete without exploring the causes of domestic violence because there is an assumption that domestic violence occurs not only because of patriarchy but also other factors such as relationship, society, race, culture, religion, ethnicity and sexuality. These factors are intertwined with each other and because these factors affect each woman who experiences domestic violence to a lesser or greater extent as individuals, those women’s experiences will be different from one woman to another.

Then, the type of domestic violence will also be explained in detail, bearing in mind that violence within the family is basically not only physical, psychological, and sexual but also economic. In generally, most states do not take all such forms of violence into account in their regulation; they often include some but omit one or others. Such circumstances are recognised by the United Nations. According to the United Nations, legislation on domestic violence issues has tended to address physical violence
only and often lacks a comprehensive definition of domestic violence. It has recommended that legislation include a comprehensive definition which consists not only of the definition of the type but also the scope of domestic violence. The comprehensiveness of the definition and the scope of domestic violence are important as the basis of community understanding, and law enforcement, and may reflect the need to change policy and regulations.¹

The presence of domestic laws in Australia and Indonesia correlates with the serious intent of these states to handle this matter; nevertheless, the law ‘on the book’ (present in theory) and the law ‘on the ground’ (present in fact) are two different things. Hence, this thesis will explore the extent to which domestic violence is regulated and the extent to which these regulations are implemented in these countries to give a general understanding of the legally and culturally diverse background to the issue of domestic violence.

3.2. Definition of Domestic Violence

The understanding of domestic violence has changed over the last three decades and includes the influence the actual ‘naming’ of the violence itself. It is important to conceptualise domestic violence because it will identify and claim the issues deemed to be a serious public concern.² The way of the naming (or identifying and conceptualising) domestic violence has specific implications for the parties involved. According to Catherine Itzin, ‘the conceptualisation and the definition of violence will determine the visibility of the violence’, and this, in turn, will have an impact on policy

² Suellen Murray and Anastasia Powell, ‘“What’s the Problem”?: Australian Public Policy Constructions of Domestic and Family Violence’ (2009) 15 Violence Against Women 532, 537.
and practice. The definition of domestic violence changes over time, not only because of the shifting of societal values but also the lack of consistency between parties (such as researchers, policy makers, members of the public and so on) over the relationship and types of behaviour that should be included under the rubric of domestic violence. As a consequence, it has been variously defined.

Previously, ‘domestic violence’ or ‘violence between intimate partners’ was widely considered a private matter and conceptualised as physical violence or battering; and the term ‘domestic violence’ was largely used to describe violence by a man against his female partner or ex-partner, and excluded children and other family members that is, it applied solely to so called ‘intimate partner violence’. Researchers argued that while ‘domestic violence’ often refers to violence that occurs in the context of marriage or co-habitation between heterosexual partners and homosexual partners (gay and lesbian cohabiting relationships), it also can be used to cover pre-domestic relationships and post-domestic relationships which involve siblings, parents and children. Thus, domestic violence has a broader meaning because it covers all types of domestic relationships.

Because the term ‘domestic violence’ has traditionally focused more on intimate partners and made other family members (includes children) less visible, the term

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5 Jayne Mooney, ‘Revealing the Hidden Figure of Domestic Violence’ in Jalna Hanmer and Caterine Itzin (eds), Home Truths about Domestic Violence: Feminist on Policy and Practice (Routledge, 2000) 24.
6 Murray and Powell, above n 2.
8 Murray and Powell, above n 2.
‘family violence’ has as a result become used as an alternative. However, a number of definitions for ‘domestic violence’ and ‘family violence’ overlap to a large extent and the terms are sometimes used interchangeably.

However, the use of the term ‘family violence’ is growing and is generally used to refer to violence within a broader group of relationships in Australia. The Family Court of Australia has adopted the following description of ‘family violence’:

Family violence covers a broad range of controlling behaviours, commonly of a

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9 Ibid.
10 Talina Drabsch, ‘Domestic Violence in New South Wales’ Briefing Paper No 7/07 (NSW Parliamentary Library Research Service, 2007) 3. There are definitions of domestic violence and family violence from health, social science and legal perspectives. For example:


(ii) The Australian Medical Association adopts a definition with an emphasis on abuse of power and lists specific relationships within which family violence can occur. ‘It is the domination, coercion, intimidation and victimisation of one person by another by physical, sexual or emotional means within intimate relationship. Such intimate relationship include adult to adult, parent to child, child to parent, and child to child. Child abuse, elder abuse and, in particular, abuse of a woman by her partner, are common forms of domestic violence. The definition also extends to family members other than the person who is the direct recipient of violence who may also be affected. See AMA, Domestic Violence: AMA Position Statement (1998) 1.<http://ama.com.au/position-statement/domestic-violence-1998>

(iii) The Partnerships against Domestic Violence Statement of Principles agreed by the Australian Heads of Government at the 1997 National Domestic Violence Summit includes the following definition: ‘Domestic violence is an abuse of power perpetrated mainly (but not only) by men against women both in relationship and after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation.’

(iv) Crawford and Neville define ‘domestic violence’ as: ‘Behaviour, within a domestic relationship that involves an abuse of power and is usually, though not exclusively, perpetrated by men against women and children. Domestic violence encompasses a range of behaviour including intimidation, coercion, emotional abuse, financial abuse, sexual abuse, physical abuse, isolation and psychological manipulation.’ See Vanessa Crawford and Monica Neville, Domestic Violence (Hot Topics No 47, Legal Information Access Centre, 2004) 2.

(v) In October 2004, Access Economics published a report funded by the Australian Government under the Partnership against Domestic Violence strategy: ‘The Cost of Domestic Violence to the Australian Economy’, which was prepared for the Office of the Status of Women. The report used the following definition: ‘Domestic violence occurs when one partner attempts by physical or psychological means to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms of domestic violence are: physical and sexual violence; threats and intimidation; emotional and social abuse; and financial deprivation. Domestic violence can involve a continuum of controlling behaviour and violence, which can occur over a number of years before and after separation.’ See Access Economics, The Cost of Domestic Violence to the Australian Economy: Part 1 (Report prepared for the Australian Government’s Office for the Status of Women, 2004) 3.

physical, sexual, and/or psychological nature, which typically involve fear, harm, intimidation and emotional deprivation. It occurs within a variety of close interpersonal relationships, such as between spouses, partners, parents and children, siblings, and in other relationships were significant others are not part of the physical household but are part of the family and/or are fulfilling the function of family.12

Article 3 of the Crime (Domestic and Personal Violence) Act 2007 (NSW) defines domestic violence as: ‘a personal violence offence committed by a person against another person with whom the person who commits the offence has or has had a domestic relationship’. Other violence, such as stalking or intimidation, has been regulated in article 13 of the Act.13

More recently, definitions of domestic violence emphasise not only on physical violence but also other forms of violence, ‘including threats and intimidation, and emotional and financial abuse, because of the ways in which these behaviours control and restrict victims’ lives’.14 In Australia, ‘family violence, is now inclusive of violence which is perpetrated by a range of family or community members, not just male partners, in order to capture the experiences of indigenous women and children in particular’.15

In Indonesia, before the passage of the Elimination of Domestic Violence Act 2004 there was no specific definition of domestic violence in any Indonesian regulations. The criminal law through the Penal Code has regulated violence within family; however, it was criticised by Indonesian feminists due to its insufficient

12 Ibid.
13 In regard to domestic violence, ‘stalking’ or ‘intimidation’ means a person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm, that person being one with whom he or she has had a domestic relationship. See Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 13(1)(2). For definition of ‘domestic relationship’, see s 5. It is broad and includes domestic arrangements other than ‘family’.
protection of women who had experienced violence within the family. However, after the passage of Undang-undang Penghapusan Kekerasan dalam Rumah Tangga Nomor 23 Tahun 2004 (Elimination of Domestic Violence Act, Act No 23 of 2004), domestic violence has been defined as a conduct committed by a person against the other, particularly women, that causes physical, sexual, psychological suffering, and/or neglect, including threatening to do an act, forcing someone to do something or illegally ‘seizing [another’s] independence in the household sphere’ (restricting liberty or freedom of movement). The scope of the Act is quite broad because it can be applied not only to persons in intimate relationships, in particular to married couples but also members of the same household, including domestic workers.

Regardless of whether the term ‘domestic violence’ or ‘family violence’ is used, the most important thing is that the definition must contain the nature of violence in the household. The United Nations has recommended that legislation should include reference to the following types of violence: physical, sexual, psychological and economic violence. The definition of domestic violence above demonstrates a more nuanced understanding of the nature of domestic violence, because it mentions the various types of violence. The Declaration on the Elimination of Violence against Women adopted by the United Nations General Assembly in 1993 defines violence against women as follows:

> Violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

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17 Domestic Violence Act 2004 (Indonesia) s 1.
18 Similarly, Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 5.
20 Ibid.
21 Ibid.
Moreover, ideally, the definition should have a broader scope rather than being limited to those very persons in an intimate relationship. Therefore, legislation that limits the definition to legally married wives in a current intimate relationship in the same household as the abuser should be amended to include other complainants and/survivors of domestic violence, such as intimate partners who are not married (de-facto relationship) or in a cohabiting relationship, persons in relationships, and members of the same household, including other female kin (‘aunties’, mother-in-laws, mothers and sisters and so forth)\(^22\) and unrelated household members such as domestic workers, as well as persons in same sex relationships, and transgender and intersex persons in relationships.\(^23\) This thesis will, however, concentrate on violence by men against their female spouse, generally within a legitimate marital relationship as that is the norm in Indonesia.

3.3. Types of Violence

Researchers have classified domestic violence into two main types: physical and non-physical violence.\(^24\) Physical violence includes sexual violence (such as rape), while the non-physical comprises emotional/psychological, economic and social

\(^22\) The more complex nature of household of indigenous and culturally and linguistically diverse communities (CaLD) (as well as those of other residents whose households diverge from the ‘nuclear’ family) demands a broader definition than simply ‘spousal abuse’, so ‘family violence’ is the term preferred by members of such communities: Hurt, *Domestic and Family Violence* (2010) <http://www.hurt.net.au/dfv.htm>. ‘Hurt’ is an Australian interactive website.

\(^23\) Ibid. The definition also includes persons in emotional and not necessarily sexual relationship. The use of the term ‘family’ also enlarges the definition to an extent that goes beyond gender to include men and boys as victims, and to a certain extent obscures the largely gendered nature of the crime as it is manifested in family life, that is, most victims remain women and girls. Hurt cites strongly gender skewed figures: ‘95 % of victims of domestic and familial violence are female and over 90% of perpetrators are male’, with particular populations especially vulnerable, including Indigenous, CaLD, same-sex, and disabled women.

\(^24\) Edward W Gondolf, D. Alex Heckert and Chad M Kimmel, ‘Nonphysical Abuse among Batterer Program Participants’ (2002) 17 *Journal of Family Violence* 293, 294. Nonphysical abuse generally refers to ‘controlling behaviours, verbal abuse, and threats, and is frequently identified as ‘psychological abuse’ because its intent and effect is often to diminish another person’s self esteem and mental being’, at 294.
violence. Other researchers have developed typologies of domestic violence, dividing it into two groups. These are ‘intimate terrorism’ and ‘common couple violence’ The latter not referring to de facto relationships but to a lesser degree of violence and weaker desire for control which is more frequently encountered). The following is a description of the types of domestic violence in terms of physical, sexual, emotional/psychological, economic, and social violence.

3.3.1. Physical violence

‘Physical violence’ includes a perpetrator slapping, throwing something, pushing, shoving, hitting, kicking, dragging, beating, grabbing, choking or intentionally burning, stabbing or even killing the victim. According to the World Health Organisation, there are two sorts of physical violence: moderate (slapped, pushed or shoved) and severe (hit with a fist, kicked, dragged, threatened with a weapon or assaulted using a weapon). In general, women victims experience both of types of physical violence in their lifetime, and some have had serious injuries due to severe

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25 Mooney, above n 5. Mooney used women’s experience to define domestic violence in five categories: 1) Mental cruelty, which included verbal abuse (for instance: the names calling, being ridiculed in front of others), being deprived of money, and/or being prevented from going out; 2) Threat of violence; 3) Actual physical violence, which included being grabbed or pushed, or shaken, being punched or slapped, kicked, head butted, attempted strangulation, hit with a weapon/object; 4) Physical injuries which included bruising or black eyes, scratches, cuts, bites, broken bones, being burned with cigarettes, scalded, knocked unconscious, and experiencing miscarriages as a result of an assault; 5) sexual assault or rape, defined as being made to have sex without consent involving actual violence and/or its threat; See also Maureen Outlaw, ‘No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse among Intimate Partners’ (2009) 24 Journal of Family Violence 263, 264.
26 There are four categories in this differentiation of violence between ‘intimate terrorism’ and ‘common couple violence’. Firstly, intimate terrorism or patriarchal terrorism is perpetrated mainly by husbands, whereas common couple violence is typically committed by husband and wives. Secondly, intimate terrorism is more harmful, more likely to be repeated than common couple violence. Thirdly, intimate terrorism has a firm ‘control’ motive rather than of the motives in common couple violence. Lastly, intimate terrorism is much less frequent than common couple violence. See Michael P Johnson and Kathleen J Ferraro, ‘Research on Domestic Violence in 1990’s: Making Distinctions’ (2000) 62 Journal of Marriage and the Family 948, 949; see also Richard. B Felson and Maureen. C Outlaw, ‘The Control Motive and Marital Violence’ (2007) 22(4) Violence and Victims 389, 390.
28 Ibid 7.
physical violence. This is relatively common in some settings.\textsuperscript{29} Hence, women who ever experience physical violence will tend to have poor or very poor health consequences,\textsuperscript{30} and have a risk of future ill health, more so than women who have never experienced such violence.\textsuperscript{31}

Studies from both industrialised and developing countries have examined a number of events as the possible trigger of domestic violence, especially for physical abuse. Such ‘triggers’ include such as:

…not obeying the man, arguing back, not having food ready on time, not caring adequately for the children or home, questioning the man about money or girlfriends, going somewhere without the man’s permission; refusing the man sex, the man suspecting the woman of infidelity\textsuperscript{32}

It has been shown that the violence is justified by cultural values about the ‘proper’ gender roles of men and women. Women, in many developing countries, often even agree with the idea that men have the right to discipline their wives in certain circumstances.\textsuperscript{33}

\subsection*{3.3.2. Sexual violence}

Sexual violence is defined as:

Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.\textsuperscript{34}

According to the World Health Organisation, sexual violence against women is

\footnote{Ibid 8 (Figure 4: Frequency Distribution of Types of Violence by an Intimate Partner among Ever abused Women).}
\footnote{Ibid 15.}
\footnote{Ibid 16.}
\footnote{Krug et al (eds), \textit{World Report on Violence and Health}, above n 7, 95.}
\footnote{Ibid 95. A frequent source of beating is refusal to be sexually available to the spouse: compliance leaves women vulnerable to unwanted pregnancy and sexually transmitted disease. See also WHO, \textit{Multi-country Study: Summary Report}, above n 27, 10 (Figure 5: Percentage of Women Agreeing with Certain Reasons that Justify Wife Beating, by site).}
\footnote{Krug et al, \textit{World Report on Violence and Health}, above n 7, 149.}
defined by the following three behaviours: ‘a woman being physically forced to have sexual intercourse against her will’, ‘a woman having sexual intercourse because she was afraid of what her partner might do’, and ‘a woman being forced to do something sexual that she found degrading or humiliating’. In addition, Julianne Toohey notes that sexual abuse including ‘rape, degrading acts, violent sex, can also involve ‘sex without protection against pregnancy, HIV and other sexually transmitted diseases’. This can involve long term impacts in terms of pregnancy (including risk of death), additional parenting and economic responsibilities, and/or long term health (and economic) impacts for the woman and any child she might bear (in addition to the broader family and community impacts).

Sexual violence by a husband within marriage is considered ‘marital rape’. Long accepted as a ‘right’ a husband possessed, sexual intercourse with one’s wife is increasingly recognised as requiring mutual consent. Marital rape often coexists with other forms of violence, such as physical and psychological violence. However, according to Parrot, sexual violence in a marriage is something that sometimes ‘stands alone’ as a means to exert control over the wife; sometimes it becomes an integral part of other violence; and it is sometimes used as a justification for the marriage relationship. As is the case for other physical violence, sexual violence is common

35 WHO, Multi-country Study: Summary Report, above n 27.
37 WHO, Multi-country Study: Summary Report, above n 27, 8 (Figure 4: Frequency Distribution of Types of Violence by an Intimate Partner among Ever-abused Women); see also Rika Saraswati, ‘Justice and the Identities of Women: The Case of Indonesian Women Victims of Domestic Violence Who Have Access to Family Court’ (2013) 1 Forum on Public Policy: A Journal of the Oxford Round Table 1, 1–20. (Justice and the Identities of Women).
38 Andrea Parrot and Nina Cummings, Forsaken Females: The Global Brutalization of Women (Rowman & Littlefield, 2006). Violence (such as rape) can be used as the a basis of a relationship, for example, where it is culturally (and legally) acceptable for the rapist to marry his victim and thus escape sanction; or where shame of the woman renders her vulnerable to continued abuse due to the nature of the crime (far more ‘private’ than other forms of violence). In regard to the former (but here with legal approval (citing Article 475 of the Moroccan Penal Code) for the use of marriage by a perpetrator to the victim), see ‘Morocco Protest against Rape-marriage Law’, BBC, 17 March <http://www.bbc.co.uk/news/world-
worldwide\(^3^9\) and has a profound impact on physical and mental health.\(^4^0\) In terms of the incidence of women reporting sexual victimisation by an intimate partner, the figures for Indonesia (Central Java) are lower than for some countries (for example, Turkey, Nicaragua) and higher than the others (Finland, Japan).\(^4^1\) The risk of sexual violence in a marriage increases substantially if an attitude exists that a wife ‘belongs to’ or is ‘the property’ of a husband, based on matrimonial consent and marital contract.\(^4^2\)

### 3.3.3. Emotional/psychological violence

Some scholars have classified non-physical violence into two groups: ‘emotional’ and ‘psychological’ violence. Emotional abuse involves comments and actions intended to undermine the victim’s self-respect and sense of worth, such as complaints, insults/put-downs, name-calling, public embarrassment, or even accusations of infidelity; while psychological abuse is an action designed to undermine the security of the victim’s own logic and reasoning, and its effect on an abused woman is to convince her that she is losing her mind.\(^4^3\) For other scholars the two areas have substantial overlap, with psychological abuse including actions such as ‘controlling what victims can and cannot do, using verbal put downs, isolating victims, prohibiting


\(^4^3\) Outlaw, ‘No One Type of Intimate Partner Abuse’, above n 25, 263–4.
access to transportation or the telephone, and inflicting humiliation. The World Health Organisation (WHO) has argued that emotional or psychological abuse is defined by the following behaviours (from the victim’s perspective):

…being insulted or made to feel bad about oneself, being humiliated or belittled in front of others, being intimidated or scared on purpose (for example by a partner yelling or smashing things), being threatened with harm (directly or indirectly in the form of a threat to hurt someone the respondent cared about).

Based on WHO research, most women have had experience of psychological violence in multiple acts: most frequently, being insulted, belittled and intimidated. Researchers also found that the most frequent instance of psychological abuse were shaming in front of friends/family, put-downs regarding appearance or behaviour and ridicule. Furthermore, although often dismissed as ‘minor’ by perpetrators (and victims) and less damaging than physical violence, this violence, in fact, has the same intensity, frequency, and impact on abused women as physical violence. Emotional/psychological abuse whether it has been experienced in the past or is currently being experienced is strongly associated with limitation in social functioning; and it is related not only to poorer health but also damaging even without the presence of physical or sexual abuse.

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46 Ibid.
48 Helen M Hendy et al, ‘Decision to Leave Scale: Perceived Reasons to Stay in or Leave Violent Relationships’ (2003) 27(2) Psychology of Women Quarterly 162, 169–71. Physical violence may be a ‘threshold’ test for abuse, even among women, in terms of prompting a woman to leave a violent relationship; though for others it is the extent of the violence that may finally overwhelm other factors that cause women to stay: ‘Fear of harm’ is identified with a decision to leave.
51 Ibid.
3.3.4. Economic violence

Researchers have defined economic violence in different ways. Generally speaking, economic violence is ‘behaviour that controls a woman’s ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency’. The abusive man usually prevents his wife or partner’s ability to acquire resources by preventing her access to employment, from working outside the home, and also from acquiring income and assets. Another form of economic violence involves preventing women from using resources that they already have, especially by controlling and monitoring how resources are distributed and used. In this respect, women are denied access to household resources generally and to money (for necessities such as food), refused information about men’s earning, prevented from having bank accounts, denied the use of their cars and access to shared transportation. Further, in order to monitor economic resources, some perpetrators intentionally use a number of methods, including stealing their partners’ money, creating costs and generating debt. Definitions of economic violence commonly include restriction of funds that are needed for necessities, taking women’s money, denying women’s independent access to money, exemption of women from financial decision making and depriving them any property they may have. Another definition includes other measures, such as preventing women from commencing or finishing education or from obtaining informal or formal employment, controlling access to health care and agricultural resources, limiting access to financial facilities (such as cash and credit

54 Ibid 565.
55 Ibid 566.
57 Ibid 170.
facilities), allocating unequal reward in the workplace, and the existence of other laws regarding inheritance, property rights, use of communal land, and maintenance after marriage dissolution, that may be regarded by many as discriminatory but perfectly acceptable by others. Many of these measures may represent an intersection of personal and societal factors (where such activities or attitudes are supported by customary law (adat) or by the law of the state (as in Shari’ah personal status legislation), and as such they may be viewed as legitimate actions or prohibitions rather than evidence of ‘domestic violence’ in the eyes of those within the particular culture or jurisdiction. What may be minor in one culture is viewed as major in another.

The main consequence of economic violence is that the victim becomes economically dependent on the abuser; and the dependency becomes a major obstacle to many women who might wish to leave abusive partners. According to Bornstein, economic dependence refers to the extent to which a person is financially dependent on others and a situation where one member has an exclusive control over financial

58 Ibid 169. See, eg, Ali Omar Ali Mesrati, ‘The Best Interests of the Child’: International Child Law as Interpreted in the Libyan High Court Jurisdiction (PhD Thesis, Faculty of Law, University of Wollongong, 2009) ch 3.1, esp text above nns 229, 230 which refers to common specific Islamic rules regarding inheritance which differentiate on the basis of gender (double for sons than for daughters, based on the different economic roles of women) and support there cited from some Muslim feminists. It should, however, be noted that Libya is one of the few Islamic states that signed the Convention on the Rights of the Child without entering a reservation and has considerably raised education provision for women and girls, and maintains a higher age of marriage.

59 See, eg, particularly in relation to access to education and employment: Maan Bin Abdul Haq Arif Khutani, Educational Rights for Women in Islamic and International Human Rights Law: Study of Theory and Its Application in Saudi Arabia ) PhD thesis, Faculty of Law, University of Wollongong, 2013). One of a number of examples is the use of the concept of guardianship in Islam in regard to women’s access to education where permission of the appropriate male relative must be obtained for education to continue, for subject choice and so on, as well as the impact of the concepts of Mahram, and ‘mixing’. Whilst many would view these as discriminatory practices, traditionalists would see them as required by Islam, and a ‘protection for women’. Matters of inheritance, custody and maintenance are seen as recognising women’s role as wife and mother; lesser compensation value (in the event of death) again simply reflects the greater economic contribution of the male and his greater responsibilities; her value as witness also reflects her nature; her need for modest clothing a recognition of male weakness (and again a protection for women) and all required by Islam, to the extent the particular tradition demands. Hence in some areas, women are regarded as ‘perpetual minors’, a position essentially incompatible with international human rights legislation (wherein both women and men become adults at 18). It could be expected that Western Feminism would view such a level of control as unacceptable as it appears to fail to recognise a level of basic equality and a right to reasonable a level of self-determination.

60 Hendy et al, above n 48, 169–71.

61 Ibid.
resources. This situation may occur because a person who controls the resources is the sole provider and chooses to deny the partner or spouse access to those resources. They may also control access to resources brought to the marriage by the spouse. The method of control can be threats or intimidation, and be applied irrespective of the sources of these resources.\textsuperscript{62} Therefore, a woman may appear to live in luxury but she may not have any control of the family’s financial resources or any role in decisions on how such funds should be spent.\textsuperscript{63} This may be combined with forbidding employment or confiscation by the husband of any earnings by the spouse or her inherited wealth. Unsurprisingly, economic violence may result in ‘invisible poverty’ of women in wealthy households that constrains their independent activities. It may also cause deepening poverty in circumstances where men exploit and exhaust family resources. Women’s diminished access to economic resources can also lead to physical violence, and the creation of social inequality; promote sexual exploitation of girls and young women by older men, and contribute to the international trafficking in women and girls.\textsuperscript{64} Economic violence can seriously impede not only on a woman’s economic independence (and the possibility of her leaving the relationship), but also her physical and psychological health in the short and long term.\textsuperscript{65}

### 3.3.5. Social Violence

Generally speaking, social abuse includes isolation of the woman, a restriction or prohibition on contacting friends or family, whether achieved by threat, force, or persuasion.\textsuperscript{66} According to the World Health Organisation, social abuse involves the controlling behaviour of an abusive man over the wife, such as: ‘keeping her from

\textsuperscript{63} Fawole, above n 56, 169.
\textsuperscript{64} Ibid, 172.
\textsuperscript{65} Adams et al, above n 53, 580.
\textsuperscript{66} Felson and Outlaw, 'The Control Motive', above n 26, 390.
seeing friends, restricting contact with her family of birth, insisting on knowing where she is at all times, ignoring or treating her indifferently, getting angry if she speaks with other men, and accusing her of being unfaithful’. Researchers have recognised that these multiple forms of non-physical violence have contributed to physical violence and been a precursor to physical violence, or been frequently associated with it. Non-physical violence is more common rather than physical abuse and its forms have been well documented. Such abuse is often described by survivors as the worst violence.

3.4. Causes of Domestic Violence

Researchers argued that the cause of domestic violence is not a single phenomenon. Early theories of violence in the home were crude, individualistic, victim blaming and did not stand up to critical assessment. Some contemporary theorists view violence in the home as irrational or pathological, arising from mental illness, personality disorders, or drug abuse on the part of the offender (or sometimes the victim). These factors may be relevant in some cases but are absent in others; they do not explain the fact that violence is relatively common or that it is more often men rather than women who commit the violence, or why some men use violence toward their wife but not in relation to others. Nonetheless, individualistic explanations continue to have influence. For instance feminist psychiatrists and defence lawyers introduced the ‘Battered Woman Syndrome’ (BWS) to describe the effect of abuse on some women. Unfortunately, in some instances, BWS has been misinterpreted and

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68 Ibid, 9. For instance: ‘Emotional abuse is worse. You can become insane when you are constantly humiliated and told that you are worthless, that you are nothing’ (Women interviewed in Serbia and Montenegro: WHO, Multi-country Study: Summary Report, above n 27, 9 (ch.2.5 Acts of Emotional Abuse)
69 The term ‘battered woman syndrome’ was coined by psychologist and prominent feminist academic, Lenore Walker, to denote a set of distinct psychological and behavioural symptoms that result from prolonged exposure to situations of intimate partner violence. Researchers have attempted to define BWS, in diagnostic terms as the development of characteristic physical, psychological and social abnormalities and symptoms, such as depression, low self-esteem and isolation, which follow the direct personal
used to focus unduly on a woman’s psychological characteristics rather than on the violence towards her or on her particular social circumstances.\textsuperscript{70}

Many feminist approaches are also sociological, but focus more explicitly on gender relations in the family and in the society.\textsuperscript{71} Several theories have been developed to provide a conceptual understanding of the causes of domestic violence.\textsuperscript{72} However, these theories are limited to addressing the complexity of variables implicated in domestic violence although some empirical literature has supported these various different theories to varying degrees.\textsuperscript{73} Many previous works on domestic violence have also approached domestic violence or intimate partner violence as a singular phenomenon that affected all women the same. The ‘universalising’ approach has been considered as inappropriate to explain the experiences and the needs of battered women from diverse backgrounds.\textsuperscript{74}

The feminist theory, one of the oldest and most well-known theories, has emphasised male dominance and gender hierarchy as the causes of gender-based violence; and feminists have also been unwilling to acknowledge factors other than patriarchy.\textsuperscript{75} The theory, however, has been criticised because it has no explanation

\begin{itemize}
\item \textsuperscript{72} Kathryn M Bell and Amy E Naugle, ‘Intimate Partner Violence Theoretical Considerations: Moving towards a Contextual Framework’ (2008) 28(7) \textit{Clinical Psychological Review} 1096, 1097. These theories include: feminist theory, power theory, social learning theory, background/situational model, borderline personality disorder, organization and assault theory and development model of batterer subtypes.
\item \textsuperscript{73} Ibid.
\item \textsuperscript{75} According to Heise, it was caused by ‘a discourse on violence that has traditionally been very slow to acknowledge the significance of gender inequalities and power differentials in the etiology of violence directed toward women.’ See, Lori L Heise, ‘Violence against Women: An Integrated, Ecological
\end{itemize}
about why some men beat and rape women when other men do not. The male superiority and the right to control female behaviour is a culturally constructed message about the proper roles and behaviour of men and women; however, male dominance cannot be relied upon as a single factor explanation, it is inadequate.\(^\text{76}\) The feminist movement has failed to recognise the multifaceted nature of women’s oppression; as a consequence, it has been offering only a partial view of oppression which is not relevant to many women.\(^\text{77}\) Further, the specific and different needs of Indigenous, non-English speaking, disabled or lesbian women, for example, were still invisible or marginalised. This has resulted in the marginalisation and trivialisation of the needs of working class women, Indigenous women, non-English speaking background women (NESB) or non-majority-language speaking background women (in the Indonesian context), lesbians and other minority groups.\(^\text{78}\) However, all women, in fact, do not experience domestic violence equally or in the same way. It occurs because there are factors including (but not limited to) community, society, race, class, gender and sexual orientation that work simultaneously in the oppression of women. These factors shape women’s experience in quite different ways, and are the basis of inequalities between women. Therefore, there are two approaches can be used to explain the cause of domestic violence namely the theory of ‘intersectionality’ and the ‘ecological’ theory.

Discussion on intersectionality of domestic violence issues is relevant to its real

\(^{76}\) Heise also argued that theories of violence have been strongly influenced by either the disciplinary biases of psychology, sociology and criminology or the ideological and political agendas of feminist activities. Theorists have either tended to emphasise individual explanations for violence (men beat women because of psychopathology or poor impulse control) or they propose social/political explanations (battering results from gender-power inequalities and the historical construction of patriarchal family); see Heise, above n 75.


and the life-threatening consequences, because the differences that exist among women have important consequences in terms of how they experience intimate partner violence, how others treat them, and how and whether escape and safety can be obtained. The women victims’ efforts to seek safety in the domestic sphere often entail profound social risk beyond retaliation by the batterer.\textsuperscript{79} Further, such circumstances are often exacerbated by further victimisation outside the intimate relationship, such as by racism, heterosexism, and classism in and out of the reference group.\textsuperscript{80}

The theory of ‘intersectionality’ was introduced to explain the experiences of battered women from the margin (which differed from that of the majority population). The theory proposes that domestic violence occurs because of oppression and social control in the community. People who exist in community have created the intersection of systems of power (for example, race, class, gender and sexual orientation) and oppression (prejudice, class stratification, and gender inequality).\textsuperscript{81} In practise, ‘…these

\textsuperscript{79} Michelle Bograd, ‘Strengthening Domestic Violence Theories: Intersection of Race, Class, Sexual Orientation’ in Natalie J Sokoloff and Christina Pratt (eds), Domestic Violence at the Margins: Readings on Race, Class, Gender and Culture (Rutgers University Press, 2005) 31.

\textsuperscript{80} Ibid.

\textsuperscript{81} Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’ (1991)43(6) Stanford Law Review 1241, 1242; See also Jyl Josephson, ‘The Intersectionality of Domestic Violence and Welfare in the Lives of Poor Women, in Natalie J Sokoloff and Christina Pratt (eds), Domestic Violence at the Margins: Readings on Race, Class, Gender and Culture (Rutgers University Press, 2005) 83. There are four key aspects of intersection theory are useful: First, intersectionality as a concept of interlocking hierarchies is a concept that facilitates the analysis and description of ‘individuals within a system of interlocking hierarchies’. It can help create an understanding of ‘how experiences of domination can change and can vary for different groups and for different individuals within groups, even while they are reproducing long standing inequalities and hierarchies. Intersection thus provides a means of understanding the experiences of individuals within a context of hierarchical power relations and is, thus particularly useful in understanding the complexity of the lives of women who are both recipients of public benefits and victims of domestic violence’. Josephson 86 (where the author refers to work by Patricia Hill Collins as well as by Crenshaw). Thus it involves a far broader range of hierarchies and inequalities than is expressed in a patriarchy based approach.

The second aspect of intersectionality ‘structural intersectionality’ (developed by Crenshaw)- that makes it ‘particularly useful’ for understanding the qualitatively different experience of dominant and minority victims of domestic violence because women of colour as victims of domestic violence often have additional problems, such as poverty, employment in their locality, lack of networks that can provide necessary financial support to help them leave their abusers; and for migrant women too there can be added a language barrier and the problem of immigrant status being dependent on the goodwill of, and cohabitation with, the abuser: Josephson 86 (with multiple Crenshaw references).

The third key aspect of intersection ‘political intersectionality’ where political movement have failed to
systems are not mutually exclusive, static or abstract. They operate independently or simultaneously, and the dynamics of each may exacerbate and compound the consequences of another.82 As consequence, women, in fact, do not experience domestic violence in the same way, because domestic violence is influenced by several dimensions other than gender, such as race, class, sexual orientation, colonisation, disability, poverty, employment status and nationality.

The intersection theory is beneficial to understanding the linkages between racism and sexism in the experiences and lives of women of colour who are victims of domestic violence.83 The concept of intersectionality can be used to analyse the ways in which mainstream discourse on domestic violence has ignored the needs of women of colour who are victims of domestic violence, and also to analyse the many categories of identities in terms of their complex and often conflicting interaction.84 The concept can be applied so that the complex experiences of other non-majority groups (Indigenous or immigrant community women who may be also be marginalised) are taken into account.

Intersectionality has been used to explain the circumstances of women in domestic violence cases who simultaneously experience diverse oppression including,
but no limited to, gender violence.85 The family lives of marginalised groups (for example, people of colour, the poor, members of the lesbians and transgendered community) are vulnerable both in the private and public domain. They may face violence in their homes, discrimination in the public domain, insensitivity at the hands of law enforcement and other helping agencies.86 Women from minority population groups are also more vulnerable to being battered than are men from the same community; and, a woman may blame herself and be judged by others differently if she is white or black, poor or wealthy, a prostitute or a housewife, a citizen or an undocumented immigrant.97

The narrow feminist view on gender inequality as the only factor in domestic violence has also been identified as having contributed to the shortage of race/ethnicity minority theoretical perspectives in the domestic violence literature.88 As consequence, there is a misleading presumption that minority (and the third world) cultures are more patriarchal than Western liberal cultures.89 The representations of minority (and the third world) women are often considered representative of their country of origin or of a third world culture.90 For example, Volpp claimed that:

[M]inority and third world cultures are more subordinating (and more patriarchal) than culture in the west to the history of colonialism, the origin of liberalism, the negative and demeaning depiction of the feminist subject, reliance on dualist thinking.91

Elsewhere Vollp writes insightfully:

[T]he reason many believe that the cultures of the Third World or immigrant

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85 Bograd, above n 79, 27.
87 Ibid 25.
89 Ibid.
90 Ibid.
91 Leti Volpp, ‘Feminism versus Multiculturalism’ in Natalie J Sokoloff and Christina Pratt (eds), Domestic Violence at the Margins: Readings on Race, Class, Gender, and Culture (Rutgers University Press, 2005) 41.
communities are so much more sexist than Western ones is that incidents of sexual violence in the West are frequently thought to reflect the behaviour of a few deviants rather than part of [Western] culture. In contrast, incidents of violence in the Third World or immigrant communities are thought to characterize the cultures of entire nations.  

Being an immigrant and a woman of colour complicates and exaggerates the barriers to ending violence in one’s life. Gender inequality inherent to patriarchal social orders was believed to causes abuse of woman in families. It is often perceived as occurring because immigrants who arrived in the destination country could not leave behind the socialisation and conditioning of patriarchal cultural structures they had already received. However, there are other socioeconomic factors that might also be faced by immigrant women that are also contributory factors to abuse, such as personal factors (shame, fear, financial impoverishment, lack of support system, dearth of survival skills), institutional (public policies, cultural insensitivity, financial requirements, child custody issues, language barrier), and cultural ideology (meaning of marriage, pressure to keep the family intact, unacceptability of divorce, acceptability of fate, tolerance toward abuser). Dasgupta gives an example where changing societal environment may have more than a single effect:

In South Asia, abusive behaviour of men may, to some extent, be checked by other family members, neighbours and in-laws. Community shame can also be evoked to restrain an abuser. Furthermore, additional safety valves - such as women’s temporary escape to their natal families when conjugal tensions increase - have developed in social-families structures to offer women some degree of security. These trips have been ritualized in the culture as women going to mother’s home or father’s home. Such routine ways of diffusing stress or curbing abusive behaviours are, of course, lost to the

immigrants. Moreover, being in a country where a strong sense of family and community is absent may actually pressure immigrant women to cling more tenaciously to their nuclear families. The dream of living a safe and peaceful life may remain removed from a battered immigrant woman trapped in this labyrinth of individual, institutional, and cultural violence. Escaping the cycle of violence is an extraordinary feat for any woman, and for immigrant women the obstructions may seem insurmountable.

Another approach to the causes of domestic violence is ‘ecological’. This approach emphasises that domestic violence is not merely the presence of male dominance and a gender hierarchy, but is also determined by a variety of factors located within themselves, in their families, in the social structure, and in the larger socio-cultural environment. The ecological framework is ‘the ways in which factors at the individual, interpersonal, and systemic levels interact to influence the continuation and cessation of violence in relationship’. In other words, an ecological framework is useful for conceptualising the aetiology of gender-based violence.

The framework itself consists of four levels of analysis: the personal history, the microsystem, the exosystem and the macrosystem. The personal history factors mean what each individual brings to his or her behaviour and relationship; the microsystem, depicts the immediate contact in which abuse takes place frequently (the family or other intimate relationship); the exosystem, encompasses the institutions and social structures, both formal and informal that embed the microsystem, such as the world of work, neighbourhood, social networks and identity group; and finally, the macrosystem describes the general views and attitudes that permeate the culture at

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95 Dasgupta, above n 93, 63–5.
97 Heise above n 75, 263–5.
98 Ibid.
99 Ibid.
100 Ibid.
101 Ibid.
102 Ibid.
large. In addition, several theorists underline the importance of the mesosystem, an additional level that reflects the interconnection between various aspects of a person’s social environment. The mesosystem includes linkage between an individual’s family and other ambits of involvement, such as place of work, extended family, or network of peers; and it also includes linkages with social institutions, such as the police, courts and social services. In the context of domestic violence, all factors in the ecological framework might have addressed the obstacles, the complexities of the woman’s surrounding and resources, and her status in the collective.

In addition, researchers have examined the extent to which the violence is transmitted from one generation to the next. Research findings have shown that some children exposed to violence in their families may use violence when they form their own intimate relationship or families. However, many people who have been exposed to violence are not violent; and conversely not all of those who use violence in their homes were exposed to violence as children. Other sociological theories analyse violence in the home as arising from stress related to poverty, unemployment or other form of disadvantage. Feminist approaches now include analysis of offending by both women and men as the definition of domestic violence expands and aggression by all parties in relationships male, female, gay and lesbian, transgender or intersex is included. They have also drawn attention to social inequalities that limit women’s opportunities for full participation in the community. Limited access to paid work, or an absence of childcare (or affordable childcare) that could allow a women to work may continue to make women vulnerable to violence in the home.

The descriptions mentioned above have shown that domestic violence is caused

103 Ibid.
104 Ibid.
by many factors, not only from the perpetrator but also from other factors which come from the wider scope such as community and society. Therefore, these factors must be considered not only as the cause but also as an opportunity for the purpose of preventing or stopping the violence.

3.5. Legislation on Family/Domestic Violence in Australia and Indonesia

3.5.1. Introduction

Domestic violence has become an important issue among feminists since 1970s because it has a detrimental effect on women (and children). Feminism and its analysis of and stand against domestic violence have influenced the women’s movement across the world, in western countries, particularly Australia in 1970s, and in non-Western countries, especially Indonesia in 1990s. The feminist movement has also played a pivotal role in convincing the governments in these countries to develop policies that address the problem, maintain the issue on the policy agenda, and improve the legal system in order to make it more responsive to women. Although the governments of these countries have developed the structure of the legal system and issued the relevant legislation, great difficulties remain on the theoretical and practical levels due to the complexities of domestic violence, for instance in relation to the distinction between ‘private’ and ‘public’ law regarding domestic violence, coordination among agencies, and the fragmented system dealing with domestic/family violence.

Moreover, the long history of a man’s right to discipline his wife has an impact on

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108 Susan Blackburn, Women and the State in Modern Indonesia (Cambridge University Press, 2004)
110 Ibid.
society as a behaviour that has been widely accepted as a part of marital relationships. Also relevant are the cultural expectations in regard to women as wives and mothers, with their primary role seen as to maintain the family. Both have trapped women in situations of domestic violence.

3.5.2. Australian legal system and domestic violence

3.5.2.1. Development of domestic violence legislation in the Criminal law

Women’s experiences of violent husbands have long been a part of the story of Australian women since the continent’s colonisation by Britain. The behaviours were not publicly recognised as ‘domestic violence’ until the late 1970s, even though it was one of the causes of women’s marital dissatisfaction. There had also been a long tradition in Britain of a man’s right to chastise his wife and it was from the British legal tradition that Australia gained its system of law. Although increasingly this right was seen as having boundaries in law in the 19th century, enforcement remained a problem even into the late 20th century, much as it is today in some jurisdictions in the world. As a consequence, many women in marriage were subjected to continuous verbal and physical abuse; and, they were unable to leave due to legal, social and economic factors. This is despite having the right (prior to Federation) under State legislation to divorce on a number of grounds, including adultery and cruelty. In the UK, adultery was a

111 Criminal law is a State matter in Australia, (in contrast to family law) so there is divided jurisdiction with different courts over different aspects of family law/domestic violence
114 Suellen Murray, More than Refuge: Changing Responses to Domestic Violence (University of Western Australia Press, 2002); Finlay, above n 112, 75.
115 The Supreme Court by virtue of An Act to Confer Jurisdiction on the Supreme Court in Divorce and Matrimonial Causes 1873 (36 Vic Act no 9) could ‘annul marriages, authorise judicial separation, or
sole ground for a man to divorce his wife yet until 1923 a woman needed to demonstrate additional grounds (such as cruelty, bigamy, rape of another woman) to divorce her husband (though she could be granted a legal separation); hence it has been observed that a poor woman could be beaten repeatedly but not qualify for divorce in Britain if her husband had not committed adultery.\textsuperscript{116} This was a legally enforced ‘double standard’ (see further below regarding custody and so on). In the UK, from 1923 adultery was the sole ground for divorce for both until 1937 when desertion and cruelty were added; with further ground inserted in the relevant Act in 1969.

In both the UK and Australia, a woman’s economic situation might yet prevent her attempting to gain a divorce. In addition, based on the Common Law, married women were long unable to own property in their own right or maintain their own earnings.\textsuperscript{117} Such provisions, however, changed after the Married Women’s Property Acts had been enacted in all Australian colonies (between 1858 and 1896)\textsuperscript{118} following similar British legislation,\textsuperscript{119} married women were considered to have their own

\textsuperscript{116} Helena Wojtczak, \textit{British Women’s Emancipation since the Renaissance}, History of Women (2009) <http://www.historyofwomen.org>
\textsuperscript{117} Scutt, \textit{Women and the Law}, above n 112, 205.
\textsuperscript{118} Ibid 206; see also Government of South Australian, State Library, \textit{Women’s Movement SA Memory}, <www.samemory.sa.gov.au/site/page.cfm?>
\textsuperscript{119} Note, the United Kingdom accorded a right to inherit in 1870 and an ability keep their own earnings: \textit{Married Women’s Property Act 1870} (33 & 34 Victoria c93) and the \textit{Married Women’s Property Act 1882} (45 & 46 Vic c 75) allowed women to control and own their own property. By 1893, a married woman was able to have control over property inherited during her marriage. This made her rights then equal to an unmarried woman or widow. A woman could even open her own bank account without her husband’s permission from 1878 in NSW (following the provisions of the 1870 UK Act): See Supriya Singh and Anujah Cabraal, ‘Women, Money and the Bank’ (Paper presented at the Financial Literacy, Banking and Identity Conference, RMIT University, Melbourne, 25-26 October 2006) 6. See also Claire Jones, \textit{The Married Women’s Property Acts} (UK, 1870, 1882 and 1893) \textit{Herstoria} (7 July 2012)
earnings and be able to retain property to a limited value. Lack of workplace participation (married women were often not expected to participate in the workplace, unless on family farm, for example or in a family business), and low wages if women did work perpetuated their economic vulnerability and reluctance to leave. Legal processes such as a divorce suit required a lawyer and an application to a court, and the money to do so. It also required a woman to go against broadly held values as to the importance and ‘sanctity’ of marriage.

The legal factors, such as legislation, access to and attitudes of police and courts (regarding domestic assaults) became a major cause of women remaining unprotected by law. Researchers have noted that women had extreme difficulty in obtaining divorce because the Matrimonial Causes Act 1959 (Cth) which discriminated against women who filed divorce. Under the Act, the ‘good conduct’ of the parties was an important consideration in obtaining certain rights, for instance property right. Thus, if a woman who was divorced for, say, adultery, she would have no rights not only to maintenance of her property but also to custody of the children of the marriage. This occurred because of the belief that a woman who engaged in adultery was a ‘bad’ mother; however, this criterion was not used to fathers who sought to custodial rights.

Women who had suffered at the hands of a violent husband sought an individual solution by going to the courts. Every local Magistrates court witnessed the many complaints of assault that had been made by women. However, the results were not often satisfactory because the perpetrator was hardly ever convicted and punished unless the violence was appalling because magistrates or judges assumed that a husband had a legal right to ‘discipline’ his wife. If he was convicted, penalties were often

<herstoria.com/?p=473>

121 Grimshaw, above n 112, 182.
disproportionately mild. However, it did represent an advance over earlier times when domestic violence was not seen as a criminal assault because of husband’s right as ‘the ruler’ to have control over his family members, but the same consideration (among others) meant women were often discouraged from reporting, police were reluctant to charge (sometimes for fear the women themselves would withdraw the accusation), and penalties could be (as stated) lower that the actions of the perpetrator would seem to deserve.

At the time (as later), domestic violence itself was framed by Australian community as ‘marital conflict’ and the aim remained the restoration of family harmony. Moreover, marital conflict (or domestic violence) was generally viewed as an indication of a women’s failure to perform their expected roles as wives because women, rather than men, were responsible for the maintenance of family harmony. If a woman left the marital relationship, it would be characterised as her failure. The dominant view was that marriage was the basis of the family, and the family was the

123 Scutt, Women and the Law, above n 112, 446.
124 With no social security payments for deserted or divorced wives in Australia until 1942 (extended in 1947 to de facto wives who had been solely maintained by the husband for no less than three years before his death), those without supportive families were particularly vulnerable (early Australian Female convict and single female migrants were without family while young married women were isolated from their families: they were arguably as vulnerable as any of today’s migrant women from minority communities). It is worth noting that no pension was available for ‘single mothers’ until 1973. Sources: New South Wales Law Reform Commission, Defacto Relationships (Issues Paper No 1 (1981) section 3 ‘Official Recognition and Regulation of Defacto Relationships and Ex-nuptial Children. 125 See <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/ip1chp3>; see also Australian Bureau of Statistics, ‘History of Pensions and Other Benefits in Australia’ 1301.9 - Year Book Australia 1988 (Feature article contributed by the Department of Social Security) 379 et seq. Full text <http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca2568200192af2/8e72e4526a94aaedca2569de00296978!opendocument>
126 And much as in England, if the perpetrator were fined, her situation did not improve; if he were jailed, she lost all means of support for herself and any children: Wojtczak, above n 122. See <http://www.historyofwomen.org/wifebeating.html>
127 Murray, ‘Why Doesn’t She Just Leave?’, above n 14, 65.

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cornerstone of society. Therefore, marriage had to be maintained intact so far as was possible; and women were expected to make the marriage work and to remain in their relationship, despite the violence. Such circumstances had put wives at a distinct disadvantage. Thus, for the purpose of protecting wives a special provision had had to be made in state law, such as section 60 the New South Wales Crimes Act 1900 which permitted a judicial separation in the event of ‘cruelty’ upon conviction of the husband (the wife would not then have to seek a separation).

Where any husband has been convicted of any assault [occasioning actual bodily harm], or of any aggravated assault, specially so found by the jury, upon his wife, the judge, if satisfied that her future safety is in peril, may add to the sentence a declaration that she shall no longer be bound to cohabit with her husband. Every such declaration shall have the effect, in all respects, of a decree of judicial separation on the ground of cruelty.

The section required a high standard for a couple who file divorce on the ground of cruelty because the judge had to satisfied that ‘her future safety [was] in peril’ and ‘bodily harm’ had not only occurred but the perpetrator had been convicted of the offence (preferably by jury trial). Though the new law had been issued, police’s responses were not satisfactory because they often refused to intervene, police remained reluctant to charge (sometimes for fear the women themselves would withdraw the accusation), but often the reason given was that because the assault

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129 Murray, ‘Why Doesn’t She Just Leave?’, above n 14, 65. Such a view continues to be expressed, but to a far lesser extent, even today. Even clergy now are less likely to countenance violence. Catholic women are advised to separate where there is ‘continuing domestic abuse, or physical or emotional violence’ and even seek a civil divorce (though catholic remarriage is only possible if an annulment is granted): Divorce and the Catholic Church: Frequently Asked Questions (Australian Catholic Bishops Conference, 2006) 10. Protestant clergy may state that a man who is violent has in effect ‘broken’ or severed his vows already, and a woman may leave, divorce and be free to remarry (if desired).
130 Crimes Act 1900 (NSW) s 60.
131 The reasons were multiple, and do not differ much then and now.
132 The pattern of withdrawing a charge even if initially launched is one that appears to either dishearten police who would like to intervene or reinforce the prejudice of those who would prefer to leave domestic
occurred in the ‘private’ sphere, they had no authority to intervene. As result, it was difficult even to bring a complaint regarding physical violence (and that was the basis of such a separation) and if it went to trial, its success was not guaranteed if those who heard the case (judge and jury (usually male)) had strong bias in terms of a husband’s right to ‘discipline’ his wife or believed that ‘a married woman is bound to cohabit with her husband’.

Then, in the early 1970s, there was a growing public recognition that violence perpetrated in the home was (or should be regarded as) a criminal assault. From the early 1970s, it was said that domestic violence has been a pivotal item on the policy agenda in Australia due to feminist efforts. However, it was difficult to convince the government, particularly when conservatives were in power, since the issue was heavily related to the liberal principle of non-intervention in the private sphere. The shared nature of policy responsibility in Australia necessitated negotiation and change at the horizontal (across portfolios) and vertical (levels of government) levels to achieve violence as a ‘private matter’ (a matter of a man’s ‘justifiable ‘control’ of his family, in the eyes of some officers). This happened then and up until quite recently in Australia and in many more modern day states. (Accounts will follow herein). Much as in England, if the perpetrator were fined, her situation did not improve; if he were jailed, she lost all means of support for herself and any children: Wojtczak, *Wifebeating*, above n 122.

It should be noted that women did not serve in all states in Australia until the 1950s: WA 1957. See S Walker, ‘Battle-axes and Sticky-beaks: Women and Jury Service in Western Australia 1898–1957’ (2004) 11(4) Murdoch University Electronic Journal of Law 1 [http://research repository.murdoch.edu.au/id/eprint/1845](http://research repository.murdoch.edu.au/id/eprint/1845> In NSW courts it was permitted in 1947 (to women who were propertied and requested to be placed on the lists) and it was not until 1968 that women were eligible without a request: Ian Barker QC, *Sorely Tried: Democracy and Trial by Jury in New South Wales* (Francis Forbes Lectures Series, 2002) 146–51, <http://www.forbessociety.org.au/documents/trial_jury.pdf>. ‘At least by 1947 the legislature was prepared to recognise that women were sufficiently equipped intellectually to make rational judgments about disputed issues of fact.: at 148.

The Australian women’s movement produced many feminist bureaucrats or femocrats between the early1970s and the mid 1990s. Their achievements were most significant under Labor governments regarding the problem of violence against women, particularly domestic violence issues; see Ruth Phillips, ‘Undoing an Activist Response: Feminism and the Australian Government’s Domestic Violence Policy’ (2006) 26(1) *Critical Social Policy* 192, 204; Chappell, above n 109.
practical outcomes. The discourse surrounding domestic violence, however, tended to reflect the ideological concerns of the policy makers and was also subject to a degree of variation in emphasis. Nevertheless, what Australian governments did through their commitments to funding various supports, services and programs that were connected with domestic violence issues indicated that feminist analysis of domestic violence had been accepted in a broad sense within the public arena.

The recognition of ‘wife beating’ as ‘domestic violence’ has been succeeded by several changes in the definition of domestic violence. For example, research in the mid1970s by the Australian Government’s Royal Commission on Human Relationships research examined what was called ‘family violence’. The Commission defined ‘family violence’ as ‘acts of violence by one spouse against the other spouse or against the children’ and was concerned primarily with physical violence including rape. This extended the concept from a husband’s assault of his wife to include marital rape, and also to include assault perpetrated by a wife against her husband; moreover, abuse of the children was also now included. The definitions have again recently been changed and

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137 Chappell, above n 109. According to Chappell, in Australia, ‘the responsibility for policy on violence against women is shared between the commonwealth and state governments at the practical level. As consequence, the policy response required not only horizontal coordination across a range of portfolios— including police, health, community services, women’s affairs, education, attorney generals and immigration—but also vertical coordination between different levels of government.’

138 Ibid, 62–63. According to Chappell, the discourse on domestic violence changed depending on the government’s view. Since the 1970s, particularly where Labor governments have been in office, violence against women was seen as a manifestation of the historically unequal power relations between men and women. From the late 1980s, the discourse reflected more conservative views, including the importance of family values, and the need to re-allocate resources from the survivors to the perpetrators of domestic violence.

139 The following two national domestic violence programs had been created by the Australian government: the National Strategy on Violence Against Women (the NSVAW) and the Partnerships against Domestic Violence (the PADV). See Chappell, above n 109, 63. The first women’s shelter for victims of domestic violence was established in Glebe in 1974. Despite some initial resistance, ‘Elsie Refuge for Women and Children’ became federally funded the same year under the Labor Whitlam government. Several refuges were set up across Australia. For insight into contemporary as well as past use, see Mandy Sayer, ‘40 Years of Elsie’, Sydney Morning Herald, 12 April 2014 http://www.smh.com.au/nsw/40-years-of-elsie-20140411-36h9v.html> By 2002 there were 31 in NSW alone: NSW Refuge Movement, Little Book of Refuges (2002) 3—4.

140 Murray, Why Doesn’t She Just Leave, above n 14, 66.

141 Ibid.
now place greater emphasis on other forms of violence and wider relationships.\textsuperscript{142} According to Murray, this includes ‘other forms of violence including threats and intimidation, and emotional and financial abuse, because of the ways in which these behaviours control and restrict victims’ lives.’\textsuperscript{143}

In Australia, family violence is now inclusive of violence perpetrated by a range of family or community members, in particular, in relation to the experiences of Indigenous women and children.\textsuperscript{144} The broader relationships now also include in addition to those in a defacto arrangement, those in household who are female kin (‘aunties’, mother-in-laws, mothers, sisters and so forth)\textsuperscript{145} and unrelated household members such as domestic workers, as well as persons in same sex relationships, and transgender and intersex persons in relationships.\textsuperscript{146}

Once domestic violence came to be considered as criminal act by elected representatives and the general public alike, most Australian jurisdictions introduced domestic violence legislation.\textsuperscript{147} A series of amendments to the laws in relation to domestic and family violence had also been undertaken since the mid1970s for the purpose of protecting and supporting victims, and holding perpetrators accountable.\textsuperscript{148} The laws include civil actions for protection of those persons experiencing domestic violence, together with criminal penalties for breaching of the civil order.\textsuperscript{149}

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\textsuperscript{142}Ibid.
\textsuperscript{143}Ibid.
\textsuperscript{144}Ibid; Murray and Powell, above n 2, 538-42.
\textsuperscript{145}Hurt, \textit{Domestic and Family Violence} (2010), above n 22.
\textsuperscript{146}Ibid.
\textsuperscript{147}Karen Wilcox, ‘Connecting Systems, Protecting Victims: Towards Vertical Coordination of Australia’s Response to Domestic and Family Violence’ (2010) 33(3) \textit{Journal of New South Wales University} 1013, 1013. According to Wilcox, ‘[T]here is no national legislation specifically targeting family and domestic violence, but there are eight separate state and territory legislative schemes which enable victims of domestic and family violence to obtain protection through the police and courts.’; See also Behrendt above n 77, 39-41.
\textsuperscript{148}Amendments have been made to both the \textit{Family Law Act 1975} (Cth) and the \textit{Crimes Act 1900} (NSW) (see text above)
\textsuperscript{149}Heather Douglas and Lee Godden, ‘The Decriminalisation of Domestic Violence: Possibilities for Reform’ (Paper presented at the Conference ‘Expanding our Horizons, Understanding the Complexities of
For instance, in New South Wales, amendments were made to the Crimes Act (namely the Crimes Act 1900 (NSW)) and to police regulations due to the recommendation of the Domestic Violence Task Force. The amendment were undertaken consecutively in 1982, 1983, 1987, 1993, 2007 and 2008; and much of the change focused on the apprehended domestic violence order (ADVO), police power to enter or to investigate or to prevent domestic violence, and the power to compel a spouse to give evidence in domestic violence proceedings.

The main problem with the initial amendment of the Crimes Act 1900 (NSW) in 1982 was in regard to the definition of the persons to whom the apprehended domestic violence order and the other amended provision of the legislation applied. They were only available to a woman who was still married or still living with the man who had assaulted her. Yet many cases of domestic violence occurred between couples after

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150 The task force presented its report to the Premier in July 1981. The report contained 187 recommendations concerning not only legal reforms but also police, welfare, housing issues, the particular problems of Aboriginal and migrant women and the need for after hours crisis services; see Robyn Lansdowne, ‘Domestic Violence Legislation in New South Wales’ (1985) 8 University of New South Wales Law Journal 80, 81; see also Reg Graycar and Jenny Morgan, ‘Law Reform: What’s In It for Women?’ above n 109, 397.

151 Crimes (Domestic Violence) Amendment Act (No 116) 1982 (NSW)
152 Crimes (Domestic Violence) Amendment Act (No 116) 1983 (NSW)
153 Crimes (Personal and Family Violence) Amendment Act (No 184) 1987 (NSW)
154 Crimes (Domestic Violence) Amendment Act (No 101) 1993 (NSW)
155 Crimes (Domestic Violence) Amendment Act (No 80) 2007 (NSW)
156 Crimes (Domestic and Personal Violence) Amendment Act (No 119) 2008 (NSW)
157 An Apprehended Violence Order (AVO) is an order which is issued by courts to protect individuals from future violence, abuse and harassment from specific persons. The order typically prohibits an individual (the defendant) from being violent or threatening violence towards another individual (the protected person). In New South Wales, provisions regarding AVOs are contained in Part 15A, Crimes Act 1900, No. 40. This legislation protects not only people in domestic relationships (eg, spouses/de facto relationship) through ADVO (Apprehended Domestic Violence Order), but also people in personal relationships (eg, neighbours, colleagues, housemates) through APVO (Apprehended Personal Violence Order). These orders also prohibit intimidation of the protected person, intimidation of persons with whom the protected person has a domestic relationship, and stalking. An individual may apply for an order in one of two ways: the individual attends a Local Court personally (or with the solicitor) and following discussion with the magistrate, swears an application for an AVO; or as consequence of either the police being called to an incident or an individual attending a police station, a police officer swears an application for an AVO on behalf of the individual: Lily Trimboli and Roseanne Bonney, An Evaluation of the NSW Apprehended Violence Order Scheme (New South Wales Bureau of Crime Statistics and Research, 1997) 3–4; see also Laura Rodwell and Nadine Smith, An Evaluation of the NSW Domestic Violence Intervention Court Model (New South Wales Bureau of Crime Statistics and Research, 2008); see also the Crimes (Domestic and Personal Violence) Act 2007 NSW.
cohabitation ceased or following the dissolution of the marriage. Thus such limitations failed to address the violence suffered by those who had divorced or were no longer living with the men who had assaulted them. To include and protect those women, the definition of domestic violence was first amended in 1983. The amendment developed the definition of domestic violence referring to the further extension of the concept of ‘domestic relationship’. Later amendments extended still further the concept of ‘relationship’ and ‘relative’. Other forms of violence included are sexual assault (in 1987), and stalking and intimidation as ‘personal violence offences’ within the framework of the Act (in 2007).

Another problem was the police response. The police were reluctant to intervene in ‘private’ matters; therefore they failed to process the complaints for apprehended domestic violence orders although the possibility of obtaining such an order from a magistrate was now in the legislation. This shows the resistance to seeing domestic violence as central to the role and function of police services in the community. The role of the police as the first contact of the victim became more significant when Australian society became less tolerant of domestic/family violence.

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158 Lansdowne, above n 150, 85.
159 Ibid.
160 Compare the definition of domestic violence relationship and relative in the Crimes (Personal and family Violence) Amendment Act (No 184) 1987 (NSW) and the Crimes (Domestic and Personal Violence) Act (No 80) 2007 (NSW). Based on s 11 of the Crimes (Domestic and Personal Violence) Act (No 80) 2007 (NSW) the meaning of domestic violence offence is ‘a personal violence offence committed by a person against another person with whom the person who commits the offence has had a domestic relationship’.
161 ‘Personal violence offences’ (s2) includes a broad range of offences including sexual assault as defined within the Crimes Act (not limited to what is commonly held to be ‘rape’ or non-consensual vaginal sexual intercourse), stalking and intimidation ‘with intent to cause fear of physical or mental harm’
162 Sexual assault was inserted by the Crimes (Personal and Family Violence) Amendment Act (No 184) 1987 NSW. Stalking and intimidation were inserted in the Crimes (Domestic Violence) Amendment Act (No 101)1993 (NSW) and in the Crimes (Domestic and Personal Violence) Act (No 80) 2007 (NSW).
164 Pickering, above n 135, 2.
The responses of police as first contact were supposed to be prompt, appropriate and effective. This was a necessity and important not only for ensuring victims received the care and support that they needed, but also for minimising the offender’s capacity to further re-offend. However, changing police officer attitudes was not as easy as ‘turning over one’s hand’; the change of legislation was needed to change the police attitudes. It had been noted in the beginning of 1980s (and later) that the police did not consider policing of family and domestic violence as the part of their job; they remained reluctant to intervene in ‘the private sphere’ or tended to delay intervention. Police also remained reluctant to enter private premises although the law clearly gave them the right to do so. Police primarily saw themselves as enforcers of the criminal law. In this context, it is worth recalling that while the issuance of an AVO is a civil matter, its breach that is a criminal matter. Hence an alleged breach of an AVO could be expected to be more likely to receive a rapid response and be likely to result in proceedings. As will be seen further below, this is not the case. However, obtaining an AVO is generally mediated by police as first contact. With police action when called to the scene of a ‘domestic’ (or in response to a complaint) able to range from ‘cautioning the person to arresting and charging the person’, attitudes that minimised the nature of the violence or characterised the matter as ‘domestic’ (and therefore of lesser importance than crime in the public sphere) remained an obstacle to intervention. Many acts of domestic violence, however, constituted criminal offences and were to ‘be reported to police

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168 Both under Common Law ‘breach of the peace’ or statutory law: see Kolar, above n 167, 25.
169 Kolar, above n 167, 25.
immediately or as soon as possible’. Domestic violence offences represent a substantial proportion of police workload as, more than any other service; police remain the ‘first port of call’. Again, this emphasises both the extent of the problem and the pivotally crucial role of police.

More recently, the police have changed their practice due to change in the relevant legislation and the mandate of the adoption of ‘pro-arrest’ policies. For example, in 1992, a study on domestic violence legislation in New South Wales found that the number of protection orders (ADVOs and APVOs) that were applied for by police increased as the result of amendment of the Crimes Act 1900. Data from the New South Wales Bureau of Crime Statistics and Research in 1997 reveal that the number of apprehended violence order issued by the court increased dramatically, from 1426 orders in 1987 to 21,599 orders in 1997. Ten years later, the rate of recorded domestic violence which involved women as victims and men as perpetrator has also increased steadily.

In 2007, the NSW government issued a stand-alone Act namely the Crimes (Domestic and Personal Violence) Act 2007 (NSW). In relation to domestic violence, the objects of the Act are:

(a) to ensure the safety and protection of all person, including children who experience or witness domestic violence, and
(b) to reduce and prevent violence by a person against another person where a domestic

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173 Trujillo and Ross, above n 170.
174 Rollings and Taylor, above n 166, 3-6. See also Scutt, Women and the Law, above n 112, 446-7.
175 Nicholas Seddon, Domestic Violence in Australia: The Legal Response (Federation Press, 1993).
176 Trimboli and Bonney, above n 157, iii-3. The protected person and the defendants who were in a ‘domestic relationship’ were to be the majority of cases (68.7 per cent) and the remaining 31.3 per cent were in a ‘personal relationship’ at 3.
relationship exists between those persons...

The Act therefore sought to ensure the safety and protection of all people (including children) who experience or witness domestic violence, and empowered the court to issue apprehended violence orders to protect people from domestic violence and other violence (such as stalking and intimidation).

In addition, the legislative reforms were ‘aimed at reducing stress and trauma for victims of domestic violence when progressing a matter through the criminal justice system’, ‘providing an apprehended violence order to victims, ensuring children of domestic violence victims are better protected’, ‘introducing a new offence of domestic violence to help identify repeat offenders’, ‘allowing police to search for a greater range of potential weapons and to demand the name of a person suspected of being the subject of an apprehended violence order’.

Although amendments have been made by Australian governments, the value of applying the criminal law in this field is criticised by feminists, particularly in regard to apprehended domestic violence order proceedings. They argued that the basic aim of the law is to provide more effective protection for the victims in the home rather than to punish the offender. Whilst the order does have ramifications for the perpetrator,

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178 Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 9(1). Note, the remaining objects in this regard are: '(c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women, and (d) to enact provisions that are consistent with the United Nations Convention on the Rights of the Child’. See Roderick N Howie and Peter A Johnson, Annotated Criminal Legislation New South Wales (2008/2009 ed, LexisNexisButterworths, 2009) 1125.


181 Regina Graycar and Jenny Morgan, The Hidden Gender of Law (Federation Press, 2002).

182 These include automatic surrender of any firearm, cancellation of firearms licence, and inability to hold a licence for 10 years after an AVO has expired, the inclusion of the person’s name on police data base during and after the cessation of the Order. Although not a criminal matter, the fact that an AO has been taken out against a person can affect their employability in areas where a police background check is required (especially where the AVO included reference to children); and ‘unless the court otherwise orders’, mandatory imprisonment for breach if it ‘involves an act of violence against a person: See
the order itself does not prove criminal behaviour but breaching or breaking the order constitutes a criminal offence. In 1997, an *Evaluation of the NSW Apprehended Violence Order Scheme* found that breaches of the order often occurred within a week of the order being granted; however, the police did not take any action to respond to the breach of the order in the vast majority of cases for a number of reasons. These included: police claiming insufficient proof of breach, police rejecting the allegation that a breach had occurred, or considering the breach too trivial for action, police claiming that the defendant was not in their jurisdiction, police failing to attend or having attended after a long delay and then doing nothing, police claiming that the order was ‘not in [the] computer’. The response to domestic violence as compared to ‘street’ violence or violence in the public sphere remained poor despite legislative changes. As Jocelynne Scutt had insisted in 1990 ‘the police, magisterial and judicial response to criminal assault at home is not comparable with the response to street crimes; and women often had inappropriately modest view of their rights and duties of police and courts’.

The difference in the treatment of domestic violence as crime by the parties involved (including perpetrators, police and judiciary) is borne out by a number of
pieces of research. A 1997 study on the operation of criminal law in domestic violence issues found ‘that criminal prosecution of domestic violence matters took longer to finalise than other criminal matters’, and ‘that defendants charged with breach of a domestic violence order are less likely to plead guilty than defendants charged with non-domestic violence matters’.\(^{188}\) Furthermore, just over a decade later Heather Douglas comments that judges ‘often fail to tailor an appropriate sentencing response that takes into account the particular background of the offence and the relationship between perpetrator and victim’; as consequence, penalties are relatively low and usually result in fines.\(^{189}\) The 2008 Queensland study also found collusion among parties (respondent, police, lawyers and magistrate) in the minimisation and trivialisation of violence and the shifting of blame to the victim.\(^{190}\) There is no reason to doubt that similar attitudes and actions would be present in New South Wales and other Australian states and territories.

In addition, the problem would be worse for women of culturally diverse background, such as Indigenous women\(^{191}\) and women from non-English speaking background (NESB).\(^{192}\) NESB women are greatly disadvantaged in terms of access to information, services and justice when they seek to leave a violent relationship\(^{193}\) due to cultural and legal obstacles.\(^{194}\)

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\(^{189}\) Ibid 443.

\(^{190}\) Ibid 443.

\(^{191}\) Ibid 443; see Behrendt, above n 77, 35–40; Phillips above n 136, 199–200.


\(^{193}\) Patricia Easteal, Less than Equal: Women and the Australian Legal System (Butterworths, 2001) 100–14 (‘Less than Equal’).

\(^{194}\) The structural barriers (such as poor English skills, lack of adequate interpreting facilities, prejudice within the police force and lack of information about their rights) faced by non-English speaking background [NESB] and Indigenous women often prevent them from feeling safe. NESB generally, may not have access to legal avenues because of a lack of financial resources and knowledge of the law or their option to use legal avenues. They may also risk isolation from their community if they do report violence. They may also risk isolation from their community if they do report violence. See, Raquel
Based on such circumstances, feminists have insisted that such laws make it harder for victims as the man is not penalised for beating his partner but for breaching a court order rather than for the violence itself; and as such it will not solve a problem like violence within the home. In another words, domestic violence continues to be a civil matter rather than a criminal matter.

Legal measures aimed at eradicating violence have to be part of larger societal goals that address women’s inferior social, economic and political status within the community. However, since the violence was caused by the imbalance power between men and women, women have remained largely invisible, their interest secondary and their experience discounted by the (legal) system which is made from the male point of view.

3.5.2.2. The Crimes (Domestic and Personal Violence) Act 2007 (NSW) and the Domestic Violence Protection Order

The government of New South Wales has provided legislation to protect the victim of domestic violence through the criminal law, particularly the stand-alone Act the Crimes (Domestic and Personal Violence) Act 2007 (NSW). The Act has annotated the Crimes Act 1900 (NSW) and at its inception expectations were expressed that the stand-alone Act would benefit not only the practitioner due to its providing a one-stop legal manual, clearly stated and easier to amend (if amending was necessary in future), but also women and children, the usual victims of domestic violence, allowing them to

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196 Rosemary Hunter , ‘Law’s (Masculine) Violence: Reshaping Jurisprudence’ (2006) 17(1) Law and Critique 27, 35–40. Hunter cites Mills’ analysis of the ‘no-drop’ policy and appears to consider it a second offence (against the victim) when it does not take into account a woman’s desire for a charge to be dropped: 36. She parallels the lack of comprehension and therefore ‘violence’ done to the victim to the treatment of rape victim (37) and to refugees (38); and also in regard to assessments re income in estimations of damages or maintenance: (39–40): Each is seen as an example of male-value created law.
obtain apprehended violence orders easier than before.\textsuperscript{197}

In the introduction of the Act, it is said that the scheme of the Act is to provide, but is not limited to, protection order or apprehended domestic violence order, provision of standard of proof, the protection of the victims against further attack or harassment; and the main aim of the Act in relation to domestic violence is ‘to ensure the safety and protection of all persons, including children, who experience or witness domestic violence’.\textsuperscript{198} The passage of the Act aimed to ‘reduce and prevent violence by a person against another person where a domestic violence relationship exists between those persons’.\textsuperscript{199} The provisions of the Act were to be consistent with certain principles underlying the \textit{Declaration on the Elimination of Violence against Women} and the \textit{United Nations Convention on the Rights of the Child}.\textsuperscript{200} In this regard, the Act has implied the state’s responsibility to take all legal and other measures, particularly in the context of national legal framework, necessary to provide effective protection of women (and children) against domestic violence. The state’s international responsibility emerges from Australia being one of states-parties that have ratified those conventions. Furthermore, the Act has also recognised that empowering the court to make apprehended domestic violence orders to protect persons from domestic violence, intimidation and stalking is as important as is ensuring the victim has access to court in a manner that is ‘as safe, speedy, inexpensive and simple as is consistent with justice’.\textsuperscript{201}

There is an acknowledgement that domestic violence is predominantly perpetrated by men against women and children and is unacceptable behaviour; and all

\textsuperscript{197} Crimes (Domestic and Personal Violence) Act 2007 (NSW) part 1-preliminary, see Howie and Johnson, above n 156, 1121.
\textsuperscript{198} Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 9(1)(a).
\textsuperscript{199} Ibid s 9(1)(b).
\textsuperscript{200} Ibid s 9(1)(c) (d).
\textsuperscript{201} Ibid s 9(2)(b).
forms of such violence (including physical, psychological, sexual and economic violence) occur in all sectors of the community in the world. It is recognised that the violence will have impacted on the current and future physical, psychological and emotional well-being of the vulnerable exposed family members, particularly children. By recognising such impacts, the Parliament has argued that domestic violence should be addressed through coordination between legal and social sectors in order to respond to such violence by giving assistance and preventing such violence. Empowerment of the court to respond to domestic violence has also become the main goal of the Act, given that the violence may become the subject of appropriate intervention by the court.

3.5.2.2.1. Definition of domestic violence in the Crimes (Domestic and Personal Violence) Act 2007 (NSW)

The Crimes (Domestic and Personal Violence) Act 2007 (NSW) defines domestic violence offence as ‘a personal violence offence committed by a person against another person with whom the person who commits the offence has or has had a domestic relationship’. The definition does not mention further about the forms of violence in that section, however it can be deduced by tracing the meaning of personal violence offence which is defined in section 4. That definition refers to the several sections of the Crimes Act 1900 and the Crimes (Domestic and Personal Violence) Act 2007 (NSW) under sections 13 and 14. The offences referred to in the Crimes Act 1900 include: murder, conspiracy to murder, attempt to murder, manslaughter, documents containing threats to kill or inflict bodily harms, act causing danger to life or

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202 Ibid s 11.


204 Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 4.
bodily harm (including wounding or grievous bodily harm, attempt to choke, using intoxicants, using poison, using gunpowder, using exposing substance, setting a trap; but not limited to neglect of family members by not providing wife, child or servant with the basic needs such as food, clothing, lodging, wilfully and without lawful excuse refuses or neglects to provide the same), common assault, sexual assault, kidnapping, firing at dwelling houses or buildings, destroying or damaging property. The Crimes Act 1900 does not make reference to such conducts as psychological, physical, sexual and economic as types of violence. Nevertheless, in this respect, various conducts among those listed can be categorised within ‘psychological violence’, such as documents containing threats to kill or inflict bodily harms; or as ‘physical violence’, for instance, conspiracy to murder, attempt to murder, manslaughter, act causing danger to life or bodily harm (including wounding or grievous bodily harm, attempt to choke, using intoxicating, using poison, using gunpowder, using exposing substance, setting trap); ‘sexual violence’, for example sexual assault; or as ‘economic violence’ including ‘not providing wife, child or servant with the basic needs such as food, clothing, lodging, wilfully and [who] without lawful excuse refuses or neglects to provide the same, destroying or damaging property. Grouping the conducts does not mean that each group of conducts or each act is separate from each other. In many cases one conduct can trigger another or multiple conducts. ‘Grouping’ of violence into its various form is used to indicate whether or not the law has regulated the forms of violence appropriately, bearing in mind, that many forms of domestic violence mentioned above (such as non-physical violence which consists of economic, psychological and social

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violence) are not covered in detail by this law. For instance, behaviours such as a prohibition on a woman’s contact with family or friends, the use of humiliating words in relation to the woman, or prohibition on a woman working outside the home (usually implemented by the perpetrators in an attempt to control their partners) are not covered in this Act.

Nevertheless, the Act has, on the other hand, regulated various conducts which were not previously considered as types of domestic violence (unlike those mentioned above). For instance, intimidation and stalking are regulated by the Crimes (Domestic and Personal Violence) Act 2007 (NSW). In section 7 of the Act, “‘Intimidation’ of a person’ means ‘conduct as amounting to harassment or molestation of the person’, or an approach made to the person by any means (including but not limited to phone calls, texts and emails) that affects the person psychologically, such that the person fears for his or her safety, or ‘any conduct that causes a reasonable apprehension of’ injury, violence or physical damage any person or physical damage to property.” In section 8 of the Act, following a person or watching a person in any setting that person frequents can be categorised as stalking.

Punishment for infringement of such conduct is various, and depends on how severe the conduct is. For instance, whosoever commits the crime of murder is liable for imprisonment for up to a maximum of life, while for manslaughter will be imprisoned up to 25 years; for sending documents containing threats a person

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206 Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 7(1). Section 7(2) indicates that for purposes of determining if the conduct amounts to ‘intimidation’, for which determination the court ‘may have regard to any pattern of violence’. This is particularly the case in regard to conduct.

207 It is defined as ‘the following of a person about or watching or frequenting of the vicinity of, or an approach to, a person’s place of residence, business or work or any place that a person frequents for the purpose of any social or leisure activity’: s 8(1). Similarly to s 7(2), s 8(2) notes that ‘for the purpose of determining whether a person’s conduct amounts to stalking, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in a person’s behaviour.

208 Crime Act 1900 (NSW) s 19A.

convicted is liable for up to a maximum of ten years imprisonment;\textsuperscript{210} for being convicted of not providing wife, child or servant with the basic needs may be punished by imprisonment for up to a maximum of five years;\textsuperscript{211} for sexual assault the punishment is up to a maximum of 14 years imprisonment; for having sexual intercourse with a child the punishment is up to a maximum of 25 years imprisonment;\textsuperscript{212} the punishment for intimidation and stalking is imprisonment for up to 5 years or 50 penalty units or both.\textsuperscript{213}

The \textit{Crimes (Domestic and Personal Violence) Act 2007} (NSW) has also taken into account de facto relationships and other relationships which have been inserted in the definition of ‘domestic relationship’\textsuperscript{214} and extended the meaning of ‘relative’.\textsuperscript{215} The detail of the definition of ‘domestic relationship’ and ‘relative’ will be beneficial for victims of domestic violence as it enables more persons who are victims of such violence to ask for and obtain a protection order. Furthermore, by regulating the domestic relationship which is not limited to the relative based on marriage or blood relationship but also a person who has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, the Act has broadened the person who becomes the subject of domestic violence offence and recognised the different definitions of family that exist in regard to an Aboriginal person or a Torres Strait Islander or those who have different cultures.\textsuperscript{216} By understanding the

\begin{itemize}
\item \textsuperscript{210} Ibid 31.
\item \textsuperscript{211} Ibid ss 43A, 44.
\item \textsuperscript{212} \textit{Crime Act 1900} (NSW) ss 61I, 66A.
\item \textsuperscript{213} \textit{Crime (Personal and Domestic Violence) 2007} (NSW) s 13.
\item \textsuperscript{214} Ibid s 5.
\item \textsuperscript{215} Ibid s 6.
\item \textsuperscript{216} Ibid s 5 defines a person as having a domestic relationship with another person if the person:
\begin{itemize}
\item (a) is or has been married to other person, or
\item (b) has or has had a de facto relationship, within the meaning of the property (Relationship) Act 1984, with the other person, or
\item (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
\end{itemize}
\end{itemize}
particular community and its different definition of family, and taking those differences into account when framing the legislation, the state has shown its concern and enabled the state and especially the practitioners of law, to really approach and treat members of the community well on the basis of a recognition of culturally diverse backgrounds.

3.5.2.2. Apprehended Domestic Violence Order (ADVO)

In order to protect victims from further offences, the state has provided a protection order or an apprehended domestic violence order. The Apprehended Violence Order (AVO) is an order which is issued by courts to protect individuals from future violence, abuse and harassment from specific persons. The order typically prohibits an individual (the defendant) from being violent towards another individual (the protected person). The function of the protection order is to tell the defendant not to engage in certain conduct again. Under the Crimes (Domestic and Personal Violence) Act 2007

(d) is living or has lived in the same household as the other person, or
(e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the Crimes (Administration of Sentences) Act 1999 or detention centre within the meaning of the Children (Detention Centres) Act 1987) or
(f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
(g) is or has been a relative of the other person, or
(h) in the case of an aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of person culture.

The meaning of ‘relative’ is regulated in section 6 of the Crimes Act 2007 (NSW). For the purpose of this Act, a person is a relative of another person (the other person):

(a) if the person is:
   (i) a father, other, grandfather, grandmother, step-father, step-mother, father-in-law, or
   (ii) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in law or daughter-in-law, or
   (iii) a brother, sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law, or
   (iv) an uncle, aunt, uncle-in-law or aunt-in-law, or
   (v) a cousin
   Or the other person or
(b) where the person has a de facto relationship, within the meaning of the Property (Relationship) Act 1984, with somebody else (the person’s partner) - if the other person is:
   (i) a father, mother, grandfather, grandmother, step-father or step-mother, or
   (ii) a son, daughter, grandson, grand-daughter, step-son or step-daughter, or
   (iii) a brother, sister, half-brother, half-sister, step-brother, step-sister,
   (iv) an uncle, aunt,
   (v) a nephew or niece, or
   (vi) a cousin,
(NSW), the victim will be protected by AVO if the alleged perpetrator is charged with certain serious personal violence offences. A criminal prosecution arises if the defendant infringes the protection order. Breaching of such order is subject to a maximum penalty of imprisonment for 2 years or 50 penalty units or both.\footnote{Based on the \emph{Law Enforcement (Power and Responsibilities) Act 2002} (NSW) if the police officers suspect or have reasonable ground that a person has committed an offence they have power to arrest the person who is suspected of an offence of breaching the AVO without a warrant. On the other hand, if a police officer has decided not to initiate or to proceed the violence with criminal proceeding against a person for an alleged contravention of AVO, the police officer should provide the reason for such decisions in a written record.\footnote{For the purpose of protecting an abused woman, police have authority to make an AVO in cases where the victim does not want to apply for it.\footnote{In principle, an application for protection orders can be made by the victim of domestic violence\footnote{By a police officer.\footnote{Under the Act the application should be made in the Local Court or the Children’s Court; these courts have jurisdiction to make such orders, both interim court orders\footnote{and final AVOs.\footnote{A police officer must apply for an order on behalf of a victim of domestic violence unless the officer is satisfied that she intends to apply on her own behalf. The police officer will make an application for an order if they believe that the person has been the victim of violence, significant threat is available, or the...}}}}}}
person has an intellectual disability and has no guardian. If they believe that there is a good reason not to apply, then a written record of the reason must be provided. When an order to protect a child, a police officer must apply for the order and any other person, such as a mother, cannot seek an order because of apprehended violence to a child.

The court, then, has authority to make an AVO if a person pleads guilty to, or is found guilty of stalking or intimidation with intent to cause fear of physical or mental harm and other serious offences whether or not an application for such order had been made; and the court considers that it is necessary or appropriate to do so in the circumstances. Such an order made on a person being charged for certain and serious offences (such as those that have been mentioned earlier) is called an ‘interim apprehended violence order’.

In deciding whether or not to grant an apprehended order on the basis of an application, the court must be convinced that the complainant is reasonably in fear of violence or harassment. However, in certain circumstances the satisfaction of the court is not necessary if the person is child, or if the person suffers from an appreciably below average general intellectual function, or has been subjected at any time to personal violence. In cases where the protected person or one of the protected persons is a child, the court should protect the child in apprehended violence order proceedings, including by not publishing or broadcasting the child’s name. A person, whether an individual or a corporation, who publishes or broadcasts the name of protected person will be subject to imprisonment for a maximum 2 years or 200 penalty units or both, or

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225 Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 22.
226 Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 91.
227 Crimes (Domestic and Personal Violence) Act 2007 (NSW) ss 27, 49.
228 Ibid ss 38, 48, 49.
229 Ibid s 40(5).
230 Ibid ss 22, 23, 24, 39, 40.
2000 penalty units, if a corporation.\textsuperscript{231} During proceedings, an applicant is entitled to choose a supportive person to accompany the applicant when giving evidence. The supportive person may be a parent, guardian, relative, friend or support person of the party such as interpreter or psychologist or counsellor.\textsuperscript{232}

Before deciding whether or not to make an apprehended domestic violence order (ADVO), the court must consider the safety and protection of the protected person and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order and the protected person’s property,\textsuperscript{233} such as restriction of access by the defendant to the residence in which the protected person and any children are living, any hardship that may be caused by making or not making the order, the needs for accommodation, particularly for a protected person and any child, but not limited to any other relevant matter.\textsuperscript{234} There is no explanation about ‘any other relevant matter’ for ADVOs, but for apprehended personal violence orders (APVOs), the ‘other relevant matter’ which is referred by the Act is mediation.\textsuperscript{235} The court should consider the mediation for the protected person and the defendant under the \textit{Community Justice Centres Act 1983} (NSW). The court can abandon the mediation proceeding if the court is convinced that there is a history of physical violence against the protected person; or the protected person has been subjected to personal violence offence, harassment, or intimidation; or there has been a previous attempt at mediation in the relation to the same matter and the attempt was not successful.\textsuperscript{236} Therefore, it is important for the court to give the reasons for any decision, particularly in deciding any prohibition or

\begin{itemize}
\item \textsuperscript{231} Ibid s 16.
\item \textsuperscript{232} Ibid ss 41, 42, 45.
\item \textsuperscript{233} Ibid s 45.
\item \textsuperscript{234} Ibid s 45.
\item \textsuperscript{235} Ibid s 45.
\item \textsuperscript{236} Ibid s 9, 21.
\end{itemize}
restriction of the defendant in regard to any premises or place in the ADVO.\textsuperscript{237}

The provisions of the Act have demonstrated that it is crucial to give protection to women and children as the vulnerable person within family relationship; and that the safety and welfare of the women and children are the main priorities in cases of domestic violence. It can be concluded that the existence of the AVO has advantaged the victim or any person who needs protection because it becomes a means to protect anyone who fears of violence, stalking, intimidation, and property damage.\textsuperscript{238}

However, the AVO has disadvantages for women due to it not involving a criminal prosecution in the initial stage. This aspect has led to comments from the feminists that protection orders are a ‘soft’ response to criminal violence in the home. For example, writing in 1983, Scutt argued that ‘the victim must be bashed twice before the law starts to move and even then there is a prosecution for breach of the order and not for criminal assault’.\textsuperscript{239} Robyn Lansdowne points out, however, that one advantage of civil proceedings lies in its lesser proof (the balance of probabilities) requirement as compared to that required for criminal proceedings; hence, an application can be lodged even where police have declined to lay criminal charges.\textsuperscript{240} Further, the disadvantage or advantage of the protection order procedures is that its effectiveness depends on the police and magistrates. It means the views of the victim as the person who is seeking protection that the law is working to protect them are important. The victim must have confidence in the law because once the victim is not satisfied because of the difficulty, insensitivity and judgementalism of the legal process, the victim might withdraw herself/himself; and, the consequence is that the victim will not receive protection from the law. According to Nicholas Seddon, the victim’s experience starts when the police

\textsuperscript{237} Ibid s 20.
\textsuperscript{238} Ibid s 21.
\textsuperscript{239} Ibid s17.
\textsuperscript{240} Ibid ss 35, 36, 37.
arrive at the front door in response to a call. From that moment, the legal process must function efficiently, sympathetically and effectively; the barriers which usually come from the people whose job it is to implement the law, for instance the police, court staff and magistrates, should be eliminated. Barriers (such as those as indicated above/further below) include stereotyping of women victims as in some manner instigating the violence, a perception that violence is to be treated differently when persons involved are in a conjugal relationship or domestic relationship (that is, the private sphere), or in an on-going relationship with all its complexities, results in broad use of ‘discretion’ in relation to response and in timelines of response by police, and in the treatment of the complaint by the magistrate. This continued despite the changes made in 1983 to the Crimes Act 1900 (NSW) as a result of the recommendations of the 1981 NSW Domestic Violence Task Force. Among the important changes were clarification of right of entry for police, who could obtain a warrant from a magistrate by phone to enter premises where police suspect ‘a domestic violence offence has recently been or is being committed, or is imminent, or is likely to be committed’ and access had been denied. The privilege of a legal spouse to refuse to give evidence was also removed. Nevertheless police response often remained tardy, and inadequate, with police continuing to cite the likelihood of women discontinuing legal action as a major cause of their action or tardiness; and magistrates still excused a spouse from giving evidence on the basis of a possibility of reconciliation, even though

242 Lansdowne, above n 150, 92. She also points out that the spouse/partner is more likely to plead guilty to as 547AA complaint on the first occasion than to a criminal assault offence. She also argues that the result is more rapid than for a charge of criminal assault: 92–3.
243 Seddon, above n 175.
244 Lansdowne, above n 150, 95. She argues that the magistrate’s discretion appears too often exercised against the well-being of the complainant.
245 Ibid 84.
this was not specifically included in the Act. Also important is the added ability to impose bail conditions where an alleged perpetrator appealed an ADVO (previously no such conditions could be imposed, leaving a woman unprotected during the appeal process). Delays remained between lodging of an application for an ADVO and its hearing, during which time the woman again remained unprotected. Lansdowne comments that this frequently was from three to four weeks. The definition remained relatively narrow regarding the persons to whom the legislation related (de facto, married, past or present, cohabiting or formerly cohabiting) until further amendments in 2007.

Surprisingly there could be a marked a contrast between the states. Lansdowne noted that in regard to the rate of complaints laid by police, in NSW it fell; while in South Australia (SA) it rose substantially. Police orders in NSW appeared to have changed but not police practice or attitudes. In NSW, the onus remained on the woman, an approach which some argue continues to trivialise the violence by not regarding it as a matter in which the state intervenes directly; however, it also does allow a woman to retain a degree of control as she can discontinue proceedings. Whilst the discontinuance may indicate her genuine desire, it can also indicate difficulty in obtaining legal aid or negotiating the legal process, or an attempt at reconciliation or presence of intimidation. It contrasts to the ‘mandatory arrest’ and ‘no-drop proceeding’ which have been instituted in other (some US) jurisdictions, and which

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246 Ibid 81. The author comments that funding of accommodation and refuges (which actually gives women an escape route) received less immediate attention than the legal responses: 81.
247 Ibid 84–5.
248 Ibid 85–6. According to her, some 63.4% of all ADVO involve separated couples (the remainder are still together): 85. In SA 51% of AVOs involve couples (the legislation does not distinguish between APVOs and ADVOs): 86.
250 Ibid, 87.
251 Ibid, 89–90. In SA it rose to 97% being instigated by police; while in NSW it fell from 7.6% to 5.2%: 89.
Lansdowne and some feminists view as essentially paternalistic.\textsuperscript{252} Pursuit of breaches of AVOs appeared generally not to be rigorously pursued, although by the early 1980s, some victims were reporting that after a concerted media campaign on the unacceptability of domestic violence, they felt able to complain for the first time and encountered a greater willingness on the part of police and magistrates to pursue matters involving domestic violence.\textsuperscript{253}

In a number of jurisdictions, there is an increasing level of successful criminal prosecution of domestic violence matters when police are mandated to arrest and charge persons in regard to such violence.\textsuperscript{254} Nevertheless, breaching of an AVO, particularly in NSW, regularly occurs and is not routinely prosecuted nor are they prosecuted properly;\textsuperscript{255} and very low rates of criminal prosecution of breaches of protection orders continue throughout most of Australia. Such circumstances occur because the consequences for breaching are relative lenient. For instance in NSW under the \textit{Crimes (Domestic and Personal Violence) Act 2007}, breaching such order is subject to a maximum penalty of imprisonment for 2 years or 50 penalty units or both;\textsuperscript{256} in other jurisdictions, the penalties for breach range from a six-month maximum period of imprisonment to up to five years. The criminal burden of proof ‘beyond reasonable doubt’, which is applied to breach offences throughout all Australian jurisdiction, becomes another reason for the low rate of criminal prosecution due to the difficulties in applying this level of burden of proof to domestic violence matters.\textsuperscript{257}

\textsuperscript{252} Ibid 96.
\textsuperscript{253} Ibid 97-8.
\textsuperscript{256} Douglas and Godden, above n 149, 10–5.
\textsuperscript{257} Easteal, \textit{Less than Equal}, above n 193, 110–1.
The introduction by the state of mandatory reporting of an alleged offence has been considered as disempowering the women victims because women are not involved in the process and in the decision making.²⁵⁸ Linda Mill, writing in the US context of mandatory arrest, mandatory charges and a non-drop environment²⁵⁹ regards the mandatory process itself as ‘a new form of state sanctioned violence that replicates the violence experienced by women at home’,²⁶⁰ and notes that as a consequence, women may become reluctant to call police to protect them from violence.²⁶¹ Although there is continuing debate about appropriate criminal justice responses to domestic violence, the argument that breaching an AVO should be penalised is strengthened as prosecution of the breach of a protection order is believed to provide an important opportunity to stop the violence and rehabilitate perpetrators, and to increase women’s safety as well.²⁶² Moreover, most studies have found that the majority of those who obtain protection orders are satisfied that they are ‘effective’.²⁶³

3.5.2.3. Family violence legislation in the Family Law

The idea that the family is a private space has been a continuing theme in law and especially in family law.²⁶⁴ The importance of the family in Australian society and in family law has been recognised explicitly in section 43 of the Family Law Act 1975 (Cth), particularly in paragraphs (a) and (b). Paragraph (a) affirms ‘the need to preserve and protect the institution of marriage as the union of a man and a woman to the

²⁵⁹ Ibid.
²⁶¹ That is, it might ‘discourage many survivors from forming partnerships with the state officials to help control the violence they endure’: Mills, ‘Killing Her Softly’, above n 258, 556.
²⁶³ Trimboli and Bonney, above n 157; Rodwell and Smith, above n 157.
exclusion of all others voluntarily entered into for life’; and paragraph (b) emphasises ‘the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children’. However, marriage is increasingly no longer seen as essential to the formation of families in Australia. Lisa Young and Geoff Monahan have observed that Australia has evolved its own style of family and family life in which unmarried partnerships have become accepted and illegitimacy of children has lost its stigma. The change in the model of family has affected legal reform in regard to the family.

Historically, under family law a husband and a wife were considered as a unity. The effect of the doctrine of unity was to suspend the legal existence of the wife. Blackstone noted this in his influential publication:

By marriage, the husband and wife is one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband under whose wing, protection and cover, she performs everything.

As a consequence, a woman could not separate from her husband without his consent, divorce was extremely difficult and any goods remained with the husband if the wife left without his permission, and wives could be denied access to their own children where the marriage had broken down. The concept of the doctrine of unity which had existed for centuries was slowly undermined by a series of legislative changes. It began with the enactment of the *Married Women’s Property Act of 1870* (as well as the later Acts of 1882 and 1893) and the *Matrimonial Causes Act of 1857* in

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265 Section 43 of the Family Law Act 1975 (Cth) paragraph a and b.
266 Ibid.
268 William Blackstone is quoted by Family Violence Professional Education Taskforce, above n 240.
269 Ibid; see Finlay, above n 97, 75.
England which followed by similar Australian statutes. This legislation, particularly the *Married Women’s Property Act of 1870*, abolished ‘all the principal effect of doctrine of unity upon a married woman’s ability to own property’, while the *Matrimonial Causes Act of 1857*, which had provided 14 grounds for divorce, allowed a woman to obtain a judicial separation from her husband. As a consequence divorced women were entitled to acquire and dispose of property, to enter contracts and to sue or to be sued in court proceedings. The legislation was made uniform throughout Australia in 1959. It was praised as just and equitable, but in practice it remained difficult and inequitable for women. Women remained subordinate within the family because the concept of ‘fault’ (with the sole exception, separation exceeding five years); guilt was still used as the basis for divorce. Due to prevailing social attitudes and double standards women had more trouble than men in establishing ground for divorce.

Then, in 1975, the grounds for divorce were simplified to the ‘irretrievable breakdown of the marriage’ as the sole grounds for divorce under the *Family Law Act 1975* (Cth). As a consequence, the applicant has no need to prove bad conduct of any sort on the part of the other, and indeed no such conduct can be raised in a divorce case. By giving evidence that the parties have been living separately and apart for the 12 month minimum period required under the Act, either party is entitled to apply for and

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270 The following grounds of divorce under the Matrimonial Causes Act 1959: adultery, cruelty, attempted murder, various other crimes such as rape, or repeated offences, drunkenness, desertion and committal to a hospital for the insane. These were ‘fault’ grounds, because the party seeking divorce had to prove the other party was insane, cruel and alcoholic or exhibited some designated characteristic or habit: s 28. 

271 Finlay, above n 97, 75.

272 *Matrimonial Causes Act 1959* (Cth) s 28. Separation was a ground for divorce if parties had been living separately and apart for five years. This was the only ‘no fault’ ground, because so long as the parties had not been living together for five years, there was no requirement to prove any bad behaviour by a spouse. This differed from the ground of desertion, where the party seeking divorce had to bring evidence that the other party had deserted her or him, leaving her without support, or him without ‘cohabition rights’, for three years or more.


274 The Family Law Act fulfilled the need for uniform laws throughout Australia. It also regulates equal property distribution for parties who apply for divorce, particularly for a woman as a wife. See also Lisa Young and Geoff Monahan, *Family Law in Australia* (LexisNexisButterwoth, 7th ed, 2009).
obtain divorce. Though ‘fault’ is removed from divorce proceedings, it remains where the law is interpreted in other matters such as property, maintenance and custody, particularly when domestic violence exists. The Australian Law Reform Commission (ALRC) rightly noted:

[T]he decision to eliminate fault from the ground of divorce did not necessarily require the total removal of consideration of the conduct of the partner from ancillary matters - custody, maintenance and property. However, the ‘no fault’ philosophy has permeated the Family Court’s broader decision-making under the Act. 276

Consequently, the existence of violence is excluded as evidence and as an important matter in the Family Court in relation to divorce. 277 Studies on court decisions before the amendment found that family violence (and child abuse) was ignored. 278 The irrelevance of conduct has then been reinforced by the conciliation model provided for in the Act and operated by the Counselling Service of the Family Court. 279 By focusing such violence in non-judicial dispute resolution, it has meant that no action might be taken even though the violence is very serious. 280 In that respect, there is a critique that violence should be understood as a conduct quite distinct from ‘fault’ so that it can be

275 According to the principle developed since 1975, domestic violence may be taken into account to the extent that it has financial consequences relevant to s 75(2) factors. Yet the fact that domestic violence is the cause of such consequences is itself irrelevant. Section 79 of the FLA empowers the Family Court to make orders altering the interests of parties to a marriage in their property. The Family Court must take into account the direct and indirect contribution of the parties to their property and to the welfare of the family.


277 The history of spouse abuse has been ignored as a ground for the divorce itself and, it can be argued, has caused the Family Court to consistently reject evidence of family violence, or else under-estimate the effect of violence upon mothers and children, thus privatising, marginalising and devaluing the experience of women, such in these cases: in the marriage of Heidt (1976) and of Cartwright (1977). See In the Marriage of Heidt (1976) 11(1) Family Law Report 576, 594, 595–8; In the Marriage of Cartwright (1977) 30 Family Law Report 547, 549–50.


considered as a ‘strong normative argument’ to benefit women in the court proceedings.281

The Australian Law Reform Commission did not propose to retreat to a ‘fault’ ground for divorce proceedings but its concern was to ensure that violence should be considered where it is relevant in ancillary proceedings, particularly in determining the welfare of children and issues concerning contributions to property and financial need of the parties.282 In addition, the Australian Law Reform Commission observed that violence needs to be made visible in the Family Law Act, particularly in the main areas such as custody and access, property and maintenance, alternative dispute resolution processes, and personal protection from violence.283

Since the coming into operation of the *Family Law Act 1975*, there have been several reviews and amendments.284 The main focus of the amendments is on custody and access, property and maintenance, alternative dispute resolution processes, and personal protection from violence. In 1995, reviews of the *Family Law Act 1975* came not only from the Australian Law Reform Commission but also from other institutions,285 such as Parliamentary Committees, the Australian Institute of Family Studies, the Joint Select Committee on the Operation and Interpretation of the Family Law Act, the Family Law Council, and men’s rights bodies.286 The most significant submissions were made by men concerned that their ‘rights’ were ignored by the Family Court and the legislation; and the report of the Family Law Council in 1992 that raised

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281 Ibid.
282 Ibid.
283 Ibid.
the issues about the unsatisfactory nature of the language of guardianship, custody and access, because after the marital breakdown non-custodial parents tend to distance themselves from their children, to lose contact and to fail to support them; in the meantime, custodial parents (usually mothers) are presented as prohibiting non-custodial parents from having access to their children.

In 1995, an amendment to the *Family Law Act* was passed to make improvements and achieve a number of objectives dealing with shared parental responsibility. The idea of the amendment was that children have ‘rights’ and that parents have ‘responsibilities’ and it encouraged both parents to remain involved in the care of their children after separation and to continue to share their parenting responsibilities in spite of their separation. Divorced parents are also required to register parenting plans (a parental agreement about the future care of the children, which contain any ‘parental responsibility’ provision and the agreement may be converted into enforceable orders. Nevertheless, the Government’s attempt to encourage shared parental responsibility may not have been particularly effective. Research into domestic violence and children’s matters found that the question of domestic (family) violence remains marginalised by a different emphasis in the question of the child’s ‘best interest’ in the court.

In 2006, the government further amended the *Family Law Act* through the

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288 Ibid; see also Rhoades, ‘The “No Contact Mother”’, above n 286, 80-3.


290 According to Renata Alexander, ‘Only extreme violence supported by firm evidence could be successfully argued in children’s cases…The relevance of violence was overshadowed by a number of failures’ from all parties, such as the legislation, the court, the legal profession and the expert to promoting a child’s right. See Alexander, ‘Moving Forwards or Back to the Future?’ above n 113, 915–18.
Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth). The new amendment introduced a rebuttable presumption. However, the new legislative provisions attracted criticism almost immediately. This occurred because the presumption is not applicable in cases where there are reasonable ground to believe one of the parties has engaged in family violence or child abuse’ (section 61 DA(92)); and its rebuttable on the basis of evidence that would satisfy a court that its application is not in the child’s best interest (section 61 DA(4)). The making of an order for equal shared parental responsibility triggers an obligation for courts to consider making orders for the child to spend equal, or substantial and significant time with each parent (section 65DAA).

Moreover, the Australian Institute of Families Studies’ (AIFS) Evaluation of the 2006 family reforms (‘Evaluation’) showed that widespread misconceptions of the changes had arisen, including that it had introduced a ‘50:50’ custody arrangement, an erroneous belief held by many parents and some system professionals, that is, they believed that the amendment to the Act established ‘an entitlement’ to equal time for each parent. The concept of the ‘friendly parent provision’ in section 60CC(3)(c) which requires ‘willingness’ to facilitate and encourage, and to continue the relationship between the child and the other parents is used as a relevant consideration for the court; however, a problem has emerged for women because the concept has potential to disadvantage women seeking to limit access where a father is abusive.

A study in this

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291 Serena Nicholls, ‘The New Family Dispute Resolution System: Reform Under the Family Law Amendment (Shared Parental Responsibility) Act 2006’ (2007) 3(1) Bond University Student Law Review 1, 2. The premise behind the introduction of a rebuttable presumption of shared parenting is grounded by the research that joint parental is beneficial for the upbringing and the wellbeing of children. ‘It can also be rebutted when the court believes that there is violence, abuse or that imposing joint parental responsibility would not be in the best interest of the child’: 2.


293 Section 61 DA(4) Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth).

294 Section 65DAA Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth).


296 Ibid.
respect found that there are few of cases in which the court has taken the extreme step of rebutting equal parental responsibility and denying or restricting time spent by a child with a violent partner or in a violent household.\textsuperscript{297}

In addition, the amendments include a range of provisions aimed at encouraging parents to use mechanisms such as mediation and counselling services to resolve disputes about children before resorting to litigation. Mediation, as one kind of family dispute resolution, is strongly supported by the government in order to save money and reduce delays in the formal justice system.\textsuperscript{298} Nevertheless, a number of significant difficulties have been identified such as the basic power imbalance in the relationship between the parties which have impacted on the ability of the victims of violence to successfully negotiate their interests and have their problems taken into account. The other important issues in mediation are that the mediators hardly ever to take into account the tendency of victims towards silence. The silence might be enforced by the perpetrator who might have ‘written the script’ for the mediation and enforced a denial of violence by threat or intimidation. Researchers recalled that, even without such threats, the victims of violence frequently face difficulties in talking about their cases, and their silence may be caused by fear, shame or self-blame.\textsuperscript{299} Further, the silence of the victims of violence is not a merely product of their weakness but of prevailing social attitudes to violence that support minimisation and denial of its occurrence.\textsuperscript{300}

Another provision designed in the amendment is shared property by emphasising ‘equal sharing’. However, the idea or expectation of property being automatically shared ‘50:50’ is inaccurate (at least in theory, given the legislation) and

\textsuperscript{297} Alexander, Moving Forwards or Back to the Future?, above n 113, 920–4
\textsuperscript{298} Patrick Parkinson, Australian Family Law in Context: Commentary and Materials (LexisNexis, 4th ed, 2009)
\textsuperscript{299} Ibid.
\textsuperscript{300} Hilary Astor, ‘The Weight of Silence: Talking about Violence in Family Mediation’ in Margaret Thornton (ed), Public and Private Feminist Legal Debates (Oxford University Press, 1995) 175, 178.
has also been recently critiqued because any such presupposition did not recognise the reality of women’s social environment which is certainly far from the ideal of equality in terms of property acquisition and earnings opportunity over a lifetime. Moreover, equally divided property would affect women and children’s lives because they would be likely to live in poverty and increasingly rely on social security for longer periods of time. For example, the NSW Pay Equity Inquiry Report discussed in some detail the fact that women earn less than men, even when the work they are doing is the same work as men. Further, it is known that women still do most of the work in the home including child rearing, and while often termed ‘valuable’ it is not remunerated.\textsuperscript{301}

Women’s work is often punctuated by absences due to pregnancy, childbirth and childrearing, which further reduces their earning capacity and earnings accumulation over time. It was also believed that the ‘50:50’ starting point would become an end point for many women because the policy emphasis on ‘equal sharing’ (in term of parenting) would certainly spill over into property and be used by men and their lawyers to promote the idea that a 50 per cent split is the new way that property settlement is determined.\textsuperscript{302}

To date, evidence for a common connection between domestic violence and financial adversity has to a large extent been anecdotal.\textsuperscript{303} However, the results of a 2002 national random population survey that examined the post separation financial circumstances of men and women who report having experienced spousal violence had


exposed the grave post-separation financial circumstances of women who report severe violence - there is a strong correlation between domestic violence and post-separation poverty.\textsuperscript{304}

Another problem is the definition of family violence. Although it was small change adding the word ‘reasonably’ in two locations the meaning changes significantly. The definition in an amendment proposed for the Family Law Amendment Act no 167 of 1995 read as follows:

Conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person’s family that causes that or any other member of the person’s family reasonably to fear, or reasonably to be apprehensive about, his or her personal wellbeing or safety.\textsuperscript{305}

According to Young and Monahan, this proposed amendment in 1995 was the subject of considerable debate in Federal Parliament. The amendment would have presented real disadvantages for victims of violence due to the use of the word reasonably because to determine whether someone feels fear or not in certain circumstances and level of that fear is difficult; particularly if violence is present in such circumstances or has been present in one form or another. As one parliamentarian put it:

Firstly, there is an implication that some forms of violence or threatening behaviour are acceptable as long as a “reasonable” person would not feel afraid. This gets the court into the very tricky business of deciding what conduct would scare a ‘reasonable’ person. I do not believe we should put the courts into this position, and parliament should be very clear that there is no such thing as ‘acceptable violence’. Secondly, the definition does not provide scope to consider the particular circumstances of the victim – for example, a person who has previously been exposed to violence may be more sensitive and fearful in circumstances where another person might not.\textsuperscript{306}

In addition, there has also been debate about terminology in the context of

\textsuperscript{304} Middleton, above n 303 714; Pascoe, above n 303, 897-8; Stanfield, above n 303, 157.
\textsuperscript{305} Young and Monahan, above 264.
\textsuperscript{306} Ibid. See in full, Commonwealth, Parliamentary Debates, House of Representatives, 28 February 2006, 48 (Nicola Roxon) (Speech on the Family Law Amendment (Shared Parental Responsibility) Bill 2005, Second Reading). Roxon makes the valid point that “[e]ven an unreasonable fear will affect the power balance between the parties’ and she added that she thought it ‘simply not fair’ to force terrified people into mediation. Such fear would affect the nature of their participation and outcomes of the mediation.
Indigenous families, with commentators taking different views on whether ‘family violence’ or some other term is most appropriate, because the term of family violence seems generally to be preferred over domestic violence (partly due to the extended nature of families in an Indigenous context).\textsuperscript{307} The Australian government amended the definition of the term ‘family violence’ in 2003, through a process undertaken through the Partnership against Domestic Violence (PADV), an Australian intergovernmental taskforce on family violence.\textsuperscript{308} The taskforce created a new definition which has four strengths: it acknowledges the gender issues involved; recognises that such violence is the result of an existing power imbalance; focuses on physical, psychological, sexual and economic violence; and also recognises family violence occurring in Indigenous communities.\textsuperscript{309} However, to date, the recommended definition has never been inserted; however, that does not mean there has been no change made in terms of definition of family violence or persons comprising ‘family’.\textsuperscript{310}

The idea of changing the meaning of ‘family violence’ in section 4 (1) of the \textit{Family Law Act 1975} has been echoed within the Family Law Amendment (Family Violence) Bill 2010 (Cth) (now the Family Law Amendment (Family Violence and Other Measures) Bill 2011 (Cth). Neither uses the word ‘reasonable’ in relation to an alleged victim’s perception of fear. The initial Bill responded to the reports commissioned on the 2006 reform of Family Law and how the family law system deals with family violence.\textsuperscript{311} In order to better capture harmful behaviours, the proposed definition deals with behaviour by one family member towards another family member

\textsuperscript{307} Easteal, \textit{Less than Equal}, above n 193, 102.
\textsuperscript{308} Ibid.
\textsuperscript{309} Ibid.
\textsuperscript{310} Ibid
and includes people who are or were married or in a de facto relationship and a broad range of relatives. The behaviours cover physical abuse, sexual abuse and coercion, and economic abuse as well as behaviours that torment, intimidate, harass or unreasonably control, dominate, deceive or coerce a family member or cause them to feel threatened or feel fear for safety.\textsuperscript{312} The 2010 and subsequent 2011 Bill\textsuperscript{313} dropped the demand that such a fear be ‘reasonable’. The latter was introduced into Federal Parliament in March 2011; and retitled (Family Law Amendment (Validation of Certain Orders and Other Measures) Bill 2012) and re-introduced in 2012 and passed into law during the writing of this thesis. It amended the definition of violence (section 4AB(1)–(2)), included exposure of children to violence (section 4AB(3)–(4), and included defacto relationships (section 4AA).\textsuperscript{314} It also focused on the other main issues, such as prioritising the safety of children, identifying abuse of child, strengthening adviser obligations, bringing evidence of violence and abuse to court, and removing disincentives to disclosing violence (see, for example, sections 60CF, 60CG). The Act is expected to reform and improve the performance of the \textit{Family Law Act} and the Family Law Court in responding family violence and child abuse cases or cases where allegations exist in regard to family violence.

Next, the Act is expected to solve the problem of fragmentation which is caused by the constitutional division of jurisdiction between the Commonwealth and the states.

\textsuperscript{312} Attorney General’s Department, \textit{Family Law Amendment (Family Violence) Bill 2010 (Exposure Draft)} (Attorney General’s Department, 2010).


and territories;\(^\text{315}\) and by the distinction between criminal and family law.\(^\text{316}\) The division of jurisdiction between the Commonwealth and the states and territories has been regulated in the *Australian Constitution*. The Constitution gives the Commonwealth Government the power to make laws with respect to marriage,\(^\text{317}\) divorce and matrimonial causes and in relation to parental rights, the custody and guardianship of infants.\(^\text{318}\) As Young and Monahan stated, however, in general private rights were regarded as more appropriately a matter for the States than for the Commonwealth.\(^\text{319}\) Consequently, there is no national legislation specifically targeting domestic violence; the legislation dealing with domestic violence is provided by the states and territories.\(^\text{320}\) On the other hand, the Commonwealth has issued several laws relate to domestic violence, for instance the *Family Law Act 1975* (Cth), family law parenting orders, social security law, child support law and family law relating to property, workplace and industrial laws, migration laws and regulations in order to meet the victims’ needs.\(^\text{321}\) However, according to the Family Law Council the two systems arguably do not work well together.\(^\text{322}\) This occurs because the separate laws have consequence in differing legal frameworks, priorities, understandings of the problem and the ideas about appropriate interventions with families.\(^\text{323}\)

The distinction between public and private law has also caused difficulties for the victims of domestic violence because a victim may be involved in up to eight different types and avenues of court proceedings and would have come into contact with

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\(^{316}\) Ibid, 858-60.

\(^{317}\) *Australian Constitution* s 51 (xxi).

\(^{318}\) Ibid s 51 (xxi).

\(^{319}\) Young and Monahan, above n 264.

\(^{320}\) Wilcox, above n 147, 1016.

\(^{321}\) Ibid, 1016-17.


\(^{323}\) Wilcox, above n 147, 1016.
at least ten different professionals. In the case of domestic violence, numerous public agencies are involved. This includes, for instance, police and the criminal justice system, child protection, specialist domestic violence courts and systems; the family law system regarding custody and guardianship disputes, as well as other agencies, for example housing, health and education. These different systems and agencies have different ways of doing things and different priorities, resources, qualifications and training for personnel. The overlapping jurisdictions have been referred to as ‘a maze’ and caused significant angst for the parties involved and considerable difficulties for the courts themselves.

In order to develop an integrated system some states in Australia have moved ‘towards ‘joining-up’ responses to domestic violence, both in terms of promoting horizontal coordination and in reviewing the difficulties emerging from the family law and family violence intersection’. However, there are some complex issues involved, such as the inclusion of the family law system in the case management and decision making process under way in some jurisdictions. The family law system has struggled to regulate family violence due to a lack of coordination with the criminal law system (as mentioned above and in the examination below).

3.5.2.3.1. Injunction procedures in the Family Law Act 1975 (Cth)

This section discusses injunction procedures as an avenue to prevent further violence against or harassment of either an adult or a child as provided by the Family Law Act 1975. To date the injunction has not proved popular with victims who prefer to

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324 Astor and Croucher, above n 315, 857.
325 Ibid.
326 Wilcox, above n 1, 1037
327 Ibid.
328 Ibid.
329 Ibid.
330 Ibid.
use a protection order under state or territory legislation. The principal reason for the injunction’s lack of popularity has been its ineffectiveness. An application for an injunction must be made by the individual or legal representative (not the police) and proceedings may prove costly and protracted. The general philosophy of the Family Court has been perceived as unsuited to the treatment of criminal conduct.

The relevant statutory provision for a victim who is, or has been, married is section 114 (1) of the Family Law Act 1975 (Cth).

(1) In proceeding of the kind referred to in paragraph (e) of the definition of matrimonial cause in subsection 4 (1), the court may make such order or grant such injunction as it consider proper with respect to the matter to which the proceeding relate, including:
(a) An injunction for the personal protection of a party to the marriage
(b) An injunction restraining a party to the marriage from entering or remaining in the matrimonial home or the premises in which the other party to the marriage resides, or restraining a party to the marriage from entering or remaining in a specific area, being an area in which the matrimonial home is, or the premises in which the other party to marriage resides, situated;
(c) An injunction restraining a party to the marriage from entering the place of work of the other party to marriage;
(d) An injunction for the protection of the marital relationship...
(e) An injunction in relation to the property of a party to the marriage; or
(f) An injunction relating to the use or occupancy of the matrimonial home.

For those who live, or have lived, in a de facto relationship, the Property (Relationship) Act 1984 NSW, for example, is couched in similar terms; it has been held that this state provision should be construed in the same way as section 114 of the Family Law Act 1975.

The terminology of section 114 is wide, and has been interpreted liberally by the Family Court of Australia. Injunctions can restrain not only physical violence but also harassment in the wider sense. ‘Personal protection (s114(a)) has been interpreted to include not only physical protection but also protection of the right to lead one’s own life without interference’. An injunction can be framed to restrict a party from approaching the others’ workplace or home. Therefore, an injunction may restrain
violence and at the same time regulate occupation of the home.\textsuperscript{331}

The descriptions above have shown that the family law system with its injunction has given a special procedure for women victims of domestic or family violence to seek help and to eliminate the violence. However, the problem of law enforcement has been identified as a principal reason for the injunction’s ineffectiveness; and, consequently, there appears to have been a lack of implementation in protecting a victim from violence and harassment. For many years, the remedies for breach were wholly inadequate; the Family Court had only discretion to attach a power of arrest, and that discretion was in practice sparingly exercised.\textsuperscript{332} Furthermore, section 114 AA of the \textit{Family Law Act 1975} provides for an automatic power of arrest on the breach of an injunction in certain circumstances, so police officers may arrest a person without warrant where the breach is constituted by conduct which causes or threatens to cause bodily harm to the person protected by the terms of the injunction, or where the person has been harassed, molested or stalked (section 114 AA (1)).\textsuperscript{333} In addition, there are also now sanctions for non-compliance with orders of the Family Court generally, and for contempt. These include imprisonment (Pts XIII A and XIII B) and fines (sections 112AD(2) and 112AP(6)).\textsuperscript{334} However, implementation will depend on the willingness of police to be involved in the family law system.

\subsubsection*{3.5.3. Legislations dealing with domestic violence issues in Indonesia}

Legislation dealing with domestic violence issues in Indonesia cannot be separated from the Indonesian feminist movement that has arisen since Dutch

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\textsuperscript{333} Monahan and Young, above n 264.
\textsuperscript{334} Ibid.
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Colonialism. Indonesian women have been organizing to improve their position within society since the beginning of the 20th century, and this development is evidenced by the growth of women’s organizations. The existence of Indonesian women’s organizations in struggling to improve the legal aspects of the position of Indonesian women is demonstrated by the passage of the Marriage Bill in the 1970s and Domestic Violence Law in the 2000s, despite not all demands not having been met by the government because of political elements that affected the formation of the legislation.

These Acts, the Marriage Act 1974 and the Elimination of Domestic Violence Act 2004 were created at different times and for different purposes. The Marriage Act 1974 was passed in the New Order era (1966-1998) during which the state had emphasized the need to protect women’s rights (or more precisely to protect a wife’s rights) from the arbitrary act of her husband (in dealing with divorce). The Elimination of Domestic Violence Act 2004 was passed in the Reformasi (Reform) era (1998-now); and the chief consideration in creating this Act was to protect women and children or vulnerable persons within the family from violence which is usually the conduct of a man as a husband or father. Bearing in mind that living in peace both in the private or public space is guaranteed by the state through Undang-Undang Dasar Republik Indonesia 1945 [Constitution of the Republic of Indonesia 1945] (the Constitution), Indonesian women used this as the basis of their demand for the

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338 Before the passage of Marriage Act 1974, a husband, who confessed Islam had the right to divorce his wife without court procedures. A husband could even be married to another woman as second or third or fourth without giving notice and divorce his first wife or other wives. See Saraswati, ‘Justice and the Identities of Women’, above n 37.
government to pass these Acts. Thus, it was to these Acts that Indonesian women turned to obtain legal protection if abused.

The existence of these Acts has made the Indonesian government provide systems and agencies to support these Acts, bearing in mind, that these Acts are laid down within different jurisdictions, the Marriage Act 1974 in family law and the Elimination of Domestic Violence Act 2004 in criminal law. The Marriage Act 1974 is applicable nationally despite the multiple religions. However, the applicable court as the institution to process the marriage and divorce issues differs between the Muslim group and non-Muslim groups because of the division of the legal system during the Dutch Colonial period which persist to this day; meanwhile, the Criminal Court has been united within State court system. Then, to give further information, an examination of these Acts will be presented below.

3.5.3.1. Legislation on domestic violence in criminal law in Indonesia

The Criminal Code (or Penal Code), the *Wetboek van Strafrecht voor...*

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339 The preamble of Undang-Undang Dasar Republik Indonesia 1945 [Constitution of the Republic of Indonesia 1945] contains fundamental ideals which are great importance. The fundamental ideas contained in the Preamble provides: protection for all the people of Indonesian and the entire land of Indonesia based on the unity of Indonesia, the states encompassing every kind of group opinion and all opinion of individuals, the sovereignty of the people based on democracy and deliberation amongst representatives, and the belief in the One Supreme God. These fundamental ideas becomes the fundamental law for the state to issue legislation in any respect, although it sometimes different in practice.

340 Article 163 of the Indies State Regulation (*Indische Staatsregeling*, S 1925:415) classified inhabitants in Indonesia into three groups: 1) Europeans, 2) Natives, and 3) Foreign Orientals. According to article 131 of the Indies State Regulation (*Indische Staatsregeling*, S 1925:415) which regulates the law in force for each group classified by Article 163, the Europeans consist of: a) Dutchmen, b) All other person whose origin are European, c) the Japanese, d) other persons who in their native country are subject to family law similar in principle to Dutch Law, e) legitimate or properly recognised children of persons in group b, c and d and their descendants. Three judicial organisations for Indonesian legal subjects consisted of a distric court, a regent’s court and a landraad. The foreign oriental group turn to the courts for the European in civil cases. See Saraswati, ‘Justice and the Identities of Women’, above n 37.

341 The dualism in the legal system not only affected the inter-relationship between the three groups but also created a dualistic judicial organisation. However, the dualistic system of administration of justice dissapeared with the establishment of the Republic. The normal court of first instance is the Pengadilan Negeri [State Court] for all the three groups, the second instance courts are the *Pengadilan Tinggi* (High Court), and the *Mahkamah Agung* (Supreme Court). Besides these three courts, there also exists the *Pengadilan Agama* [Religious Court] whose jurisdiction is mainly in marriage and divorce for Muslims, but it is not limited to the *pengadilan adat* [adat court] which exist within *masyarakat adat* [adat communities].
Nederlands Indie, dates from colonial times and is also called Kitab Undang-Undang Hukum Pidana Indonesia (KUHP). It is valid for the whole Indonesian territory (to date). The Criminal Code was promulgated and entered into effect in 1915. The content of the KUHP is similar to the present Penal Code of the Netherlands (1886) because under the colonial government of the Netherlands, the concordant principle was a mandatory principle in Indonesia. The Penal Code remained in effect in certain parts of Indonesia upon independence, and became effective throughout all of Indonesia in 1958 (although Aceh has been permitted since 2001 to implement Shari’ah in addition to the Criminal Code).  

The Code has various provisions which touch upon the status of women. The feminists’ perspective, however, viewed the Penal Code as insufficient to protect women who experience violence, especially violence within family. Their argumentation was based on several reasons. First, the Penal Code uses the term ‘torture’ (in this context, physical violence) to describe an act of violence by a perpetrator on children, wives, mother and father. According to Indonesian feminists, this term is not as strong as ‘violence’ (which can encompass many other acts by the perpetrator). Second, other forms of violence which are regulated within the Act have

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342 R M Surachman, ‘Indonesia, Ne Bis In Idem, or Double Jeopardy in Indonesia’ (2002/03) 73 Revue Internationale de Droit Pénal 1009, 1016. Note: Apparent use of Shari’ah for non-Muslims in Aceh who participate in offences with Muslims in areas where the Criminal Code is silent has been reported: Agenzia Fides, ‘Lawyers and Islamic Activists Contest the Application of Sharia Law to Non-Muslims’, Banda Aceh, 29 April 2014. Some feminists have expressed reservations as have others as apparently reinforced male power spreads to unapproved actions, ie men and boys exploiting powerful positions: ‘When Rape Victim Faces Whipping’, The Star On-Line, 18 May 2014 (widow caught in compromising situation with a married man, gang-raped by eight youths, facing whipping — village head appalled as rape he said is a far more serious crime but both are being dealt with by the separate system that applies (caning under Shari’ah for zina; to hold others fled under Criminal Code for rape); accusation and publicity leads to a 16 year old girl’s suicide; corruption among and sexual assault by Shari’ah police is reported.


344 Violence against women such as rape, trafficking and domestic violence were classed together under the category of crimes against morality rather than crimes against the person. Therefore, the cases of violence against women were never been seen in the context of the impact on the woman as victim.

narrow meanings in the context of the Act, whereas there is a complexity of the form of domestic violence which needs a new special formulation to secure a far more proper definition and suitable punishment. For example, in regard to Articles 285-296 of rape and dissolute acts, the rape provision is not valid for a wife and does not accommodate other forms of rape within the family sphere. Other Articles are also inadequate, for instance Article 442 refers to the ‘displaced person’ who under the law should be provided with living, cared for and maintained; however, this provision does not cover all of forms of economic violence. Article 465 on hostage-taking and Article 470 on the deprivation of liberty have been considered as accommodating psychological or emotional violence but, in fact, the scope of this violence is broader than the Act’s provisions. Third, the system of punishment under the Penal Code was restricted to gaol, for instance in regards to Articles 351-356 on torture. The punishment causes a dilemma for the victim who is economically and socially dependent on the perpetrator. As a consequence, the victim is inclined to keep silent about the problem and resist bringing the case to public notice in a complaint. Lastly, the Penal Code does not regulate women’s rights as victim, such as access to services and compensation.

The weakness of the legal system has caused domestic violence issues to be regarded as a private matter, not to be discussed with others. Moreover, the women victims are most reluctant to lay charges against their husbands on whom they and their children may be economically dependent. Violated women are reduced to a state of great humiliation: they do not wish their plight to be made public, hoping to preserve at least some scrap of dignity. Women often have had no concept of their rights against such violence. Victims have no confidence that anything is to be gained by going public.

346 See Article 285-296 in regard to rape and dissolute acts. The rape provision is not valid for a wife; Article 442 covers displaced persons who under law should be provided with a living, cared for and maintained. However, this provision is insufficient to cover all of forms of economic violence.
They lack faith in ‘the system’ to provide justice. The women view the police and the judiciary as not to be trusted, with considerable justification since they have treated women victim of violence with a callous lack of understanding and compounded their woes.

Although there was no legal support, this did not stop diverse parties, particularly women’s organisations from providing services and support for women and children who had experienced domestic violence.\(^347\) However, it was necessary to establish a new law for purpose of protecting women’s rights as victims of domestic violence and give a legal basis for institutions to provide support and services for those women.

On the basis of these reasons, Indonesian women’s groups proposed a Domestic Violence Bill in 1997. The Bill had been publicised through campaigns, discussions, workshops and hearings throughout Indonesia from 1997 to 2003.\(^348\) There was a long way for Domestic Violence Bill to go before it approved by the government, until Indonesian women’s groups successfully lobbied against domestic violence, which resulted in the enactment of the Law for the Elimination of Domestic Violence in October 2004.

The aim of the new law is primarily to eliminate all forms of domestic violence, protect the victims of domestic violence, take action against the perpetrators of domestic violence and preserve the unity of harmonious and prosperous households.\(^349\)


\(^{349}\) The consideration of Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga Nomor 23
violence in the new Act has been very broadly defined to include any physical, psychological or sexual abuse (including the threat of committing such abuse), as well as economic neglect evidenced by failure to provide for the household or prohibiting women from engaging in paid work.\textsuperscript{350} It also provides fines and imprisonment which a term of up to 15 years.\textsuperscript{351} The scope of a household includes husband, wife, children and domestic servants, and anyone of a blood, marital or adoptive relationship living in a single residence.\textsuperscript{352}

There are encouraging outcomes of the passages of the new law; for example, the number of reports of domestic violence increased,\textsuperscript{353} and the institutions established by women’s organisations or local states which provide services and support for the victim have grown rapidly throughout Indonesia.\textsuperscript{354} However, cultural and legal obstacles to the enforcement of the new law remain. Cultural obstacles are women being reluctant to disclose their cases due to feelings of shame, guilt over the violence that has occurred, fear of blame from family and the surrounding community, and hesitation regarding initiating a complaint or proceeding with a case out of consideration for the family unit.\textsuperscript{355}

The Act itself is believed to be progressive, but inadequate implementing regulations and budget allocations have emerged as difficulties in regard to proper

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\textit{Tahun 2004} [The Elimination of Domestic Violence Act No 23 Year 2004].
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\textsuperscript{350} Ibid arts 6–9.
\textsuperscript{351} Ibid arts 45–55.
\textsuperscript{352} Ibid art 2.
\textsuperscript{353} The reported cases number were 2425 in 2004, 6029 in 2005, 2789 in 2006 and 19 253 in 2007.
\textsuperscript{354} These institutions include women crisis centres, hospitals, units for services for women and children in police stations, and attorneys’ offices. The institutions usually provided eight types of services and supports, such as hotlines, counselling, support groups, legal aid, shelter, psychological therapy, medical services and economic support.
implementation of the law. Even if an adequate budget has been provided, a lack of coordination between agencies and services providers often occurs. In addition, the available penalties are considered mild. The punishment which is emphasised by the Act is not always a good solution for the victim because of cultural and economic concerns. There is also the obstacle posed by the legal structure derived from the state and religious courts, not only from the judges but also the institutions themselves. Judges in these courts do not properly understand the Act and the issues. In family cases such as divorce, for instance, judges tend not to use the new Act as the basis of their consideration and decisions, although the violence exists as the ground for divorce.\footnote{Komisi Nasional Anti Kekerasan Terhadap Perempuan [National Commission on Violence against Women] emphasised focusing on judges in religious court because of the high number of divorce cases in religious court, the number rose from 8 643 in 2006 to 85 555 in 2007: Komisi Nasional Anti Kekerasan Terhadap Perempuan, Ten Years of Reformation, above n 312. See Saraswati, ‘Justice and the Identities of Women’, above n 37.} Judges in the State Court\footnote{There is a report that judges still use the Penal Code arts 285, 289, 351 and 352 A year after the enactment of the Elimination of Domestic Violence Act 2004, law enforcement continue to use the Articles of the Elimination of Domestic Violence Act 2004 and the Penal Code in various court decisions on criminal penalties between three months to six years. Until now, there has been no court decision that sets additional criminal penalties as stipulated in Article 50: ‘Apart from crime as referred to in this chapter, the judge may impose an additional penalty in the form of: restriction of movement by both players aiming to keep perpetrators from victims within a certain time and distance, as well as restriction of certain rights of the perpetrator; determination of perpetrators counseling program under the supervision of certain institutions’. See Catatan Tahunan Mitra Perempuan [Annual Record of Mitra Perempuan/Female Partners], Tahun 2006: Catatan Kekerasan Terhadap Perempuan & Layanan Women’s Crisis Centre [Annual Records of Violence against Women and Women’s Crisis Service Centre] (28 December 2006). For text see http://www.perempuan.or.id/catatan%20tahunan/2006/12/28/tahun-2006-catatan-kekerasan-terhadap-perempuan-layanan-women%E2%80%99s-crisis-ce. See also, Catatan Tahunan Mitra Perempuan [The Annual Record of Mitra Perempuan/Female Partners] Tahun 2007: Catatan Kekerasan Terhadap Perempuan & Layanan Women’s Crisis Centre [Annual Records of Violence against Women and Women’s Crisis service Centre] 22 December 2007). For full text, see: <http://www.perempuan.or.id/catatan%20tahunan/2007/12/22/tahun-2007-catatan-kekerasan-terhadap-perempuan-layanan-women%E2%80%99s-crisis-ce>.} and Supreme Court\footnote{Zafrullah Salim, Putusan Badan Peradilan tentang Tindak Pidana KDRT (Kekerasan dalam Rumah Tangga) [Court Decision on the Crime of Domestic Violence] (2010). For full text, see: <www.djpp.depumham.go.id/hukum-pidana/511-putusan-badan-peradilan-tentang-tindak-pidana-KDRT> who decide domestic violence cases tend to apply the Penal Code rather than the Act of Elimination of Domestic Violence. Although the intention is to implement the new Act, the understanding of judges on domestic violence issues and the new Act are at odds with each other. Moreover, the
facilities and infrastructure relating to the service room, the court room and its equipment to protect the victim and the success of its trial are inadequate. In addition, to date, there is no state court decision that has been implemented the additional available requirement for the perpetrator to undertake an anger management course or similar counselling. The provision of a ‘protection order’ (and its form) is not widely known and implemented by legal officers.

Therefore, based on the existing facts, the implementation of the Domestic Violence Act in the Court is a must, not only because it relates to gender equality but also because Indonesia has already ratified the Convention on the Elimination of all Forms of Discriminations against Women in 1984 and other international conventions, and issued the Elimination of Domestic Violence Act in 2004 as well. Moreover, through the President’s Instruction No 9 of 2000 on Gender Mainstreaming, the President has given an instruction to the ministers, the heads of government institutions, the Attorney General, the Commander of the Indonesian Army, the head of Indonesia Police, the Governors and the Mayors to apply gender mainstreaming in all national development processes.

3.5.3.1.1. The Domestic Violence Act 2004 (RI) and the rights of women as victims of domestic violence

Act No 23 of 2004 on the Elimination of Domestic Violence (‘Domestic Violence Act 2004’) was issued through a long struggle of about seven years conducted

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359 Komisi Nasional Anti Kekerasan Terhadap Perempuan [National Commission on Violence Against Women], above n 355, 12.
361 Katjasungkana, above n 16, 483–4.
by Indonesian women’s movement activists.\textsuperscript{362} The Act has been in force since 2004, and the primarily mission is to eliminate domestic violence. Through the Act the state is expected to prevent the occurrence of domestic violence, prosecute perpetrators of domestic violence and protect victims of domestic violence.\textsuperscript{363} In accordance with consideration of the Act, every citizen is entitled to safety and freedom from all forms of violence, particularly violence within the domestic sphere.\textsuperscript{364} The Act has insisted that all forms of violence within the domestic sphere are an infringement and crime against human rights. Under the Act, the obligation of the state is not only to ensure the safety and protection of all persons, to reduce and prevent violence by a person against another person, to sentence the perpetrator, but also to maintain (where possible) the harmony of the household.\textsuperscript{365}

The Domestic Violence Act 2004 defines ‘domestic violence’ as any conduct by a person (mainly against a woman) that causes a reasonable apprehension of misery or physical, sexual, psychological injury, or neglect; including any threat of such conduct, compelling a person, expropriating the freedom of a person against the law within a household.\textsuperscript{366} The scope of ‘household’ in this Act includes: a) husband, wife, and children; b) people whose family relationship with those people (the individual referred to under a) is due to blood relationship, marriage, suckling at the same breast,\textsuperscript{367} care, and guardianship, who lives in the household; c) the individual working to assist the household and living in the household shall be considered as family member during the

\textsuperscript{362} Saraswati, ‘Justice and the Identities of Women’, above n 37.
\textsuperscript{363} Ibid.
\textsuperscript{364} Ibid.
\textsuperscript{366} Ibid art 1; See also Saraswati, ‘Justice and the Identities of Women’, above n 37.
\textsuperscript{367} This can include a child adopted into the family who is literary nursed by the same mother as other children (can be a cousin’s child and or no blood relative).
period while living in the household.\textsuperscript{368} Scope of the victim is expanded not only to include the family members and relatives but also house-keepers because in many cases house-keepers experience violence from their employers, meanwhile there is no regulation provided by government to protect their safety.\textsuperscript{369}

Based on the Act, physical violence towards a person means any conduct that causes pain and injury; and the perpetrator of this violence is liable for a term of imprisonment from a minimum 3 years to maximum 15 years in jail, or fines, depending on the severity of the impact of the violence.\textsuperscript{370} Psychological violence towards a person means any conduct that causes feeling fear, self-confident and distress; and maximum penalty is 3 years or a fine of IDR 3 million, or both.\textsuperscript{371} A person can be accused of perpetrating sexual violence by compelling someone to have sexual intercourse, compelling someone to have sexual intercourse with someone else for commercial and/or other certain purposes. The maximum penalty for such conduct is 20 years imprisonment or a fine of IDR 300 million (circa AUD 30 000).\textsuperscript{372} Neglect is another form of violence regulated by the Act which maintains that the neglect of anyone by another else is prohibited, because according to law and agreements, the person has an obligation to give basic necessities or to look after family members. Further, someone may be accused of neglect if the conduct has a negative impact on financial dependents, or restricts of the freedom to work either inside or outside the household, which in turn,

\textsuperscript{369} This Act is a breakthrough for the protection of housekeeper since there is no regulation to cope the employee who works in domestic sphere because they are considered non-formal workers which are outside regulation by labour law. As a result, this Act only regulates the protection of housekeepers if they abused, and does not regulate their labour rights (such as the minimum wage, number of hours worked, the type of task done and so).
\textsuperscript{370} Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga Nomor 23 Tahun 2004 [Elimination of Domestic Violence Act No 23 of 2004] arts 6, 41.
\textsuperscript{371} Ibid arts 7, 44.
has caused someone else to restrain the person who desires to work. The maximum penalty for this violence is 3 years and a fine IDR 15 million (circa AUD 150).\textsuperscript{373} The heavy penalties and fines are expected to have deterrent effect on potential and past perpetrators in regard to committing acts of domestic violence.

The Elimination of Domestic Violence Act is the first regulation governing the rights of the victims in detail.\textsuperscript{374} The rights of the victims of domestic violence in Article 10 include as follows: 1) protection of the family, police, prosecutors, courts, advocates, social institutions, or any other party either temporarily or based on the determination of a court protection order; 2) health services in accordance with medical needs; 3) special handling related to the confidentiality of the victim; 4) assistance from a social worker and legal assistance at every level of the examination process in accordance with the provisions of legislation; 5) spiritual guidance services.\textsuperscript{375} The police are obliged to immediately provide temporary protection to the victim (that is, within a period of 24 hours). In providing temporary protection, the police may cooperate with a health worker, social worker, companion volunteer, and/or spiritual mentor to accompany the alleged victim. Various agencies are involved in order to protect the victim and ensure their rights as a victim are upheld. These provisions have also shown the complexity of the treatment of the victims of domestic violence which is different from other crimes.

Then, for the purpose of providing services to women victims, the central and local government provides special units in police offices, also social workers and legal aid; establishes and develops a system and mechanism of networking for the purpose of helping the victim to access such services; and, gives protection to assistants, witnesses, members of the victims’ family and their friends. The Act not only gives the

\textsuperscript{373} Ibid arts 9, 49.
\textsuperscript{374} Saraswati, *Justice and the Identities of Women*, above n 37.
\textsuperscript{375} *Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga Nomor 23 Tahun 2004* [Elimination of Domestic Violence Act No 23 of 2004] art 10.
responsibility to government to prevent and stop domestic violence, but also involves the role of community. Therefore, a mutual obligation between the government and society is an important action to prevent domestic violence. Hence, it is needed to involve the community in monitoring and preventing the occurrence of domestic violence in the neighbourhood. The role of this community accommodated in Articles 14 and 15 of Elimination of Domestic Violence Act. Article 15 states that as a duty:

- Prevents the continuation of crime;
- Provides protection to victims;
- Provides relief emergency; and
- Assists in the application process for putting protection into place.  

This section is expected to diminish cultural obstacles regarding intervention by community members where the violence occurs within a family sphere and overturn the assumption that the violence is a ‘private’ family matter; instead, community and broader family involvement to prevent or end such violence is considered an obligation.

The Act has also regulated the mechanism of the domestic violence order to protect the victim within 24 hours. The police have an obligation to apply for the order before the court, then, investigate the reported complaint. The victim by herself or (by her authorisation) a family member or someone else can report the violence directly to police. For the children exposed to violence, such a report can be made by parents, guardian, or by the children themselves.

The court within a specific period (7 days) of the application having been accepted must issue the decree on the domestic violence order. The application for the order can be requested by the victim, the victim’s family, police, assistants (social worker, legal aid counsellor, religious personnel). In certain cases, consent from the

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376 Ibid arts 14, 15.
377 Ibid art 27.
victim is not needed when the report is requested by a party, other than the victim. Based on the request of the applicant, the court makes apprehended domestic violence orders to protect people from the violence.  

For the purpose of protecting the victim, police are entitled to arrest the perpetrator if the police are convinced that the perpetrator has committed a breach of the apprehended domestic violence order. Any breach of the apprehended domestic violence order, can be reported to the Court by the victim, police and assistants; and, the court, then, investigates the perpetrator. If the court is convinced that the perpetrator has breached the order, the court obliges the perpetrator to make an undertaking that she/he will comply with the undertaking. Any breach of such an undertaking will result in detention for 30 days.

The above sections have examined the duties of the legal apparatus in facing domestic violence cases, but, in fact, the legal apparatus does not abide by these duties in practice. For instance, judges often impose lenient penalties on the perpetrator based on reasons such as the incident being a family matter and the perpetrator being the breadwinner, so the judge considers that if the penalties remove the perpetrator from the family for a longer period, his family members will suffer all the more due to a lack of family income. In addition, the police often do not arrest the perpetrator because the violence is regarded as ‘a family matter’. Police are even often reluctant to respond to the victim’s report because of the victim’s own attitude. Victims do not realise that most of them often fall into a pattern of ‘report the violence and withdraw the report’; this pattern is recognised by the police and the police argue that all victims will have much the same pattern. As result, police believe that it is useless for them to respond to a report. These facts have shown that the obstacles in domestic violence issues are derived

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not only from the victims but also from community members, including police and judges as the legal apparatus.

3.5.3.2. The development of family law legislation in Indonesia

There was no adequate information or documentary evidence about women’s experience of violent husbands within families in Indonesia during the era of Dutch colonisation (1602-1942); however, it has been assumed that violence against women in the family sphere occurred in different forms.\(^{379}\) For example, whilst physical assault might not be well known at that time, child marriage and forced marriage, repudiation and polygamy certainly were recorded and represent examples of the prominent forms of what we would now term domestic violence or curtailment of human rights.\(^{380}\) At the time, marriage was a problem not only for Indonesian women but also European women but for different reasons.\(^{381}\) Marriage for Indonesian women was a problem due to the rampant practice of polygamy and repudiation. Although European women did not have such extreme experiences in this regard, they also could be repudiated and to be exposed to polygamy if they married with Indonesian (Muslim men). In addition, the extramarital relation of European soldiers and the cohabitation of European and Indonesian women were also issues of official debate as were the marital practices of the Indonesian community. Cohabitation could be entered into a situation that was a desire of both parties but where the relative power imbalance severely disadvantaged Indonesian women.

Under Dutch rule, the written European civil law was valid for European women namely the Netherlands Indies Civil Code ( Het Burgerlijk Wetboek voor Nederlands

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\(^{380}\) Locher-Scholten, above n 335; Saraswati, ‘Justice and the Identities of Women’, above n 37.

\(^{381}\) Locher-Scholten, above n 335; Saraswati, ‘Justice and the Identities of Women’, above n 37.
The provisions of the law ensured women’s rights within marriage through a monogamous marriage concept, minimum age of marriage, grounds for divorce, guardianship for both parents post-divorce; however, in some provisions a married woman should not have the full capacity to own property. For Indonesian indigenous people (who were mostly Muslim), there was no regulation to make Indonesian native women secure within marriage. A Muslim man had the right to issue a *talak* (divorce) without notice or regulation. Activists claimed that it made Muslim women’s position within marriage insecure and noted that it symbolised women’s inequality because divorce was very easy for men to obtain and factually impossible for women. In other words, women could be married, divorced or made to share a husband with other wives in a polygamous arrangement, all against their will. These problems have been striven against by the Indonesian women’s movement even today who call for reform of the Marriage Act so as to guarantee women’s or wives’ equality with the men or husbands.

Historically, the struggle for improving women position within marriage was begun by Raden Ajeng Kartini, an Indonesian *priyayi* daughter, in the 9th century. She fought for the education of women and the promotion of monogamy which became the

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382 This law was also valid for the foreign oriental chinese and foreign oriental other than Chinese. See Saraswati, ‘Justice and the Identities of Women’, above n 37.
383 According to Article 105 of the Netherlands Indies Civil Code, a married woman has no entitlement to her own property and parties’ property after marriage, but the husband as the head of the family was obliged to take care of it, unless their marriage was based upon a conditional transaction. As a consequence, a married woman could not enter transactions without their husbands’ written permission (see Article 108 of the Netherlands Indies Civil Code). See also Saraswati, ‘Justice and the Identities of Women’, above n 37.
385 Martyn, above n 337, 122.
386 The Movement focused on these matters because it was believed that Indonesian feminists had yet to take up the suffrage issues in the period 1908-1925. Many Indonesian women’s organisations that emerged during 1910s were generally apolitical and expressed more interest in social questions such as education, polygamy, and welfare than in political debates or the right to vote.
387 *Priyayi* here means of the nobility.
standard for Indonesian feminism’s struggle in the ensuing centuries. In the 1920s and 1930s, the problem of divorce remained and it was far more common than polygamy. The practice of divorce had affected more Indonesian Muslim women from diverse social backgrounds because divorce by a husband was relatively easy to obtain through repudiation (talak), the husband spoke the talak formula three times, and divorce occurred without any requirement for maintenance of the spouse. Then, in 1937, for the purpose of realising the ideal of a stable monogamous, marriage in tune with Western norms, the Dutch government proposed a law on voluntary monogamous marriage. However, it was rejected by all the Islamic associations, because it is contradictory to the practice of polygamy.

After the Republic of Indonesia was established, the Indonesian government efforts to regulate the marital practice, especially for Muslims, were begun by the issuing of a law on the registration of marriage, repudiation and retraction in 1946. However, the substantial content of the law did not regulate most marriages.

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388 Locher-Scholten, above n 335.
389 *Talak* is a verbal formula used by Muslim men to divorce their wives, and has to be stated three times for the divorce to final.
390 However, as a result of Indonesian custom (adat) and Islamic prescriptions, women have retained one means to seek divorce, the *ta’lik*, which seems to have been a prerogative for Islam in Indonesia only. This formula, to be said by the husband shortly after the wedding ceremony, states that the woman could seek a divorce if he mistreats her or does not fulfill certain conditions.
393 Before the passage of the Marriage Act 1974, the majority of Indonesian women had no protection against child or forced marriage, and faced the indignity of polygamy and the threat of arbitrary divorce. This was attributed to the lack of a codified marriage law for Muslims and adat communities, which made women’s legal position uncertain and provided no recourse if men abused their preferential access to polygamy and divorce. The pluralism of colonial law continued to govern marriage. Europeans, Eurasians and Chinese, as well as Indonesian Christians in Java, Minahasa and Ambon, remained subject to marriage laws enacted by the Dutch. The majority of Indonesian remained outside these civil laws, following adat and Islamic marriage practices. In the colonial era, the Dutch government divided the inhabitants of the Indies in the three population groups and each group had different marriage procedure. Marriage of Indonesians had to be registered by the penghulu, or mosque administrator, to become valid and had to be dissolved by divorce through the same civil servant. Europeans who wanted to marry had to apply at the civil registration office, while for divorce they had to turn to courts of law.
394 The pluralism of colonial law continued to govern marriage. Europeans, Eurasians and Chinese, as
Therefore, to improve the content of the law and to produce a new national marriage law, in 1950 the government established a commission to compose a Marriage Bill which was called the *Panitya Penyelidik Peraturan Hukum Perkawinan, Talak dan Rajuk* (abbreviated to NTR, that is *Nikah, Talak, Rajuk*: marriage, repudiation, retraction).\(^{395}\)

This commission was instructed to examine all the marriage regulation in force and to work out a project which was suitable to the spirit of the modern Independence era and could be applied to the various groups in order to establish greater unification in regard to Indonesian marriage.\(^{396}\) This was something which the colonial period had failed to produce. However, the Unification of Marriage Act was not the only reason for the effort because there were pressures derived from national and international arenas.\(^{397}\)

The important points included in this draft Act were: the consent of both parties, the introduction of minimum age for marriage (being 15 years of age for girls and 18 years of age for boys), equal rights for husband and wife in social and legal aspects, and restrictions on polygamous marriage. Further, the object of marriage was given as to establish a family that consists of the parents and the children. Thus, marriage was a

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\(^{396}\) Prior to the passing of the Marriage Law Act of 1974, marriage had been regulated through several laws: the custom law for general citizen, the Islamic Law for Muslim citizens, the Christian Indonesian Marriage Ordinance for Christian citizens in Java, Minahasa and Ambon, the Civil Law Code for Citizens of European and Chinese descent, and the Interfaith Marriage Regulation for inter-religious marriages.

\(^{397}\) The reasons in the national arena: the state has a concern to improve the status of women as the result of their participation in the revolution against the Dutch, the invalidity of several Articles of Indonesian Civil Code (*Kitab Undang-undang Hukum Perdata*) because they were based on discriminatory grounds, and the pressure from the Indonesian women’s movement that demanded legal reform; meanwhile international pressure occurred as a consequence of ratification of the United Nations *Convention on the Political Rights of Women in 1958*; see Butt, above n 391, 124.
holy bond, a noble alliance which must not be broken in any arbitrary way. However, this commission’s Bill also failed to pass; again, the objection raised against it by women was that it favoured polygamy, and repeated efforts and drafts were to be required before an Act would be passed.  

Women’s organisations had expressed opposition to polygamous marriage, and many had been bitterly disappointed with the failure of the government to pass a comprehensive Marriage Bill, instead passing a regulation (No 90) in 1952 which ‘accommodated, even perpetuated’ polygamy (This was compounded by President Soekarno taking a second wife in 1954). 

A proposed Bill of Marriage was introduced again in 1958, but it was not until 1973 that the government resubmitted a marriage bill which had been met by a variety of responses. Muslim religious opposition said that several provisions were incompatible with the tenets of Islam, particularly in regard to the issue of polygamy. Other areas included interfaith marriage, redefining the status of various relatives and adoption (which are governed differently in Islam to what was proposed in the legislation). Indeed the religious sector objected that the entire marriage/divorce area (in particular registration, which attracted the most objections, and so on) was not an arena in which the state should be interfering as it was covered by Islamic jurisprudence. Meanwhile, most Indonesian women’s organisations supported the original Bill because it was considered sufficient to protect the position of women.

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401 Marlita and Poerwandari, above n 400, 70.
403 Ibid.
within marriage. Finally, after a long struggle by women’s organisations, the Marriage Act 1974 (Undang-Undang Perkawinan) was finally passed. Under the provisions of this law, all marriages were required to include a religious ceremony and state approved registration (including registration by a Religious Court), and all divorces must be determined through a court’s decision (again maintaining the role for the Religious Court for Muslim couples). The new law also required the consent of the parties to marriage which targeted the elimination of forced marriage. The aim of marriage, according to this legislation, is to establish a happy and prosperous family; and under the Act polygamous marriage is regulated more strictly.

Another provision of the 1974 law concerned the minimum age for marriage, with the minimum age for marriage raised to 19 for men and 16 for women. It also changes the Civil Code and the Act on Christian Marriage in this respect. However, these ages have been criticised as too low, particularly for women, because at this age they are still in the first year of high school. In comparison with men, they have less education than men because men will have completed high school when they married. The amendment of this clause has been recommended. The passing of the Bill was thus only achieved by a great degree of compromise. It was a much amended version that was eventually passed, with much in the original Bill that had been deemed contradictory to the tenets of Islam either removed or made further subject to

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405 Undang-Undang Perkawinan Nomor 1 Tahun 1974 [Marriage Act No 1 of 1974] art 2 (1) (2).
409 The minimum age of marriage (from 18 for women and 21 for men) to be reduced to 16 for women and 19 for men. Article 7 sets the minimum age at 19 for the man and 16 for the woman. Exceptions may be granted by the Court at the request of the parents: Nani Soewondo, ‘The Indonesian Marriage Law and its Implementing Regulation’ (1977) 13 Archipel 283, 286–7.
410 Katz and Katz, above n 398, 661, 663. Circumstances included the occupation of the floor of the Indonesian parliament and repeated street demonstrations by largely Muslim youth: at 663 n 55 and associated text.
implementing regulations; much of the power remained in the hands of the Religious Court.\footnote{Ibid 664-5.}

One of the main objectives of the Indonesian Marriage Law was to reduce the frequency of polygamous marriages.\footnote{Saraswati, ‘Justice and the Identities of Women’, above n 37.} Under the Act, a man can generally have only one wife and a woman can only have one husband. Therefore, one can say that the Indonesian Marriage Act is monogamous in intent, although polygamous marriage is not prohibited.\footnote{Ibid.} The Marriage Act allows a husband to engage in a polygamous marriage based on certain circumstance in which the application is made before the Religious Court.\footnote{Ibid.} Further, the court can give permission to a husband to have more than one wife (polygamous marriage) if he can obtain consent from the relevant parties. Thus, a man must fulfil the requirements set out in law to get permission from the Religious Court.\footnote{Undang-Undang Perkawinan Nomor 1 Tahun 1974 [Marriage Act No 1 of 1974] arts 3(2), 4(1) and general elucidation, and 4 (c). A man may receive permission from a court to become a polygamist if and only if: his wife cannot carry out her conjugal duties, or his wife becomes crippled or terminally ill, or his wife cannot give him children. In addition, his present wife or wives must first give him permission, his ability to support all his wives and children must be certain as must be his ability to be fair toward all his wives and children.}

Some scholars believed that the Indonesian Marriage Act is a reflection of male and state domination of women. It can be argued that such a provision is unjust towards women since a husband can have more than one wife simply if his wife cannot bear him a child. The other reason many view the Marriage Act as reinforcing patriarchal and outdated values is that the Act has also defined a husband as a ‘head of the family’ (\textit{kepala keluarga}) and a wife as ‘housewife’.\footnote{Kate O’Shaughnessy, \textit{Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law} (Routledge, 2009) 31–2.} The concept of a husband as the ‘head of the family’ and a wife as the ‘mother of household’ is believed by many to be the
main cause of subordination women to men within marriage.\textsuperscript{417} For example, married women are never been considered as ‘main income earners’ unless they are certified as widows or if the husband is unable to work and such status is conferred only upon request.\textsuperscript{418} Therefore, a revision the Marriage Act 1974 remains the main concern of Indonesian women’s organisations.\textsuperscript{419}

Another provision of the 1974 law involves divorce. Under the Marriage Act 1974, men as well as women must submit a petition to the court for a divorce, and both sexes are required to give ‘sufficient reasons’.\textsuperscript{420} The implementing regulation of the law gives examples of sufficient reasons. These reasons are: adultery; compulsive drinking, drug taking, or gambling; desertion for two consecutive years; the spouse having a jail sentence of more than five years; endangerment of one spouse by the other; disease or handicap which prevent the carrying out of marital duties; and continuous arguments caused by irreconcilable differences.\textsuperscript{421} Then, if judges are convinced by the one or several grounds of divorce that are presented by the applicant, they will decide the divorce verdict. Based on the Marriage Act, both a wife and a husband can present as a litigant before the court.\textsuperscript{422}

With regard to the results of a divorce, the 1974 law contains provisions regarding spousal maintenance, custody and child support, and division of marital property. The law court can require the former husband to pay maintenance for the former wife to her. Although the provision in the Act does not specify any criteria for determining the duration or the amount of such payments, the court based on the act has

\textsuperscript{417} O’Shaugnessy above n 416; Saraswati, ‘Justice and the Identities of Women’, above n 37.
\textsuperscript{418} Katjasungkana, above n 16, 487; Saraswati, ‘Justice and the Identities of Women’, above n 37.
\textsuperscript{420} Saraswati, ‘Justice and the Identities of Women’, above n 37.
\textsuperscript{421} Peraturan Pemerintah tentang Pelaksanaan Undang-Undang Perkawinan Nomor 9 Tahun 1975 [Implementing Regulation on the Marriage Act 1974 Number 9 Year 1975] art 39.
\textsuperscript{422} Undang-Undang Perkawinan Nomor 1 Tahun 1974 [Marriage Act No 1 of 1974] art 40.
authority to impose the husbands to pay amount to support her.\textsuperscript{423} In accordance to the law, with regards to custody and child support, divorced parents are responsible for the protection and education of the children, and, if there is disagreement over custody, the court shall decide the issue. The financial aspect of this responsibility falls first on the father, but, if he impecunious, the court can order the mother to shoulder it.\textsuperscript{424} Regarding the division of marital property, under the 1974 law, wealth which is brought to the marriage or which is inherited or received as a gift constitutes individual wealth; meanwhile, wealth gained during the marriage constitutes joint wealth.\textsuperscript{425}

However, divorce has remained a contentious issue for many Indonesian women after the passage of the Marriage Law. Studies on Indonesian divorce trend before and after 1900s found that Indonesia had become a higher divorce rate country compare with the United States and the Southeast Asia countries. It was believed that several aspects of the marriage system had contributed to the high divorce rate in Indonesia.\textsuperscript{426} However, after the 1990s the divorce rate declined due to several factors, such as trend towards marriage at an older age, improvements in education, increasing economic self-sufficiency, and greater difficulty in satisfying the divorce requirements as a consequence of the introduction of the Marriage Law.\textsuperscript{427}

Legislation to provide greater protection in regard to divorce and polygamy affects women, particularly women who become civil servants and wives of civil

\textsuperscript{423} Ibid art 40.
\textsuperscript{424} Ibid art 41 (a)(b).
\textsuperscript{425} This rule makes the spouses equal and is somewhat disadvantageous to creditors because they must always get both spouses to commit themselves on matters involving joint property. On the other hand, it is possible that creditors could be deceived regarding whether an asset is joint or not.
\textsuperscript{426} Tim B Heaton, Mark Cammack and Larry Young, ‘Why Is the Divorce Rate Declining in Indonesia?’ (2001) 63(2) Journal of Marriage and Family 480, 481. The authors attribute the decline to several aspects including: few legal restrictions on men wishing to divorce under Islamic law, the kinship system and family structured accorded a relatively high social and economic standing to women, early arranged marriages that has a socio-economic impact. See also Saraswati, ‘Justice and the Identities of Women’, above n 37.
\textsuperscript{427} Ibid, 483. See also Saraswati, ‘Justice and the Identities of Women’, above n 37.
servants, has also been issued by the government. The legislation is called as Peraturan Pemerintah Pelaksanaan Undang-Undang Perkawinan 1974 Nomor 10 Tahun 1983 (PP 10/1983) [Implementing Regulation of Marriage Act 1974 No 10 of 1983] on Government Regulations on Permission for Marriage and Divorce for Civil Servants.428

Another piece of legislation issued by the Indonesian government is the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) through an Instruksi Presiden [Presidential Instruction] No1/1991.429 The Compilation of Islamic Law is the official legal document for judges in religious courts across Indonesia and an official legal guide in matters of marriage, inheritance and religious donation regulation.430 The purpose in issuing the compilation is to respond to ‘social unrest’ which was caused by the different verdicts by the Religious Court on similar cases.431 As with the Marriage Law, a number of Articles in the Compilation are believed by Indonesian Muslim feminists to marginalise women.432 The feminists argue that the Compilation confirms and perpetuates the inequality and inequity between men and women within marriage, such as in the matters of guardianship, the marriage witness, nusyuz (women’s disobedience in marriage), polygamy and a husband’s and wife’s rights and obligations.433

Although some regulations have been provided to make divorce more

428 Implementing Regulation No 10 Year 1983 provisions prohibit the practice of polygamy and it also placed heavy restrictions upon divorce by civil servants, who risk dismissal if they failed to comply with regulations. The civil servant becomes the model of good citizen in society as well as in the organisation of their lives as a family. Therefore, a civil servant is forbidden to live in a de facto relationship. If they want to file for divorce, they have to ask permission from their supervisors, who are legally bound to attempt to reconcile the couple. However, the civil servants’ Marriage Law also contained financial disincentives designed to discourage women from filing for divorce. See also Saraswati, ‘Justice and the Identities of Women’, above n 37.
429 Ibid.
430 Ibid.
431 Ibid.
432 Ibid.
complicated, data from various resources indicates that domestic violence as a cause of marriage dissolution was prevalent.\textsuperscript{434} For example, reported data from the State Ministry of Women’s Empowerment in 2001 revealed that 11.4 per cent of the total female population, or approximately 24 million women, said that they had experienced domestic violence which was ended by divorce.\textsuperscript{435} Data obtained from the first level of the Religious Court throughout Indonesia in 2007 indicated that there were 124,079 petitions for divorce filed by women as applicant (\textit{cerai gugat}) and 72,759 cases filed by men as applicant (\textit{cerai talak}).\textsuperscript{436} In 2008, a study on access to and equality in the State Court and Religious Court found that women who filed for divorce in State Court and Religious Court were more than twice as numerous as men.\textsuperscript{437} The study also found that in terms of civil cases filed, the divorce cases in State Court comprised 37 per cent and 97 per cent in the Religious Court.\textsuperscript{438}

Basically, the data indicated that the reasons for divorce of most cases could be categorised as domestic violence, but the courts ignored the element of domestic violence.\textsuperscript{439} In addition, data released by the National Commission against Violence

\textsuperscript{434} Saraswati, ‘Justice and the Identities of Women’, above n 37.
\textsuperscript{435} Ibid.
\textsuperscript{436} The major reason cited for divorce is one party abandoning or neglecting their duty (such as the responsibility of a husband to provide a living allowance for his wife, and the responsibility of a wife to look after the household affairs); the second reason was constant strife (for instance cited personal disharmony, third-party interference and political factors); and the third reason was a moral issue (polygamous husbands did not conform to the rules governing polygamy, moral crisis and excessive jealousy). The next reason was domestic violence and the another was the existence of a biological defect that made one party unable to fulfil his/her marital duties (for example, impotence); and lastly under-age marriage, or partner in a gaol. See also Saraswati, ‘Justice and the Identities of Women’, above n 37.
\textsuperscript{438} Jurisdiction of the State Court in private cases includes: divorce for non-Muslim, inheritance, land cases, and contracts. The jurisdiction of the State Court is regulated by the Law on Judicial Power Act No 48 of 2009. Meanwhile, the Religious Court’s jurisdiction is regulated by the Religious Court Act No 3 of 2006. Jurisdiction of religious court is valid for Muslim in private cases, namely divorce; inheritance, wills, grants; \textit{waqf} (religious endowments (including land, buildings) and \textit{sadaqah} (voluntary gifts); \textit{infaq} (voluntary gift/spending) and \textit{zakat} (obligatory charity); and Islamic economics.
\textsuperscript{439} For instance see Divorce Case in Semarang District (State) Court No 243/Pdt.G/2007/PN/Smg: The
against Women (Komnas Perempuan) in 2008, indicated that the number of domestic violence cases increased between 2002 and 2007, and the perpetrators mostly were men and the victims were women.\textsuperscript{440} The number of divorce cases which contained the element of domestic violence in evidence is very high in both courts but the matter is not mentioned in the actual judgment.\textsuperscript{441} For instance, in 2009, divorce cases in Religious Court numbered 233,371 and in the State Court were 528,5\textsuperscript{442} yet the judges never mention domestic violence in their judgments. Such circumstances have encouraged Komnas Perempuan to provide a reference book to guide judges since 2008 in making a verdict. It seems important for Komnas Perempuan to give gender awareness training to judges in the court, particularly judges in the Religious Court due to a number of reasons, the primary one being that most of judges in this institution had

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judge noted that the husband always hurt the wife by hitting, kicking and grabbing her. The husband had also indulged in irresponsible behaviour and left the house to live with another woman. In the judgment, the judge said that such a circumstance happened because both parties did not make enough effort to restructure their household well. See also Divorce case in Semarang Religious Court No 0739/Pdt.G/2010/PA.Smg. The judge here noted that the husband never gave the wife money to meet living costs, denied his child, and left the wife for no reason. These actions committed by the husband can be categorised as economic and psychological violence, but the judge decided the reason for divorce by deploying Article 19(f) of PP 975 and Article 116(f) of the Compilation of Islamic Law as inappropriate.

The Articles mentioned persistent conflict that makes the parties unable to be ever reconciled. See also other cases in Rika Saraswati, ‘Kasus-kasus dalam Hukum Perdata [Civil Law Cases] in Donny Danardono (ed), Perspektif Gender dalam Peradilan: Beberapa Kasus [Gender Perspectives in Court: Cases] (Convention Watch Universitas Indonesia [University of Indonesia] and NZAID, 2006) 41; Rika Saraswati, Perempuan dan Penyelesaian Kekerasan dalam Rumah Tangga [Women and the Solution of Domestic Violence] (Citra Aditya Bakti, 2\textsuperscript{nd} ed, 2006); See Nindy Deviani, Kekerasan dalam Rumah Tangga sebagai Alasan Gugatan Perceraian yang Diajukan oleh Istri sebagai Korban: Studi Kasus di Pengadilan Negeri Semarang [Domestic Violence as a Reason for Divorce claims Proposed by Wives as Victims: A Case Study in Semarang District/State Court]’ (Skripsi, Fakultas Hukum Universitas Katolik Soegijapranata, Semarang, [Undergraduate Thesis, Faculty of Law University of Catholic Soegijapranata] 2001) 63; Saraswati, ‘Justice and the Identities of Women’, above n 37.


\textsuperscript{441} Saraswati, ‘Justice and the Identities of Women’, above n 37.

\textsuperscript{442} Mahkamah Agung (Supreme Court) and AusAID, Memberi Keadilan Bagi Para Pencari Keadilan: Sebuah Laporan Penelitian tentang Akses dan Kesetaraan Pada Pengadilan Negeri dan Pengadilan Agama di Indonesia tahun 2007-2009 (Giving Justice for Justice Seekers: A Report of Access and Equality to State Court and Religious Court in Indonesia’ (Mahkamah Agung (Supreme Court), AusAID, 2009) 21; Saraswati, ‘Justice and the Identities of Women’, above n 37.
\end{quote}
no gender equality knowledge.\textsuperscript{443} Many divorce cases before them contained the element of domestic violence,\textsuperscript{444} and yet considerations of divorce verdicts related to domestic violence cases revealed that the term ‘domestic violence’ had never been mentioned. This is particularly problematic as the numbers of divorce cases in the Religious Court are higher than in State Court as the vast majority of the Indonesian population mostly is Muslim and would utilise the Religious Court.\textsuperscript{445}

Lack of awareness of domestic violence issues in family matters may occur due to the judges’ assumption that domestic violence is categorised as part of the sphere of ‘public law’ and not of the sphere of private law and so ‘domestic’ violence being ‘private’ should not be mentioned. Moreover, in some cases judges prefer to use the terms of ‘persistent dispute’ and ‘quarrel’ to domestic violence in their consideration, thus masking or disguising its occurrence as a private matter.\textsuperscript{446} These circumstances have encouraged a strong demand for the integration of the Elimination of Domestic Violence Act into judge’s decision making in the Religious Court (and State Court).\textsuperscript{447} In order to cope with these obstacles, some ideas have arisen as to how to overcome these considerations, such as the implementation of the Elimination of Domestic


\textsuperscript{444} Saraswati, \textit{Kasus-kasus dalam Hukum Perdata} [Civil Law Cases], above n 438, 41.

\textsuperscript{445} Ibid.

\textsuperscript{446} Saraswati, \textit{Perempuan dan Penyelesaian Kekerasan dalam Rumah Tangga} [Women and the Solution of Domestic Violence] above n 438; See Deviani, above n 438, 63. This term is one of six grounds of divorce in the (keeping) Marriage Act 1974, namely ‘between husband and wife persistent disputes and quarrels, and no hope of peace alive in the household’. The reason is often used by parties in filing for divorce and is also used by the judges as a consideration in deciding matters of divorce. By citing this reason, the background for the continuous quarrel does not need to be examined by the judges. The judges’ opinion on this affair is based on the Jurisprudence of Supreme Court Number 3180/Pdt/1985. The jurisprudence says that in relation to a persistent dispute and quarrel where a couple can not be reconciled the cause of the quarrel which has to be proven is not emphasised but the Court must look at the reality that a persistent dispute and quarrel is occurring so that the couple can not be reconciled. See also Saraswati, \textit{Justice and the Identities of Women}, above n 37.

\textsuperscript{447} Saraswati, \textit{Justice and the Identities of Women}, above n 37.
Violence Act and other relevant regulations as part of judges’ consideration in decisions, the publication of a circular letter or other rules by Supreme Court, and the amendment of the regulations relating to the religious courts’ jurisdiction to implement the Domestic Violence Act. These demands, in particular in regard to integrating the Domestic Violence Act 2004 into judges’ decision making in divorce cases, have a basic rationale from a Presidential Instruction which was released in 2000 on the ‘Mainstreaming of Gender in Development’. The Instruction was directed at heads of government departments and required them to include gender as a factor in all future programme planning and implementation.

3.5.3.2.1. The Marriage Act 1974 (RI) and the issue of family/domestic violence

This section will examine the concerns of the Marriage Act 1974 in regard to the issues of women’s rights dealing with violence within family. The Marriage Act 1974 is the main act for regulating marriage for persons of all religions in Indonesia. There are two steps that should be undertaken to make the marriage valid; first, the procedure is grounded in the rules of the person’s religion or their faith; in addition every marriage must be registered based on the prevailing legislation.

In principal, the mechanism for a valid marriage is the same for all citizens: first, the marriage must be undertaken on the basis of the citizen’s religion; and, then, it must be registered. However, the registration offices for Muslim and non-Muslim (Christian, Catholic, Buddhist, Hindu, Confucians, and so on) are different from each other due to each of religion having its own institution to celebrate the marriage. For instance, Muslim brides must take the procedure of marriage in Islam by going to mosque or inviting the registrar of marriage;


449 Undang-Undang Perkawinan Nomor 1 Tahun 1974 [Marriage Act No 1 of 1974] arts 1, 2.
and, Catholic or other Christian brides must take the procedure of marriage in Catholic/Christian way by going to the church and being married by clergy; and persons of other recognised religions (such as Buddhist, Hindu, and Confucian) must be married in accordance with their rites and traditions. Then, religious based marriage is registered to the state which has different office based on whether the faith is Muslim or non-Muslim. The marriage conducted in Islam is registered in the Office of Religious Affairs, while a marriage conducted in accordance with a Catholic, other Christian (Protestant), Buddhist, Hindu, or Confucian rite is registered at a civil registry office.

Further, the court to process such matters, including divorce, is also different for each group, namely the Religious Court for Muslims and State Court for non-Muslims. The regulations implemented in marriage and divorce cases are grounded not only in the Marriage Act 1974 but also the other legislation such as *Kompilasi Hukum Islam* (Islamic Law Compilation), *Peraturan Pemerintah Nomor 10 Tahun 1983* (Government Regulation Number 10 of 1983). The different procedures, mechanisms, institutions and legislations of marriage and divorce may probably have different effects on men and women in correlation to their access to justice. To what extent these pieces of legislation regulate a woman’s rights when they deal with the relations between a man and a woman as a husband and a wife, and the issue of violence within family will be examined below.

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450 It should be noted that Animism and Judaism are not among the religions recognised by Indonesia under Pancasila’s six recognised faiths: Islam, Catholicism, Protestantism (recognised groups only, and not Jehovah’s Witnesses, for example), had their last official restrictions lifted in 2001), Hinduism, Buddhism, and Confucianism (See Bureau of Democracy, Human Rights and Labour, ‘Indonesia’ in Bureau of Democracy, Human Rights and Labor, 2001 International Religious Freedom Report, US Department of State (2001) <http://www.state.gov/j/drl/rls/irf/2001/5686.htm>). ‘Other’ faiths are not recognised but neither are they generally forbidden, but they may encounter some difficulties, such as intermarriage restrictions. Hence many Animists identify as Hindus. There is no separate civil service. Interfaith marriage is prohibited—certificate of conversion or reversion must be completed (although such couples may apparently marry overseas).
3.5.3.2.2. The Women’s Rights in the Marriage Act 1974 (RI): The Implementing Regulations and the Compilation of Islamic Law

This section will elaborate upon women’s rights during marriage and when marriage breakdown has occurred as defined in the Marriage Act 1974 and its implementing regulations such as PP 9/75 and PP 10/83, and the Compilation of Islamic Law. It is important to examine these pieces of legislation since they have significant influence on ensuring women’s rights while the marriage exists and in the event of its breakdown.

It has been mentioned above that the Marriage Act is not a single piece of legislation applied to marriage and divorce issues because there are several implementing regulations dealing with these issues, which in turn affect women’s access to justice. The Marriage Act has a main implementing regulation namely Peraturan Pemerintah Nomor 9 Tahun 1975 (PP 9/75) [Government Regulation No 9 of 1975]. Further, there is another government regulation namely PP 10/83 dealing with the issue of marriage and divorce for civil servants. Both of these implementing regulations apply to everyone regardless of their religion. Meanwhile, the Compilation of Islamic Law issued by the government through Presidential Instruction Number 1 of 1991 applies to Indonesian Muslims. The Compilation, together with the Marriage Act 1974, are used

452 Ibid.
453 Ibid.
454 The decision to legalise the Compilation of Islamic Law through a presidential instruction rather than an Act was for a political reason. Nur Ahmad Fadil Lubis argued that the decision was undertaken bearing in mind the sensitivity of the matter and also from respect for the other religions. See Nur Ahmad Fadil Lubis, Islamic Justice in Transition: A Socio-Legal Study of the Agama Court Judges in Indonesia (Dissertation PhD, University of California, 1994) 103. See also Mark E. Cammack, and R Michael Fenner, ‘The Islamic Legal System in Indonesia’ (2012) 21(1) Pacific Rim Law & Policy Journal 13, 18–9; See Abdul Gani Abdullah, Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia [Introduction to the Compilation of Islamic Law in the Indonesian Legal System] (Gema Insani Pers, 1994); A. Hamid Attamimi, ‘Kedudukan Kompilasi Hukum Islam dalam Sistem Hukum Nasional: Suatu Tinjauan dari Sudut Teori Perundang-Undangan Indonesia [The Position of the Compilation of Islamic Law in in the National Legal System]’ in Amrullah Ahmad (eds), Dimensi Hukum Islam dalam Sistem Hukum Nasional: Mengenang 65 Tahun Prof. Dr. Bushara Ariffin, SH [Dimension of Islamic Law in the
in the legal consideration and decision of judges in the Religious Court. As has been mentioned above the passage of the Marriage Act 1974 and its implementing regulations was encouraged by the Indonesian women’s movement demanding protection for the rights of women.\footnote{The passage of implementing regulations such as PP 10/83 was an elite Indonesian women’s demand for the purpose of protecting the women’s rights as the wife of a civil servant. See O’Shaughnessy, above n 361, 34-5; Saraswati, ‘Justice and the Identities of Women’, above n 37.} Meanwhile, the main reason for the passage of the Compilation of Islamic Law was to provide guidance for judges in the Religious Court in their decision-making (the draft compilation was initiated by Department of Religion, Islamic religious leaders (ulama) and Islamic scholars).\footnote{The Religious Court existed before the passage of the Religious Act No 7 of 1989. The Act itself was issued to legalise the Court which had been mentioned in the Judicial Act No 14 of 1970; as legal consequence, it has similar jurisdiction to other courts, such as the State, Military and Administrative Courts. However, after the passage of the Religious Act, there was no guidance for judges for their decision making. The decisions were mostly had been made on the basis of isni’s book. Nevertheless, the matters remained because judges have had their own interpretation of the mazhab books which in turn affected the different decisions from one judge to another for the same type of cases (that is, cases where the same or similar facts occur). Therefore, there was recognition for the need of a Shari‘ah compilation or specific legislation to support the performance of judges in the Religious Court, which in turn had encouraged the government to establish a committee to formulate the substance of the compilation. To determine the substance of the compilation, the committee had undertaken comparative studies involving several Islamic countries, research on different Islamic legal mazhab and Indonesian jurisprudence, and had interviewed Islamic leaders in several Indonesian regions. Therefore, there is a belief that the compilation will be accepted by Indonesian Muslims because the content was formulated locally and adjusted to Indonesian culture. The compilation was approved by government in 1991 and legalised through Presidential Instruction No 1 of 1991. See Amiur Nuruddin and Azhari Akmal Tarigan, Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No 1/1974 sampai KHI [Islamic Civil Law in Indonesia: Critical Study on the Development of Islamic Law from Fiqh, the Marriage Act 1974 to the Compilation of Islamic Law](Kencana, 2004); Nurlaelawati, Euis Rahim, Abdurrahman, ‘The Training, Appointment, and Supervision of Islamic Judges in Indonesia’ (2012) 21(1) Pacific Rim Law & Policy Journal 43, 63–4.}

The definition of marriage will be presented in order to examine the correlation between the Marriage Act 1974 (Indonesia) and its implementing regulations in formulating women’s rights within the marriage relationship. The definition of marriage will be explored because it reflects the insight of the state into marriage (including the relationship between a husband and a wife within the marriage, and the way the state respects women). As the main Act on marriage and divorce issues, the Marriage Act 1974 defines marriage as ‘a physical and spiritual unity between a man and a woman as
a husband and a wife in order to establish a happy and everlasting family which is based on the one and only God’. From this definition have emerged three issues. First, the definition explains that a marriage is not only a physical relationship but also a spiritual and religious matter because it mentions the one and only God (that is, monotheism) as the basis of marriage. Furthermore, the marriage must be undertaken and registered based on the religion and/or the belief of the persons to be married. Second, the aim of marriage is to obtain the happiness; it is implied in the word of ‘happy’. It means that a marriage should create happiness for husband and wife and the family’s members which in turn gives the members of family opportunity to improve themselves not only within domestic but also public space. Therefore, any violence that creates suffering and unhappiness is not in accord with this definition. Third, the Marriage Act has insisted that a lasting marriage is the ideal marriage, and the aim to make divorce more difficult seems in accordance with this principle of marriage. Divorce must be undertaken before the Court and the party who files for divorce must give reasons to the judges that convince them of that person’s entitlement to divorce under the Act. Then, for the purpose of establishing an ideal marriage, the Act has regulated the rights of a woman as a wife and of a man as a husband. The rights for a woman and a man in the Marriage Act can be identified in two categories: during the marriage and after the marriage breakdown. These matters are regulated not only in the Marriage Act 1974 but also in the implementing regulations and the Compilation of Islamic Law.

3.5.3.2.2.1. Women’s rights in the marriage relationship

During the marriage, a husband and a wife have responsibilities and rights which are regulated in the Marriage Act 1974, Implementing Regulation No 10 of 1983 (PP


458 Ibid art 2 (1).

459 Ibid art 2(1).
Most of the responsibilities and rights have similarities, and only a few differences exist. Table 3.1 below shows where the responsibilities and the rights are regulated within those pieces of legislation.

**Table 3.1. Responsibilities and Rights of a Husband and a Wife in a Marriage Relationship**

<table>
<thead>
<tr>
<th>No</th>
<th>Responsibilities and Rights</th>
<th>Marriage Act1974</th>
<th>PP 10/83</th>
<th>Compilation of Islamic Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A husband and a wife have a responsibility to maintain family harmony as the family is the basis of the structure of community.</td>
<td>Art 30</td>
<td>Consideration, point (b)</td>
<td>Art 77(1)</td>
</tr>
<tr>
<td>2</td>
<td>A husband and a wife are equal to each other both in the household or social life.</td>
<td>Art 31(1)</td>
<td>Adjust to the Marriage Act</td>
<td>Art 79(2)</td>
</tr>
<tr>
<td>3</td>
<td>A husband and a wife have the right to conduct legal actions.</td>
<td>Art 31(2)</td>
<td>Adjust to the Marriage Act</td>
<td>Art 79(3)</td>
</tr>
<tr>
<td>4</td>
<td>A husband and a wife must respect, love, be faithful to, and support each other.</td>
<td>Art 33</td>
<td>Adjust to the Marriage Act</td>
<td>Art 77(2)</td>
</tr>
<tr>
<td>5</td>
<td>A husband is a head of household and has responsibilities to protect his wife and fulfil the needs of family members based on his capability.</td>
<td>Arts 31(3), 34(1)</td>
<td>Adjust to the Marriage Act</td>
<td>Arts 79(1), 80, 81 and 83</td>
</tr>
<tr>
<td>6</td>
<td>A wife is a housewife and her responsibility is to organise household affairs as well as possible.</td>
<td>Arts 31(3), 34(2)</td>
<td>Adjust to the Marriage Act</td>
<td>Arts 79(1), 83 and 84</td>
</tr>
<tr>
<td>7</td>
<td>If a husband or a wife neglects his/her responsibilities, it can be used as the reason to sue the party who has abandoned his/her responsibility.</td>
<td>Art 34(3)</td>
<td>Adjust to the Marriage Act</td>
<td>Art 77(5)</td>
</tr>
<tr>
<td>8</td>
<td>A husband and a wife have rights to any property which is obtained during the marriage. Meanwhile, the property gained before marriage will be under controlled by each party.</td>
<td>Art 35</td>
<td>Adjust to the Marriage Act</td>
<td>Arts 85-97</td>
</tr>
</tbody>
</table>

Table 3.1 has shown that the Marriage Act, PP 10/83 and the Compilation of Islamic Law regulate the obligation of a husband and a wife to keep family harmony as the basis of the community in general. This obligation has been strongly emphasised,

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particularly in regard to civil servants because as civil servants they become an example to others. Therefore, they must have good behaviour because their individual and familial life is controlled not only by the society but also by the institution or state.\(^{461}\)

Although on one hand this legislation insists upon equality in the relationship between a husband and a wife in the household, social life and legal matters, on the other hand, the gender role remains between a husband and wife with the role of husband characterised as a ‘head household’ and a wife as a ‘housewife’ or homemaker.\(^{462}\) Some Islamic scholars have argued that the contradiction and inconsistency was caused by the gender bias in interpreting the religion tenets,\(^{463}\) in this regard there are relevant verses of the Qur’ān, that are cited for this understanding, particularly on the role of male as the guardian or protector of women or and head of the household (leader).\(^{464}\) As a consequence, such interpretation appears in the Marriage Act 1974 (Articles 31 and 34). However, the Compilation of Islamic Law details the responsibilities of a husband as the head of household in even more detail than the


\(^{462}\) Saraswati, ‘Justice and the Identities of Women’, above n 37.

\(^{463}\) The same ‘equal but different’ approach to marriage roles is espoused by conservative Christians; and similarly the ideal appears attractive but in practice may degenerate to one as ‘ruler’ and the other ‘ruled’ as the ‘headship’ partner interprets it in their favour, while ‘obedience’ can degenerate into despotism. Despite advice from religious authorities who urge caution and gentle persuasion and so on, a male may expect no opposition and his word to be absolutely and unquestioningly obeyed as if this is the desire of the Divinity.

\(^{464}\) Islamic scholars argued that the gender bias occurred because of the interpretation of the word qawwam in Qur’ān an-Nisa’34 (Qur’ān 4.34). Qawwam has been interpreted as ‘leader, protector, responsible person, guardian to female’. The reasons for this are given as because God has given more bravery, intelligence, strength, capability and similarly ‘strong’ characteristics to men rather than to women. Women on the other hand are said to have valuable characteristics that suit their mothering and parenting role and are lacking in the male. They are therefore, in such a view, to be equally valued, but for different reasons. The human rights are equivalent (equal in value) rather than ‘equal’ (equal in quantity, identical in nature). The male has also no reproductive and physical barriers such as menstruation, pregnancy and giving birth. This makes men stronger, more capable and more easily able to look for and find a living and doing a number of activities (compared to women). Further, it was observed that historically it was males not females that became the prophets, leaders, witnesses, guardians and who played other important positions in communities. See Didin Syafruddin, ‘Argumen Supremasi Atas Perempuan: Penafsiran Klasik QS. An-Nisa’34’ [Argumentation on Women’s Supremacy: Classical Interpretation on Al Qur’an An-Nisa’:34] (Ulimul Qur’an, 1994) vol. V(5-6) 4-5; see also Syafiq Hasyim, Hal-hal yang Tak Terpikirkan tentang Isu-isu Keperempuanan dalam Islam [The Issues about Women in Islam that Never Been Considered] (Mizan, 2001).
Marriage Act 1974. It has set a husband as a simultaneously ‘guide’, ‘protector’, ‘teacher’ and ‘provider’ to his wife and through this role he has responsibilities for his wife/wives, such as giving her/them a living (including sufficient for daily life, health and household affair), *kiswah* (clothes), and providing place for living. These responsibilities will disappear, however, if his wife or wives are guilty of *nusyuz* (disobedience). Meanwhile, the main obligation of a woman as a wife is to serve her husband devotedly, manage and organise the household affairs as well as possible. If she does not fulfil her main obligation, she is considered to be guilty of *nusyuz*; as a consequence, she will lose her rights as wife. Disobedience can be committed by a husband or a wife. This conduct is basically a form of domestic violence; unfortunately, in the legislation there are no sanctions for a husband who commits *nusyuz*. The only way to treat a disobedient husband is for the wife to file a lawsuit against her husband. Nevertheless, filing a lawsuit against a husband is not an easy legal action for a wife who usually faces financial difficulties because of her financial dependency on her husband. The dependency is the result of the gender role which has been legalised and justified not only through the religion but also in law.

Then, there is the other major women’s rights issue in term of marriage: property issues. According to the legislation mentioned (the Marriage Act and the Compilation of Islamic Law), a husband and a wife have the right to manage their own property which is obtained before the marriage; and, then, for the property which is obtained after and during the marriage, this becomes common property. The Marriage Act 1974 and the Compilation of Islamic Law have set equal rights for a husband and a wife in regard to access to property. Nevertheless, the access of a woman as a wife to the property when the marriage breaks down seems likely not to be easy, and sometimes unfair for women
because of the gender bias within these regulations. These matters will be examined in the next section below.

3.5.3.2.2.2. The Marriage breakdown and women’s rights

The Marriage Act and its implementing regulation, and the Compilation of Islamic Law have also regulated the women’s rights during the divorce proceedings and after marriage breakdown. The legislation determines divorce as one of the ways to terminate a marriage, and to undertake a divorce there are requirements and procedures that must be fulfilled. The legislation has also regulated women’s rights during the court hearing and after the marriage breakdown.

Table 3.2. Legislation regarding Women’s Rights during the Marriage and when the Marriage Breaks Down

<table>
<thead>
<tr>
<th>No</th>
<th>Substance</th>
<th>Marriage Act 1974 and PP 9/75</th>
<th>PP 10/83</th>
<th>Compilation of Islamic Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Divorce Procedure</td>
<td>Arts 39(1) (2), 40 of the Marriage Act 1974 and Arts 14-18 of PP 9/75</td>
<td>Art 3(^{468})</td>
<td>Arts 114, 115(^{469})</td>
</tr>
<tr>
<td>2</td>
<td>Grounds for divorce</td>
<td>Art 39 (2) in the explanation of the Marriage Act 1974, Art 19 of PP 9/75</td>
<td>Art 7 (and adjust to Art 19 of PP 9/75)(^{470})</td>
<td>Art 116(^{471})</td>
</tr>
</tbody>
</table>

\(^{466}\) Ibid.  
\(^{467}\) Articles 39(1)(2) and 40 of the Marriage Act 1974 state that divorce will be undertaken before the court after the court cannot reconcile both parties, and divorce must be undertaken based on the convincing reason that the marriage relationship between a husband and a wife cannot be sustained. Articles 14-18 of PP 9/75 are about the procedures undertaken by litigants, such as submitting the application to divorce with the reasons to court in the region where she/he lives. Then, in 13 days the court will summon the litigant and his/her partner to confirm the application and to reconcile them; only if there is no reconciliation the court will process the divorce application. See Saraswati, ‘Justice and the Identities of Women’, above n 37.  
\(^{468}\) Article 3 of PP 10/83 regulates the obligation of the civil servant to ask permission to her/his superior in a formal letter dealing with his/her intent to file divorce. See Saraswati, ‘Justice and the Identities of Women’, above n 37.  
\(^{469}\) Articles 114 and 115 of the Compilation of Islamic Law state that a marriage breakdown can be undertaken on the basis of talak (the litigant is husband) and gugatan cerai/divorce (the litigant is wife). The application of divorce either talak or gugat cerai must be delivered to religious court. See Saraswati, ‘Justice and the Identities of Women’, above n 37.  
\(^{470}\) Article 39 (2) in the explanation of the Marriage Act 1974 and article 19 PP 9/75 are about the grounds of divorce. There are six grounds of divorce: a) One of the parties commits adultery or is an alcoholic, is addicted to drugs, a gambler and has other vices which are difficult to cure; b) One party leaves the other party for two consecutive years without the consent of other party and without legal justification or because of other things beyond their ability; c) One party gets a five-year jail sentence or punishment after the marriage has been entered into; d) Either party is cruel or mistreats the other, endangering the life of the other party; e) One party has a disability or disease that renders them unable fulfil their...
obligations as a husband/or wife; f) Between husband and wife there are persistent disputes and quarrels, and no hope of peace alive in the household. See Saraswati, ‘Justice and the Identities of Women’, above n 37.

471 Article 7 of PP 10/83 states that the superior will give permission to civil servant to file divorce only if the grounds of divorce were given by the civil servant in accordance with the grounds of divorce in the Marriage Act 1974 and its implementing regulations (PP 9/75). Saraswati, ‘Justice and the Identities of Women’ above n 37.

472 Article 116 of the Compilation of Islamic Law is about the grounds of divorce which consists of eight: a) One of the parties commits adultery or is an alcoholic, is addicted to drugs, a gambler and has other vices which are difficult to cure; b) One party leaves the other party for two consecutive years without the consent of other party and without legal justification or because of other things beyond their ability; c) One party gets a five-year jail sentence or punishment after the marriage has been entered into; d) Either party is cruel or mistreats the other, endangering the life of the other party; e) One party has disability or disease that renders them unable to fulfill their obligations as a husband/or wife; f) Between husband and wife there are persistent disputes and quarrels, and no hope of peace alive in the household; g) violating a taklik-talak (premarital agreement); h) becoming an apostate which causes instability in the household. See Saraswati, ‘Justice and the Identities of Women’, above n 37.

473 Articles 24(1) and (2) of PP 9/75 states that permission for living separately given by court to a husband and a wife is made for the interest of both parties and the children. Then, the obligation of the husband to fulfill the wife’s and the children’s needs must be fulfilled.

474 Article 136(1) and (2) of the Compilation of Islamic Law states that the religious court considers the safety of the parties and permits the parties (a husband and a wife) to live separately during the court hearing. Further, the parties can ask religious court to make order for a husband to provide a living for his wife and children, and to determine certain action in order to keep the property belonging to husband or wife.

475 Article 41(c) of the Marriage Act 1974 states that the court can make an order to the ex-husband to provide a living to his ex-wife (maintenance). However, this Article does not explore further about the kind of the living; as result, it affects to the women’s rights when they sue their husband for maintenance. Then, the other points (a) and (b) correlate with the responsibilities of the parties to the children which remain despite the divorce. See Saraswati, ‘Justice and the Identities of Women’, above n 37.

476 Article 8 of PP 10/83 consists of eight paragraphs. Paragraph (1) states that if the male civil servant insists the divorce, he must give half of his earning for the living of his ex-wife and children; (2) the earning distribution mentioned in paragraph (1) is one-third for the male civil servant, one-third for his ex-wife and one-third for children; (3) if there is no child within the marriage, the male civil servant must give a half part of his earning to his ex-wife; (4) if divorce is initiated by the wife of the male civil servant, she is not entitled to the earnings of her ex-husband; (5) the rule in paragraph (4) does not apply to a wife of the male civil servant who files divorce from her husband because her husband committed polygamy; (6) if the ex-wife of the male civil servant remarries, she will lose her rights to maintenance. See Saraswati, ‘Justice and the Identities of Women’, above n 37.

477 The Compilation of Islamic Law provides two ways of divorce: talak and gugat cerai. Talak is divorce initiated by a husband; meanwhile, gugat cerai is a divorce with a wife as the litigant. These kinds of divorce will affect the women’s rights. Article 149 states that talak [an Arabic word meaning ‘to release’ or ‘to divorce’, to untie the matrimonial knot by articulating a word denoting divorce] bring consequence for the ex-husband to: (a) provide [a gift or present] either money or goods to his ex-wife only if his ex-wife does not qobla al dukul [does not have sexual intercourse with the husband]; provide living, maskan [a place for living] and kiswah [clothes] to his ex-wife during iddah [period of time that must be passed through before she remarries] only if his ex-wife has been subject to talak ba‘in talak which had been undertaken by the husband three times or mustaz [disobedient] and she is not pregnant; pay the indebted mahr [a gift given by the bride-groom to bride]; provide the living for his children who are aged under 20 years. Article 156 states that a marriage breakdown because of divorce initiated by a wife [gugat cerai] brings the consequence: (a) children under 12 [mumayyiz] are entitled to have mother’s guardianship, unless the mother is dead and she will then be replaced by: women from the upper-line of the mother, father, women from the upper-line of the father; (b) children who have already completed their mumayyiz
Divorce proceedings before a court must be framed in a way that utilises the Articles in the legislation that regulate divorce.\(^4\)\(^8\)\(^2\) It means that both women and men who want to file for divorce against their partner must bring the matter to court by citing as grounds the reasons which are available in the relevant legislation.\(^4\)\(^8\)\(^3\) The legislators created the procedure and the grounds for divorce for the purpose of making divorce more difficult than previously.\(^4\)\(^8\)\(^4\) The aim is not only to apply the marriage principle (to maintain a lasting marriage), but also to protect women’s rights.\(^4\)\(^8\)\(^5\) Therefore, the

<table>
<thead>
<tr>
<th></th>
<th>Women’s right to property after divorce</th>
<th>Art 37 of the Marriage Act 1974(^4)(^7)(^8)</th>
<th>Adjust to the Marriage Act 1974</th>
<th>Art 157(^2)(^9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Women’s obligations after divorce</td>
<td>Arts 11, 41 of the Marriage Act 1974, Art 39 of PP 9/75(^4)(^8)(^0)</td>
<td>Adjust to the Marriage Act 1974</td>
<td>Art 153(^4)(^8)(^1)</td>
</tr>
</tbody>
</table>

\(^4\)\(^7\) Art 37 of the Marriage Act 1974 states that in the event of a marriage breakdown, the sharing of common property will be regulated in accordance with the law. This article does not mention any particular law because the parties can choose any law that is in accordance with their beliefs or religion to divide the common property.

\(^4\)\(^8\)\(^2\) Article 157 of the Compilation of Islamic Law regulates the way that common property is divided, with half going to each divorced party; however, sharing property 50:50 can be ignored if the parties have determined the property distribution through a prenuptial agreement.

\(^4\)\(^8\)\(^3\) Article 11 of the Marriage Act regulates a period of time (\(\text{iddah}\)) for a divorced woman before she remarries. The period of time is regulated in Article 39 (1) of PP 9/75: (a) if the marriage breakdown is caused by the death of the husband, the period of time is 130 days; (b) if the marriage breakdown is caused by divorce, the period of time is 90 days; (c) if the woman is pregnant, the period of time is decided as until the birth of the baby. Article 39(2) states that there is no period of time for a widow after the marriage breakdown if she and her ex-husband have never had sexual intercourse. Then, Article 41 of the Marriage Act states the responsibility of a mother after the marriage breakdown is to look after and educate the children, including paying the expenses if the father cannot afford it.

\(^4\)\(^8\)\(^4\) Article 153(1) of the Compilation of Islamic Law states that period of time before a woman remarries after the marriage breakdown (\(\text{iddah}\)) is available. Article 153 (2) of the Compilation of Islamic Law states (a) the period of time for a woman after the death of her husband is 130 days; (b) if the marriage breakdown is caused by divorce, the period of time is 90 days; (c) if the marriage breakdown and the woman is pregnant, the period of time is determined as until the birth of the baby; (d) if the marriage breakdown is caused by the death of the husband and the wife is pregnant, the period of time is determined as until the birth of the baby. See Saraswati, ‘Justice and the Identities of Women’, above n 37.

\(^4\)\(^8\)\(^5\) It has been mentioned in the previous section that it has been easier for males, particularly Muslim males, divorce their wives. In Islam simply by saying an acceptable form of the talak, divorce could be
litigant must give as reasons for his/her lawsuit one or more grounds for divorce supplied in the Marriage Act or the Compilation of Islamic Law to convince judges who handle the case that the divorce should be granted.\textsuperscript{486}

If the divorce application is approved, the court hearing will be started. During the court hearing, the safety of the parties becomes the concern of the legislator/state. There are rules within the Marriage Act to protect the safety of the parties, including the children, by allowing the parties to live separately. Although the Marriage Act does not mention explicitly about violence, these Articles show the state’s concern in this matter. This Article is similar to the injunction in the \textit{Family Act 1975} (Cth) in Australia; unfortunately, there is no further explanation for the implementation to litigants who need this service. This issue, in fact, is very important in the protection of women who become victims of domestic violence when their husbands stalk or otherwise intimidates them. For the purpose of ensuring the woman’s rights as wife, a husband as a head of household must fulfil his responsibility in providing a living for his wife and children during the court hearing.

The Marriage Act 1974 insisted that a husband and a wife are equal and have the same right before the law and in the community. They have obligations and rights to work, help, and assist to each other.\textsuperscript{487} Nevertheless, there are two contrary Articles to the ‘equality between a husband and a wife’ since the Act regulates the gender role of a husband as a ‘head of household’ and a wife as a ‘housewife’.\textsuperscript{488} The legislation regulates the responsibilities of the husband and wife based on their gender roles; and, if one of the parties fails to fulfil such obligations the other can bring the matter to

\begin{footnotes}
\item[487] Ibid.
\item[488] Ibid.
\end{footnotes}
Failing to fulfil one’s obligations can be categorised as neglect of the other party since the legislation had determined the responsibilities to each party. ‘Neglect’ is not only mentioned as the grounds for divorce in the Marriage Act, but also in the taklik-talak. Therefore, if a husband violates the taklik-talak, his wife can use it as the ground for divorce. Although domestic violence is not stated clearly in the legislation, a number of grounds for divorce regulated in the Marriage Act 1974 and the Compilation of Islamic Law that could be categorised as such behaviour, that is, where one party is cruel or mistreats the other, and endangers the life of the other party. Other grounds are a spouse’s adultery, alcoholism, drug addiction, gambling or other vices which are difficult to cure. Wilful neglect, too, where a husband refuses to supply a living to his wife (due to gambling or other vices, rather than an ability to gain employment) is a form of domestic violence. The remaining ground is one very close to ‘irreconcilable differences’, that is, that ‘between husband and wife there are persistent disputes and quarrels, and no hope of peace alive in the household’. This can often operate as a ‘polite’ substitute for an admission of violence. These grounds are in addition to the situation where a husband has violated a taklik-talak (premarital agreement). As can be seen above the grounds for divorce in the Marriage Act 1974 and the Compilation of Islamic Law include cruelty, mistreatment and life endangerment which can be classified as domestic violence similar to those contained in the Elimination of Domestic Violence Act 2004; however, these kinds of violence are never been mentioned by judges (in both the Religious Court and State Court) in their

489 Ibid.
490 Ibid.
491 Ibid.
492 Ibid.
493 Ibid.
494 Ibid.
495 Ibid.
496 Ibid.
These laws also regulate the provision of living (maintenance) for a divorced wife through such Articles as Article 41 of the Marriage Act 1974, Articles 8 (1)-(6) of PP 10/83, and Articles 149, 152 and 156 of the Compilation of Islamic Law. The Marriage Act 1974 determines the responsibilities of the husband in relation to giving his ex-wife a living without explaining the kind or extent of the maintenance in detail. In PP 10/83, the male civil servant has a responsibility to supply his ex-wife with maintenance; however, the woman’s right to obtain the living from her ex-husband will diminish if she initiates the divorce. Her rights remain if she can convince judges that her initiating the divorce is caused by a polygamous marriage conducted by her husband (whether it is undertaken in the absence of her consent or with her consent forced).

A similar issue is also regulated by PP 10/1983. If the husband is a civil servant who has filed for divorce, he must give two-thirds of his earnings to his ex-wife and children (or half to wife if there were no children). This obligation must be fulfilled until his ex-wife remarries. However, female servants or others whose spouses are not civil servants and who request divorce forfeit any right to maintenance, with an exception made only if the request was due to polygamy. PP 10/1983, at a certain level, has ensured women, whose husbands work as public servant, a greater financial security after divorce than women whose husbands are not civil servants.

Then, in the Compilation of Islamic Law, a woman will obtain maintenance if her husband initiates the divorce. On the other hand, if she initiates the divorce, she will not obtain her rights as a divorced woman. Articles 149 and 152 of the Compilation of

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497 Ibid.
498 Ibid.
499 Ibid.
500 Ibid.
501 Ibid.
502 Ibid.
Islamic Law govern this.\footnote{503} Article 149 states in detail and clearly the responsibilities of the husband who utters *talak*/divorces his wife. When one turns to Article 152 with its title that mentions about ‘the consequence of *perceraiyan*/divorce’, there is no statement about the responsibility of the husband to ex-wife; it only mentions the responsibility of the father to the children.\footnote{504} These pieces of legislation, particularly PP 10/83 and the Compilation of Islamic Law, have shown that they do not really take into account women’s rights when women become active litigants.\footnote{505} Instead the women lose certain rights that they would otherwise have as divorcees if they are the active litigants; they only retain their rights if their husbands are the active litigants.\footnote{506} Therefore, it can be said that there is inconsistency from the legislators in their application of the ideal of equality between a man and a woman within the marriage relationship, both when it is an existing marriage and in its dissolution.\footnote{507} The legislators continue to demand that women to be the passive person and obey men in the marriage; and in relation to its dissolution, it is the man who is favoured as the person to decide the marriage is to end, a similarly equal right is not accorded to the woman by denying her continued support if she initiates divorce proceedings.\footnote{508}

Then, these pieces of legislation have also regulated the effects of marital breakdown on the children and in regard to any property. Even though the marriage breaks down, the legislation insists that the separated parents have the responsibility to educate, look after and maintain any property until the children have the ability to look after themselves (in term of reaching such maturity, the Marriage Act 1974 determines the children’s age at 18 years old, and the Compilation of the Islamic Law determines

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\begin{tabular}{l}
503 Ibid. \\
504 Ibid. \\
505 Ibid. \\
506 Ibid. \\
507 Ibid. \\
508 Ibid. \\
\end{tabular}
the children’s age at 20 years old). This legislation has also given the authority to court to revoke the guardianship if one party (whether husband or wife) behaves irresponsibility and neglects the children. In addition, this legislation has also determined the sharing property after the marriage breakdown, particularly in relation to common property (that is, property acquired after marriage); property acquired before marriage remains the property of the relevant party.

Based on the descriptions above, legislation on the issue of marriage in Indonesia remains diverse although the Marriage Act 1974 aimed to replace the different legislation that was introduced during colonialism with a single unitary Act.\textsuperscript{509} The Religious Court with its reference to Islamic Law has its own legislation and system to adjudicate divorce issues and women’s rights. On the other side, the State Court will adjudicate non-Muslim divorce cases based on the Marriage Act 1974 and its implementing regulation.\textsuperscript{510} To what extent these courts that have differences in terms of their systems and legislation that benefit to women victims of domestic violence will be examined in Chapter 5.

\textsuperscript{509} Ibid.
\textsuperscript{510} Ibid.
CHAPTER 4

THE CAUSE OF DOMESTIC VIOLENCE AND INDONESIAN WOMEN’S EXPERIENCES: AN ECOLOGICAL APPROACH

4.1. Introduction

This chapter describes the research findings on the causes of domestic violence as experienced by Indonesian women. The ecological approach is chosen for the research project because that approach was initially established to conceptualise the aetiology of gender-based violence in a manner that explores the multiple factors involved, challenging the feminist theory that violence can be attributed solely to gender and the patriarchal system.¹ Its use means that the causes of domestic violence cannot be analysed only from one side in a single dimensional approach, but rather bears in mind that the violence is a multifaceted phenomenon which is grounded in a complex interplay among personal, situational and sociocultural layers;² and these layers are basically forms of space where each has its own power and law. By deploying this approach, the assumption is that the interconnected layers consist of three correlated elements: law, power and space, the existence of which correlations is expected to be demonstrated. The detection of the correlation between law, power and space within these layers is important in regard to support for - the researcher’s account in this study that the ecological approach has only mentioned power between interconnected layers as the cause of domestic violence but ignores other elements: law and space which, in fact, exist in the interconnected layers. Therefore, by connecting those elements this study investigates and emphasises the extent to which the relations between law, power

² Ibid.
and space as a single entity has caused or caused to emerge domestic violence. These relations, in turn, affect (or are affected by) women’s access to resources and to justice (as will be discussed in Chapter 5).

Access to resources is affected by the relations between law, power and space. For example, women who know resources exist may be intimidated by violence not to seek aid due to a number of factors, such as their own internalised belief that they brought it upon themselves or that violence is acceptable which may deter them from seeking aid, as may their distrust of or disillusionment with the authorities involved, perhaps due to own previous experience or knowledge of the experience of others will deter access. A lack of knowledge of the availability of resources naturally prevents any access to existing resource (legal, social and so on) and thus to justice. Any and all of the above inhibit women’s access to justice and perpetuate violence. Women’s access to resources and justice will be discussed in Chapter 5.

By applying an ecological perspective to Indonesian women who have experienced domestic violence, this study provides descriptions of the causes of domestic violence which will be examined on the basis on their experience, starting from the individuals’ personal history and extending to other relevant influential and interconnected systems in which the individuals are enmeshed: the microsystem, the exosystem, the macrosystem, and the mesosystem.\(^3\)

The microsystem is the primary context in which the abuse takes places. It usually relates to intimate partner violence within a family or acquaintance relationship.

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\(^3\) This theory was originally applied by Belsky in a study on child abuse and neglect. Belsky’s framework consists of four levels of analysis: individual, microsystems, exosystem and macrosystem. Other theorists emphasise the importance of an additional layer, the mesosystem, which represents the interplay between various aspects of a person’s social environment. See Jay Belsky, ‘Child Maltreatment: An Ecological Integration’ (1980) 35(4) American Psychologist 320, 324-8; see Heise, above n 1, 263-4; Jeffrey L Edleson and Richard M Tolman, *Intervention for Men who Batter: An Ecological Approach* (Sage Publication, 1992); Parveen Azam Ali and Paul B Naylor, ‘Intimate Partner Violence: A Narrative Review of The Feminist, Social and Ecological Explanations for Its Causation’ (2013) 18(6) *Aggression and Violent Behaviour* 611, 613.
This context can be male dominance in the family, male control of wealth in the family, marital conflict, the use or abuse of alcohol, personal responses to and impact of instances of abuse in the home. The exosystem, as the next and ‘outward facing’ layer, represents the institutions and social structures, both formal and informal, such as the world of work, neighbourhood, social networks, and identity groups, and their relationships that may be affected by unemployment or low socioeconomic status, as well as by isolation of the family and the family. Then, the next layer is the macrosystem. The macrosystems represents the general views and attitudes that permeate the culture’s values and beliefs at large. Male supremacy, for instance, is the embodiment of patriarchy which would influence the organisation of power in community and the distribution of decision making authority in intimate relationships. Therefore, the sorts of behaviours within this layer comprise a sense of male entitlement in regards to women, masculinity linked to aggression and dominance, rigid gender roles, and an acceptance of interpersonal violence and physical chastisement.

Finally, the mesosystem represents the interplay between various aspects of a person’s social environment. It comprises the linkages between an individual’s family and other social institutions and networks, such as between the abuser, family, friends, police, court and social services. Given this chapter’s focus on the causes of domestic violence and this layer’s discussion of the interplay between various aspects of a person’s social environment (rather than the causes of domestic violence, the study on the mesosystems will be presented in Chapter 5 in association with responses and coping strategies taken by the women victims.

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4 Heise, above n 1, 265.
5 Ibid.
6 Ibid.
7 Ibid.
Figure 4.1. The Relations between Law, Power and Space within an Integrated Ecological Model of Domestic Violence

a) An Ecological Framework (Source: adapted from Lori L. Heise)\(^8\)

b) The Relationship between Law, Power and Space

c) The Relationship between Law, Power and Space within an Integrated Ecological Framework

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\(^8\) Ibid, 264–5. An ecological approach developed by Heise has been deployed to examine the causes of domestic violence. It consists of layers representing the individual (personal history), microsystem, exosystem, and macrosystem.
4.2. Personal History

The personal history is an individual experience (such as witnessing violence when a child, being abused, absence of father, the woman’s individual choice and marriage arrangements) where the experience can contribute to violence in a family when he/she marries. Given that each of the respondents and her husband has their own personal history, the manifestation of these personal histories is probably different from one respondent to another, and these factors, consequently, will impact differently on the marital relationship and its domestic violence. Though not all Indonesian women respondents in the study stated explicitly that their husband/ex-husband has had experience of such circumstances within their original family and that it affected the relationship between them, most of them admitted that personal history has a significant influence on the emergence and the perpetuation of domestic violence.

4.2.1. Witnessing or being exposed to violence

Some studies on personal history and domestic violence have shown that personal history may have no effect directly on the violence, but other studies observed a significant relationship between men witnessing violence against their mother and later abuse of their own partners. The experience of witnessing or being exposed to violence when a child is sometimes indicated by men as the reason in particular for them to not repeat the same behaviour toward their partners. According to a number of respondents, the perpetrators had said that they would not commit violence toward their

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9 Ibid.
10 In the study, this factor became the ground for respondents to stay with their abusive partners.
wife as their father did, but, in fact, the violence still occurred. There were two respondents (V and Y) whose husbands had had experience of witnessing violence when they were children. Though these respondents did not have any experience of physical violence, the perpetrator’s behaviour by throwing objects and abusing them verbally had a psychological impact on the respondents. V said that her ex-husband had even told her about the violence against his mother:

His family was like that. His father also liked beating his mother, he might have seen it, but he said, “I am not like that. I do not want to beat [you] that way.” His mother died due to cancer, getting stress continuously. It was bad when his mother was beaten to black and blue. His grandmother, the mother of his mother, told me…

The second example of the abusive husband with a prior history of witnessing or being exposed to violence was Y’s husband. There, a history of violence toward his mother prompted an overt concern on his part for not manifesting the same attitude or behaviours toward women. However, in fact, Y’s husband remains violent to his wife; and, in turn, the violence impacts on Y who has no experience of domestic violence within her family of origin.

He also once said that his mother had forever been abused. His father had had an affair with another woman because he was affected by the woman’s black magic for years…When his mother was being abused, he [Y’s husband] promised that he did not want her [Y] to be treated so…

At the beginning of the violence Y did not realise that her spouse’s treatment of her was domestic violence due to her belief that the incidents (such as arguing because of conflict, leaving house and wife after arguing, and going clubbing and drinking) might be very common within a family. However, she then realised that it was wrong and unfair for her to be treated like that. Her growing consciousness that such behaviour was wrong, has, in turn, caused her to flee the marital home (see Chapter 5).

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13 Interview with V, a food entrepreneur (Semarang, 13 January 2012).
14 Interview with Y, a small entrepreneur (Semarang, 22 January 2012).
4.2.2. Absence of father

Empirical research suggests that boys who grow up without a consistent and available father or father figure tend to exhibit more violent behaviour in adulthood.\textsuperscript{15} Though this account is controversial to date, the absence of parents is believed to have a significant impact on the psychological development of children, as much perhaps as those who witness or are exposed domestic violence.\textsuperscript{16}

In this study, there are two respondents (ID and EL) whose husbands have experienced the absence of father or parents. The absence of parents during childhood, particularly the mother in one case, had affected one spouse. ID described her husband personality as ‘childish’. His parents had been very busy persons (as both were employed in senior positions in schools), and they had not had enough time for their son. As a consequence, her husband still needs more affection, particularly from his mother, even as an adult.

He was [the product] of his upbringing; growing up in a family with his parents [both] principals. He came from a broken family, not broken in a sense of divorce but one with no affection. He had, unlike his sisters, experienced ‘no hand of God’ [that is, discipline]\textsuperscript{17}

The other respondent is EL whose husband was the child of a polygamous marriage; his mother was a fourth wife. The absence of the father deprived him of an education and affection, but also contributed to his notorious behaviour, such as gambling, drinking, cheating, stealing and using drugs. The husband’s behaviour had led to acts of domestic violence towards EL and their children; it affected the marital


\textsuperscript{16} Silverstein and Auerbach, above n 15, 12.

\textsuperscript{17} The expression ‘hand of God’ also means that sense of assurance that God is guiding your footsteps.
relationship and the relationship between the father and children. The experience of EL’s husband is evidence of the disadvantages of polygamous marriage. Polygamous marriage is a type of the marriage that exists and remains controversial in Indonesia because, although it is legalised by the government through the Marriage Act 1974, it has been identified by Indonesian feminists as a form of domestic violence since, in practice, it usually results in priority being given to one of the wives and the others being neglected, including the children from those marriages. Regardless of the various justifications given for polygamous marriage, researchers insist that polygamous marriages are disadvantageous to women and children in all aspects.  

4.2.3. Being abused prior to marriage

Abuse during childhood is often a parameter investigated by researchers, and its correlation with subsequent perpetration of violence appears to be less strong than that of witnessing violence; however, intergenerational transmission of such behaviour is

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18 Polygamy appears to be one of the most salient issues that illustrate the distinctive features of a fragmented and at times divided Indonesian feminism. While secular feminists regarded polygamy as a form of violence against women, Muslim feminists pointed toward misogynist readings of verses of the Qur’an and of the hadith. The justification of polygamy on the grounds of textual evidence in the Qur’an, is generally based on the third verse of the fourth chapter An-Nisa: ‘...marry of the women, who seem good to you, two or three of four’. Feminists argue that the verse does not only mention that polygamy is allowed (as emphasised by supporters of the practice), the verse also states clear limitations and explicitly explains that there are strict conditions appended. They point out the necessity not to dismiss the verses that accompany that section of the An-Nisa verse 4:3, namely, ‘[...] and if you fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women of your choice, two or three, or four but if you fear that you shall not be able to deal justly (with them), then only one of (the captives and the slaves) that your right hands possess. That is nearer to prevent you from doing injustice” (Qur’an 4:3 emphasis added), or from verse 129, ‘You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision) so as to leave the other hanging (i.e. neither divorced nor married). And if you do justice, and do all that is right and fear Allah by keeping away from all that is wrong, then Allah is Ever Oft-Forgiving, Most Merciful.” (Qur’an 4:129). Note: all quotations from the Qur’an, are taken from The Nobel Quran. For the full text, see <www.dar-us-salam.com/TheNobleQuran/surah4.html>. See also LBH-APIK, Poligami Sebagai Bentuk Kekerasan yang Paling Nyata atas Harkat dan Martabat Perempuan sebagai Manusia di Dalam Hukum, Sosial Budaya dan Agama Cuplikan Siaran Pers LBH-APIK tanggal 24 Juli 2003[Polygamy as the Real Violence to Women upon [Their] Dignity as Human Beings in Legal, Socio-Cultural and Religious Context’ Pers Release LBH-APIK of 24 July 2003](2003) 31 (Jurnal Perempuan, 2003) 117; Sonja van Wichelen, ‘Polygamy Talk and the Politics of Feminism: Contestations over Masculinity in a New Muslim Indonesia’ (2009) 11 Journal of International Women’s Studies 175, 179–80.

19 Heise, above n 1, 265.
widely acknowledged (both in terms of perpetrator and victim). In this study, neither respondents nor their husbands identified themselves as having experienced abuse during childhood, but the experience of being abused prior to marriage is present among respondents. Abuse prior to marriage was experienced by V, ID and NA; the abusive behaviour prior to marriage continued during the marital relationship. Thus violent behaviour or other abuse prior to marriage can be seen as a strong indicator of subsequent behaviour. The following descriptions are from respondents who recognised the abuse prior to marriage (yet still married the perpetrator).

V had recognised her boyfriend’s abusive behaviour when they were dating. She thought that his abusive behaviour would stop after the marriage; however, in fact, her husband continued being verbally abusive of her. The abusive behaviour affected her emotions, her daughter’s behaviour and her sense of well-being as well.

I had known his character since [the time when we were] dating...Hard character person. ...[When we] first met in Surabaya, in a relationship he liked slamming things. Actually the drawback with him had been clear, but I was stubborn. Since the beginning of [our] marriage, 2003, he has said rude words like cursing ‘damn it’. Firstly I was hurt but I was increasingly immune...21

The other respondent, ID, had also recognised the behaviour of her boyfriend and future husband as childish and an indication of a sense of insecurity.

In fact, he was insecure. He was an enigma type; the propensity was to be angry. I thought [that] after graduation. He did not like that because I had already passed and he had not. But in fact he was the perpetrator of domestic violence so that’s it...22


21 Interview with V, a food entrepreneur (Semarang, Indonesia, 22 January 2012).

22 Interview with ID, a property entrepreneur (Semarang, Indonesia, 10 January 2012).
NA experienced non-physical abused prior to marriage. Though NA did not explicitly describe the abusive behaviours experienced prior to marriage, based on her story it could be concluded that her boyfriend/future husband had abused her psychologically and economically. For instance, her boyfriend had asked her to abort a pregnancy but failed to supply her with the necessary medication. Instead, he just repeatedly asked her for the money [which she supplied] but the medicine was never forthcoming. Eventually when she was seven months pregnant, they married.

The marriage was on 12 December 2009, [when I was] already pregnant…[some] 7 months. It was long time to wait because my boyfriend wanted me to abort the pregnancy; but, my boyfriend never told me directly, he always telephoned and never met me. He said he would buy the drugs but he always asked me for the money. I kept giving money but the drug was not provided. Sometimes it was 100 thousand up to 500 thousands rupiah until [the pregnancy] was…two months. Yes I was restless as I had nobody to share [the pregnancy] with. He also did not want to see [me]. I continued pushing him to seven months…

Her boyfriend’s behaviour continued until the official marriage had been conducted. Even before the marriage, her boyfriend was reluctant attend voluntarily, but, at last, he came, after NA’s father had insisted, but the absence of her husband continued after the marriage and delivery of the baby. This is abuse by neglect and lack of economic and emotional support.

4.2.4. Woman’s individual choice to marry and arranged marriage

The decision of respondents to marry their husbands based on their own choices became a reason to keep silent when violence occurred. They were afraid that they would be blamed for making their own choices to marry someone other than their parents’ preference. They kept silent because they feared having no support from the family, particularly from their parents, sisters or brothers despite the violence. The

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23 Interview with NA, a dressmaker (Semarang, Indonesia, 11 January 2012).
experiences of ID has shown that the choice to marry someone she loved did not guarantee her a happy marriage; and, the fact that she had selected her spouse resulted in a dilemma sometimes when violence occurred.

I used to beaten until swollen. My father was actually suspicious but since the family has the principle that “You've been taken by a man so that it was your family’s affairs, you and your husband ['s]”. Well, then where should I run? Moreover, my parents have [that] principle. After all, it’s also my own choice. The point is I have to be consistent [live in accordance] with my choice. Many men approached me why I chose this man and like him. I must be consistent. I am ashamed, there used to be a friend [who] said: ‘ID was too selective; just see how her husband would be like’. Well, I was ashamed about this incident [the domestic violence]…

In bearing in mind that her husband was her own choice, she preferred to keep silent rather than to disclose the violence. She argued that it was a consequence of her choices and was her responsibility. The silence inevitably had enabled the violence to be perpetuated during her twenty years of marriage. A similar circumstance was the experience of V.

I never told my parents, because it [was] also my own choice to marry him, so I was afraid if my parents will also think less [of me]. Lastly because he did a lot of torturing I became rebellious because I could not endure [it]. So I proposed a divorce, though my parents disagreed…

The other respondent, SS, described her experience about her decision to marry a man who was not preferred by her family nor was she by his.

My husband used to like me. I was in Jakarta, I was not allowed to meet/marry him because I was about to be matched to someone else by my family. I understood and I was locked in a room not to go out…However, on Tuesday he came and said, “I love you”, and I was given something to eat. On Wednesday we got married in [the] KUA [Board of Religious Affairs]. He had nothing, my family funded everything. So my parents emphasised that there [could be] no regrets [about marrying him] because I [had been] about to be matched to someone there and… not allowed to marry people here (Semarang)…

The decision to marry someone based on their personal choice had made the respondents feel that the violence that subsequently occurred was therefore a

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25 Interview with ID, a property entrepreneur (Semarang, Indonesia, 10 January 2012).
26 Interview with V, an entrepreneur (Semarang, Indonesia, 13 January 2012).
27 Interview with SS, a private employee (Semarang, Indonesia, 21 December 2011).
consequence of the marriage and their own responsibility. They have argued that while
the violence had posed a risk to them, they stood ‘on their own two feet’ in facing the
violence without seeking any help from family, particularly from their parents. However,
because they finally could not stand the violence, they then disclosed the violence to the
parents, family members or friends in order to get advice on how to stop the violence.
This will be discussed further in the next chapter.

On the other hand, arranged marriage is also a source of violence for women,
and also a nightmare because respondents did not like the man that they had married.
However, obedience to parents, particularly to their father as the decision maker within
family, and the values of patriarchy had compelled the respondents to accept the
arrangement. Arranged marriage was the experienced by FA and MI.

I actually did not like him, but I was matched, well there was nothing I could do. My
marriage age was 20 years long…I never let it be known outside that there were family
problems because I did not know how, could not talk, just scared of my husband. Why
tell [of] family problems…28

I used to be matched. Here is the story, my sister used to study in an Islamic boarding
school, and she was going out with a boy. My parents considered it is taboo to have
such a relationship so they went ahead and got married, afraid that things had happened
[that] were not desirable. [This occurred] while, I was still in junior high school; I, in
Javanese term, was ‘bypassed’, actually I didn’t mind. After my sister got married, I
was paired with someone [by my parents who were] afraid that I would be an old maid,
because I had not married.29

Although an arranged marriage does not cause the violence in and of itself, such
violence may be caused by a mismatch, by the overall character (attitudes, values and so
on) of the husband. The experiences of FA and MI have shown that having an arranged
married may cause (due to such a mismatch or the husband’s attitudes) and perpetuate
domestic violence within a marriage. This phenomenon is similar to the experience of

28 Interview with FA, a housewife (Semarang, Indonesia, 11 January 2012).
29 Interview with MI, a house wife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27
December 2011).
the other respondents who married their husband based on their own choice. In an arranged marriage the parents arranging a daughter’s marriage may fail to recognise the true nature of their prospective son-in-law or be blinded by other advantages presented by the match, while a woman ‘following her heart’ and making her own choice may also fail to recognise his true nature or even when violence is present may mistakenly believe it will not continue after marriage. A failure in a ‘rebellious’ choice within a traditional society may leave a women feeling ‘trapped’ by her own decision making, just as much as when parents’ poor choice may leave a woman feeling ‘trapped’ (indeed sometimes more so). Thus, neither arranged marriage nor personal choice of marriage partner can completely guard women against domestic violence.\(^{30}\)

**4.3. The Microsystems**

The personal history (see Heise’s Ecological Framework in Figure 4.1.a above) cannot be separated straight away from the other layer, the microsystem. The microsystem represents the immediate context in which abuse takes place—frequently the family or other intimate or acquaintance relationship,\(^ {31}\) and a dimension of that relationship, for instance male dominance in the family, male control of wealth in the family, alcohol use,\(^ {32}\) experience of violence, personal responses to and impact of abuse, financial issues, and coping strategies.\(^ {33}\) The respondents experienced a range of immediate contexts simultaneously and these also affected (and/or were affected by) the different types of violence in the relationship.

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\(^{30}\) The nature of the husband may be revealed only after the marriage; parents or the woman may be equally deceived or unwilling to terminate a potentially violent match (no matter who makes it), for a variety of reasons. In English the idea of accepting such a situation (particularly if the choice of husband is the women’s choice) is sometimes expressed as ‘You made your bed, now lie in it’.

\(^{31}\) Heise, above n 1.

\(^{32}\) Ibid.

4.3.1. Male domination in the family

Male domination is the most common phenomenon experienced by respondents in the study. It may support the observation found elsewhere that men raised in patriarchal families that encourage traditional gender roles are more likely to become violent adults than are men raised in more egalitarian families.\(^{34}\) In this study, male domination is not merely expressed through the husband’s control over his wife’s body, the property, the finances, but also in the women’s mindset. Moreover, the husband’s superiority to his wife is expressed not only through physical violence but also her humiliation, being ignored and restriction of movement (for example, to see family and friends), or of access to education and so on.

The experience of ML, for instance, has shown that her husband—whether he had a job or not—had always controlled her psychologically by insisting on the patriarchal norms and traditional gender roles.\(^{35}\) ML’s husband expected that she must behave as ‘a good wife’ by playing a largely domestic role, such as staying at home and looking after him. In the patriarchal view, what had ML done by working and studying was a form of disrespectful behaviour toward him as a husband. The doctrine of male domination was continually supported by the husband’s family; and, that, in turn became the trigger for


psychological and physical violence which impacted not only on the marital relationship between ML and her husband, but also on the child who witnessed the violence.

I had two jobs and also attended school. So because he’s living at home he does not like that I was often out of the house. I said, “While you’re not working, you are in the house”. That’s what I mean. I first worked because if I worked the money was to pay [for] the house as well…At that time he had not hit [me], he still cursed: “You damn woman…useless…One day I came home from work. At dawn I was woken up by him and he asked me, “Why did you get home at this time of night?” I said, “You knew that I worked, I also bring money back home” He said, “You must cheat”. I did not know why he was like crazy and hitting me…°6

Other respondents have different experience. For example, although L’s husband did not abuse her physically, she felt that her husband’s desire to dominate was revealed when he did not allow her to work or study, and put all the responsibility for household affairs on her shoulders.

He never [over] played his hand because he already knew the laws. I was given a living [allowance], but I did not dare to ask too often. In addition I was also not allowed to go to school; the reason was “later” after [youngest] child [was] aged 8 years… But I think it is okay if, after the age of 8 years [was reached] he held [to] his promise [but what] if [he] does not? If he change [s] his mind again, I waste my time, do I…?

He also never helped. For example, when being asked for help he liked to argue. … There was a toilet tissue on the floor he did not want to [pick up]… I offered him a drink or food [but] he did not directly answer; he wanted to be asked many times. Finally, I said, “So grab [it] by yourself [if] that’s all you want. If he was furious, he would say rudely, “You bitch, Indonesian women are cheaters…”°°7

The violence experienced by L can be categorised as social violence because her husband restricted her access to study and friends or other community members by emphasising her gender role as a mother to look after the infant. She also suffered psychological abuse as his manipulative behaviours regarding insisting that she repeatedly make requests of him to reinforce and illustrate his dominant role in the family structure.

°6 Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).
°°7 Interview with L, a student (Campsie, NSW, Australia, 11 October 2011).
Restriction as the form of male domination of a wife was also experienced (in addition to physical violence) by ID during her twenty year marriage.

During 20 years of marriage, I should not be in touch with friends. With even my mother, he was just angry. …He was always perplexed with a propensity to being angry. Later if he made problems, I was as the sane one who would automatically answer if I was blamed. He did not like it. The domestic violence had started in the past; the physical violence was like hitting. 38

Restriction to activities and being ignored were also experienced by Y. Y’s husband was busy with himself and ignored the needs of his wife and only daughter. Though Y was to all appearances well provided for, living in a four level house with his parents, she felt lonely because her husband did not care for her and their daughter.

Every time I had problems I could not settle them with husband, because he did not care for it. We had never talked; he was selfish and thought that he was the most correct. He’s always transporting his family around. So every time we had had an argument, his family were all away from it, while I was there and did not have any relatives.

Away from family, so I felt isolated, oppressed, beaten. So I was never able to resolve the problem well…I stay at a four level house at my husband’s parents, I was only with maid, my husband came home at dawn, even rarely came home for days. I felt [as if I were] in the ‘golden cage’: [I] was not allowed to do anything, I also couldn’t share with my mother because he did not give me opportunities [to do so]…39

Doing something without a husband’s permission is regarded by some as an insult, as an attack on the husbands’ self-esteem. It is also a form of male domination, however, when it is a reasonable for the decision to be taken by the wife. This was MI’s experience, when she decided to consume contraceptive pills without her husband’s permission.

After the birth of second child, I dared to start using family planning so as not to get [births] too close. At that time I had the contraceptive pills; [when he] became aware [of this]… [they were] thrown away by my husband. He was angry and I was hit. He gave me the reason “Those who have a husband and pregnant just feel okay; you have a husband but you did not want to get pregnant.” I answered that I wanted to be pregnant, but I already had children, but he didn’t want to know. He was selfish…40

38 Interview with ID, a property entrepreneur (Semarang, Indonesia, 3 January 2011).
39 Interview with Y, a small entrepreneur (Semarang, Indonesia, 22 January 2012).
40 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, 27 December 2011).
In this case, the husband has insisted that the wife’s body belongs essentially to him, so the husband had authority to decide whether the family planning is needed or not, despite the needs, the health and the requests or opinion of his wife. MI insisted that her decision to use contraceptive pills was due to her experience of having two children in a short time.

4.3.2. Male control of wealth

A number of previous studies have found that wife beating is most frequent in many different parts of the world and many different societies, and it can be used by the husband to control the wealth of wife. Male control of wealth in this study is embodied in several actions such as control the finance, the wife’s movements and activities. Several respondents have had experience of male control of wealth, namely SR, L, MR, Y and PJ.

SR, for example, had argued that in her first marriage she had been wealthy; however, the husband controlled the finances and that made her unable do anything, even help her parents. The husband’s control of wealth affected the autonomy of SR in managing her own money. Moreover, the disrespectful behaviour of her husband to her parents and herself had disappointed her.

I want to say that we were rich, but not very rich; it was said poor but not poor. Simple, enough: there was a car in the house, but he did not want to responsible for the family at all. He did not want to help my parents when they needed it, particularly when the economic downturn, business was not smooth due to the economic difficulties. My mom and dad wanted to borrow money from him, but he treated my parents improperly. After my mother passed away, he forced me to sell the house.42


42 Interview with SR, a student (Sydney, NSW, Australia, 1 November 2011).
Another respondent, Y, experienced how her husband controlled the finances, controlled her movements and activities, and prevented her contacting her mother. Moreover, the husband had treated her disrespectfully, and kept the whole of his earnings just for himself. If Y asked for money for her needs and for those of their children, the husband rejected her requests, arguing that he as the bread winner had the authority to decide whether to give the money or not.

I [recognised] that he worked very hard, but he did not fulfil the needs of children. I have asked him to give more money but the answer hurt me [he said] “I was looking for the money, so I was entitled to spend the money”. That’s what hurt me, he was more willing to have the money for clubbing, go to the spa, buy cigarettes, have a party with his friends-he paid it anyway, but for food for one day for child and wife, which was just 20 thousands rupiah, he was angry.43

The violence committed by Y’s husband is economic and psychological. He controlled the wealth by compelling his wife to give her living to him as well as use what he earned for himself only; and the money or the property was consumed by drink, gambling and other notorious activities. The efforts made asking for money for the sake of the child sometimes had no result.

MR’s experience demonstrates her unsuccessful initiative to take the money and keep it for family needs. Her struggle to have the money often was ended by violence committed by her husband.

I asked for the money [from the bridal make up and weeding decorations consumer] to be paid to me because my husband would use the money [if given to him] to drink, gamble and have sex with prostitutes. ..44

MR’s husband had tried to control MR by taking the money to which she was entitled as she had earned it and by being psychologically and physically violent towards her, but she resisted these behaviours and she had reported the violence to

43 Interview with Y, a small entrepreneur (Semarang, Indonesia, 22 January 2012).
44 Interview with MR, a bridal decorator (Semarang, Indonesia, 24 December 2011).
police. Nevertheless, her resistance and the report to police did not make her husband aware of his mistake.

Male dominance of wealth can also be used to secure a desired outcome for the husband. PJ’s husband did not give her a living for almost two years in order to get her to agree to give permission required for a polygamous marriage.

Once caught [had done a ‘nikah siri’/ religious marriage with another woman], he asked for my signature to polygamy. He told me “If you did not want to be divorced, so polygamy.” But I did not want [it]. After two years without an income from him, I sued. I was not given a living for two years in the hope I would want polygamy.45

The experience of these respondents demonstrated that whether the wife had her own earnings or not, the husband remained dominant by controlling the wealth of wife through various ways and for several different purposes as well. In this study, the men’s control of wife’s wealth had adversely affected the wellbeing of the wife and children.

4.3.3. Marital conflict

Researchers have examined whether marital conflict (disharmony) is frequently the trigger for or escalates to domestic violence. Conflict occurs more often in an asymmetrical power structure rather than in an egalitarian relationship; and it often escalates from a verbal disagreement, disagreement over the division of labour, frequent drinking/gambling, and/or the wife’s having a higher educational attainment than the husband, or accusations of infidelity.46 In this study, a number of these phenomena were experienced by different respondents.

45 Interview with PJ, a housewife (Semarang, Indonesia, 27 December 2011).
ML had had the experienced of disputes between her and her husband that stemmed from her husband’s response to a situation where she had her job and studied, while he stayed at home.

I have two jobs and also attend school. [H]e had been living in home and he did not like it. I was often out of the house, so he [thought he] was not [being] considered and continued to be angry. I said, “While you're not working you are in house… [W]hat I mean [is] I worked first because [when]… I worked the money was to pay for the household expenses as well…”. He said “Well, you do not take care of me. You are busy [with] yourself and I as your husband have been ignored…”

It appears that disagreement upon division labour or gender role between a husband and a wife had become the source of marital conflict and the trigger for domestic violence. From the viewpoint of ML’s husband, the ‘good wife’ was measured by her attention to taking care of her husband and staying at home. Conversely, having no job had made him as an inadequate husband in his own eyes. This circumstance is caused by a cultural value that a man is the head of the household.

Another form of conflict is continuous disputes over who is the more appropriate person to receive the earnings where couples work together. This occurred between MR and her husband, and the disputes had triggered physical violence against MR.

Doing violence when he had a little problem, for example like this. If he decorated I also decorated, and when was… someone wanted to pay, I said [for them] to leave the money to me and not [to] give [it] to my husband. However, sometimes the person talked directly to my husband; and, we finally had a quarrel after coming home…

It was a reasonable reason to ask that the payment should be delivered to MR; however, her husband could not accept the reason she gave, and he showed his rejection by abusing her instead. Though she could tolerate male dominance within a family as

47 Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).
48 Interview with MR, a bridal decorator (Semarang, Indonesia, 24 December 2011).
long as it is used to respect and help to each other, she has insisted that what her husband did to her was a form of violence.

Marital conflict was also demonstrated by verbal agreement and incapacity to manage anger. Such a circumstance was experienced by V.

My husband is selfish he wanted to win himself. If he did not like something and he could not express it, he would compensate it on me. Sometimes he was angry towards his daughter. So he did all he wanted; even for only a trivial issue.49

Respondent ID had the same experience of having verbal disagreement, but in ID’s case it led to physical violence.

[T]he existing problems need[ed] to be resolved with communication. In any case, communication is important. However, if there was a conflict again, my answer [whether it] was rude and polite remained trigger [of] his temper and he just slapped...50

Verbal disagreement was also experienced by GI. She had argued that her marital relationship had been compromised by verbal disputes and accusations of her infidelity.

I got married in 1980. It used to be a quarrel only; he started to hit me in 2006. He hit me because he accused me of cheating but I said no… Only the influence of alcohol made him increasingly irritable, and then he hit me…51

Marital conflict was sometimes triggered by what to others appear trivial matters, such as feeling jealous of your children. The childish and inferior character of her husband had been recognised by EL, then a pharmacist. His character had been marked by notorious behaviour, such as drinking, gambling, and using prostitutes52 that had made their marital relationship even worse. EL has recognised that her higher education and self-confidence may have made her husband feel inferior to her; and, this feeling had been expressed by him committing physical, psychological, and economic violence

49 Interview with V, a food entrepreneur (Semarang, Indonesia, 12 January 2011).
50 Interview with ID, a property entrepreneur (Semarang, Indonesia, 3 January 2012).
51 Interview with GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011).
52 Officially termed ‘commercial sex workers’.
towards EL and in his neglect of El and their children. Moreover, she believed that a lack attention from his father who had been in polygamous marriage may have shaped and had an adverse impact on the development of his character.53

The presence of another woman outside the marriage (that is a mistress rather than a second or subsequent wife) can also be a source of marital conflict; and it can become a trigger for domestic violence. Having another woman may make the husband ignore his wife and children. In some cases, the husband may even leave his wife without divorcing her, and then, the family may be left for long time while he is in an illegal marriage to his mistress. The absence of the breadwinner creates financial difficulties for the wife and any children she may have in her care.

Another instance is that of PJ, a housewife. She was betrayed by her husband after a twenty year-long marriage. Her husband had another woman and children from this relationship.

I asked him but he did not admit to liking another person. I asked why he often did not come home. He said that he had a meeting out of town. Then I asked, “What was it actually there? I [know] you must be in love, like grooming, like perfumes”. It was me who usually liked to give fragrance. He’s a bit different. “I was…loved by you. You also … fell in love with me, I could feel it”. He said, “No one”, then, I found out, with whom...54

The presence of another woman has also triggered the violence against MR, a housewife. The husband not only physically abused her and the children, but he also neglected them for years. Being without a living for years had forced her to find any jobs in order to look after her children. The husband’s behaviour in having many relationships with other women and his violence had even affected the mental development of her children as well.

53 Interview with EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012).
54 Interview with PJ, a housewife (Semarang, Indonesia, 27 December 2011).
He had been discovered...he had another woman; when at home he was often angry. If he came home...late at night, he was angry and often hit and kicked me...My first son got a mental disorder. He was asked by his father into the hotel with a woman and told to call her Mom. [After she was] replaced by another woman, he was brought again and told to call her mother. He has suffered depression since childhood. There is a possibility that he also saw his dad having sex; he was also often beaten...

Similar emotional pain and verbal abuse (although not the physical violence) due to the presence of another woman was experienced by RB. The presence of another woman affected the well-being of RB because her husband left the family behind for his mistress without giving the wife any living allowance for her and their children for three years.

My husband always lied, he told me [that he had] a lot of work but he has other girls. He did not come home from work; my husband was a driver and the reason [he would give] was flat tyre, so it had to be patched or anything. I was never beaten in my marriage. If he yelled at me, then I usually kept quiet because I did not want the kids or the neighbours to hear. I was ashamed in front of my neighbours and kids, so I [thought I] had better shut up.

The experience of another respondent, GE, shows that the presence of another woman and the leaving of the husband are often combined with physical violence by the husband against the wife. He had inflicted extreme pain and suffering on her. GE, then a merchant in a traditional market, describes her experience below:

My husband was having an affair with another woman for a long time; I just did not care about [it] because I was selling. So he [then] had sex with a woman [that] he got to know. He said he wanted to go to Borneo, but why [was he] not going home? If he wanted to go he should sleep with me as his wife and talk, but he did not; in fact he went around on his bike with his woman. Finally, I was [in a] panic, I was looking for, finally met and because of emotions we then fought.... I was often beaten. I did not report [it] because I did not know [how] and also still loved him. I thought that if he had realised his mistake, he would sleep with me again...I think so because I loved him...

The other experience was from Y, then a housewife. Though the presence of another woman was not obvious in her case, Y believed that her husband’s behaviour of

55 Interview with MI, a house wife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
56 Interview with RB, an entrepreneur (Semarang, Indonesia, 24 December 2011).
57 Interview with GE, a motorcycle park keeper (Semarang, Indonesia, 24 December 2011).
neglecting and isolating her for years was also influenced by the presence of other women in his life; moreover, the behaviour of her husband before and during the marriage by going clubbing, doing karaoke and going to spas has strengthened her suspicion about him.

I do not know if there are other women because I was too plain and too well. A friend asked me why I did not want to investigate my husband whether he had another girl or not. First, I have kids, kids that cannot be abandoned; I did not have employees who can take care of my child. Secondly, I did not have a car [or] motorcycle. Moreover, he often went to the spa, karaoke at his brother’s place of business. He never touches me [or] eats my cooking. Of course, as his wife I became suspicious. When I was returning to Semarang, I heard from someone who told about my husband’s attitude that he likes to play [around with] girls before marriage…”

IN also had her suspicions that the presence of another woman had affected her marital relationship, and, it led her to report her husband to police in order to ‘teach him a lesson’. However, the report she made revealed that she herself could have been convicted of adultery (see Chapter 5).

As time passed, I heard he would have reconciliation with his first wife. [W]hen he married with me in 2002–2003 it turned out he was married. He was married in bachelor status with me. He used forged documents…After she knew that her husband married me, the first wife finally sued for divorce. After [having got] the divorce and a divorce certificate [from his wife], my husband [then] married another woman, his third wife. At first I went to the police station… reported my husband to give [him] lessons; but… learned I had no right to report this one (third wife) because I had the potential to be reported because it [IN’s earlier marriage to her husband] was considered adultery…

In different circumstances, the wealth of the husband sometimes might be a factor in attracting another woman or in a husband being able to pursue another woman.

This was the experience of PH in her first marriage.

Well, maybe because people see… that we have money, [a] nice house in Pulo Mas [an elite place in Jakarta], [and] my husband drives Mercedes-Benz. So [the life] was attractive to women [who then] us[ed] klen汀 [black magic]. My then husband had a child (with another woman). He used to come home in the morning, there was lipstick that would [be used] on purpose…The marriage at that time was seven years long but

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58 Interview with Y, a small entrepreneur (Semarang, Indonesia, 22 January 2012).
59 Interview with IN, a worker in a private company (Semarang, Indonesia, 28 December 2011).
the disruption (from other women) never stopped [as he kept] breaking one and connecting [with another] one... 60

The descriptions above have shown that conflict—such as disagreement over the division of labour or authority in the relationship (for example, in relation to fertility control or pregnancy), or behaviours such as frequent drinking and/or gambling, and/or the wife’s having a higher educational attainment than the husband, accusations of infidelity or actual fidelity – triggered or were associated with domestic violence. It occurred in the marriages of respondents regardless of the length their marital relationship, their social status and the religion.

4.3.4. Use of alcohol

Many studies have found a correlation between heavy alcohol consumption and physical violence against women, 61 though there is no clear single explanation as to how alcohol operates to increase the risk of violence. 62 It appears generally agreed that a number of factors are operating. This include disinhibition of the behaviour, alcohol intensifying a response to a situation that normally elicits an aggressive response, cultural acceptance of physical chastisement of women, and anticipation of disinhibition

60 Interview with PH, a retired beautician (Belmore, NSW, Australia, 19 October 2011).
or learned disinhibition.\textsuperscript{63} Importantly alcohol consumption appears to affect cognitive functioning, though the social cultural setting can modify behaviours.\textsuperscript{64} It may also serve to simply ‘unmask’ existing personality traits that are unexposed in day to day activities.\textsuperscript{65} The existence of some involvement of the neurological effects of alcohol consumption is clear, particularly in long-term high consumers of alcohol.\textsuperscript{66} However, women certainly believe that drinking can trigger violence within a family.\textsuperscript{67} Several respondents in this study have had husbands whose attitudes to the consumption of alcohol had affected the physical and non-physical violence against the women. Consuming alcohol is usually accompanied by the other activities that Javanese people called *ma-lima* (five of M),\textsuperscript{68} five notorious behaviours all of which in Javanese language begin with letter ‘m’: namely, *main* (gambling), *mabuk* (alcohol consumption), *madon* (sexual intercourse with other women or prostitutes), *maling* (theft) and *madat* (illicit drug consumption).

The experience of GI is just one example. The notorious behaviour of her husband had led to them to quarrel continuously; and, it had, in turn, led to psychological and physical violence against her.

Before we were parted, he liked drinking, gambling he is still [doing this] up to now. Even if he did not have money he kept gambling. Where was that money from? He

\textsuperscript{63} Parker and Auerhahn conducted research on the relationship between alcohol use and aggressive behaviour at an individual level, and they summarised that “Experimental studies have shown that a consistent relationship at the individual level between alcohol use and aggressive behaviour, especially in the presence of cues that would normally elicit an aggressive response; the consumption of alcohol increases the aggressiveness of this response.” See Parker and Auerhahn, above n 61, 293-4, 299-301.

\textsuperscript{64} Ibid, 299–300.


\textsuperscript{68} *Malima* or five M (in Javanese language) may not be considered as domestic violence, but these behaviours, in many cases, have a direct impact on the occurrence of domestic violence.
seemed like taking money from my wallet or wherever I kept [it]. I am most annoyed by his habit of taking money without asking. Searching in women’s purses is not good, especially as I never did the same [to him].

He started to hit me when he accused me of having affair. That afternoon, I was eating with my child and at the time it rained. Suddenly my husband said, “Well is it nice to make love in rain?” I was shocked “Hey ... making love with whom? Oh, are you accusing me? Watch your mouth… Don’t accuse me. I did nothing.” He replied, “Impossible”. We bickered.

He took something [what it was] I was not so sure, [something]…like a glass with an arm and he broke it. I did not understand. The influence of alcohol made him increasingly irritable, and then he hit me, and the blood mixed with the glass shards was spreading…This penetrated the bone [here she showed the scars and stitches in her right upper arm]. Even if the scar is massaged or scraped, I still feel the pain because the bone was pierced.69

EL’s husband consumed alcohol and was guilty of other notorious malima conducts.

I did experience domestic violence. The first time was when I had our first child. In 1985 I was married then, [when] I had a child. I experienced domestic violence, being beaten, and also Javanese people said ma-lima (madon, main, mabuk, maling, madat/cheating, gambling, drinking, stealing and consuming drugs). I am a Catholic if we are united by God we are not going to be divorced by humans.70 So at my first contact with domestic violence I prepared myself by working and having my own earning. I should be independent. The first child was born in 1986 until the current time I feed the children. I never reported [the violence] to the police. I challenged my husband as a Muslim who had said, “Divorce” many times to [go ahead and] process it…71

Her husband’s use of alcohol and prostitutes had also significantly affected the marital relationship of MR and her husband.

My second husband thought only of himself and liked to destroy things. If there was a problem, [he] came home, got drunk and destroyed goods or took goods to be cashed in [at a pawnbroker/money lender]… 72

69 Interview with GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011).
70 EL is here referring to the Holy Bible, Mark 10.9: “What therefore God hath joined together, let no man put asunder’ (King James version). It is a verse often quoted in marriage services. It is the basis upon which Catholics do not generally practice divorce and why ‘annulment’ (an annulment is when a marriage is declared to have been invalid from the outset due to a lack of consent or other Canon Law recognised impediment) are so rare. This is not to say that Catholics cannot divorce under State law (and remarry), rather than having their marriage annulled under church (canon) law. EL was, however, married in a Muslim ceremony and the same provisions do not apply. She appears to have combined the two traditions in a way has disadvantaged her.
71 Interview with EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012).
72 Interview with MR, a bridal decorator (Semarang, Indonesia, 24 December 2011).
4.3.5. Experience of violence

A victim of domestic violence may have experienced more than one type of violence; and the different types of domestic violence sometimes occur simultaneously. Generally speaking, domestic violence is divided into categories such as physical, sexual, psychological/emotional, and economic/neglect. Research results indicate that nonphysical violence occurs more frequently than physical or sexual violence. In this study, all respondents had not experienced just a single type of violence but a number of types of simultaneously. This occurs because one sort of violence sometimes becomes the trigger (or is a stepping stone) to other forms of violence. However, one victim’s experience of domestic violence will never be exactly the same as another’s due to the individually different circumstances of each victim; as a consequence, diverse strategies and solutions need to be implemented based on the individual cases, since the interests and needs of the victims differ one from the other.

The violence, both physical and non-physical affected the physical and psychological and emotional health of the respondents. Some of them had physical health issues, such as suffering from eye injury (and damaged sight), being dizzy, developing high blood pressure (hypertension) and injury-induced paralysis. At the same time, some of them felt disgraced, humiliated, and depressed, so much so that they even tried commit to suicide. In spite of the violence, some respondents persisted in staying with the perpetrator for years due to their belief or hope that the husband’s behaviour would change, and so as to maintain a degree of family harmony. However, their expectations were unrealistic because the violence continued. The following descriptions represent the experience of violence suffered by the respondents in this study.
ML, is an Indonesian woman who has been living in Australia for more than ten years. Her birthplace was West Java, Indonesia. She married an Indonesian man in Australia, and has a daughter from that marriage. She experienced psychological and physical violence which were caused by the attitude of her husband who believed in rigidly defined gender roles and a patriarchal parental system. The violence affected her emotionally and physically. The physical violence came not only from him but could also be self-inflicted.

At that time he had not hit [me], he still cursed, “You damn woman, useless…” One day, I…even asked him for money, the answer was, “What? Here is $50 but you have to do what I want”. After I gave birth he did not want to help me doing housework. It happened during the nearly three months, until my parents told me to stay with them. Because of stress, I often beat my own body. To reduce stress I then decided to work. I worked without his permission because I was not allowed to contact my family and to meet friends...  

She endured seven years of marriage because she had expected her husband to change. However, at last, she could not stand it since she felt that she had sacrificed much but her husband had not made any change. After she was out of this situation she realised that her husband was not likely to change.

Another respondent who has been living for years in Australia is L. She married an Australian man, and they have two children. Her relationship with her husband started through internet dating and then they met and married in Indonesia after the short period of dating. She experienced psychological violence because her husband did not allow her to study until their youngest child was aged eight years. Moreover, the attitudes and behaviour of her husband was described by L as stubborn and dominating, and his tendency to keep deferring issues rather than dealing with them contributed to their problem.

He’s the type of person who will not resolve the problem directly. He likes to delay. Anyway if there is an issue I always wanted to finish [it] but his type is like…

73 Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).
thought that if the problem is postponed, it will resolve itself, but it does not, it’s even greater…”

The dominance of the husband affected the distribution of property when their marriage broke down. She accepted the sum of $25,000; it was less than that which she believed (erroneously) was provided under of the Family Law Act 1975 (that is, half of the property, with the amount increased if the mother had children from the marriage is in her care) (see also Chapter 5).

PH, another respondent in this study, experienced psychological and sexual violence. She is an Indonesian woman from Manado (Sulawesi) who lived in Jakarta before moving to Australia. She married twice, first to an Indonesian man and then secondly an Australian man. In both marriages she experienced domestic violence. The presence of psychological abuse in the first marriage was caused by his treatment of her as a wife when he embarked on a relationship with another woman. PH and her husband were wealthy couple and ran a dockyard company in Jakarta (see section 4.3.3 on marital conflict above). According to the interviewee, the wealthy attract other women who tempt her husband by using ‘black magic’. His infidelity had created suffering on the part of PH. She filed for divorce despite her belief as a Catholic Roman, but stayed in the home for the children’s sake, leaving only when her husband’s mistress was to move in.

In 1960s we were married, in 1970 [the marriage] had begun to [be] shake [y]. Then, in 1972 I filed divorce [after made a separate application to have the divorce finalised]. I left the house in 1974 because the person (the husband’s mistress) wanted [to live in] the house. My husband did not want to divorce; I just wanted to avoid his mistress. So, 74

74 Interview with L, a student (Campsie, NSW, Australia, 11 October 2011).
75 Section 79 of the Family Law Act 1975 (Cth) Australia currently confers on the Family Court (and the Federal Magistrate Court) a board discretion to make an order altering the parties’ property rights where it is ‘just and equitable’ so to do, taking account of wide range of factors. Therefore, there is no rule that property should be equally divided according to 50/50 formula. A person will not necessarily get half of everything, or be able to keep those things in her or his name that she or he paid for. It all depends on each person’s contribution and their needs. See Lisa Young and Geoff Monahan, Family Law in Australia (LexisNexis, 7th ed, 2009) 593.
between in 1972-1974 we remained in one house despite being divorced, because we are Catholic so keep trying to be in one home for the children... 

She, then, went to Australia in 1986. In Australia, she met her future second husband and married him. However, the marriage lasted only a week because not only she could not comply with her husband’s passion for sexual relations twice a day, but also he placed restrictions on her contact with friends and family members.

After one week, I thought it could not be like this, he just wanted to use my body. At that time I was 47, but…my life seemed to be sinful. I went to court and asked [what could I do] if I wanted to cancel the marriage. The officer told me to go home [Indonesia] for one year and not come back; this would mean that the marriage had [irretrievably] broken down. 

But, after [I had been] just five months…in Indonesia he called me and promised that he would be not be like that anymore. In November I was back again, ah ... in fact it was even crazier: I was not allowed to see my friends from Indonesia or receive a call from friends... I kept bleeding because I was afraid all the time. I just said, I was sick but he forced [me] too. Until he said to me “I married to you, your body was mine.” I entered the hospital because of bleeding; I had been really tormented...

In this second marriage PH had suffered sexual abuse, including forced sexual intercourse and possible physical injury resulting from that, notwithstanding the emotional trauma that this must have caused her, as well as enforced social isolation. PH, like many women, had trusted promises of change, only to be disappointed.

The next respondent is SR. She is Indonesian woman who lived in Medan city (Sumatra). She had been married to her first husband for ten years, until she decided to flee to Australia because of the treatment by her husband who, according to her, did not

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76 Interview with PH, a retired beautician (Belmore, NSW, Australia, 19 October 2011). Note the syncretistic combination of Catholicism and local belief (‘black magic’ mentioned earlier).
78 Interview with PH, a retired beautician (Belmore, NSW, Australia, 19 October 2011).
79 Spousal rape is not a criminal offence in Indonesian law until it is regulated by the Elimination of Domestic Violence Act in 2004. However, the implementation of the articles on this issue is rare. In Australia, it is a criminal offence in all Australian states. Its criminalisation began in NSW under a 1981 amendment to the Crimes Act 1900 (NSW).
appreciate her parents and herself as a wife. Moreover, her husband was deceitful in the financial matters.

It was the home of my parents, so he only lived in. When my mother was still alive, he must have ‘eaten from my mother’s rice’, but he did not think about it. He did not want to responsible for the family at all. He did not want to help my parents when they needed it, particularly during the economic downturn; the business was not smooth due to the economic difficulties. My mom and dad wanted to borrow money from him, but he treated my parents improperly, it was disappointing.81

SR experienced psychological and economic abuse. The way her husband treated her and also her parents constituted psychological abuse; meanwhile, economic abuse was caused by her husband’s extreme control over the business which SR had herself pioneered. After collecting money by working as a cleaner in Australia, she finally filed divorce; and, several years later, married an Australian man.

Another interviewee is SS. SS is a respondent who originally came from Medan (Sumatra). She lived in Semarang City because she studied and then married a man who came from this city. She experienced psychological and physical violence, and neglect since the first year of her marriage.

…since the marriage in 1989 to 2009, the domestic violence continued. The [physical] violence has gone [now] but the psychological violence [is still here]. After [I gave] birth to the first child it was not over, his words were hurtful. After having a first child I was told my mom to go home, but I did not want to, I did not want to be a ‘widow’. I had long been distressed, gave birth by my own, leaving to the hospital by myself… So I was extremely distressed. Then, in 2009, after the children started in elementary school he began to hit. If he was being asked where he had been, he would become physically violent, [and] start beating [me]. Long ago I was working because he never gave us support or help. He worked but did not care. If one of our children was sick he had no response. [Being] with him felt like mental torture.. 82

MR, another respondent, also experienced physical and psychological violence. She works as a bridal wedding and decorator, and lives in Semarang. The economic violence perpetrated by the husband was triggered by his behaviour as he liked drinking,

80 An expression meaning that he had relied on his mother-in-law (and probably not just his food, but everything else).
81 Interview with SR, a student (Sydney, NSW, Australia, 1 November 2011).
82 Interview with SS, a worker in a private company (Semarang, 21 December 2011).
gambling and using the services of prostitutes. MR’s earnings from decorating were always taken by her husband to finance his pleasure.

He started performing [acts of] violence [on me] three years after the marriage, being violent when he had a little problem, for example like this...[when] I asked for the money to be paid to me because he would use the money to drink, gamble and have sex with prostitutes.83

Being abused had been the experience of GI over a long time. GI worked as a carrier of goods to market (such as onions, potato, chili and other produce for the biggest traditional market in Semarang). She experienced psychological and physical violence as well as neglect. The violence, particularly physical and psychological, affected her physical and mental health.

I got married in 1980. It used to be only quarrelling; he started to hit me in 2006. He hit because he accused me of cheating but I said no... I felt no [difficulty in] filing for divorce, because there was my husband but he did not look for a living, [rather] I was also looking for my own living and [that of the] children; no husband is better... 84

The violence occurred for several reasons: the husband never gave her a living allowance (housekeeping); his behaviours such as drinking, stealing her money, and gambling had made her think; the accusation of her having another man had made her uncomfortable because she really had not had an affair. The worst violence she ever experienced was when she was hit by a glass jug or decanter when her husband accused her of having an affair with another man.

Another respondent is RB. RB was a housewife when the violence occurred; she experienced psychological violence and neglect while her husband pursued an affair with another woman. No support from her husband has compelled her to return to being a small merchant in a traditional market in Semarang (see her experience in section 4.3.3 on marital conflict above).85 The violence inevitably affected financial matters

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83 Interview with MR, a bridal decorator (Semarang, Indonesia, 24 December 2011).
84 Interview with GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011).
85 Interview with RB, an entrepreneur (Semarang, Indonesia, 24 December 2011).
because her husband is the breadwinner; and, also there was the matter of family shame as her husband had married the other woman.

Another respondent is MI. She has been married for more than twenty years. She had experienced physical, psychological, sexual violence and neglect. To date, she has not filed for divorce, though her husband left her and the children years ago to marry another woman.

After giving birth, I was not healthy [but] I [was required] to serve my husband [and] … have sexual intercourse. My husband has a great passion, so I have to serve him obediently. When I used to be beaten by my husband I was still indoctrinated to be obedient to my husband. In the second year of marriage I had been subjected to violence because there was another woman. He had often slammed my head to the wall, until my eyes were bleeding. It affected my eyesight so I am using glasses. Not only was me, but also my child was being beaten...

The violence not only affected her but also her son. Her son has suffered from depression since childhood, not only because his father asked him to go to the hotel with his mistress, his father forced him to call the woman ‘Mom’ (and he may have witnessed the sexual intercourse between them), but he was also often be beaten.

The other respondent is FA; she has had similar experiences to MI of being abused by her husband. The violence is various, not only psychological, physical and sexual but also neglect; and it had been experienced for years since the first year of marriage.

I got married in 1986; [sometimes] I could not stand anymore until my chest hurt [because of extreme anxiety and distress]. It … hurt, especially when he got angry. When he was angry or annoyed I was always knocked against the wall. It happened after two years of marriage. My husband did not give us money because he sometimes worked, sometimes didn’t. If he had money he used it [for] himself. He does not drink and gamble but likes to play dingdong (similar to gambling). I was also often beaten, being sent out for looking for money. My daughter was also sold as a prostitute…

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86 October 2012.
87 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
88 This is a logical supposition, given the small spaces of hotel accommodation.
89 Interview with FA, a housewife (Semarang, Indonesia, 29 December 2011).
The violence experienced by FA is basically her husband’s reaction to economic problems. His tendency to use what money he did earn for other than the family’s well-being further adds to the desperate position of the family. Thus the power imbalance between FA and her husband made the circumstances within family worsen. She could not even prevent her daughter being forced into prostitution by her husband. Such a power imbalance often occurs to varying degrees between a husband and a wife. It is caused by not only the differences of education, age, and social status, but also the influence of patriarchal values.

Patriarchal values within communities affect the power balance, the degree of equality and where it functions (in both public and private space, and/or both to a varying extent, for example), and in the relationship between individual men and women. Such circumstances were experienced by IN. IN, for instance, did not finish her elementary school and had married to a man who was the owner of an infrastructure company. She has argued that the different level of education (a class rather than gender issue) between her husband’s family and herself affected the way her husband’s family treated her, particularly when she had a complaint about their marriage. Her vulnerability was increased, however, by her gender. She had experienced psychological violence and neglect from her husband. She realised that her education level was not comparable with that of her husband or his family who were educated; however, she insisted that she did not want to be (nor deserved to be) humiliated.

Being treated respectfully is also NA’s dream. NA, another interviewee, has argued that she wanted to be an independent woman as her husband had treated her improperly. Before and after being married she had experienced of psychological violence.

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90 Sometimes the husband cooperated with a pimp; and sometimes he himself organised to sell her services as prostitute. He would then take her earnings.

91 Interview with IN, a worker in a private company (Semarang, Indonesia, 28 December 2011). She here refers to marriage documentation. He married her as a bachelor when indeed he was married at the time.
violence and neglect. She was pregnant before she was married. At the moment of marriage, her husband was reluctant to come; then, after the official marriage had been conducted her husband never lived in NA’s house. He ignored her when she had a baby and did not look after the baby.

When we were married, his family did not come, he did not come voluntarily. My father forced him to come; he was called continuously because there had been a lot of people and neighbours… After the marriage he just slept here once after marriage. I was just being patient till the child was born. I was not accompanied, not given money. It seemed like I did not have a husband. Then he also tried to trap me by accusing me of having an affair. My parents did not believe it and I also denied his accusation…

ID, the next respondent, runs her own business on property after her husband divorced her; she was a housewife. She had been married for twenty years; and endured physical, psychological, economic and social violence from her husband from the beginning of her marriage.

I used to [be] beaten until swelling. When experiencing physical violence I did not ever tell, I hid it because it is a disgrace …

ID has recognised that the violence occurred was caused by not only the behaviour of her husband but also the intervention of her husband’s family, particularly his mother. She has argued that if the husband’s family had not interfered, the situation might not have ended in divorce. She had tried to cover up the family problem until she was sued for divorce. She was embarrassed for friends or neighbours to know the real situation; moreover, as a Catholic woman she believes that they must remain in marital relationship in spite of violence.

A similar situation was also experienced by EL. She professes Roman Catholicism but when she married a Muslim man, she married to him in an Islamic ceremony. Her husband was psychologically and physically violent towards her and

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92 Interview with NA, a dressmaker (Semarang, Indonesia, 29 December 2011).
93 Interview with ID, a property entrepreneur (Semarang, Indonesia, 3 January 2012).
also neglected her. The violence had started at the beginning of marriage, particularly when their first child was born. She stayed in the abusive marital relationship because of her belief that a husband and a wife should not be divorced, though in later years she decided to sue her husband for divorce.

In 1985 [when] I was then married and had a child and experienced domestic violence, being beaten. It was caused by his behaviour, what Javanese people said is malima… I have a principle based on my religion ‘If we are united God [in marriage] it is not going to be divorced by humans’. Indeed, I hold this, but I was married in Islam. 

Another respondent who had had experience of psychological and sexual violence was V. V, a Buddhist, and her husband, a Catholic, dated for three years before getting married. V had recognised that her boyfriend-future husband was a stubborn person, and he had also been abusive and harassed her prior to marriage.

I had known his character since [the time when we were] dating. A hard character person… and he liked slamming things… Even, after marriage he had shown much the same behaviour, like talking rudely… Till a few years before filing divorce I couldn’t stand anymore, I became rebellious… In fact I was the one who was hurt, stressed and could not sleep; it was psychological [abuse] then. I thought that I would die at young age, being stressed, and living with someone I didn’t love anymore…

Y has had similar experiences of being abused psychologically and neglected. Y is a Buddhist from Semarang, Central Java, and she married a man from Bandung, West Java. She then was a housewife; after her divorce she has run own business, a small market at her own home.

I got married in 2002. After marriage I was pregnant immediately. Continues from there, in my fourth month of pregnancy he began to return to his old habit, came home at dawn, clubbing, drunk. He complained of his work for there was trouble [there], so he had to relieve his stress into clubbing, drinking, smoking, that’s his reason.

From there he began to get angry and I was often left behind. I was just with the maid, I was not allowed to go, [not even to go] for a walk in the house was also not allowed because our house was a shop-house, and [yet nor was I permitted to] even lie down. His big family started talking weird and made me depressed. It’s weird such as making gossip, and cursing. I did not really remember what they said; it’s different ethics of Javanese and Sundanese although we are both Chinese. It just has a different accent. So the violence is psychological.

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94 Interview with EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012)
95 Interview with V, a food entrepreneur (Semarang, Indonesia, 12 January 2012)
If he was angry all the things were thrown at me but [I was not] not being hit. Then, he punched the wall, hit the door, [threw] any item that was directed to me. I thought that he was throwing stuff closer and closer to me, after a long time it could be to my body. Then I thought “I can be killed by him”…

The descriptions above have shown that it seems likely that physical violence was less to occur than non-physical violence. However, the impact of non-physical violence (such as social, economic, and psychological abuse) affected the women (and in a number of instances their children) and had mental consequences, the effect of which was more or less the same as physical violence; even, in certain cases it had caused an attempted suicide and health mental disorders (anxiety, depression and so on) that need special treatment and are costly for the victims of domestic violence. The impact of the violence will be described further in the next section below.

4.3.6. Impact on physical and mental health

Researchers have investigated the physical health consequences of domestic violence on abused women. In addition, many women who have experienced domestic violence have a high level of mental distress and report a significant negative impact on their mental health. Some women feel that the impact of non-physical abuse is more damaging than that of physical abuse. Women experiencing nonphysical forms of domestic violence have their self-confidence and self-esteem undermined, which can make them feel worthless, useless, and stripped of their identity. As a consequence, affected women may be subject to acute anxiety, panic attacks, depression, and drug

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96 Interview with Y, a small entrepreneur (Semarang, Indonesia, 22 January 2012)
and alcohol dependency. In this study, most of respondents have suffered from physical and mental health issues mentioned above.

Physical and mental health consequences of domestic violence were experienced by ML. She felt that her depression was mainly caused by psychological violence perpetrated by her husband. Her husband always complained about her being busy working and studying, and having no time to look after him.

Because of stress, I often beat my own body. To reduce stress I then decided to work. I worked without his permission because I was not allowed to contact…my family and to meet friends...

She attributed beating her own body to ‘stress’; another might attribute it to depression or growing frustration and self-hatred or an inability to respond to his violence in any way that could be deemed culturally appropriate. Fortunately, she could overcome her stress by deciding to work. She worked without permission from her husband, however, because she believed that her husband would not allow her to work.

PH experienced both mental and physical suffering due to her husband’s treatment of her. Feeling afraid of having sexual intercourse frequently each day had led physical and mental health consequences to PH.

I kept bleeding because I was afraid all the time. I entered the hospital, I had been really tormented. Sometimes after we had the intercourse, he asked me, “Did you enjoy?” I said, “No”. He was angry...

She attributed her continual bleeding to stress. She also felt that having sexual intercourse frequently each day was improper and against with her culture and religious

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99 Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).

100 Interview with PH, a retired beautician (Belmore, NSW, Australia, 19 October 2011).
belief. Because of an unresolved difference in principle with her husband on their sexual life, PH eventually decided to terminate the marriage by leaving the marital house to decrease her psychological and physical health issues.

Feeling distress is also experienced by SS. Although her husband’s physical violence toward her did not effect to her body permanently, her feelings of insecurity and distress remained.

After having a first child I was told my mom to go home, but I did not want to, I did not want to be a ‘widow’. I had long been distressed, gave birth by my own, leaving to the hospital by myself… So I was extremely distressed. Then, in 2009, after the children started in elementary school he began to hit. If he was being asked where he had been, he would become physically violent, [and] start beating [me]. Long ago I was working because he never gave us support or help. He worked but did not care. If one of our children was sick he had no response. It feels like having mental suffering with him...102

After struggling to get through the violence by contacting resources to seek help, she, at last, filed for divorce. She felt that the atmosphere within her family is not bearable anymore; even her children had been provoked by her husband to hate her. She is now living with her son who still loves her.

Physical violence perpetrated by a husband sometimes results in permanent physical health consequence as well. This is MI’s experience. She must wear spectacles due to her husband’s behaviour – he had slammed her head many times into the wall.

…in the second year of marriage I had been subjected to violence because there was another woman. He had often slammed my head to the wall, until my eyes were bleeding. It affected my eyesight so I am using glasses. …103

The physical violence perpetrated by her husband ended after her husband married and lived with another woman by forging her marriage certificate.104 However,
the violence, particularly economic violence or neglect remained because to date her husband has never given her living expenses. In order to obtain her rights as a neglected wife, she, then, is struggling to get her allowance from her husband’s employing institution (via garnisheed wages).

FA is another respondent with permanent physical and mental health consequences due to physical and non-physical violence. FA feels pain in her chest and head due to her husband physical abuse.

If he hurt me it [my chest]… hurt, especially when he got angry. It’s always when he was angry or annoyed. I was also afraid of being beaten. I was knocked against the wall… If I was beaten [it was] not until wounded just dizzy. I did not know the effects on health or not but I ever fell suddenly and [suffered] dizziness [previously]… 105

Another affected respondent is PJ. PJ has paralysis of her fingers because they were cut when she and husband were arguing and fighting. The psychological violence and neglect had also affected to her mental health.

I went to hospital for mental health [reasons] because I could not sleep for days. I could not sleep so [I became] dependent on sleeping pills and I could not do anything… Because of arguing and fighting three fingers were deeply cut. They look normal but they felt numb. If they are pinched I do not feel it. [The cut]… got the inner veins, I’ve been already weak and there’s no strength. [As]…it is painful in the cold, …I should wear gloves… 106

Experience of sleeplessness which resulted in her being dependent on sleeping pills is evidence of the physical and mental health consequences of her treatment. Although her dependence on the sleeping pills is over now, she suffers from paralysis of her fingers and needs special treatment to recover their full use.

Feeling continually distressed sometimes had led victims of domestic violence to suicidal behaviour. This was GE’s experience.

104 The marriage certificate belonging to MI was changed by her husband. The picture of MI on the certificate was taken off and the details of her identity were replaced by those of his mistress.
105 Interview with FA, a housewife (Semarang, Indonesia, 29 December 2011).
106 Interview with PJ, a housewife (Semarang, Indonesia, 27 December 2011).
…I was almost crazy. He never came until I poured kerosene on my body, I wanted to burn myself. Just why [I survived was] I wore clothes that were difficult to burn. I was crazy then, if now I [would say]...stress, it was also all right. I continued to drink down bodrex [pills for fever or cold] one strip, ... I even left the house naked, but at night. I was knocked out at the face till like this …

Physical violence had also adversely affected her eyesight. Such was the depth of her love for her husband that GE could not initially accept the reality that her husband had had another woman and had left her and had married this woman. As time goes by, however, although still feeling hurt, she is more realistic about the fact that her husband has left her. She tries to enjoy her life by doing her job as a motorcycle park attendant and having meetings with other members of a support group.

Another respondent is GI who had similar experience of being abused physically. After being hit by a glass jug or decanter she still feels pain in her upper arm to this very day. The quarrel was triggered by her husband accusing her of having an affair with another man. The violence also imposed a financial burden because she had to pay for the medical treatment herself.

Only the influence of alcohol made him increasingly irritable, and then he hit me with a glass jug…This penetrated the bone. Even if the scar is massaged or scraped, [I] still feel the pain because the bone [was] pierced. The glass shards and blood spread everywhere…

Respondent Y experienced of nonphysical violence. She has argued that nonphysical violence has the same effect as physical violence because it has a detrimental effect on the victim.

He then started hitting the wall, threw me using his clothes it seemed he wanted to snatch, I then ran away. It was so ordinary for him. I had never been treated that way by

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107 Interview with GE, a motorcycle park keeper (Semarang, Indonesia, 24 December 2011).
108 Whilst a victim often describes the emotion as ‘love’, those beyond might see it as a prolongation of an emotion beyond its usefulness (for either party, but particularly the victim) as it no longer suits the environment. Outsiders may describe it rather as ‘misguided attachment’ at the very least, and comment that the depth or her bond to her husband is obviously not reflected in his bond to her, as is demonstrated in his behaviour. Whilst she clings to the marriage, he has emotionally, then physically and lastly legally abandoned it.
109 Interview with GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011).
my parents, so I became a bit distressed. I thought, was it the life of husband and wife? I did not have negative thoughts at the time; just felt it was probably my fate. It was in my mind, was [being] a woman or wife like this? I never thought anything bad, so I went along. He never perpetrated physical violence, but he often scolded me in front of guests, in front of his employees, in front of his servants, until finally the servants did not respect me anymore. The old maid dared to shout at me in front of my husband and family… 110

Her husband’s neglect of her and his humiliation of her in front of guests, friends, family and servant had significant mental and physical health consequences for her.

I have a brother, he is a doctor, I asked him why I was tingling one side of my body. He then traced one by one; He, then, gave me medication. It turned out the medicine [was a] tranquilizer. Finally [I] recovered; he [the brother] said, “No wonder you heal, because you were stressed, [had] depression”. 111

After she returned to Semarang, her mental suffering began to diminish and her high blood pressure decreased and she is now feeling better than before. However, she still feels insecure due to her marital relationship which continues to legally exist though they live separately.

The experiences of these respondents of having permanent physical health consequences and suffering mental health consequences demonstrate that domestic violence really is harmful for victims (and their children). Moreover, these physical and mental health consequences have brought with them enduring social costs and health costs, because most of the victims pay the expenses for treatment themselves, or have them paid (or at least partly paid) through their health insurance.

4.3.8. Financial issues

Researchers have investigated why many victims of domestic violence stay in abusive marriages. Their results indicate that this is often because of an uncertain economic future without their partner; the fear of poverty is a major concern for women,

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110 Interview with Y, a small entrepreneur (Semarang, Indonesia, 22 January 2012).
111 Ibid.
many of whom do not have sufficient earnings, and work in low paying jobs, or work part-time (or not at all). Women may not be able to even afford divorce proceedings due to the cost and length of the process involved.112

In this study, respondents who had their own earnings did not worry about the financial matters; only for housewife respondents did the financial matter become the important issue. At the time of interviewing, four of the eighteen respondents were still in the abusive marriage. Two of those four respondents who remained in the abusive marital relationship were having their divorce processed. The remaining two who were staying in the abusive marital relationship argued that their reasons for staying are that they are thinking about the interest of their child/ren, and the lawyer’s fee as well as court fees for processing a divorce.

MI, for instance, insisted that she stays in the marital relationship because her son needs special treatment due to the husband’s abuse; and, paradoxically, she cannot afford it without her husband’s salary.

Finally, I was shattered, when eventually I [decide I] cannot divorce [as] I have a pension of 50% [If I] wait half a year longer… to get the retirement benefit. Divorce is not the end of the road. I am not selfish, I am there [caught] in the middle (because of the pros and cons [relating to] the children) but I have to be wise between… [choosing to] divorce and not, between take legal [avenue] and not. Moreover, there is still a son in need…My child has a mental disorder because he was asked by his father into the hotel with another woman and told to call her Mom. He had suffered depression since childhood, there was a possibility that he also saw his dad having sex, he was also often beaten…113

Others leave, despite the uncertainty that brings. For example, Y did not have any job when she left the marital home in Bandung; therefore, she has struggled to make a living, especially one that allows her to afford her daughter’s special health


113 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
treatment. Further, although she planned to sue her husband for divorce, she cannot afford the fee since lawyers have advised her that there would be IDR 20 million (AUD 2000) in legal fees.\textsuperscript{114}

The last respondent in this section is FA. FA is thinking of proceeding with divorce but obstacles emerged, not only from her lack of information about the court fee and court procedures, but also because she felt scared of her husband.

I actually wanted to be separated from my husband. I also did not mind if my husband went to prison as the person [who] likes beating. I wanted to report but I was scared and because I did not know how to report. I don’t know how to divorce. I never [let it be known]… outside … I did not know how, could not talk, just scared of my husband – why tell… [of] family problems. Yes I still think it’s a family problem…\textsuperscript{115}

The descriptions above have shown that most of respondents who were very financially dependent on their husband and isolated by them faced difficulties with this issue, and it becomes an important obstacle to determining whether to leave the marriage and divorce the abuser. However, these obstacles have not prevented them from adopting another strategy as an alternative solution. They do not surrender to the circumstances; most of have struggled with them by finding a job or creating their own business. On the other hand, the respondents who are financially independent have no significant difficulties in making a decision, particularly dealing with financial issues. They generally have greater self-confidence to confront the violence. As result, they can more quickly make the decision to leave the abusive marital relationship or to divorce the husband than that of respondents who are entirely financially dependent on the abuser.

\textsuperscript{114} Interview with Y, a small entrepreneur (Semarang, Indonesia, 29 December 2011).
\textsuperscript{115} Interview with FA, a housewife (Semarang, Indonesia, 29 December 2011).
4.4. The Exosystem

Researchers reviewed indicated that the exosystem encompasses the institutions and social structures, both formal and informal, in the context of which the person operates.116 These institutions include the world of work together with the associated area of employment/unemployment and high/low socioeconomic status), neighbourhood, social networks, and identity groups, the immediate family and its degree of isolation, and the extended family.117 Other researchers examined maintained that the exosystem also includes health care professionals of the healthcare system, the justice system and family services, and the barriers to service utilisation.118 This section addresses whether the role of the exosystem will have a significant influence as a cause of domestic violence or not in regard to respondents in this study.

4.4.1. The world of work

At a certain level, the world of work has a significant effect on the harmony of the relations between a husband and a wife within family, and can serve as a trigger directly or indirectly to domestic violence. The state of their relationship can also affect their behaviours in the world of work. Thus, both relations are interrelated to each other. The experiences of five respondents (SR, GI, PJ, RB and PH) in the study have shown these phenomena. SR, for instance, had run a store with her husband. Though the store was run in her house, her duties as a store keeper had created a double burden, as a wife and as a worker. She argued that she did not mind having a double burden as long as her husband respected her. However, she felt that her husband had treated her like a slave

116 Heise, above n 1; see Ho, above n 112; Ruksana Ayyub, ‘Domestic Violence in the South Asian Muslim Immigrant Population in the United States’ (2009) 9(3) Journal of Social Distress and the Homeless 237, 239.
117 Heise, above n 1; see Ho, above n 112; Ruksana Ayyub, above n 116.
because the husband had never taken into consideration the burden she bore.\textsuperscript{119} The double burden is a problem for women in general who want to be independent because the role as mother and wife remained embedded by society in a way that has made women unable to release themselves from expectations (theirs and their husbands) that they will continue to undertake most if not all the home duties; meanwhile, most men still have the mindset that the household affairs are the responsibility of women.

That the world of work had affected the marital relationship was also experienced by GI who works as a loader at the traditional market in Semarang. According to GI, merchants in traditional market like rumours. They created rumours about her, that she was having an affair with a man. This rumour became the trigger of violence within her marital relationship because it was the source of her husband’s accusation that she was having an affair, and for his subsequent violence towards her.

My husband did not allow me to get along with friends. People in the market were different with village people. They always told about rumours “cheating, cheating”. My husband was provoked by them and he accused me …[of] cheating. If my husband said I was cheating but I really did not cheat, I would not like it. People in the market have such a mouth…\textsuperscript{120}

The complex interplay between individual husband/wife and the relationship of each to the world of work and the world of work to the relationship is illustrated here. His pre-existing jealousy rendered him vulnerable to believing the rumour and existing tensions escalated, until finally physical violence erupted against GI. The violence, in turn, had led to the complete breakdown of their marriage and also resulted in physical health consequences for GI (as mentioned in the section above)

The influence of the world of work on domestic violence is also shown by PJ’s experience. PJ, a housewife, found her husband was having an affair with his colleague.

\textsuperscript{119} Interview with SR, a student (Sydney, NSW, Australia, 1 November 2011).
\textsuperscript{120} Interview with GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011).
She did not believe at the first that her husband had affair since they had been married for twenty years, but changes in her husband’s attitude and the rhythm of work awoke her curiosity.

I finally followed him because of suspicion...Well, it was very far [away] in West Semarang, near the fisherman village, his woman was hidden in there, in (Imam) Kyai’s place. The woman was four-[to] five months pregnant...

Shocked by her findings, she felt sad and distressed. Meanwhile, her husband tried to persuade her to give a permission to conduct a polygamous marriage. PJ refused her husband’s proposal; she preferred to file for divorce rather than share her husband with another woman. Her struggle to obtain her right as a mother, wife and abused woman will be described in detail in a later (Chapter 5).

RB also had experience of the interaction of the world of work and the domestic relationship of husband and wife. She believed that the work of her husband rendered him vulnerable to affairs. Her objection to her husband adopting a new profession as a driver had been expressed at the beginning when her husband said that he intended to change jobs and chose the job as a driver.

My husband was tired of working on the building project and [in] Johar traditional market. Then, after having own places in the market my husband [said he] was bored and wanted to be a driver. I disagreed by saying “…I [do] not want you to be driver, a driver likes stopping anywhere”. He said that it depended on the person. Then he actually had an affair…

RB had had such an opinion because there is a general opinion that the world of the driver, particularly the long-distance driver, is one surrounded by women or prostitutes. Her opinion is well-founded: Truck drivers (together with a lower number of seafarers) are the most frequent client of sex workers in Java as in many other areas. Hepa Susami, Suriadi Gunawan and Subash Hira (eds), *Indonesia: HIV/AIDS Research Inventory 1995-2009* (National AIDS Commission 2009) 157, 160.
number of those places, many women are prostituting themselves. Because the drivers usually have regular schedules, a relationship between drivers and the women appears to almost inevitably occur. Such a pattern seemed to have developed in regard to RB’s husband. Again, the world of work may have served to test the pre-existing strength of the relationship or tested him beyond his capacity or will to resist or may have served to reveal the unspoken desire of the husband for the ‘excitement’ provided by the road (that is, his desire to be a driver may have been influenced by a wish to actually embark on an affair, with the job then providing the necessary opportunity). The behaviour of fellow drivers would also have served to normalise infidelity.

The interrelationship of the world of work, the individuals in the marriage (and their own individual motives, needs and desires)\textsuperscript{124} and the marital relationship is again revealed as highly complex. However, there is no denying that his new job gave him the opportunity to be unfaithful to his wife; this led to an affair, contributed to or triggered subsequent violence towards her, his leaving her and then neglecting her and their children by failing to supply a living allowance.\textsuperscript{125}

The experience of PH had also shown that the world of work could be a significant trigger for circumstances that lead to domestic violence within a family.

My husband had a large company. He and I had to entertain big bosses, let us [go] to the night club or massage spas. So [the luxury life] was attractive to women [who then] us[ed] klening [black magic]…\textsuperscript{126}

These cases have shown that the world of work (the working environment), regardless of the character of the person,\textsuperscript{127} sometimes provided an environment

\textsuperscript{124} Both conscious and unconscious, about which they and us can often only guess from words and deeds
\textsuperscript{125} Whether that it would have occurred without the change of employment will never be known; however, it may just be that the partner may have been another.
\textsuperscript{126} Interview with PH, a retired beautician (Belmore, NSW, Australia, 19 October 2011)
\textsuperscript{127} It is clearly demonstrated in the case of RB’s husband, the environment of work had influence on the change of his behaviour from a devoted family man to a man who has affairs with other women. The continuous contact with such circumstances – fellow workers or other parties, and the dominance of (bad)
counterproductive to fidelity which had a bad impact on the person who is involved there; and such circumstances, in turn, affect the life and the well-being of the wife and the children. Thus, it can be said that the circumstance of the world of work may reveal a part of life (and a person’s personality) that may never previously have known of or expected to exist.

4.4.2. Neighbourhood

It is believed that ‘neighbourhood’ has a significant influence on preventing the repeated violence; however, the role of the neighbourhood in preventing the violence will be influenced by the understanding of domestic violence as a private or public matter. Most people disagree with the idea of women being beaten, but when the context of beating relates to a family matter or the relationship between a husband and a wife, people are often reluctant to be involved in it. Both men and a significant minority of women may believe it is acceptable, particularly in certain circumstances. The experiences of several respondents (GI, GE, RB, EL and IN) have demonstrated these phenomena.

The experience of GI, for instance, had shown the sensitivity of domestic violence matter which creates a reluctance on the part of the neighbourhood to get involved.

norms or values living in the world of work may have significant influence on the behaviour, the character and the lifestyle of someone to a certain extent and at certain times, or even permanently.


129 See the OECD Social Institutions and Gender Index, Indonesia (OECD, 2010) <http://genderindex.org/country/indonesia>. Worryingly, here the authors observe that: ‘…evidence indicates that public acceptance of domestic violence may be increasing among women. According to 2003 Demographic and Health Survey, almost 25 per cent of women who are or once were married agree that a husband is justified in beating his wife for any of the following reasons: she burns the food; she argues with him; she neglects the children; or she refuses to have sex with him’ [citing Badan Pusat Statistik-Statistics Indonesian (BPS) and ORC Macro (2005) Table 3.121]. When asked again during the 2007 survey, the total had risen to over 30%. These numbers were highest among poor and young women, and those with little to no education [citing BPS and ORC Macro (2008) Table 3.121](emphasis added).
After my husband beat me I went to RT [neighbourhood administrator] to report violence that I experienced. RT just said “Oh, it is usual in a household…” I said “Are you sure there is such a household?” I frequently reported to the RT, then my husband was called and [the RT] was told “Sir [I] don’t do so”… When I had the worst physical violence I did not tell RT because I took care of my own body as too much blood. No neighbours wanted to help because they were afraid of my husband because he’s a member of thug [group]...130

The response of the neighbourhood administrator who had said that beating within a family was common matter is an expression of the patriarchal system. Advice being given to the husband to stop the violence is common in Indonesian communities; though it is believed that in some cases it is useless. Moreover, the response of her neighbours who were reluctant to help her even when she was bleeding shows the sensitivity of domestic violence as family matter, but also reflects how the fact that the position of GI’s husband as a leader of street gang in a certain region had affected the willingness of people in the surrounding area to help. They were more afraid of having trouble from a member of a street gang than they were motivated to help a woman who was suffering from physical violence which had committed by her husband. GI’s experience has also shown how the power of a small group of people in certain positions or areas influences the people in general. For example, not just the role of her husband as a gang leader but also the key role of the neighbourhood administrator whose attitude and ready acceptance of a husband’s denial would deter further complaints.

Another interviewee that had been beaten by her husband was GE. GE was beaten in the public space, a traditional market in which many people are available, but nobody help her since her husband insisted the matter was a domestic affair.

When I was knocked out I did not report this because I still loved [him]. When my husband and I met in the Johar traditional market, I was beaten. There was someone going to help, but my husband said “This was my business between my wife and I,

130 Interview with GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011).
domestic affairs. Don’t get involved.” As consequence, that man had stopped [going] to help me...131

Such a phenomenon has shown that people restrict their involvement in situations deemed a family matter. This behaviour might be influenced by their understanding that violence within a family or domestic violence as a ‘family matter’. This can be used as a parameter for the communities’ understanding of the Domestic Violence Act (Indonesia) which was issued in 2004. According to the Act, the community or everyone has a responsibility not only to prevent the violence, but also to help, render first aid and to protect the woman who has been beaten by her husband; but, in fact, awareness of the issue is only growing slowly and changes in expectations (both on the part of men and women and of the general community) are slow in changing.132

RB had a similar experience when a neighbourhood administrator, who similarly maintained that the violence between RB and her husband was a ‘family matter’; moreover, she had also been told variously that she was too old to proceed with divorce, that her resistance to the violence was in relation to events that occurred too long ago and that they may reconcile again (with this used as a justification by authorities for failing to intervene or pursue the matter).

Then I asked about the recommendation letter from RT / RW but they did not give it. The reason given is: “Don’t do it, you all [are] …old, you’ll later reconcile again” Then I said, “Wow, it can’t be.” Moreover, he already had a child and he couldn’t leave the one there...133

The belief that a husband who has an affair with another woman will return to the first wife is also common in Indonesian community. Such a belief has been used in

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131 Interview with GE, a motorcycle park keeper (Semarang, Indonesia, 24 December 2011).
132 Domestic Violence Act 2004 (Indonesia) s 10. See OECD Social Institutions and Gender Index, Indonesia (OECD, 2010) <http://genderindex.org/country/indonesia>, citing Badan Pusat Statistik-Statistics Indonesia (BPS) and ORC Macro (2005) Table 3.121 which showing rising acceptance (25% to 30%) among women of violence in marital relationship. Such an attitude was, however, seen as more prevalent among the less educated and the poor.
133 Interview with RB, an entrepreneur in the traditional market (Semarang, Indonesia, 24 December 2011)
term of the advice given (by family and community members more generally) to women who are suffering psychological violence, particularly when the violence was triggered by the presence of the third party or another woman. There is an assumption that the ‘true love’ belongs to the first wife, while the love of mistresses or even of the second or third wives is not deep or long lasting. Such a belief has influenced women’s and men’s behaviour, and served to reinforce the practice of a woman staying in the abusive relationship on the basis of such an assumption. Moreover, there is a mindset in the community that a person in middle age should not proceed with a divorce because they are too old. Such an attitude seems to restrict the actions of and discriminate against those in middle age, encouraging an acceptance of a poorer quality of life. It seems only the young can expect to have a happy life in terms of their marital relationship or make changes to ensure that they can do. Nevertheless, not all women in this study could be persuaded to hold or act in accordance with such values.

EL, had also even reported the violence to neighbourhood administrator; however, the response from the administrator was only ever directions and the advice to reconcile and to be patient. She felt that the advice was useless and did not overcome the problem because her husband’s behaviour did not change and the violence continued to occur. She reported the second incident of physical violence to police but the police did not arrest her husband out of consideration for the small children she had at that time. This too is recurring theme: the presence of a husband and/or his financial support for young children overrides consideration of safety for the mother; there appears to be little comprehension of the damage done to the children’s ability to form relationship or their relationship to their parents being affected by witnessing such violence or even becoming themselves victims of it (see EL’s account below). For the third major violent incident, she did not report it to police or, even the neighbourhood
administrator, this time she maintained that it was because of the sense of shame about the recurrence of the violence.

I did not report the violence to police because of the neighbour. [I wanted to] avoid the outcry. I buried the problem [in] myself. The neighbour administrator [RT] could not act as [had been] my expectation, because [the violence was considered] domestic problems. I had reported … [the] domestic violence frequently but the neighbour administrator only gave direction and advice. My husband was called and advised; but, because of his mental [state] as a drinker… it was useless…

From the description above, the actions taken by the neighbourhood administrator (that is, to give advice and urge reconciliation) are very common in Indonesian community. As a ‘family matter’, domestic violence is treated as a ‘poor relation’ to violence perpetrated by a stranger violence in the public space. Legal institutions are unlikely to intervene and women are less likely to take the initiative to prevent the violence by legal means, that is by contacting police or seeking separation or divorce themselves. Consequently, the violence is recurrent and the victim remains vulnerable and unprotected. Ultimately, however, the circumstances are such that the victims of domestic violence initiate real action, sometimes because of the threat to a woman’s children’s safety as well her own.

The individual initiative to disclose or to get support from the neighbourhood had also been attempted by IN, but far more successfully. IN was a wife of the owner of a building contractor company. During her marriage to him, she had had a respected social and economic status. The respect from the neighbours remained during her hard life; she got support from her neighbours regarding her case.

I collect people around; I announce my intentions and ask their blessing. So even though I am a ‘widow’, no one looked askance with me because I am also always maintain [my good] reputation. In my hometown [I am] also active as in the PKK [women organisation] now still active as second secretary. I [was] forthright [in my] responses to local residents and they’re good, supportive. I…on my individual behalf

134 Interview with EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012).
[did] request the support of the gentlemen all present [and said] “I am facing a problem like this...”

To disclose the violence within a marriage is difficult for every woman for a number of reasons. It sometimes depends on the level of violence and the woman’s view of the violence. IN’s way of disclosure in her case was extraordinary because, generally speaking, in the early phase of violence, the victims usually did not want to open their case because of their expectation that it would end soon. The descriptions earlier have shown that the victim’s expectation of obtaining help from the neighbourhood are often disappointed; further, the neighbours are often hesitant to be involved in this issue because they are afraid of being criticised as someone who intervenes (or meddles) in a family matter belonging to another family.

4.4.3. Social networks

Respondents in this study were connected to or became connected to several social networks, such as friends in Qur’anic recitation, church, workplace, and (later) legal services. Several respondents had used their social networks that had been formed through, their religious communities (such as at the church, mosque) but not limited to those activities. By having connections with such networks respondents had opportunity to disclose the domestic violence and consult on the matter with other members of their social networks. Most of respondents in this study had disclosed the violence to friends and religious leaders; and, the advice obtained sometimes had a significant influence on the respondent’s belief and decision to stay or leave the abusive marital relationship. In EL’s case, it may have contributed to her decision, for here was a person of religious faith (though Muslim rather than catholic) whose advice (unlike that of the lay people EL had encountered) was not tending toward reconciliation or an acceptance of suffering at the hand of an abusive husband:

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135 Interview with IN, a worker in a private company (Semarang, Indonesia, 28 December 2011).
I asked a neighbour, he is a rector of IAIN (Islamic University in Semarang) and [he] told me to leave the marital home because the [husband/] father had [shown] no change…I finally left the marital house because my son would be killed by my husband [otherwise]…

While the advice contributed to her decision, her realisation of the threat to her son and her responsibility as a mother finally took precedence over her loyalty to ‘the marriage’ as such. The advice received from social network members is not the only reason for women to make their final decision (see further, Chapter 5). Below are the accounts of respondents who did contact social network members.

Her experience of violence had led ML to tell of her case to three priests in the churches where she was involved. She found different responses from the priests regarding with her case. The two Indonesian priests had argued that she must stay in the marital relationship because she has been united with her husband by God; meanwhile, an Australian priest, provided an opposite prescription for her case.

I also consulted with two priests. The first priest said if you had been married, whatever happened you had to keep it in peace. The second priest said the same thing. Perhaps because the priests are Indonesian so they suggested the same thing. Then I moved to the church in which the priest is Caucasian. He told me that if I felt unsafe, I’d better get out; I had no future in it, especially since I had a child to protect…

The mindset of the first two priests toward marriage and toward the relationship between a husband and a wife was very unsuitable for ML’s situation. The advice stated by the first two priests was grounded on religion tenet that would apply in an ideal context, which may be more properly implemented within different circumstances. Because of her dissatisfaction with the two priests’ accounts, ML, then, was moved to

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136 Interview with EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012).
137 Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).
138 Note: it was the common advice of a century ago; but one that has been less likely to be given from the latter part of the twentieth century onwards. Even earlier, a woman could obtain a church sanctioned separation as a spouse violent to the point of death; she could, however, not remarry (and without family help and in the absence of state provision of assistance, many women inevitably stayed)
seek the opinion of the third priest. His (more contemporary) advice seemed to strengthen ML in making the decision to file for divorce because it more rational for her situation.

The experience of PH, another respondent, has also shown that a priest’s advice can have a significant role in respondent’s decision.

After married [the second marriage] [to an Australian man] I went to the priest telling about my history. The priest told me [that I should] not…feel guilty continuously. I said, “Guilty all the time because what I did [remarried to a new man despite her first husband was still alive] [was] against the church law”, then the Priest said “Read in the Bible about King Saul and David. Those who had been chosen by God were still guilty, especially us as humans”. Father gave that example, “The prophets who had been chosen by God were still sinners … it’s you [too]. Do not continue to feel guilty…

The priest had strengthened PH, by referring to the Bible and telling her not to blame herself for the situation. Though the priest in her case did not suggest to her that she file divorce, PH had made a decision to leave the unbearable marital relationship.

SS experienced support from networks other than ones related to a religion. She had several friends from other groups, such as a business group as well as a Qur’anic recitation groups.

All of my family helped as long as I do not work. Now I do not want to [depend on them], I want to work. During the difficult times Ms. Eva from LRC KJHAM [Legal Resources Centre untuk Keadilan Jender dan Hak Asasi Manusia (Semarang)] also took me on [at the] shelter. I was also offered to work in the Women Services Centre but I said I could not because I was not ready to work in a place where I had to meet those who had had the same problem [as me] every day. I asked friends about getting me a work, because I have many friends in the recitation [group], and businessmen friends. Thank God there were many friends who helped, gave me chairs, chests, spoons, knives, pans, a wardrobe for my son.

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139 US Council of Catholic Bishops, For Your Marriage (2012) <http://foryourmarriage.org/everymarriage/overcoming-obstacles/domestic-violence/> The authors cite: US Conference of Catholic Bishops, When I Call for Help: A Pastoral Response to Domestic Violence against Women (2012) where the Catholic bishops emphasise that: ‘no person is expected to stay in an abusive marriage’. They add that: ‘Violence and abuse, not divorce, break up a marriage. The abuser has already broken the marriage covenant through his or her abusive behaviour. Abused person who have divorced may want to investi details.> The authors cite: US Conference of Catholic Bishops, When I Call for Help: A Pastoral Response to Domestic Violence against Women (2012) where the Catholic bishops emphasise that: ‘no person is expected to stay in an abusive marriage’. They add that: ‘Violence and abuse, not divorce, break up a marriage. The abuser has already broken the marriage covenant through his or her abusive behaviour. Abused person who have divorced may want to investigate the possibility of seeking an annulment.

140 Interview with PH, a retired beautician (Belmore, NSW, Australia, 19 October 2011).

141 Interview with SS, a worker in a private company (Semarang, 21 December 2011).
She also thanked her neighbours and friends who had convinced her that she would be able to face the difficulties.

The neighbourhood also helped, my friends also helped. They tell you that you’re not going to be miserable. “You were clever,” [they’d say] because they know I can make cakes and ice cream… I used to have a restaurant, shop and even had an exhibition in Ciputra Mall, but all went bankrupt, [in] all [I was] duped. I did my own work…

Not all respondents were satisfied with the existence of networking and their experience of it, as they had a struggle to find the right person or parties whom they believed could identify the issues in the case in order to offer support to her and to provide any solution. See the following experience of MI in this regard.

I have ever told to Kyai [a cleric] about my case. Kyai told me that “my husband could not control his passion”. He said, “Your husband’s wife [mistress], P, was not right. She had a brother who was a witch and he used the [P’s] menstruation blood to witch. I had asked many kyais. It could not be calculated [how many times I went]…to Kyai to ask for advice, [I] also reunited with my husband, but my husband always insisted [on his own path] when he was advised [otherwise]. [If] the kyai said one word my husband answered ten…instead [he] turn [ed] to advise the Kyai…

The experience of MI has shown that clerics’ advice did not have any significant influence on her husband’s behaviour. Though the advice did not have any significant effect on her husband, she stayed in an abusive marital relationship for twenty years for a number of reasons. The reason that MI had contacted many clerics was due to her wish that her husband’s behaviour would change and her consideration of the ‘best interest’ of her children.

Another respondent who had negative response from social network members is Y. The negative response derived from her social networks in Bandung. It was caused not only by the limitation of her social networks, but also by the refusal of her friends to

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142 Interview with SS, a worker in a private company (Semarang, 21 December 2011).
143 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, 27 December 2011).
be witnesses in her case. The limited number of social networks occurred due to her limited access to finance that affected her access to communication and transportation; moreover, it was also caused by the isolation created by her husband. Her opportunity for having a social life came when her daughter started school. In her daughter’s school she had several friends, but they remained limited.

I was also sad. There were friends who knew I had a problem like this and, then, they went away. There were two people close to me. The first [friend], she moved away for fear of being called as a witness. She had heard several times that my husband had driven me [out] to not return again. Then I asked [my friend if she were] willing. She did not say yes or no, but since then she pulled away...

The experiences of the respondents above have shown that the responses of neighbourhood are varied. If the respondents obtained a positive response, it can strengthen them to continue their strategy or decision; whereas if they obtain a negative response, they may not give up but it may delay their eventual decision to leave and/or divorce their husband. In some cases, however, the respondents will abandon that attempt, and keep struggling to gain positive responses which are appropriate to their goal. A number stay in their abusive relationship.

4.4.4.1. Ethnicity and social status

The existence of different ethnic background and social status was identified by respondents as the trigger of violence because of the different values, norms, attitudes and language that exist in such situations. However, the detail of discussion on this issue will be presented in Chapter 5 because it has correlation with another layer of ecological framework, namely the mesosystem. The mesosystem section discusses the interplay between various aspects of a person’s social environment. It further focuses on the resistance of the respondents as the response to the oppression and to what extent

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144 Interview with Y, a small entrepreneur (Semarang, Indonesia, 22 January 2012).  
the ethnic background, social status and other respondents’ identities will influence the opportunity of respondents to access resources, adopt various strategies and make a decision to seek justice.

4.4.5. Unemployment or low socioeconomic status

Domestic violence occurs in all socioeconomic classes; however, there is strong evidence that that wife abuse is more common in families with low incomes and unemployed men as a heads of households. Although it is not clear exactly how low socioeconomic status or unemployment among men are linked to the abuse of women, the lack of income is likely to generate stress, frustration and sense of inadequacy in some men for failing to fulfil the defined gender role of provider. The respondents’ husbands are (or were) most likely to have a full time job (such as being employees in private and government institutions, or a decorator, driver, small economic entrepreneur). Where they were in part time employment, or were intermittently jobless (sometimes for long periods of time), this presented particular stresses as has been alluded to above.

Unemployment or low socioeconomic status is believed to have a significant influence on men, who have a gender role as a ‘breadwinner’ within a household, and also on the likelihood of committing violence. Nevertheless, the violence occurs among educated couples as well within couples on welfare.

The experience of ML, however, has shown that whether her husband has a job or not, the violence continued to exist. ML insisted that before her husband had a job,

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146 Heise, above n 1; Hotaling and Sugaman, above n 11; Straus, Gelles, and Steinmetz, above n 20.
147 Heise, above n 1, 274.
she became a provider and a student in the same time. However, her husband did not like this and said that her activities left her no time to take care of him. His feelings of dissatisfaction with the circumstances and jealousy of his wife’s activities in earning money had then been expressed in his physical and psychological violence against ML. The psychological violence nevertheless continued to exist despite her husband getting a job. ML recognised that her husband’s family had influenced his mind about what the gender role should be. As consequence, her husband was never satisfied with what ML had done, in particular when she decided to work and study. Further, her husband had also attempted to control her by calling her many times during the work time in her work place.

Then, he got a job. However, each time he came home from work he was always angry. Even at work he always called me, he could call me a dozen times, if not answered he was angry. I don’t know how to deal with him, I was always wrong…

Other evidence has shown that having no permanent job can affect the marital relationship. This was experienced by GI and her husband. As result of his unemployment and thus no access to funds of his own, her husband often stole her money in order to fulfil his desire to pursue notorious hobbies, such as gambling and drinking.

Yes it was very beginning before we were parted, he likes drinking, gambling, he is still up to [that now] now. Even if he did not have money he kept gambling. Where was that money from? He likes taking money from my wallet or wherever I kept [it]. So far, I continued to work, my husband had no clear work, one thing for sure he worked in the building [industry] so that would not fix [the situation]...

Given that the earnings of her husband in the building industry fluctuated, GI had never been given money for daily needs; therefore she worked in order to fulfil those needs. She argued that during the marital relationship she felt as if she had no a

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149 Interview with ML, a student (Sydney, NSW Australia, 5 October 2011)
150 Interview with GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011)
husband, because her husband never fulfilled his responsibility to a household. This reflects a traditional gender role expectation in the wife as well as in the husband.

Another respondent affected by unemployment in the family was FA. She and her husband both had no permanent employment, but her husband always forced FA to work and had taken the money that she earns from her.

My husband did not give us money because he sometimes worked [and] sometimes doesn’t. If he had money he used it for himself. So if he got money he usually paid the food stall because he [often had] … a debt to the stall…

If she does not provide money, it became the reason for her husband to abuse her physically, sexually and psychologically. If FA had money, it was taken by her husband just for his pleasure. Their only daughter had even been exploited as a prostitute by her husband in order to meet their daily needs. The husband cooperated with a pimp and also sometimes organised himself to sell her services as a prostitutes. Her husband had taken the money that the daughter had earned.

Having an unemployed husband was also the experience of NA. In this case there appears to be long-standing disapproval of the marital match on the part of his family. They used his unemployment as an opportunity to separate them. NA had encouraged her husband to have initiative and looking for his own job, but her husband’s brother promised him a good job and wealthy life as long as he divorced NA.

His brother promised to my husband if he came with him [that he] would have a good life. For example, he will give my husband a car but my husband should have not married. [If he was unmarried], “I would give you work; you would…get money every year.” He seemed to be attracted by his brother [to this]…

Her husband seemed to be persuaded and attracted by his brother’s promise.

Finally, her husband filed for divorce and all the fees for processing divorce were paid

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151 Interview with FA, a housewife (Semarang, Indonesia, 29 December 2011).
152 Interview with NA, a dressmaker (Semarang, Indonesia, 29 December 2011).
by his brother (At the time of interviewing, the divorce procedure is underway in the Supreme Court).

Based on the descriptions above, unemployment and low socio economic status has affected the marital relationship of respondents in this study. It has even led to violence against the vulnerable within the family, such as against women as wife or daughter. In this study, the respondents who have less bargaining power than their husband seem likely to be more exploited by their husband rather than is the case for the respondents who have more bargaining power. The more power women have, the more opportunity they have to leave the abusive marital relationships.

**4.4.6. Isolation of the family and intervention of the family**

**4.4.6.1. Isolation of the family**

Studies on the correlation between isolation of the woman and the family and domestic violence have shown that battered women are more isolated in terms of frequency of interaction with friends, neighbours, and relatives, and their participation in public activities.\(^{153}\) The findings in research that has been examined are that within societies with a low level of family violence, community members are aware of their rights and obligation to intervene in ‘private family matters’; whereas, in a culture with high violence against women, a husband-wife relation and family issues are considered beyond public scrutiny.\(^{154}\) These findings insist that women who have strong family and friendship networks will experience less violence. It has also been shown that the length of time that a couple lives in a neighbourhood and the presence of extended family

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\(^{153}\) Heise, above n 1; Russell P Dobash and Emerson R Dobash, *Violence against Wives* (Free Press, 1979); see also also see Richard J Gelles, *The Violent Home: A Study of Physical Aggression between Husband and Wives* (Sage, 1974)

members are generally associated with a lower incidence of the abuse of women.\textsuperscript{155} Nevertheless, the presence of extended family members in the home sometimes can have significant negative impact upon the violence; and can be a source of continuous violence if such members condone or even perpetuate the violence themselves.

Isolation from family (if not already the pattern) is usually established by the perpetrators of violence who are mostly men. Isolation is where one party controls all access of another and is a form of power imbalance between two parties. Controlling the wife (or other vulnerable family members) is done by the perpetrator by precluding access to communication and financial assistance from others; as consequence, the wife becomes dependent both socially and economically on the perpetrator. Such a phenomenon is experienced by several respondents in the study. Again, however, family intervention can also support or cause violence and contribute to making the marital relationship unbearable. Such intervention in many cases becomes the trigger of violence rather than the solution; and several respondents experienced both being made isolated by the perpetrator from any support as well as negative family interventions at the same time.

L, for instance, had married to an Australian man. At the beginning of their marriage, she was not allowed to study because of the presence and age of their children. Her husband had promised that she could study after the youngest child turned 8. However, as year passed and she began to recognise more fully the character of her husband whom she described as ‘difficult and hard’, she was thinking that this would not eventuate. Moreover, during the four year marriage, she felt isolated because she did not have opportunity to make friends due to having to stay at home almost all day to fulfil the role as a mother and wife.

...I do not have friends to talk so I think and I decide by my own. Well, I talked to my husband to find the solution. There is also a friend, my husband’s friend, he’s like a ‘mediator’ [for us and he tried to help me] but my husband is harder...

Isolation from friends in Australia and without adequate information about her rights had made her discuss divorce and property matters only with her husband and a friend of her husband. She recalled in her interviewee that she had less power than her husband during discussions, and she considered that she had only been given an amount of money which was less than the 50:50 share she believed was applicable under the Marriage Act 1975 (Cth). Although the amount may have been less than could have been obtained with regard to full pursuit of her rights under the Act, she (like many others) was incorrect in assuming that a 50:50 distribution was automatic under the Act. Multiple factors are taken into consideration, including what was brought to the marriage, contribution made during the marriage (including consideration of parental responsibilities), and respective earning capacity and responsibilities subsequent to the dissolution of the marriage. Where children are involved, there is also the separate issue of provision of maintenance.  

Another respondent, Y, also had the same experience of being isolated because the husband had not given her opportunity to access communication with others.

I felt [as if I were] in the “golden cage”: [I] was not allowed to do anything, I also couldn’t share with my mother because he did not give me opportunities [to do so]...I did not have friends to share the story, but I did not want to tell it since it was considered … taboo; meanwhile I had no family in this city...

Contact with her family was limited. Although he had seven mobile phones with different providers, he was reluctant to lend his mobile phones to her. Y acknowledged that her husband is a ‘stingy’ person, but his failure to lend her a mobile may have

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156 Interview with L, a student (Campsie, NSW, Australia, 11 October 2011).
157 Marriage Act 1975(Cth) ss 75, 79. See also Young & Monahan, above n 75.
158 Interview with Y, a small entrepreneur (Semarang, Indonesia, 22 January 2011).
stemmed from other motives. Her husband’s family tended to defend her husband rather than support her in any matter upon which they disagreed. She insisted that the long isolation from family and friends, and the economic and psychological violence he inflicted had affected her mental and physical health; she suffers from high blood tension and distress.

Being isolated from family was experienced by ID as well. In twenty years of marriage ID felt that she had no friends because her husband did not allow her to contact with friends and her mother.

When my husband sued [me] for divorce so automatically I could not do anything, I did not know where I [could] want to run? During 20 years of marriage, I could not be in touch with friends, even with my mother, he was just angry...

The isolation impacted on her relationship with other people, particularly when she was divorced by her husband; there were great difficulties for ID in finding a witness for processing the divorce, not only because she did not have friends but due to the isolation created by her husband, she had never shared her experience of domestic violence with friends or her parents, so nobody knew what had exactly happened within her marital relationship.

Descriptions above have shown that isolation from family is often implemented by the perpetrator as a means of controlling the wife’s activities. The impact of isolation is significant on the women’s welfare and knowledge. It has been shown through the cases of L, Y and ID that domestic violence had affected the women’s health, economic independence, self-confidence and access to information that they needed, particularly when they were facing legal issues. The effect of isolation is made worse if the intervention of family members (whether from the perpetrators’ family or the victims’

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159 Interview with ID, a property entrepreneur (Semarang, 12 January 2012).
family) does not support the victim and support the elimination against her. Further details of this issue will be discussed below.

4.4.6.2. Intervention of family

Conflict arising between a husband and wife is sometimes caused or heightened by the intervention of family members (both from the husband’s family and the wife’s family). Intervention, even well-meaning victim supportive intervention, can be a ‘two-edged sword’. First, it may helpful for the parties in conflict, particularly for the victim of violence, if supportive of the victim and the adoption of means other than violence for conflict resolution. Generally speaking, various forms of interventions can be implemented to stop the violence, such as reminding the perpetrator to stop the violence, advising the perpetrator to behave respectively to the wife, reconciling the parties, or asking the victim to leave the abusive marital home. However, even such seemingly victim-supportive interventions sometimes are useless or counterproductive because they may serve to aggravate the perpetrator further and escalate the conflict, and consequently, the violence not only remains but sometimes occurs with greater intensity (this is without considering situations where family interventions actively support the husband’s position and violence as justified or culturally or religiously appropriate).

Intervention often impact on the self-confidence of the parties concerned. If critical of the perpetrator, they may make him angrier about the victim. If the advice is directed toward the victim and supportive of her staying (as opposed to taking action against the perpetrator or leaving), the intervention may further disempower the victim. The advice given may not be advisable given the particular circumstances of the victim. The poor guidance supplied in such interventions may be the result of values or norms that may be improper or inadvisable to implement in the victim’s circumstances.
Intervention may also involve giving a priority to the members of the family of origin. Giving priority to the family of origin affects the other party making them feel of abandoned. Such a feeling was frequently been expressed by respondents in the study, particularly when what they felt they really needed was support from their husband.

MI’s husband had abandoned her several times due to prioritising the interests of his parents.

Also at that time he was driven by his parents. If there was anything he was obedient to the parents. Because he was a mother’s boy, so when he was invited by his parents even though I had a baby, he wanted to [go], stayed and [did] not come home, I was left alone...\footnote{Interview with MI, a housewife and volunteer at women’s crisis centre (Semarang, Indonesia, 27 December 2011).}

Obedience to parents and husband had also been embedded in MI. She has since realised that her extreme obedience to her husband was a mistake and was caused by her false understanding about what the relationship between a husband and a wife should be. She argued that the intervention of her husband’s family affected to her husband’s behaviour as he was an irresponsible man who had no respect for her as a woman and his wife. He continued to maintain a childish attitude, was selfish, repeatedly violent, and lacked a sense of a responsibility not only towards her but also their children.

In another case, the intervention of family had exacerbated disharmonious marital relationship between SS and her husband. The intervention of his family had influenced her husband to give more attention to his family rather than to SS as his wife.

I was slapped because I asked for money for the children. If being asked about his salary he never answered me, and then he was always angry. It seemed he had a lot of credit cards problems and stress. And his parents were impartial and he said, at last, that his family is more important than I…\footnote{Interview with SS, a worker in a private company (Semarang, 21 December 2011).}
Though her husband preferred to give more attention to his family, behaviour that was accompanied with violence toward her, her family has helped and supported her to remove her from the violence.

At that time my father was having a birthday, he called me. Without realising it I screamed “Daddy”. Then my father asked, “What is it?” Then I said “I already cannot stand” but I did not dare to speak [more]. Then I gave my phone to [my] husband and my father said, “What have you done to my daughter?” He replied, “I did not do anything.” My father said, “Beware, if you hurt my daughter, I will kill you”. After that the phone was given to my oldest son, my son was kicked [by my husband] and told not to say anything. Then my daddy said [to me] “Just leave all of your children, go home [to Medan], [better] than being tortured there.” I said, “I have no money, all my money was taken by him”. My father said “I’ll transfer [some money] on 6th…"

In the case of NA, the intervention of her husband’s family origin aggravated the marital relationship between NA and her husband. There appears to be a marked contrast in the attitude of two families. In the beginning, NA’s boyfriend involuntarily married to her and this was (she believes) due to the influence of his family. NA’s boyfriend was forced to attend the wedding by the bride’s father and his family did not come to the marriage ceremony at all. After they were married, he hardly stayed in the same place with NA.

…”When I was in hospital to deliver the baby, I called my husband but [I was] not answered, whereas he slept at home, then his mother answered and said, “Yes, later” [but he did not come]: his sister said the same thing but still [he] did not come. My father called [and said], “This child will be born…” He [finally came but] did not accompany me in the room, just waited in the lobby. He did not discuss with me and even discussed [it] with his family…"

Although her husband’s family never said so explicitly, NA believes that they disapproved of the marriage; therefore, they tried to split them up by influencing NA’s husband to file for divorce. NA believes that her husband’s family intervened in her marriage problem and even financed the court processing of the divorce from the first level to the highest level (the Supreme Court) which was very costly. NA’s parents are

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162 Interview with SS, a worker in a private company (Semarang, Indonesia, 21 December 2011).
163 Interview with NA, a dressmaker (Semarang, Indonesia, 29 December 2011).
not wealthy people, but they have supported NA psychologically, economically and legally, first by insisting on the marriage to legitimise the child that was to be born and then, when things did not work out as intended, by asking for free legal aid from their neighbour who works as a lawyer (see Chapter 5).

EL also experienced familial intervention, in her case by her husband’s mother. The intervention which was expected to provide a solution, in fact, had made the conflict worse as the intervention tended to support the continuance of the violence. EL has recognised that it occurred because of a lack education on the part of her husband and her mother-in-law.

His mother always intervened in family matters, defended her son, because of lack of education. I did not tell my case to the family. In my family [the thought was] I could look after myself. So, where had I to go? I just asked the Lord. This is quite frankly because no one helps, morally and materially…When I was beaten I had ever go home, but my father told me, “This was probably a test from God, come back.” I was told to go home. I do not want to, but the father says, “You must be patient; this may be a test from God. I then went straight back… Only my brother [would] be a witness, that’s all…”

She recalled in her interview that she did not ask her family to support her because of her initial experience of being repelled by her father when she sought assistance, and whose only advice to her was to be patient when she experienced violence. According to EL, the advice was useless because it did not give any solution. She attributed his lack of assistance, to the fact that she was of different blood type to her father and mother. The significance of the difference in this instance is that two O group parents cannot produce a B group child; such a child is either adopted or, if

164 Interview with EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012).
165 The O group allele is recessive: hence the BO genetic combination is expressed as B group person, and thus while a BO and BO parents can have an OO child as the O allele from each parent combines in the offspring, a BB and BO (both expressed as B group) can only ever have a child that is BB or BO (expressed as B group), and OO parents can only ever naturally conceive an OO child (as the expression of the O group depends upon having the two of the recessive O alleles). If EL, as an educated person is aware of this (and as a pharmacist this is highly likely to be the case) then while she complies with his request to go back to the marital home, she may see it as evidence of his rejection of her as his child (or even as ‘punishing her’ for the unfaithfulness of his wife).
born to the wife, is not the husband’s child. This belief then contributed to her reluctance to seek further assistance from them.

Family intervention in the form of giving advice to the perpetrator to stop the violence sometimes has no significant effect on reducing the violence because the perpetrator can simply reject the advice and continue to commit violence, or the effect may be only temporary, with violence later recurring. Such a phenomenon was experienced by FA and her children.

When I was beaten the children were still little, just before [this] his mama said, “If you beat your wife you’d better just beat me.” When my husband beat up my son, his mother also defended her grandson: “Instead of beating my grandchild, you’d better beat me.” If his mama said so he then stopped, but it recurred again…

Though her mother-in-law warned her husband against hitting her (the mother-in-law’s comment that ‘You’d better just beat me’ being an appeal to filial obedience to avert the violence), her husband repeated the violence, though in the case of the son being beaten it could serve to interrupt or delay the violence.

The intervention of family can have a significant impact on someone who has no firm principles because he or she will be able to be manipulated. This phenomenon was experienced by IN.

There were elements of emotion, so my husband’s brother and sister were trying to separate us. My husband did not have [any strength of] principle so [he was] just played by the brothers. So in fact my husband was still able to be directed, he was actually serious about me; it may have caused [by the fact] that my education which was not the same level [as theirs]… I am not an educated person, so they are furious [as to] whether I can educate [our] son or not…

The intervention may have been deployed in order to preserve and transfer the values held by a family to another family through the relationship between a husband and a wife. Given that the values, for instance gender role, embedded in members of a

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166 Interview with FA, a housewife (Semarang, Indonesia, 29 December 2011).
167 Interview with IN, a worker in a private company (Semarang, Indonesia, 28 December 2011).
family differ between one family and another family, the interaction between the different values probably will create conflict since it has influenced the way of thinking and behaviour of the individuals involved. If there is no mutual understanding about the values held by the husband and wife, such a conflict in values may even trigger domestic violence. The experience of ML has shown that the intervention of family in terms of the idea or value of a particular view of gender role had triggered the violence within the couple’s marriage.

[If he had just sent an email or called his parents or siblings, I immediately...[became the target of his] anger]: He said, “You are a brainless wife, you don’t take care of your husband.” I was told, “As the wife who does not have responsibility, you must be beaten.” He also said, “Why do you still study while you have been married still in school, what use is it? You married, just take care of your husband.” [But] my family supported me, “If you cannot stand [it], just get out...”

The views of the respective parents of the couple differed, particularly in relation to the violence: the husband’s family supported the initiation of violence; the wife’s family encouraged her to flee if it were unbearable.

It is believed that family intervention in many cases has affected family harmony. In a community where the relationships between members of the original nuclear family (that is between the members of the couple and their respective parents and brothers and sisters) remain close, intervention inevitably occurred.

Intervention is, as earlier noted, can help or it can hurt the victim of domestic violence when it actively supports or condones the violent behaviours and abuse by the perpetrator: or it can ameliorate the situation, by maintaining an avenue of support, or supporting a victim who wishes to leave her situation; or it operate as a ‘two edged sword’: it can hurt while trying to help.

168 Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).
The descriptions above have shown that the intervention of family sometimes did not have significant influence on stopping the violence. On the other hand, the intervention, could even, have escalated the violence because the intervention was done without considering the needs of both parties, particularly the needs of the wife as the victim. Therefore, family intervention in marital relationships in some cases became a disaster for the couple when the character of one party was weak or easy to manipulate by her or his family origin and the intervention served to support the perpetuation (even the initiation) of violence. In addition, if the intervention from the family members perpetuates the patriarchal values and beliefs, the abusive marital relationship seems likely to continue. Such phenomena will appear in this following section as one of the factors within the macrosystem.

4.5. The Macrosystem

This section discusses on the macrosystem as the representation of general views and attitudes that permeate the culture, its values and beliefs at large. For instance, the general view of male supremacy and the embodiment of patriarchy influence the organisation of power in community and the distribution of decision making authority in intimate relationships.\(^{169}\) Most feminist discourse and theorising on violence against women have focused on macrosystem factors such as patriarchy (which has a correlation with other factors elsewhere in the framework).\(^{170}\) Researchers argue that the macrosystems comprises male entitlement in regard to women, such as masculinity linked to aggression and dominance, rigid gender roles, and acceptance of physical chastisement.\(^{171}\) In addition, the macrosystem encompasses religious belief, age, age
cultural expectation and norms. Thus, based on the macrosystem point of view the cause of domestic violence will be examined as to whether these were really experienced by respondents in this study or not.

4.5.1. Masculinity linked to dominance

One of the macrosystem factors that promote violence against women is a cultural definition of manhood or masculinity. Although not all cultures define manhood in terms of dominance and aggression, many certainly give greater emphasis to the male as the dominant partner in decision-making, including economic decisions, location of household, its composition, reproductive decision making and so on. There are some that accord special position to women in term of inheritance and land or decision making within the purely ‘domestic’ realm, or even participation in trading as a ‘traditional’ occupation or in various roles as agricultural labourers (but not agricultural decision-makers). Research suggests that masculinity is, however, mostly linked to dominance and aggression, male honour, even rape and sexual coercion. In this study, perceptions of masculinity are often linked to dominance and aggression, and this is experienced by respondents, particularly those respondents who experienced physical violence. Many of the accounts above clearly demonstrate this in relation to family intervention which served to reinforce a masculine stereotype of dominance which included a right to dominate the wife by physical abuse. Problems can arise when that presupposition of male dominance are challenged by the couple’s circumstances.

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172 Weeks and LeBlanc, above n 33.
173 Ibid.
The first experience to be related here is that of ML. Here unemployment of the male and employment of the female presented specific challenges to the male’s sense of self that had been formed as a male dominant ‘breadwinner’ model (which will also be covered further below). After marriage ML became the breadwinner as her husband had no job. She had two jobs that had forced her to spend much of her time out of home. It seemed that he felt insulted due to his wife having taken over the role of breadwinner. In addition, because of ML’s busy schedule her husband felt jealous and was furious, and he felt that ML did not look after him. Her husband then started accusing ML of cheating [on him].

Then a few weeks later when I came home from work, I found the wedding photo was torn out. The frame had been completely destroyed; the material had been [thrown] in the waste basket. I asked, “What the hell is this?” He said, “Well, you do not take care of me. You are busy yourself and I as your husband have been ignored”. [I responded:] “Well, what can I do, I have to work for a living, and because you don’t work you should tolerate [it]. He continued to be angry…\textsuperscript{175}

Although her husband never committed any physical violence after he was reported to police and served by an Apprehended Domestic Violence Order\textsuperscript{176} he continued to perpetrate psychological violence such as stalking her by calling her many times during work hours; and, he always expressed his disagreement with ML’s continued work and study in rude words and manner (see section on the exosystem above namely 4.4.1).

A male dominance mindset which affected to marriage life was also experienced by SR. SR and husband ran a small grocery store together; however her husband never gave appropriate earnings to her. For SR’s husband, the desire for dominance was expressed particularly as economic control. SR lost her autonomy and though working

\textsuperscript{175} Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).
\textsuperscript{176} The type of Apprehended Violence Order (AVO) issued where a domestic relationship exists between the people involved.
in the business became dependant on him. SR felt that her husband also did not consider her participation as a worker and a wife (that is her ‘double burden’) but expected her to carry the burden of all household duties as well as work in the store. She argued that her husband had exploited her to work but gave no appreciation. Finally, her husband’s attitude was such that it encouraged her to leave the marital house.

The link between masculinity and dominance (physical and economic) was also experienced by SS. At the beginning of their marriage, her husband did not have a job, and she helped him to find one. SS recalled in her interview that she always had done what her husband had wanted, but he did not have any concern about household affairs; everything had been held by SS, and, her husband never even gave her money for daily needs.

[W]hen I told him [to help], he said [that he was] tired. So, all of that [was done] by [me on] my own. I then felt what I was lacking. I’ve tried my best when he asked for anything. If he wanted to go somewhere, I always followed…”  

MR, had the same experience of being dominated by her husband. Although she had own earnings from her job as bridal wedding and decorator to meet the family needs, this did not guarantee that she would be appreciated by her husband.

Well, it’s the man in power but he should be believable as well. If the male is supposed to have the power but it does not mean that he can do what he wants. Households become neglected because everything was done by me. So it must be a mutual respect. My first husband and the second were similar, self-centred (but my first husband was not physical violent). The second one liked to destroy things…”

Both MI and ID were abused physically. Their husbands had dominated the marital relationship through the disrespectful and aggressive behaviour. MI described the character of her husband as ‘rude’ and ‘selfish’. She was beaten many times and neglected during the marriage. Although her husband was never physically violent after

177 Interview with SS, a worker in a private company (Semarang, Indonesia, 21 December 2011).
178 Interview with MR, a bridal decorator (Semarang, Indonesia, 24 December 2011).
leaving her to stay with another woman, the economic violence continued because her husband never gives her any money for living expenses for her and their children’s needs. Given the financial difficulties that she faces, she forced herself to look for a job despite the presence of her small children.¹⁷⁹

ID has the same experience of being abused by her husband, despite both being highly educated (she a graduate of an Indonesian university and he with a masters from an Australian university). His education was deemed greater and his socio-economic standing higher than hers or that of her family. She argued that her husband had controlled her not only in regard to financial issues by giving her limited money for daily needs, but also in term of her freedom. It was a pattern that continued in the marriage and even after divorce: while in the marriage both physical violence and economic control were used, after the divorce he again sought to secure dominance but via economic means.

After divorce he also never gave a living. When we were still together he never gave me enough money. Even, at that time, I was not allowed to choose my own clothes. So he always chose them for me, sometimes I did not like but I was still forced to wear…¹⁸⁰

Based on the descriptions above (as well as many earlier) male domination is present in the relationship of the couple: it is a value or belief of the husband and one that is often ascribed to by the wife as well, although she may express the belief that it does not entitle the holder to be violent or controlling to the extent that he is. It makes itself felt in many different ways, very commonly in controlling financial issues and controlling wife’s activities, sometimes utilising abuse in its various forms to achieve or exert male domination in the relationship. Male domination was also experienced by couples regardless of education and a socio-economic level. Thus, in certain cases,

¹⁷⁹ Interview with MI, a housewife and volunteer at women’s crisis centre (Semarang, Indonesia, 27 December 2011).
¹⁸⁰ Interview with ID, a property entrepreneur (Semarang, Indonesia, 3 January 2011).
higher levels of education and a socio-economic level of the husband had no significant influence in preventing or stopping the violence; in a number of examples it had even led to aggressive behaviour towards their wives.

4.5.2. Rigid gender roles

A belief in rigid gender roles and the patriarchal parental system has a significant impact on the value and perspective of the respondents in facing the violence. The way that their own parents organised their own relationship and that of their family, particularly the father’s domination of the family, and their education of their children in a manner that reinforced the patriarchal system and rigid gender roles influenced both perpetrators and victims, the perpetrator in their acceptance of what is regarded as acceptable ways to manifest male dominance and what comprises the ‘male’ role in society, and the respondents in their acceptance of the violence against them. The respondents argued that what their husbands had done in terms of domestic violence towards them was commonplace. However, the respondents’ values changed over time due to their involvement to organisations (either membership of a non-government organisation or local government) that are concerned with the elimination of violence against women. The values are long-standing and deep-seated, and often embedded by not only experience within the family but also via broader cultural and sometimes religious values, and take time, encouragement, and a degree of reflection by the victim on the victims’ own experiences to alter.

Patriarchal values had been embedded to MI’s life since her childhood; and, as a consequence, her attitudes have been shaped in regard to how she views the male patriarch or patron within the family and the relationship between a husband and a wife, and how the family should operate.
Before joining in a support group organised by KJHAM, I was stupid, did not have any insight, or a scientific/educated [attitude]. The only emphasises in my mind was [to be] obedient and obedient. ... My family was so obedient. After getting married I was pregnant five months later. I was still obedient, [and did] not...have family planning because my husband disagreed. After giving birth, I was not healthy, but I [believed that I] must serve my husband [and have] ...sexual intercourse. My husband has a great passion, so I have to serve him obediently...  

Furthermore, because of the patriarchal parental system, she had had to accept the marriage that had been arranged by her parents. What prompted her marriage was the marriage of her younger sister. In Javanese culture, if a younger sister had been married, then the older sister must be married as soon as possible due to the assumption what comprises the normal order of marriages in a family. She would be rendered a curiosity if she remained an ‘old’ single girl.

Here is the story, my sister used to study in Islamic boarding school; she was going out with a boy. My parent considered it is taboo to have such relationship so they went ahead and got married, afraid that things had happened were not desirable. While, I was still in junior high school; I, in Javanese term, was ‘bypassed’, actually I didn’t mind. After my sister got married, I was paired with someone [by my parents who were] afraid that I would be an old maid, because I had not married yet...  

Another respondent who had similar experience of patriarchal parental system that influences the formation of an arranged marriage is FA. She said, ‘I actually did not like him, but I was matched, well there’s nothing I could do.’

Generally speaking, the patriarchal system exists just about everywhere, in any part of the world. It has been embedded in many families, not only in Indonesia but also in Australia. It is proven by experience of Indonesian women who either have been living in Australia for years or whose husbands are Australian men or who are men who, while born in Indonesia, have lived in Australia for a considerable time and are

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181 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
182 Interview with MI, a housewife and volunteer at women’s crisis centre (Semarang, Indonesia, 27 December 2011).
183 Interview with FA, a housewife (Semarang, Indonesia, 29 December 2011).
permanent residents but whose values may have been reinforced rather than undermined by their experiences in Australia or whose original values are retained despite their experience in Australia. For instance, ML who had been living in Australia for more than ten years and was married to an Indonesian man who held a permanent resident visa expected her to behave as ‘a good wife’ by staying at home and serving her husband. 184

Regardless of the place of residence of the respondent lived, the patriarchal system had affected the mindset of ML’s husband. Although ML’s husband had been living in Australia for years, the values and the mindset and the rigid gender roles and patriarchy system remained deep-rooted; meanwhile, ML has modern insight into marital relations.

One of the effects of rigid gender roles is that the household affairs become unworthy for men to do, even to discuss. It seems that the man’s task is only in the public space that is, earning a living; whereas all domestic affairs become the wife’s responsibility. The refusal of the husband to help a wife with the housework or a woman’s acceptance of that role becomes a burden for a wife, particularly when she is being educated or operating a business or employed earning income for the family. Patriarchal values are not limited to Indonesian husbands. It has also been experienced by L who had married an Australian man.

He also never helped. For example, when being asked for help he liked to argue ... If he was furious, he would say rudely, “You bitch, Indonesian women are cheaters…When my mother came he did not really like, he did not really like [it] when the children were cared by my mother he wanted me to take care of them…”185

The attitude of L’s husband was actually not merely to ignore the household affairs but also to control his wife’s movements, ignore her wish to study or to work,

184 Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).
185 Interview with L, a student (Campsie, NSW, Australia, 11 October 2011).
and give limited money for living expenses. He wanted his wife to stay at home caring for the children. On the other hand, L did not want to ‘waste her time’ just looking after her children, and she felt being isolated from friends and society during the four year marriage. Here there was a real clash values in the marriage in regard to gender role perception.\textsuperscript{186}

The influence of patriarchal system and rigid gender roles can also involve a view of the wife’s body as the husband’s property. The husband (in such a view) has authority to control women’s body. This can be in terms of his use of it for his pleasure or even in terms of curtailing the reproductive rights of the woman (for example, her access to contraceptive advice and devices or pharmaceutical products) as shown in the earlier example of MI.

In terms of sexual use of the wife’s body, PH husband compelled his wife’s participation in sexual activity with him two of more times a day. Although PH complained about her husband’s attitude, the husband gave the reason that the marriage had given him an authority to possess her, even to have sexual intercourse whenever he wanted.

Finally, I’ve said [that] if [one is] Indonesian, [one] has sexual intercourse only once a week, but he wanted twice a day. I felt pain; my legs were trembling so maybe it is like this because in Catholicism I should not get married if my husbands do not die even though we’re divorced… I just said [that] I was sick but he forced [me] too. Until he said to me, “I married you, your body is mine”…\textsuperscript{187}

The power of possessing the member of family also affected FA and her daughter who were abused physically, psychologically and sexually. She insisted that she did not like her husband’s behaviour as he had shown no responsibility for her and children, but she was afraid to complain because she would be beaten. Her husband’s

\textsuperscript{186} Interview with L, a student (Campsie, NSW, Australia, 11 October 2011).
\textsuperscript{187} Interview with PH, a retired beautician (Belmore, NSW, Australia, 19 October 2011).
arbitrary behaviour escalated when he sold their disabled (Down syndrome) daughter into prostitution in order to get a living.

If he was not served [sexually] he would be angry. He liked to force sex [on me], it was always. I used to work but my husband took the money. Even the money of IDR 5 thousand was also asked until I couldn’t buy anything that I wanted to. My second child was sold as a prostitute in 2007…

The husband’s responsibility for the household (as indicated in the Marriage Act 1974 (Indonesia) had been misused by FA’s husband. He exercised his authority as head of the household (and his control over his wife and daughter) to use them as a tool to get money. He cooperated with a pimp for the sale of his daughter’s sexual services and also sometimes himself sold her services and lived off the earnings of his daughter whom he had forced to be a prostitute. His wife’s fear of being beaten meant that other than initially objecting, the prostitution of their daughter went ahead. He also had a pattern of behaviour that included forced sexual intercourse with his wife (spousal rape). This is a continued abuse that reflects exploitation of his wife’s relative physical vulnerability; it does not reflect loving care for a wife, her health and well-being. A lack of education (a situation that can be sometimes attributed to a patriarchal system that preferences education for boys ahead of girls as well as poverty more generally) brought FA into deeply abusive circumstances, and she felt that she could not do anything about the violence perpetrated by her husband. However, she has an awareness that the violence against her was wrong, and she did not mind if her husband was sentenced in regard to his violence but was reluctant to act for fear of him.

In addition, the patriarchal pattern within family and rigid gender roles can affect the respect of husband for his wife and his attitude to his wife’s work in the home and as a worker. After marriage, SR and her then husband ran a store. He became the

\[188\] Interview with FA, a housewife (Semarang, Indonesia, 29 December 2011).
manager and SR the assistant shopkeeper. However, in the running the store her husband did not consider her contribution as a business partner though on a small scale. She stated that

Well, I am as his wife did not hang about and sit inattentively, but I kept the shop, it was also work, but he did not consider me as a worker because I am his wife.\textsuperscript{189}

The experiences of the above respondents have shown that an acceptance of or enforcement of rigid gender roles had affected the women’s well-being. They had been forced to undertake what was considered their gender role as mother and wife in private space as the main task rather than that of employed person or other activities in the public space. The belief in rigid gender roles led the perpetrator to emphasise that household affairs are the task of women and men should have no involvement in them. Hence, this view has overemphasised the women role in the household while underemphasising their role in other activities in public spaces. It is a perspective that often underestimates the value of the woman’s role in the home. Moreover, whilst maintaining that the woman’s role is legitimately limited to home and children, this view often paradoxically undervalues that contribution: the man’s gender role ‘in the world of work’ is seen as far more important and the woman’s role as ‘supportive’ or ‘secondary’ only to the man’s role as ‘breadwinner’.

This perspective is also a ‘two-edged sword’ as a man unable to fulfil the rigid gender role assigned to him is seen or may see himself as then ‘less of a man’ and became frustrated, angry and aggressive towards his wife if she is able to provide income. This can be seen in a number of the accounts by respondents.

A woman’s status can be raised by participation in work, but this can be a source of anger rather than a pride for a husband. And although her status is raised if she takes

\footnotesize{\textsuperscript{189} Interview with SR, a student (Sydney, NSW, Australia, 1 November 2011).}
on other duties, the lower status work (women’s work in the home) remains hers alone. Her husband does not want to share that burden. This perspective thus is a cause of conflict in a number of cases.

4.5.3. Acceptance of physical chastisement

Most cultures approve of physical punishment of women under certain circumstances. The circumstances are defined by the cultural rules about who has a right to hit whom and at what level. Thus, the cultural acceptability of punishment may serve to justify abuse; and, as consequence, others have no right to intervene. The transgressions of a gender norm, such as by disobeying a husband, failing to prepare meals on time, or sexual infidelity, are frequently considered as the ground of a husband’s ‘right’ to chastise his wife in order to discipline her. Increasingly such acts are also becoming considered internationally and nationally as unacceptable violence against women or wives. In this study the most reason for physical chastisement was a wife’s disobedience from the husband’s point of view. The husbands in this study expected their wives to be ‘good wives’; in the patriarchal terms, a good wife means that the wife must do everything and whatever the husband says and wants. In some instances, the less women complained about their husband’s behaviour even though it contradicted their interests and needs, the less the physical or non-physical violence

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191 Heise, above n 1.
against them. In certain cases, however, complying with the husband’s demand without complaint did not guarantee that the women could avoid such violence.

The experience of ML has shown that physical and psychological abuse by her husband was caused by his view of the rigid gender role. The right of man to chastise wife physically was also embedded in his mind; and it always emerged after he had conversation with his family or relatives. 192

The experience of SS had shown that her husband did not like being asked about his activities, and the questions she asked seemed like as an unjustifiable investigation to him. This circumstance emerged her husband’s anger.193 Though SS had tried to be a good wife by complying with her husband wishes and never complained about everything because she had her own earnings that she used to fulfil her children needs, it seemed not enough for her husband. Her husband remained reluctant to help and showed her disrespect.

Considering himself superior to his wife was also a characteristic of MR’s husband who liked beating her when they argued with each other, even over trivial issues. Financial management often became the trigger of physical violence towards MR since the husband had tried to dominate the financial arrangements. MR would not have minded if her husband had been good at managing, but, in fact, the money he got from working just went on gambling, drinking and the services of prostitutes.194

The findings of this study have also shown that several respondents had experienced physical violence after their husbands were detected being involved in sexual infidelity. The experiences of respondents MI and GE, for instance, have demonstrated this phenomenon. MI experienced physical violence because she knew

192 Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).
193 Interview with SS, a worker in private company (Semarang, Indonesia, 21 December 2011).
194 Interview with MR, a bridal decorator (Semarang, Indonesia, 24 December 2011).
her husband had an affair with another woman. Once the affair had been disclosed, MI’s husbands often abuse and neglect her. 195 A similar experience occurred to GE. Her husband having an affair with another woman had caused conflict between them; and, then, it had led her husband to perpetrating physical violence and leaving her. 196

Not only was male dominance shown by the ability of men to launch illicit sexual affairs, sometimes including fathering children in other relationships, but also by their expectations of the wife’s behaviour, where they demonstrated a total intolerance of opposition on the part of the wife. There is of course no toleration (given male dominance) of any similar reverse practice, rather any suspicion of unfaithfulness on the part of a wife can lead to severe beatings in some instances (as has been shown by this study).

In the case of GE (above) her husband’s response had shown that he did not accept any resistance from GE. It is evidence of the domination of men over women, as is the prioritising of his desire over any consideration for her and her affection for him. Her acceptance of the violence in terms of her failure to report the matter to police due to her affection for him again demonstrates a similar priority being given by her to the male and less priority to her own physical well-being and safety. Although it was he who had ‘made a mistake’, his belief in himself as superior and the ego expression permitted to him as ‘a man’ had even led to show his power by abusing his wife physically in public spaces. He had, however, rendered the intensely private matter of domestic violence very public (in the busy marketplace), and transgressed a boundary that might elsewhere have led to prosecution; but here his repeated assertion that it was a ‘domestic matter’ and thus others should not to be involved was accepted by those

195 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
196 Interview with GE, a motorcycle park keeper (Semarang, Indonesia, 24 December 2011).
around him, and even when help was initially forthcoming. This then became a very public demonstration of male power over women in a man’s ‘private’ life, and its acceptance and reinforcement by the reactions of those around the couple demonstrated the interacting layers of individual, the microsystem of their marital relationship, and the exosystem of neighbour, workplace, and the macrosystem of broader cultural expectations.

On the one hand wives were expected to tolerate marital infidelity by their husbands, a wife even accused of such activities could often expect violence at the hands of her spouse, as is demonstrated in this study. The experienced of GI has shown that being accused of having an affair with another man had also led her husband to abuse her physically.\footnote{197 Interview with GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011).}

GI’s experience, like that of many other respondents in this study, has shown that physical abuse has actually been used as her husband’s way to control her. Other ways noted in this chapter have included financial, emotional, psychological and social abuse (such as the use of isolation from family and friends).

Based on the description above, however, physical violence mostly had been done by men as perpetrators while the victims are mostly women. In this study, it was found that most female victims cannot ultimately accept such violence. Their resistance to the violence has been demonstrated by the victims seeking familial advice or assistance or assistance from an agency beyond the family (for example, a domestic violence victim support group), and by in a number of cases ultimately reporting the violence to police. The physical abuse perpetrated by men in this study has shown that the abuse had been used as the way to express their superiority and control of women regardless of the grounds; and the abuse is used to maintain that dominance, financially,
socially, sexually, in all areas of the couple’s relationship and in any circumstances in which they find themselves. Given that their ‘innate superiority’ (due simply to gender) is used to justify violence used to maintain it, it is unsurprisingly that physical abuse, then, can be used by perpetrators from all socioeconomic and education levels.

The descriptions above also demonstrate that a religious belief can contribute to the creation and perpetuation of domestic violence. The experiences of ML, EL and PH are evidence of this phenomenon. For these respondents, religious beliefs, together with other factors (further discussion on this matter is in Chapter 5), had been used to guide them in their choice of coping strategies and in their decision whether to stay in or leave the abusive marital relationship. Religious beliefs have significance influence on women who have religious faith; it is often the nature of those beliefs that contribute to their response. The authoritative interpretation of religious texts, and the credence given religious authorities (and their advice) play a key role in women’s response to violence in the home. Religious beliefs seemed be a two-edged sword: on the one side they were able to help the victim to come out from the abusive marital relationship, but, on another side, they could also be used to force the victim to stay in the abusive marital relationship.\(^\text{198}\) They can to support the concept of the victim of domestic violence remaining in the violent situation unless they are interpreted properly on the basis of the women’s interests. It means that more sensitive gender based interpretation of the religious beliefs is needed.\(^\text{199}\) Unfortunately, the gender bias in interpretations rather than the gender based interpretation are more widely available and acceptable in many


communities, which in turn, become contributing factor to domestic violence.\textsuperscript{200} Religious beliefs that exemplify this stance include those that place the husband as the head of household with the primary role\textsuperscript{201} as the decision maker and maintainer the family structure by whatever means he feels are justified (including violence);\textsuperscript{202} meanwhile, women are placed as the primary caretakers of children and who are to submit to their husband. For instance:

Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded; as for the women who show rebellion, you shall first enlighten them, then desert them in beds, and you may beat them as a last resort. Once they obey you, do not seek a way against them; surely Allah is High, Great.

\textit{(Qur’an, 4:34; cited in Douki et al, 2003,168)}\textsuperscript{203}

Wives, submit to your own husbands, as to the Lord. For the husband is the head of the wife even as Christ is the head of the church, his body, and is himself its Savior. Now as the church submits to Christ, so also wives should submit in everything to their husbands.

\textit{(Ephesians 5:22–24)}\textsuperscript{204}

These verses or surah are often given an overarching value, rather than taken in the broader context of the respective scriptures from which they are taken. The issue of the equality between women and men is the concern of the Qur’an and the Bible as both have verses and scriptures to place and to justify such issue. For example:

\ldots He created mates for you from yourselves that you may find rest, peace of mind in them, and He ordained between you love and mercy. Lo, herein indeed are signs for people who reflect.

\textit{(Qur’an 30:21 cited in Douki et al, 2003, 169)}\textsuperscript{205}

\textsuperscript{203} Ibid.
\textsuperscript{204} The letter to the Ephesians is a section of New Testament scripture (based on Paul’s teachings) that contains some material on the context of marriage. See also Open Bible info 34 Bible Verses about Physical Abuse in Marriage (2001) <http://www.openbible.info/topics/physical_abuse_in_marriage>.
\textsuperscript{205} Douki et al, above n 202, 169.
Husbands, love your wives, as Christ loved the church and gave himself up for her, that he might sanctify her, having cleansed her by the washing of water with the word, so that he might present the church to himself in splendour, without spot or wrinkle or any such thing, that she might be holy and without blemish. In the same way husbands should love their wives as their own bodies. He who loves his wife loves himself.

(Ephesians 5:25–28)\(^{206}\)

These examples verses from the Qur’ān and the Bible demonstrate that there is no absolutely single verse or its interpretation to justify male dominance and other abusive male behaviours to women. The message from these verses (among others) is clear that the wife is to be honoured, uplifted, and exalted member of the family.\(^ {207}\) She

\(^{206}\) The ground of love and respect of each other within a marriage are clearly mentioned in the Bible through its scriptures. For instance: Colossians 3:19 ‘Husbands, love your wives, and do not be harsh with them’; 1Corinthians 13:4–7 Love is patient and kind; love does not envy or boast; it is not arrogant or rude. It does not insist on its own way; it is not irritable or resentful; it does not rejoice at wrongdoing, but rejoices with the truth. Love bears all things, believes all things, hopes all things, and endures all things. See OpenBible, above n 204.

\(^{207}\) The Qur’ān is very clear that the basis of a marital relationship is love and affection between the spouses, not power or control. Physical violence (including marital rape) and non-physical violence are unacceptable in such a relationship. For instance: Sūrah al Baqarah 2.223: ‘Your wives are your tilth; go then unto your tilth as you may desire, but first provide something for your souls, and remain conscious of God, and know that you are destined to meet Him...’ (a verse often cited for the husband’s desires to always be fulfilled). Other verses indicated a greater degree of mutual regard, kindness and affection is a prerequisite. See Sūrah ar Rum 30.21: ‘And among His wonders is this: He creates for you mates out of your own kind, so that your might incline towards them, and He engenders love and tenderness between you: in this, behold, there are messages indeed for people who think!’; Sūrah al Baqarah 2.187: ‘... They are as a garment for you, and you are as a garment for them’; Sūrah al Nisa 4.19: ‘... And consort with your wives in a goodly manner, for if you dislike them, it may well be that you dislike something which God might yet make a source of abundant good.’ See: Muslim Access, Women rape in Islam <http://www.muslimaccess.com/articles/Women/rape_in_islam.asp>. Contrast: Muslim Access, Rape, Zina and Incest (4 January 2013) archived at Archive Today <http://archive.today/av6ah> where it is reported that three out of four women charged under the Hudud laws in Pakistan are rape victims (and have includes a daughter, the victim of her father). While in Malaysia ‘silent conversion’ of children from Hinduism to Islam without the knowledge or consent of spouses (and the associated legal implications for the children – including re divorce, custody and residence) is likewise condemned by the women’s rights activist group, Sisters in Islam. See Sisters in Islam, ‘JAIS Raid Shows Injustice of Unilateral Conversions’, Media Release, 3 June 2014 <http://sistersinislam.org.my/news.php?item.1278.40> . The Old Testament in the Bible has passages that similarly fines a perpetrator and forces him to marry the victim of sexual assault. To our eyes this is incredible (dooming the victim to live with and serve the perpetrator) – at the time it saved the woman’s life: Glenn Hohnberg, Does the Bible Legitimise Rape ? A Response to Benjamin Law, City Bible Forum (30 November2013) <http://citybibleforum.org/city/brisbane/blog/does-bible-legitimise-rape-response-benjamin-law> , Author cites Deuteronomy 22 : 23–29. It should be noted that no such regime extened into the New Testament community. Indeed when a woman was to be stoned, Jesus (PBUH) stated, ‘Let he who is without sin cast the first stone’ and the men left. To the woman (who had been caught in adultery, he said ‘Go and sin no more’ – an illustration of Mercy combines with an expectation of amendment to behaviour: John 8:1–11. And the same mercy men are expected to show to each other: ‘Peter … said to [Jesus], “How many times shall I forgive my brother? As many as seven times?” Jesus said to him, “I do not say seven times but seventy times seven”’. : Matthew 18 :21. So the new regime is clearly meant to be one characterised by Mercy (despite later shortcomings of and atrocities committed by those claiming to follow him).
is not a second class citizen; though the husband is the family leader, he is expected to get her input on decisions. Unfortunately, again, the biased gender based interpretation is more acceptable to many, particularly men who have chosen to emphasise one text over others. The male gender-biased verses are chosen to justify male dominance not only by men in their families and groups of people for their own sake, but also by states through their legislation. Consequently, for most of men, religious beliefs have been used as a tool to justify their domination (and other forms of domination such as the implementation of rigid gender role, marital rape, acceptance of physical abuse and other forms of abuse) towards their wives. For others, such as religious leaders and social network members, the religious beliefs often have been used as the guidance to solve social problems in regard to domestic violence issues (but the solutions for women sometimes are harmful or inadequate). In several states, religious beliefs have even been used as a consideration in making law. For instance, in Indonesia’s case through the Marriage Act 1974 and its implementing regulation, and the Compilation of Islamic Law (see Chapter 3). This fact is evidence that patriarchal values which are reflected in the practice of male dominance, rigid gender role, acceptance of marital rape, of physical abuse and other abusive forms have been strengthened its position through a legal justification. Such legislation which in turn will affect women victims of domestic violence to ensure or limit their rights (see Chapter 5).

4.6. Discussion

In sum, domestic violence was caused not only by power imbalance between a man and a woman in marital relations but also in relations between a woman and a man generally, a woman and social institutions (family, neighbourhood, non-government organisation), a woman and social norms (male dominance, patriarchy and so on), and a woman and the state (justice system (court, police) and other institutions). Further, the
cause of domestic violence varied from individual factors to social networks, and institutional and cultural factors which occurred not only in private but also in public spaces. Thus, it is suggested that each layer within the ecological framework has contributed to domestic violence singularly and simultaneously.

It begins with the personal history of individuals (either respondents or their husbands). Several respondents have described their husbands who had themselves as children witnessed violence between their own parents and have developed to be ‘childish’, ‘selfish’ and having ‘rude manner’ as well as being ‘controlling’ and ‘violent’. Violence was a pattern that had been known to the husbands; they had seen their father model violence as a pattern of behaviour towards his wife in various circumstances and in various ways, while the mother may have modelled acceptance of that violence and compliance with the husband’s demands in light of the violence. Although a number of men in this study identified the violent behaviour of their own fathers as a reason not to be violent, they nevertheless repeated the behaviour. Women too can be affected by witnessing such violence in terms of their expectations of what is acceptable in a relationship, and whether such violence is ‘commonplace’ and therefore tolerable to a degree. However, no woman in this study indicated that she had witnessed violent behaviour between her parents when she was child.

The absence of either mother or father or both parents was also identified by the respondents as the cause of such behaviour, of the development of childish selfishness and an unwilling to accept responsibility, as the now adult child seemed to require additional attention, and if such attention was not forthcoming in the eyes of the husband, he tended to commit violence against the wife. The personal history cannot be separated straight away from the other layers – the microsystems have also been examined in this study. Personal histories from the husbands that influenced the
development of their personal characteristics (volatility, temper, jealousy, selfishness, childishness, rudeness) as well their own beliefs about the roles of women and men, the acceptability of coercion (physical, sexual, financial), indeed the role of violence in relationship and society) had affected their intimate relationship. The belief in and assertion of male dominance is the common thread that is expressed. The degree to which this view is shared by women (and society more widely) affects women’s response to violence from intimate partners as has also been shown. The attitude is expressed in the relations observed in the microsystem of relations between the individuals within the marriage and their immediate families.

Whilst all respondents identified themselves as having no similar experience to that of their husbands in terms of witnessing violence as a child, some of them provided other material in their personal histories (such as individual choices to marry or arranged marriage) which they recognised as having impacted on the violence within their marital relationship directly and indirectly.

These personal histories from the respondents’ side had been affected by the microsystem layer as well as being overlaid by the other layers. For instance, the individual’s choice to marry usually resulted in the wife attempting to keep silent about the violence due to reasons such as the feeling that the situation was a result of their exercising choice and so they therefore felt that they should take some responsibility for the consequences of marrying to the husband of their choice (particularly when they did so aware of a potential husband’s violent tendencies – as was here the case in a number of instances). Also implicated are feelings of shame. Furthermore, some parents usually did not want to intervene in their adult children’s marital affairs, especially when the children by exercising choice had already indicated a rejection of parental authority and advice. Such parents would – would do so only if – the respondents sought to help.
Some women would anticipate rejection and fail to approach their parents for a very long time. Of those victims who approached their parents or family in regard to the violence, very few were ultimately entirely rejected, although some were. In circumstances where there was an arranged marriage, the respondents also had barriers to seeking help but because of their obedience to parents and husband, an obedience manifested in the compliance with arranged marriage, which, although it supposedly should take into account the couple’s mutual acceptance and consent, may not have; and hence couples unsuited to each other may also marry. To then approach a parent could be taken to imply that the child rejected the parents’ choice or caused those parents shame. A lack of attraction between the parties, however could feed resentment and an unwillingness to work toward and maintain a relationship (as evidenced by partners who sought extra-marital affairs, mistresses or used prostitutes and so on) and could also contribute to further resentment and violence by husbands. As demonstrated in their account of their subsequent married lives, wives in such a situation had, however, often felt bound by their own ‘personal histories’ by a responsibility to maintain the family name, family harmony and avoid family shame. Compliance did not always ensure a reduction in the violence; indeed, it could serve to further escalate it.

The next layer is the exosystem which encompasses the institutions and social structures, both formal and informal such as the world of work, neighbourhood, social networks, and identity groups, unemployment or low socioeconomic status, of the family. This includes consideration of the isolation of the family and the intervention by the broader family (family of perpetrator or victim). The exosystem forms significant factors for the existence of domestic violence directly and indirectly, both singularly and simultaneously. The impact of the world of work, access to institutions and the

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208 Heise, above n 1.
impact of the responses from those institutions has been explored as has the presence or absence of social networks, as well as the impact of class or socio-economic discrepancy, and the role of family interventions (whether or not intended to support one or other or both of the partners). The complex inter-relationship of the individuals and their micro-, meso-, exo- and the macrosystem is observed in the respondents’ accounts.

Then, the macrosystem represents the general views and attitudes that permeate the culture values and belief at large such as male supremacy are dominant factors in a husband abusing his wife both physically and non-physically. A belief in male dominance led to instances of aggression and other manifestation of male dominance in the everyday lives of individuals in their male-female relationship, particularly their marital relationship which are the subject matter of this study. Further, the belief in male supremacy, regardless of whether it came from either the family of the husband or the wife has a significant role in promoting rigid gender roles; this, in turn, together with the prevailing cultural view on the acceptance or otherwise of physical chastisement will influence the respondents’ acceptance of such practices. Such views values are fashioned by religious beliefs, cultural expectations and prevailing norms. The respondents in this study have insisted that male dominance both socially and physically is embodied in the role of husband as the ‘main householder’ (a view that is embodied in the Marriage Act 1974 (Indonesia). They have also argued that such power must be implemented as taking into account one’s responsibility to others, rather than as a crude power sharing that reflects a pattern of dominance rather than mutual care, responsibility, respect and regard for others.

The descriptions above have shown that the layers within an ecological framework are not merely the cause of domestic violence as a single layer where one
layer has no relationship to or correlation with other layers. The experience of the respondents provides evidence that there are multiple interrelationships and correlations among and between the various layers within the ecological framework. This is absolutely uncontestable.

Their accounts also provide evidence that the relations between law, power and spaces actually exist in the ecological framework. The layers are basically representative of spaces, and each of layers contains power regardless of whether its function is oppressive or empowering. The power distribution, in fact, is based on the theory developed by Foucault that has shown that power does not belong to the state or certain people anymore, but it belongs to everyone who has access to resources that are available within the layers. Then, everyone has access to the use of power (whether apparently overwhelming or residual); this is itself is an observation made clear by the exercise of power by women in the circumstances above that changes over time and reveals its latent presence in their subsequent use of it. Power in this context is relational, it flows from and affects each of those involved, whether as individual or official; whether in private or public space, power is implemented in regards to others.
CHAPTER 5
ACCESS TO RESOURCES AND JUSTICE: THE INTERPLAY BETWEEN THE IDENTITIES OF INDONESIA WOMEN VICTIMS OF DOMESTIC VIOLENCE AND VARIOUS ASPECTS OF THE SOCIAL ENVIRONMENT

5.1. Introduction

This chapter discusses the interplay between the identities of Indonesian women victims of domestic violence and various aspects of the social environment in order to determine whether the identities of Indonesian women victims of domestic violence affected their opportunity to access resources and justice. Further, the interplay between these variables is expected to demonstrate whether access to resources will lead Indonesian women victims of domestic violence to be more powerful or powerless than was the case before they accessed the resources dealing with domestic violence.

By accessing resources the decision of respondents – in particular in confronting the violence and deciding whether to bring the case before the courts or not – will be examined in order to determine to what extent the women’s identities will influence the decision, and whether or not a certain identity becomes more dominant than the others as the identities intersect and interplay one with the other; or whether there is no dominant identity that significantly influences women’s decision making since the respondents’ identities complete and support each other in the decision-making process.

Being or feeling more powerful or powerless is an important circumstance that will affect their coping strategies and decision whether to stay or leave an abusive marriage. This chapter will describe their ability to take action in order to improve their lives by controlling the surrounding environment, namely by their having power.¹

Power is simply 'the ability to do something or to act'\textsuperscript{2}; and includes the ability to access power and control.\textsuperscript{3} In this respect, the concept of resources is also relevant, as power has been seen as 'the ability to use resources in order to achieve desired objectives or outcomes'.\textsuperscript{4} Power, resources and control are the key to empowerment; and these are applicable at all systemic levels and must be considered in the cultural context.\textsuperscript{5}

The sources of power are derived from macro and micro systems. ‘Macro’ refers to systems, at an organisational or societal level, while ‘micro’ refers to interpersonal or relational levels.\textsuperscript{6} Macro level power ‘filters down into micro level relationships and it can be seen as a hierarchy stemming from oppression or marginalisation which is perpetuated by the dominant class’.\textsuperscript{7} Meanwhile, micro level power ‘exists within interpersonal relationships; and, therefore, is interactional’.\textsuperscript{8} At the micro level, ‘power has also been seen as existing within relationships with persons of authority’.\textsuperscript{9} As mentioned in Chapter 2, Michel Foucault rejected the old concept of power as

\begin{footnotesize}
\begin{enumerate}
\item Oudshoorn, above n 2.
\item Oudshoorn, above n 2.
\item Ibid.
\item Oudshoorn, above n 2.
\end{enumerate}
\end{footnotesize}
oppression, and described power as a disciplinary power (modern power).\textsuperscript{10} He argued that power does not come from above but from below; it comes from the multiplicity of social institutions and relationships, and it is exercised in diverse forms. Power arises from knowledge (and can be a gateway to knowledge), and both elements are interrelated to each other; power is essentially relational and an individual only ever holds power because of their position within a set of relationships. In an instance where individual lacks power, it nevertheless gives rise to the potential to resist the power relations in which they are located. The power relation is thus seen as positive and productive rather than negative and limiting.\textsuperscript{11} The power relation indicates a field of operation where one can be stronger or weaker but it also indicates a balance that may shift.

This new concept of power developed by Michel Foucault has been chosen to examine whether power in a relationship has a significant influence or not on the empowerment of women victims of domestic violence. ‘Empowerment’ is basically a dynamic process of power whereby individuals gain control based on the strength not the weakness.\textsuperscript{12} With reference to women victims of violence, the empowerment perspective maintains that ‘these women are not victims by choice but rather, if provided with adequate support, resources, and opportunity, they would choose violence-free lives for themselves and their children’.\textsuperscript{13} Hence, empowerment is basically the ability to give a person (in this case the battered woman or female victim of domestic violence) ‘the knowledge of options available to her, to educate her about

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\textsuperscript{10} Carol Smart, \textit{Feminism and the Power of Law} (Routledge, 1989)
\textsuperscript{11} Michel Foucault, \textit{Power/Knowledge: Selected Interviews and Other Writings 1972-1977}, above n 8; see also Biddy Martin, ‘Feminism, Criticism, and Foucault’ (1982) 27 \textit{New German Critique} 3, 8–10; Carrie Paechter, ‘Power, Knowledge and Embodiment in Communities of Sex/Gender Practice’ (2006) 29(1) \textit{Women’s Studies International Forum} 13, 16.
her options, and then to let her make the decision’.

Further, it is important to understand the processes of women’s empowerment as requiring an examination of the various levels of individual and social construction processes of staying or leaving in a variety of ecological and situational contexts (for example, social, institutional, interpersonal and individual). The ecological approach which is deployed in Chapter 4 in order to understand the causes of domestic violence is also implemented in this chapter for the purpose of figuring out the Indonesian women’s response to the violence which lies in the layers within ecological approach. The response as a dynamic process of empowerment includes their manoeuvres in regards to multiple layers (for example, engagement); within these layers, an individual woman can manoeuvre from one space to other spaces to gain access to resources for the purpose of improving her life in terms of reducing her exposure to domestic violence or eliminating the violence from her life. The way that an individual Indonesian woman copes with the violence will be influenced not only by her individual level of capability (such as is determined by her identity, self-confidence, self-esteem, and financial situation in the innermost ‘circles’), but also by the availability of adequate support, resources, and opportunity from her ‘outer circles’.

The way to access resources may vary due to the fact that violence experienced by these women differs from one woman to another. Within any community, there may be groups or individuals whose values, needs, and experiences differ from the larger group.

Women from communities that value independence and autonomy may engage in an empowerment process that looks very different to that of women who thrive on

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15 Kasturirangan, above n 1, 1467.
interdependence.\textsuperscript{16} Although women who experience domestic violence may share certain experiences, their lives may differ in many ways because of their diverse identities (ethnic, religion, social-status, financial capability, nationality, education, and so on).\textsuperscript{17} The identities of women affect their experiences and their responses. For instance, ethnic minority women may experience of domestic violence differs because of family structure, immigration status, acculturation, and histories of oppression that may affect the varying of goals within an empowerment process.\textsuperscript{18}

The description of respondents’ perspectives on marriage relations and domestic violence will be explored initially. Their perspectives on these matters, which are probably caused by the women’s identities, have a pivotal role in the women victim’s response to the violence, particularly in determining the coping strategies and whether staying or leaving. The coping strategies, including access to resources and power either within private or public spaces, adopted by women victims will be described comprehensively through the ecological approach which, in turn, will examine the interplay between the relations of law-power-space and how the women’s identities affect their opportunity to access resources and make decisions.

\textbf{Figure 5.1. The Relations between Law-Power-Space and Women’s Access to Resources in the Context of Empowerment}

\begin{figure}
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\end{figure}

\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid.
5.2. Coping Strategies of Indonesian Women Dealing with Domestic Violence

Studies on women’s responses to violence assumed only two possibilities: namely, staying or leaving. Staying is often seen as an acceptance of the violence, with women who stay continue to be implicated in their abuse as either willing victims responsible in some way for ‘provoking’ the violence or as having no interest in leaving the relationship. Meanwhile, leaving is often seen as the only response which confirms a woman’s unwillingness to tolerate the violence. With the decision to leave emerged, however, significant risks such as homicide, economic problems and social consequences. Separation from the partner was and still is frequently seen as the ultimate, or only, act of resistance; yet the decision taking of women as to whether to stay or to leave has demonstrated that this is a woman’s active response and that they should not be seen merely as helpless, dependence and passive persons. In addition, studies found that personal resources, social support and institutional responsiveness have a significant effect on the adoption of various coping strategies by women victims of violence (often referred to in US materials as ‘battered women’). The more those women have personal resources, such as individual income, the greater opportunity of having social contacts outside the home, and thus the greater the level of potential

21 Cavanagh, above n 19.
22 Ibid.
23 Ibid.
available support resources. Such personal resources and other social contacts (both formal and informal) are multilayer factors within the ecological approach mentioned above in Chapter 4 which consist of power relations, including power relations between a husband and a wife, a man and a woman, between the family and the state (court, police station, other institutions), family and communities, the Family Court and Criminal court, and a woman victim and family, relatives, friends, neighbourhood, public institutions, non-government organisation, social institutions and social norms.

Hence, to understand to what extent Indonesian women victims of domestic violence have the ability to recognise, to use and to implement such powers and to what extent the personal power will be used as a tool to penetrate and to bargain with the other powers within those spaces mentioned in order to obtain their goals, a description of Indonesian women’s experiences in regard to coping strategies dealing with domestic violence both in terms of women who have chosen to stay within the abusive relationship and women who have chosen to leave will be presented below.

Indonesian women staying in the abusive marriage include women who still live with and are married to the perpetrator, and those who are still married but lived separately. Meanwhile, women leaving the abusive marriage are those who have left and divorced the abuser; or, the abuser has left and divorced the respondents. Only four respondents in this study were staying in the abusive marriage relationship compared to fourteen respondents who left the abusive marriage relationship.

5.2.1. Staying in an abusive marital relationship: The experiences of Indonesian women respondents who live in Indonesia

In this study, four respondents in Indonesia, namely, MI, FA, Y and GE

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remained in the marriage at the time of interview. Although they were staying in the marriage relationship, by no means could it be considered that they had a ‘passive’ response to the violence. These respondents have struggled to leave the abusive marriage relationship but they remain for a number of reasons. It is this active consideration of the individual reasons that applies to them that illustrates that they are not simply ‘passive’ victims but are consciously adjusting their responses to their particular situations. (See Table 5.1).

Table 5.1. The Respondents Staying in Abusive Marital Relationships: Their Access to Resources and the Justice System

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Access to Resources and the Response</th>
<th>Access to the Justice System and the Response</th>
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</thead>
</table>
| MI         | 1. Parents: support her financially and psychologically;  
2. Sister: supports her with information about legal aid;  
3. KJHAM: support her with legal aid complaint to her husband’s institution;  
4. BP4: asked her to reconcile;  
5. Private Doctor: asked her to go to police office;  
6. Imam: had advised her husband but nothing change | 1. Police, the officer asked her to reconcile with her husband;  
2. The Religious Court cannot make a decision because her husband was reluctant to pledge talak  
3. Rail Corporation: the management has approved her living rights. |
| Y          | 1. Friends in Bandung and Semarang;  
2. Neighbourhood Administrator in Bandung who offered her surveillance;  
3. NGO in Bandung;  
4. Catholic Legal Aid in Semarang was unwilling to process her divorce due to religious principle;  
5. Lawyers in two Law firms in Semarang who asked her for 20 million rupiah to handle her divorce proceedings. | 1. Police: the officer asked her to seek witnesses to support her psychological violence report. |
| FA         | 1. Her brother who support her to file divorce;  
2. KJHAM assist her in psychological and legal matters. | - |
| GE         | 1. Friends in the market who support her with any information she needed, such as healers;  
2. Neighbourhood administrator who issued the ‘boro’ letter (a letter to move from one place to another) to her husband;  
3. Healers whom she asked to bring her husband back. However, the result was nothing.  
4. KJHAM. | 1. Police: the officer asked her to report her case to another police station;  
2. The Religious Court: the officer cannot process her divorce due to the loss of her marriage document. |

Sources: Interviews with respondents between December 2011 and January 2012
To understand the women’s responses and strategies adopted by them, an examination will be conducted of the role played by the recognition of the problems posed by marital relations that involve domestic violence because it sometimes has shaped the mindset, affected attitudes and, in turn, influenced the women’s responses and decision to stay or to leave. However, recognition of the problem of marital relationships and domestic violence sometimes has no significant effect on the women’s efforts to minimise the violence. The following sections describe the experience of women victims and the impact of their identities in responding to such a general value (an understanding that that the behaviours that they are experiencing comprise what is now more widely recognised as ‘domestic violence’ and that their own marriage is one of those affected), and examine the way in which women victims access resources and the utilise various strategies. The interplay of their identities, various institutions and social structure in their decision-making process will be considered.

5.2.1.1. The case of MI

5.2.1.1.1. Access to resources: Positive and negative responses

Patriarchal values had been embedded to MI from when she was child. As result, these values shaped her attitude regarding the acceptance of certain patriarchal norms within the family, and (in particular), that in the relationship between a husband and a wife, a woman is to be obedient, a core belief that made her obey her husband despite the violence. Such a marital relationship and such beliefs are not static or unchanging, as is demonstrated by her changing reactions to her experiences of marital life as they accumulated. MI acknowledged that she had been taught to obey by her parents such that when her parents arranged a marriage to a man whom she did not know, she agreed
An arranged marriage is not always bad as long as the relationships between two parties are equal. Unfortunately, MI’s husband had not a good attitude during the marriage. The response of MI to the arranged marriage arrangement was to accept it without any complaint because she, as a Javanese girl, was taught to obey her parents; whatever the purpose of the parents, it is something that must be obeyed. She acknowledged that she was taught to obey not only her parents, particularly the father, but also a husband. Her obedience persisted from the first year of marriage in 1981 to 1985 despite his violence toward her. However, her resistance initially emerged after she delivered her first baby because her husband forced her for having sexual intercourse despite her health not being good. Her resistance was embodied in her consumption of contraceptive pills without telling her husband or asking permission from him; a decision that made her husband was very angry and, then, the pills were thrown away.

In the early instances of violence MI did not have any power to oppose the violence due to her economic dependence on her husband and her own expectation that her husband’s behaviour would change. Her response to not being given sufficient fund by her husband to cover basic living expenses in the five years of marriage was to work to look after the children. Her husband had neglected her by not giving her living in the five years of marriage, although he works for the Rail Corporation. In addition, her husband had also committed physical violence since his affair with another woman was disclosed. Her husband had even made a formal statement that he would not repeat his violence; however, it useless because he continued committing the violence.

MI went to family services in order to solve her marital problem. Family

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26 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
services which were used by MI were BP4 (that is, *Badan Penasehat Perkawinan dan Penyelesaian Perceraian* [Marriage Counselling and Divorce Settlement Body])\(^{27}\) and as is in accordance with its duties she and her husband had been advised to reconcile. She was disappointed by the services from this body because the institution preferred to reconcile them despite the violence. At that time, there was no special legislation on domestic violence issues as both the Domestic Violence Act 2004 and the relevant provisions of the Penal Code were not in place, so the members of the body would probably not be aware of such an issue although they have knowledge about marriage law. However, the advice could not be implemented because MI’s husband was again repeatedly violent. After the advice having had no significant effect to her marriage relations, MI responded by asking her husband to divorce her. Her husband finally filed for divorce but remain reluctant to make the required *ikrar talak*/divorce pledge; as a result, the marriage remains intact.

She responded to her husband’s aggression and dominance by leaving the marital house, not only to save herself and their children but also to teach him a lesson. In Javanese tradition, by returning to her parents’ house or ‘*purik*’, a wife signals that she is seeking protection because her husband has treated her badly or could not provide for her safety. To leave one’s husband and return home to one’s parent publicly shames a husband (and his wider family) because people will judge the husband for not treating his wife well; and if a reconciliation is reached, then it would be expected that, as a result of this ‘lesson’, the husband would treat his wife and children better than before. However, ‘*purik*’ sometimes offers no advantages to women because sometimes a different interpretation is made of the action, and it is represented as an example of a woman’s rebellion against her husband and an abandonment of her responsibility to

\(^{27}\) BP4 has a duty to reconcile couples. In BP4 hearings, board members talk to couples about their marital problems, give advice and bring pressure to bear on them to try again.
him. In some cases, as the consequence, ‘purik’ is considered as an example of a wife’s bad behaviour and one that can therefore make her have no right to sue in regard to maintenance from her husband in a divorce.

In accessing other resources, MI has major opportunities to socialise because she is a member of group at her husband’s workplace and she also joins in recitation. At the recitations, she has opportunity to meet many imams and she consulted them in regard to her marriage problems. Sometimes her husband had been asked to come and to be advised by the imam. She thought that imam’s advice, because it had the strength of being from a religious source, might have more influence on her husband in comparison with that the advice of her parents and parent in-law; however, these efforts too seem likely to have had no significant effect on her husband’s behaviour. Rather obeying the imam’s advice, her husband turned to advise the imam instead.

After several instances of physical and non-physical violence, MI shared her experience of violence with her sister who advised her to bring her case to a legal aid service that belongs to a non-governmental organisation that is concerned with such issues.

My sister used to tell me to report the case to LBH (legal aid) to get the solution. I went there and the institution gave me reference to other organisation that is concerned with violence against women, the so called KJHAM…

She then showed further resistance by seeking from the LRC-KJHAM (the LRC-Keadilan Jender dan Hak Asasi Manusia or ‘Legal Resource Centre-Gender Justice and Human Rights) and then joining a support group under its supervision. From her exposure to various concepts by this institution, she recognised her mindset was not right. She became more ‘enlightened’; it increased her understanding of what comprises

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28 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
an equal relationship between a husband and a wife within marriage, and of the issue of
domestic violence, and increased her awareness of her rights as a woman.

It should be harmonious, mutually give and receive each pair. Each partner must have
drawbacks and advantages. We are ordinary people and there must be weaknesses. If
there are weaknesses in wife, the husband must complete. No hitting, kicking the wife is
not to be beaten; the wife should be protected, kept well physically and psychologically.
Households of shakinah marwadah (a happy family) must be borne by two and cannot
be charged to the wife only.29

MI acknowledged that male domination of women still exists as a value held
within society; nevertheless, she refused absolute domination because of her
understanding of both the desirability and the factual basis of the concept of equality
between men and women. However, she recognised that traditional ‘public’ values still
held sway.

…but the public demanded that the wife must satisfy her husband. She should serve her
husband in order that her husband is not unfaithful, mainly women must have [the
responsibility for keeping the home happy]. Anyway it inculcates patriarchal culture
…the culture is still strong…30

The intensity of her contact with legal aid and women support group continued
to increase to date. Her subsequent involvement in a support group has led her to be a
volunteer at a women crisis centre run by the local government in Semarang City. At
this centre, her understanding and awareness of gender equality become stronger than
before and she has become more active in helping and empowering other women
victims of domestic violence. Being a volunteer has also strengthened her finances
because the centre decided to give her some income for every month.

The experience of MI has shown that during her hardship she obtained support
from parents, sister, family services, imam, KJHAM, and her husband’s workplace (see
Chapter 4). Although the support received did not have significant impact in terms of

29 Ibid.
30 Ibid.
stopping the violence, it has supported her psychologically. Her parents accompanied her to the court when divorce was proposed and to the hospital for a medical examination after she had been physically abused. When she proposed divorce and went to hospital, all fees were paid by her parents because she as a housewife could not afford the fee. Her sister also helped her by providing information about KJHAM that has assisted her to obtain the living costs from her husband’s workplace. The supports came to her because she asked actively to her sister who fortunately was well informed about the legal aid that are concerned with this issue.

5.2.1.1.2. Access to the Justice System

5.2.1.1.2.1. The Religious Court: Her husband’s refusal to declare the ‘Talak’

Initially, MI asked him to file for divorce; however, her husband did not want to divorce her. Her husband had proposed divorce to the religious court three times, but he always refused to make the divorce pledge (‘ikrar talak’). She asked him to divorce her because she was not able to afford the court fee; besides, if he as a plaintiff asked her for a divorce, she would not lose her living rights. The reason for not pronouncing ikrar talak was that he did not want to pay the living for the iddah (the period of three menstrual cycles or three month after separation), an amount that totalled was IDR 8 million in this instance. Such an amount must be paid after the pronouncement of divorce. Given he refused to say ikrar talak, the court could not issue a decision in the case. The legal consequence of this refusal is to cancel the divorce; and thus, MI remains in an abusive marriage due to her husband’s recalcitrance. The only way for MI to divorce him is as a plaintiff against her husband, but she must then bear the court fee; and, moreover, by suing her husband she, based on the Compilation of Islamic Law, would probably lose all her rights except that of the division of property since the
legislation has regulated divorce settlement in such a way.\textsuperscript{31} This demonstrates that patriarchal values remain in the Compilation of Islamic Law which is used by the Religious Court to make decisions in divorce cases. It also can be said that in spite of the religious court having provided women with the opportunity to proceed with a divorce before the court, by no means have the patriarchal values of such courts been diminished.

Under Islamic law, before the Marriage Law 1974 was passed, a man had an absolute right to divorce his wife unilaterally without grounds, simply by pronouncing the repudiation or talak ‘I divorce you’. After the first or second talak, the husband may reconcile (rajuk) with his wife until up to three months after the divorce by simply pronouncing the reconciliation formula. After three talak or if the wife’s waiting period (iddah) had expired, the husband had no right of reconciliation but could remarry the wife only after she had consummated a marriage with another man and divorced that man or been divorced by him. In contrast, under the Marriage Law 1974 and regulations implementing the statute, a man married according to Islamic law wishing to divorce his wife must now file a ‘petition’ with the Islamic court in his area declaring his intention to divorce accompanied by a statement of reasons. The court is directed to examine the petition, and is to convene for the purpose of ‘witnessing’ the husband’s divorce only if it finds ‘sufficient’ reasons under the statute. If the court assents to the divorce, the husband then appears in court and pronounces the talak in the presence of the judges. After witnessing the talak, the court certifies the result by issuing a ‘Certificate Respecting’. The divorce is then deemed valid from the moment it is ‘expressed’ in court.

In principle, women have no right of a unilateral divorce under Islamic law; that

\textsuperscript{31} See Article 153 of the Compilation of Islamic Law; see also Article 8 the Implementing Regulation No.10 of 1981.
is, the permission of the husband must be obtained (and often – though sometimes alternatively – the approval of the religious court). The practice in Indonesia has long recognised various legal devices for implying in the marriage agreement or postponing the effect of a talak, which thereby permit a woman to obtain a divorce without her husband’s consent. By far the most frequently used divorce option for women in Indonesia has been the ‘conditional divorce’ or taklik talak,\textsuperscript{32} – a promise pronounced by the husband at the time of entering into the marriage that a talak would automatically be applicable if certain named conditions occurred. If the taklik talak had been pronounced by the husband at the time of the marriage, the wife could thereafter obtain a divorce by proving in court the occurrence of one of the stated conditions. Since the talak is deemed to occur automatically upon the occurrence of the triggering event, proof of the event is tantamount to proof of a talak and entitles the wife to an immediate divorce.

However, if a woman continues to file for divorce (which for several reasons, she may choose to do so) she can use the implementing regulation (\textit{Peraturan Pelaksana}) of the Marriage Act 1974, namely the Implementing Regulation Number 10 of 1981, as the basis of her demand to get the living that is due to her if her husband is a public servant who is subject to this implementing regulation. Under this regulation a ground for divorce can be that a public servant who entered into a polygamous marriage (instead of the ground of violence or desertion) and she is also then entitled to a living. (It is worth noting that under the relevant legislation, such a marriage must have also

\textsuperscript{32}The most commonly stated conditions in the taklik talak include: desertion for six months or more; failure to provide obligatory support for three months; physical abuse; and neglect of the wife for six months. See Amiur Nuruddin and Azhari Akmal Tarigan, Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU 1/1974 sampai KHI [\textit{Islamic Civil Law: Critical Study on Development of Islamic Law From Fiqh, The Marriage Act 1/1974 to the Compilation of Islamic Law}] (Kencana, 2004). Re polygamous marriage and divorce, see Khoiruddin Nasution, ‘Polygamy in Indonesian Family Law’ (2008) 1692 \textit{Shariah Journal} 207, 208.
have been entered into with the permission of the relevant departmental head). However, only if she can provide evidence that the polygamous marriage has a correlation with domestic violence and it has a significant harmful effect to her wellbeing, and judges are satisfied with the evidence, will she obtain her right to a living (maintenance) not only for herself but also for her children.

Examples provided above demonstrate that the family law system (both state and religious), in fact, does not ensure that women victims of domestic violence become more empowered for in some instances women fail to use the opportunity to pursue divorce due to cost and complexity or negative outcomes for the woman and who pursues divorce (and for her children). Divorce may be delayed through ignorance of the current legislation or due to social factors such as family disapproval. The system has continued to be criticised by feminists. For the women victims who have no access to sufficient financial resources, lack of access to the legal system will be the main obstacle. Nevertheless, permitting women to file for divorce without the husband’s consent is a breakthrough for developing equal power between men and women within the legal system, particular in regard to marriage matters. In addition, the court has facilitated access by the poor to court through making available ‘pro bono’ procedures. Several respondents in this study have experienced getting such a benefit, and it will be discussed in the next sections.

The oppression created by MI’s husband has actually given her the power to do something that might have never been thought of before. However, her ability to exercise her rights was not as easy as she thought since she found difficulties due not only her husband’s action being generally considered her ‘private’ matter but also from her husband’s workplace that having little awareness of her situation.

5.2.1.1.2. The Workplace: Justice in the hand of managers

Bearing in mind that MI’s husband never gave her money to cover living expenses (that is, funds to look after the children during the marriage), she prefers to obtain her rights from her husband’s workplace rather than to file for divorce. However, obtaining her rights as an official wife of her husband is not easy because her husband has falsified the marriage certificate, identity card and family card which all are the basic requirements for marriage; and, all the requirements have been used to marry to another woman; and he delivered these to the manager at his workplace. Hence, she must give evidence that she is the legitimate wife and is still bound in the marriage to obtain her rights. Though it took her much times and energy, she tried to keep struggling and to be patient as access to part of her husband’s salary is very important for meeting her children’s needs. She in fact had two issues: maintenance due as a valid wife and the presence of domestic violence.

The first time she reported the violence, the manager was emphatic to her situation; however, after a change of manager in the workplace, it seems more likely that the husband’s workplace would tended to defend her husband as an employee rather than that her as the victim of violence committed by her husband and as a party entitled to certain rights in term of maintenance. Thus, she had to go to her husband’s workplace many times to have contact with the manager despite the result repeatedly disappointing her. (It should be noted here that in Indonesia, approaching a husband’s superior in regard to such matters is not unusual). The manager referred to here is her husband’s superior, and as the wife of a government officer she can report her husband’s behaviour to the manager in order to have him disciplined or to advise her husband. Based on her report, the manager can determine whether the perpetrator of domestic violence will be given an administrative sanction or not. The sanction given usually will depend on the
awareness, sensitivity and policy of the manager, largely exercised at the manager’s discretion.

In the case of MI, the world of work in terms of her husband’s employment posed an intervention opportunity (as previously explained) but it did not have an immediately significant in regard to the violence; however, the chief of the Rail Corporation in which her husband works does (as his superior) have a role in minimising the effects of violence when she reported the violence to him. Her husband’s manager had facilitated change by giving advice and providing mediation. The manager had made her husband sign a statement that he would not repeat the violence. In the event of a repeat of the violence, an employee can lose their employment. However, the imposition of such a sanction is a ‘two-edged sword’: it’s threat might manage to cause a husband to alter his behaviour or make him angrier with his wife and more violent, and its imposition can also have the potential to further adversely affect the victim, by worsening a couple’s financial situation and provoking further or worse violence against the wife, particularly if she has no other means of support. In this instance, the corporation’s administrative sanction in regard to terminating his employment was implemented; however, because of a change of staffing, a new manager with a new policy has ensured that her husband remains an employee of the corporation. How the manager wields his individual discretionary power is crucial to the imposition of sanctions he may or may not choose to believe the complainant and he may or may not choose to impose sanctions. The threat of sanction may or may not have the desired effect.

My husband’s boss had given advice and mediated; my husband had also made a statement that he would not repeat the violence again but he still did it. Administrative sanctions were present, at that time he was fired, but since there was the new boss he was not sacked. Each time I reported [the violence] the boss changed. Now,
his new boss was half-hearted so he defended my husband… 34

She acknowledged the difficulties she further had in obtaining her rights within the Rail Corporation after her husband filed for divorce but refused to pledge *ikrar talak*/divorce. The administration personnel of the corporation have argued that as she is a divorcee she does not have any right for asking for the wife’s allowance. She, then, stressed that she was not yet divorced because there was no proof of a divorce verdict from the religious court.

Of particular concern, the boss turned to my husband, [and] he accused me of lying [he said] that I had been divorced by my husband, I said “Where is the proof, sir, there has been no certificate of divorce.” I explained that my husband has not dropped the pledge of divorce so I am still his wife. Then it was submitted to the law department. 35

After convincing them that she was still in a legal marriage with her husband, she finally could then ask them to process her application regarding the living allowance for a wife (and children). To obtain her rights, she must process the application for many times because her husband often breaks his promises to give an allowance to the children.

The experience of MI has shown that while the social network could not change her husband’s behaviour, it has given her opportunities and empowered her to implement her strategies and decisions. Her successful attempt to get the living from her husband’s workplace has shown that the legislation provided by the state has crossed the two boundaries between private and public spaces when it was applied to the case. It has also shown that the problem in the private sphere has given power to MI to bring it into public spaces; the power belongs to the Rail Corporation which basically as laid down in the public spaces; this has been imposed and implemented in regard to the

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34 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
35 Ibid.
private sphere, such a move having been triggered by domestic violence issues. Thus, the Marriage Law which lay in private law has been expanded to public domain, particularly for government officers with the existence of specific provisions for maintenance for spouse and children both within a marriage and after a divorce, and conditions for the receipt of such maintenance.36

It can be said that the legislation for marriage and the relationship between a husband and wife has been brought from private space to public space in order to protect wives from neglect, unwilling participation in polygamy, or from becoming a victim of other forms of domestic violence. The legislation gives the wife rights for obtaining maintenance, and applies sanctions to male government officers who neglect, abuse or enter polygamous marriage without permission of the first wife. Through the legislation, power has been given to a wife to obtain her rights; but the wife must be active to report and apply to the institution for which her husband works and by submitting the evidence as required; this also takes time.37 Although the legislation is already provided, implementation is not as always smooth as one might expect due to the extent of the bureaucracy involved and the lack of awareness of the bureaucrats with which the women have to deal.

36 Although a marriage law was promulgated in 1974 and followed by an implementing regulation (PP 9/1975), the government nevertheless compiled additional laws to regulate marriage and divorce of civil servants. This need was justified by the special status of civil servants and their obligation to serve as models for the rest of society. PP 10/1983 made up for the weakness of UU 1/1974, especially by requiring a husband to obtain permission from their superiors before taking a second wife or divorcing. PP 10/1983 applies to civil servants and high officials of all state ministries, banks, companies, village heads, and other village administrators, and it covers marriage, divorce, polygamy and concubinage. To obtain a divorce a civil servant must have the permission of his or her superiors. Valid reasons for divorce are similar to those in UU 1/1974. If divorce is initiated by a civil servant husband, his wife automatically receives a third of his salary, while another third goes to the children. If there are no offspring, the ex-wife receives one-half of the salary. If divorce is filed by the wife, she is entitled to nothing, unless the cause of divorce is polygamous marriage, in which case the rules apply as if he initiated the divorce. Alimony (spousal maintenance) can be collected directly from the office and not necessarily from the ex-husband. When divorced wife remarries she is no longer entitled to alimony.

37 It takes time between three months to six months to get a response. For higher echelons which require ministerial approval, it may take even longer. See Julia I Suryakusuma, ‘The State and Sexuality in New Order Indonesia’ in Laurie J Sears (ed), Fantasizing the Feminine in Indonesia (Duke University Press, 1996) ch 3, 92.
The experience of MI has shown that a woman can bring her issue from the private space into public sphere based on the legislation provided. However, for respondents whose husbands are not public servants, the only legislation that can be used to sue her husband for a living (or maintenance for herself and/or children) after divorce is the Marriage Act 1974. For Muslims the protection of their right to a living can be obtained under the Compilation of Islamic law only if they are sued for divorce by their husbands; the right to a living is lost if they sue their husbands for divorce. The experiences of respondents who leave and divorce their husbands demonstrate this significant gender-role related power imbalance (see section on leaving an abusive marriage in this chapter).

MI’s continued endeavour, however, finally yielded results; she obtained spousal maintenance (alimony) of IDR 400,000 per month in 1985, and this was then increased to IDR 900,000 per month five year later; she is now (2012) struggling for access to a proportion of her husband’s superannuation. In spite of the result, which according to her is not entirely satisfactory, her struggles to exercise her rights have demonstrated the responses and strategies taken by her in deploying resources which are available surrounding her; and the resources have empowered her to do some needed actions.

5.2.1.2.3. The Police: “Cigarette” negotiations

In 1985, when MI first experienced domestic violence, the issue of domestic violence was not as strong; exposure and discussion of domestic violence was then still strongly taboo because it was regarded as ‘a family matter’. Therefore, when the private doctor who treated her medically sent her to the police station to report the violence, in order to have a visum et repertum, the police officer refused to arrange for it and suggested she and her husband reconcile instead.

The second year of marriage I had been subjected to violence because there was another
woman. When I was beaten I didn’t go to a health clinic, but to a private doctor, the doctor directly sent me to Police station...The doctor said it was [up] to the police. [T]here [at the police station] I did not know why...the police officer was really obedient [having been] given a cigarette or something. Then the policeman said “Just [be] in peace”. But after he came home he performed violence again.  

The doctor’s decision to send her to police station had shown an understanding of the domestic violence issue. Unfortunately, the police did not have a similar understanding about the issue; as a result, they refused to arrange a *visum et repertum* for her due the violence being ‘a family matter’ since the perpetrator was the husband. (It should be noted that after the passage of the Domestic Violence Act in 2004, the police usually send a complainant to a particular state employed doctor at a particular hospital. There is now far greater coordination between police and hospital, lawyer and psychologist in order to help domestic violence victims).  

MI felt a sense of injustice when reporting violence against her to police because the police’s response was simply to advise her to reconcile. She indicated that her husband seemed to have some negotiation with the police officer, by giving him a cigarette and talking separately to the police; afterward, the above advice was given.  

She recalled that there was a power imbalance between her husband and herself that had made the police take no action to her husband. The ‘power’ – the ability of her husband to communicate with the police officer (perhaps as ‘man’ to ‘man’, emphasising too their ‘male solidarity’) by giving cigarettes – could dilute the main role of the police officer as part of the legal apparatus there to protect the victim; it appeared to change the relationship between her husband and police officer, who then appeared to act as if they were friends (rather than police officer and person accused of or actual perpetrator of violence). This new ‘friendship’ made the police negotiate an important

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38 Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
public issue as a private issue, and returned the matter to the husband’s hands. Even though there was no indication that any money had been given to the police by MI’s husband, the attitude of police was to ignore the case. This can be seen as a form of ‘corruption’; the police officer knew what he must do, but he had deliberately ignored the requirement to process the report.

Further, the patriarchal attitude of the police officer (demonstrated by his asking MI and her husband to reconcile instead of arresting her husband) remained strong. Domestic violence still was considered ‘a family issue’. The police officer also refused her to give a reference letter for visum et repertum as the next legal step in the process on the basis that it was a ‘family matter’. This fact has shown that there was no recognition of her as first the victim of violence (which happened to be domestic), rather the fact that it occurred in the domestic sphere predominated in the police’s reasoning. The husband’s ‘rights’ as husband and man were given greater weight than the wife’s rights as a victim of violence. Further, it has also shown that the firmly rooted attitude of the police officers as he ignored the presence of sections within the Penal Code that are there to provide protection to a wife and other family members from an abuser, and to ensure that an abuser faces justice. Though the Penal Code has been criticised as lenient in terms of regulation of domestic violence issues, it still had basic provision (even if limited) that addressed the issue at that time; the main problem that emerged in the circumstances in which the women victims were unprotected due to the mindset of the police which was a consequence of the absence of sufficient awareness of police officers of the women as victims and of what is then the appropriate and indeed legally mandated response of police in such situations. As result, the absence of state sanctions on her husband allowed him to repeat the violence.
5.2.1.1.3. Identity and its influence on MI’s decision-making to stay

There are multiple identities belonging to women victims of domestic violence; and these identities will emerge and be used in response to the abuse or oppression either singly or simultaneously. The experience of MI has demonstrated these phenomena. For instance, when she was beaten by her husband, she returned to her parent’s house seeking help and support from her parents. At that moment, she used her identities as a daughter, an abused woman and a Javanese woman in response to the violence. As a daughter and an abused woman she returned to her parent’s house to seek help, protection and support; and as a Javanese woman, by returning to parent’s house or ‘purik’, she wanted to show her parents and her parents-in law that her husband did not treat her well.

The response from her parents was positive because they, then, brought her to police to report the violence. However, she was in the situation as a powerless person because of dependence on her parents financially and on her husband who totally controlled the police at the time. She was powerless when her husband filed for divorce and refused to pledge *talak* which affected the marriage which remains in existence, but her husband does not give her a living. At last, as a housewife who had no other skills, she forced herself to take any part-time job to feed her children when she was so neglected by her husband.

She became more powerful after having consulted KJHAM to obtain her right for living as a neglected woman, a married woman and a housewife to a living allowance from her husband’s institution. Moreover, by contacting KJHAM, she became a volunteer in a women’s crisis centre belonging to Semarang local government. She argued that her decision to be a volunteer was not only caused by her financial state (because she obtains fee payment regularly, even though the fee is below the regional
minimum wage), but also due to her concern as a victim of domestic violence to help other women victims to confront and overcome the violence.

In addition, she used her religion (that is, her religious identity) to break the silence by disclosing the violence to several imams in order to get religious support and so strengthen herself and to obtain advice for her husband to change. However, her efforts were in vain because her husband never changed; he even left her for another woman and illegally married this woman. The decision to stay in the abusive marital relationship despite the absence of her husband is made on the basis of her consideration of financial matters, particularly given the presence of her son who needs specialised medical treatment. She insisted that there are no obstacles that spring from her faith as a Muslim as she could to file for divorce against her husband; moreover, she has enough information about the court and trial procedure since she is involved in the women’s crisis centre where she supports victims with information about psychological and legal services. The main reason for not filing for divorce against her husband is her son’s interests, as he needs special medical treatment. She argued that divorce is not the last resort for her, although at the beginning of her marriage when she first encountered violence she had planned to file for divorce.

Divorce is not the end of the road. I am not selfish, I am there in the middle but I have to be wise whether to divorce and not, between taking the legal course and not. There is still a son in need...

The experience of MI has shown that her identities have fought with her husband identities. Her husband identities as a household head and an employee have given him more power to control the resources in order to oppress MI. On the other hand, MI’s identities as a housewife, mother, and an unemployed person have set her in

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[^39]: Interview with MI, a housewife and volunteer at a women’s crisis centre (Semarang, Indonesia, 27 December 2011).
the position of a subordinate woman whether in the private or public sphere. Being a victim of domestic violence and unemployment had forced MI to look for a job since she has had responsibility for her five children, as her husband (whose income and social status are higher than hers) chose to neglect them rather than support them adequately. Though her husband does not give her the required allowance, she used her initiative to claim her rights at Rail Corporation, her husband’s workplace, by asking help from KJHAM. Her efforts to obtain her rights are basically collaborations between her struggles and help from her sister and also from her social network, and particularly KJHAM. Nevertheless, economic and psychological violence remain due to her husband having a mistress in another city and the fact that he never looked after or provided for her and their children.

However, after being involved in KJHAM activities and after many consultations dealing with her case, the awareness of her identities as to the avenues to obtain her rights as a woman, a housewife, a mother and an abused woman has increased. This has shown that the role of non-government organisations such as KJHAM is important and has succeeded in empowering MI through the acquisition of accurate knowledge about the Domestic Violence Act provided by the state. This empowerment has led her to making a decision which is appropriate to her circumstances. Therefore, she insisted that she did not want to divorce because this course of action would not suit her circumstances where her son still needed to a medical treatment and that could only be afforded if she accessed funds from her husband salary every month.

She acknowledged that the support from KJHAM to process the allowance has strengthened her psychologically and forced the Rail Corporation to consider her case. She has found sources of legal aid and moral/emotional support through the LRC-
KJHAM. These circumstances have demonstrated that a woman must be active in obtaining her rights and information about everything, particularly in regard to legal issues, to protect her rights.

5.2.1.2. The case of Y

5.2.1.2.1. Access to resources: From one city to another

Y married her husband based on her own choice after dating for a year, often at a distance. Living in different cities (Y in Semarang, Central Java and her husband to-be in Bandung, West Java) had forced them to have only limited meetings as they attempted to get to know each other. The infrequency of meetings has been acknowledged by Y as a factor that contributed to her not really understanding her husband’s attitude in regard to matters like clubbing and drinking or his attitude towards family responsibilities. There was also a distinct difference between his actions before and after marriage. When they were dating, her husband often gave her money; however, after they married he seldom gave an appropriate living to her that would meet her and her daughter’s needs. Only after the marriage did she come to recognised her husband’s true character as a financially controlling (even mean) person (in regard to her and her daughter’s needs) but generous (or selfish) in relation to spending on his own pleasures, such as clubbing, and drinking. She also found he often would come home late after indulging in such pastimes.

In the case of Y, physical violence did not exist but psychological violence, verbal abuse, and sexual neglect, as well as economic violence became the dominant forms of violence during her marriage. She responded to the violence by forcing herself to communicate with her husband; she emphasised communication as the important way to cope such violence because she believes that family problems between husband and wife are a matter for the husband and wife, and they should be overcome such problems
by themselves.

In my opinion family problems between husband and wife should be a matter of husband and wife themselves but the main issue is me, every time I had problems I could not settle them with my husband, because he did not want to know. We had never talked, he was selfish, and he [believed] that he was the most correct…

Although she believed that ‘domestic matters’ such as these were essentially ones that should be resolved in the home, she also believed that an equal relationship between a husband and a wife is a must:

[A husband and a wife] … should respect each other, understand each other, and accept the advantages and disadvantages of each. We unite our thoughts and will be brought to extent degree [of unity]. Okay, if he wants me to change I will change as long as he [will] change as well, let us turn to each other [in] equal self-correction. So we do not have an argument because of differences in vision.

She tried to communicate with her husband whenever she had opportunity since her husband seldom went home and tended to avoid her. Hence, she felt that her marriage problems seemed likely difficult to settle since she recognised that her husband is a selfish person. Moreover, her husband always involved members of his family in his marriage conflict in a way in which such intervention did not solve the problem but makes it far worse instead.

Psychological pressure increased because she was isolated from her family of origin by her husband who did not even want to provide a mobile phone or other means of communication for her. Moreover, her husband’s family did not care for her, they even often humiliated her. This occurred because every time a conflict arose, her husband would always involve his family; and they (unlike FA’s mother-in-law) would invariably take his part and not offer Y any support at all. Meanwhile, she was alone because she had no family or relatives in Bandung who could support or help.

He’s always carrying around [his] family when we had on our argument; his family was all out of it, while I was there and did not have any relatives. Away from family, so I felt

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40 Interview with Y, a small entrepreneur (Semarang, Indonesia, 22 January 2012).
41 Ibid.
isolated, oppressed, beaten. So I was never able to resolve the problem well. It was hard to contact family because my husband was so stingy with calculation of the cell phone account. I was not bought the cell phone account and finally my mom bought it for me, if suddenly the cell phone rose significantly I would definitely be accused, until the print out was traced for who used it. Then, the expenses of the house were so big, so I was accused again…

Y never told her parents about her marriage problems due to her reluctance to upset them and from a consideration for her parents’ health.

I also couldn’t share [information about the marriage] with my mother. I couldn’t dare to share because at that time my father had kidney failure, if I told him I was scared that he would later be worse. I was just trying to settle with my husband. If it was completed so my parents wouldn’t [worry]… so deeply. So while staying there [with my husband] if there were occurrence [of the violence] I did not tell the parents. So I tried to solve [it on] my own so I could hold up to nine years. So I thought let’s pray for a change, but [my prayer] was unrequited…

She acknowledged that in the first month of her marriage, the relationship was good; however, once she was pregnant the conflict started. They have lived in separate rooms after she was in the six month of pregnancy because of her husband sleeping ‘twisted’ so that she had no room to sleep. After sleeping in different rooms, the communication between them became worse and she never had sex with her husband. If she asked for sex, her husband always refused her by arguing that he was worried and tired due to work. Her husband, then, started hitting the wall, threw his clothes at her. Her response was to run away and feel quite anxious and distressed. She did not have particularly negative thoughts about it at the time; she just felt it was probably her mistake and ‘fate’. It was in her mind whether the life of wife is simply like this, and to be expected. Thus, at that time she did not recognise that she had been a victim of domestic violence.

Financial restrictions on her have also made her strictly manage money. Her husband only gives her the very minimum amount of money for food when compared to

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42 Ibid.
43 Ibid.
his expenditure on clubbing, smoking, drinking and having parties with his friends. As a result, she never accessed transport to go anywhere including delivering her daughter to school; and, this has impacted on her daughter’s health. Every time she asked for money for her and daughter’s needs, her husband would be always angry. Given the difficulties involved in asking for money from her husband, Y then tried to run her own business. The idea for running the new business selling items via the internet came from her friends, whom met at her daughter’s school. Given that she did not have access to the internet as there was no computer at home, she then forced herself to ask her husband to buy a new blueberry mobile phone which she planned to use not only for communication but also for displaying the items on the internet. His response disappointed her. He did not agree but instead threw his mobile phones at her. However, she did not give up; she explained it many times till her husband agreed to buy it but it was subject to one requirement, that is, that he must be involved in her business. She did not run her business for long since, instead she discontinued it as she felt that her husband had taken advantage of her business and controlled the finances; and so she had gained nothing.

Feeling hopeless due to her circumstances, she finally returned to Semarang (her parents’ home) in May 2011.

There was no talk of going home here, but if we have conflict he always said “Now what do you want? If you want to go home [to Semarang], fine just go and never come back again.” Since my daughter was three years old for both small and big issues he was always saying that. Never solved the problem, he also never wanted to talk.44

44 Ibid.

After she arrived in Semarang, she talked about her experience of being abused by her husband to her mother. Her mother blamed her for the lack of communication and her lack of services to her husband. Blaming the marriage problem on a wife
because she did not play the gender role appropriately seems common for the community; however, a similar view seems likely to be less deployed to men in relation to their role as breadwinner. She responded to her mother’s accusation by explaining that she had already prayed and fasted for the purpose of changing her husband’s behaviour. However, she had done all the rituals for nine years and the expected change never occurred; this final circumstance became her reason to go home to Semarang.

My mother tended to blame me; she always says “have communications”. Yes, as Eastern the way of how a wife to serve her husband is important. So according to my mom, I never considered to serving my husband. I said that “he never tasted my food even a spoon, he was only ravaged”. He already knew the consequences, I am Java and he is Sunda, not only the speech has a different accent but the appetites were also different. If he gave me input I also wanted to change, but in fact he never talked to me…

In Semarang, she has much more opportunity to develop her social network; she meets her family, relatives, and friends. From the social network members she can access resources and information about jobs and legal aid which are helpful in reducing her distress and lessening her financial problems. She acknowledged that she received financial support from her friends (IDR 10 million) to run her own business which according to her takes up her life because she herself runs it. The business is only a small grocery store but she feels happy because it is profitable enough. However, the earnings from her business are not enough to pay for her daughter’s medical treatment. Once she had been living in Semarang for a while, she decided to give her daughter back to her husband based on the financial reason that her husband was wealthier than she was and would be better able to pay for the daughter medical treatment.

At last, her mother agreed with her decision to split.

My mother finally suggested I split, yes recently. At first she still advised me “to attempt with prayer”. Our customary Javanese [way] still in use, so we like it [and] fast [too]. Who knows whether if we pray or we fast he could be better. I said to my mother “It’s been nine years, mom. I am not strong mom, I’ve been tired. I continue to pray and continue to fast. I need to live happily. I have prayed and fasted, I changed as he wanted
However, the decision has affected not only Y and Y’s husband, but her mother, who resigned from her position as an administrator and consultant in Confucianist marriages due her feeling of failure as she was unable reconcile her own daughter’s marriage, but also she was shocked by Y’s marriage problems.

5.2.1.2.2. Access to the Justice System

5.2.1.2.2.1. The Police: Psychological violence is difficult to prove

Breaking the cycle of violence finally occurred when Y shared her experience with friends she met at her daughter’s school, reported the violence to police officer and administrator neighbourhood in Bandung; and, in Semarang, she disclosed the violence to her mother and brother, asking about legal support to lawyers from legal aid organisations in Semarang. Although she has then many resources, the response from these networks have been both positive and negative (in terms of facilitating an end to the violence) which influenced her strategies.

Y has similar disappointing experiences to those of MI when she reported the violence to police, and when she approached a contact person at a non-government organisation in Bandung. In Semarang, she was also disappointed by the response of a legal aid person that belonged to a Catholic university, two legal aid personnel, and two private lawyers.

Before leaving Bandung, Y reported to police about her experience of being abused psychologically, but the response of police disappointed her because they could not do anything since the violence was psychological which, according to the police, was difficult to prove; however, they suggested that she bring witnesses for the next
report and court processing.

[At] the police, first I was laughed at because they argued that the violence experienced by me had no evidence. Probably psychological violence is not considered as a threat. So I felt there was no positive response in accordance with my expectations. If in our society there is fear itself, then the family name will be so bad. I then went to [the] administrator of the neighbourhood, he recommended [me to] his friend, a police officer, [and said] that the police would visit me once in a while; but, I fear again that if the husband [would become] even angrier...46

Based on police’s advice, Y then had tried to ask her friend who knows of her husband’s behaviour (when he had threatened to throw her out of their home and how he was reluctant to look after her and their daughter). Unfortunately, her friend did not want to be a witness and had kept away from Y instead. It seems that Y’s friend was reluctant to deal with the police. Y was very disappointed with the friend’s response, but she tried to understand the reasons behind her reluctance. It is common for people to be reluctant to deal with police since there are many rumours about the police; thus, just imagining dealing with police, and not actually having to deal with them has raised community members’ fears. Further, it is also sometimes caused by an unwillingness to be involved further in the ‘family matter’ of others. Given that her friend was unwilling to help, she then went to the neighbourhood administrator seeking help. The neighbourhood administrator gave her a reference to his friend, a police officer who promised to visit her sometimes. However, feeling afraid of her husband who would probably become more aggressive if he knew that she had reported their family matter to police, she refused the neighbourhood administrator’s offer.

She kept seeking help, and asked her friend about legal aid in Bandung. Her friend gave her the details of a contact person of a non-government organisation; she followed it up by contacting and making an appointment to meet, but her efforts had no result because every time she called there was neither response nor text message in

46 Ibid.
reply from the person.

I’ve contacted legal aid in Bandung, but I feel cheated. Well, it’s hard to meet. I’ve asked many times and promised time at this hour, but she never replied; [after] two weeks… and finally I decided to go home…

Feeling hopeless, she finally decided to go to Semarang with her daughter; and return to her mother’s house. In Semarang, she has convinced her mother that she had tried to communicate with her husband, to be a good wife by cooking food for him every day but her husband never tasted it, that she had endeavoured by praying and fasting to change her husband’s behaviour and to improve the marital relationship, but all these efforts had no result, and she had become distressed instead. In the beginning, her mother as a Confucianist marriage counsellor could not accept all the reasons and blamed her, believing that she must not have served her husband well; at last, however, she understood the main problem and agreed to Y’s plan to file divorce.

The reason for supporting Y’s plan was triggered by the treatment of her daughter by her husband and his big families, which according her mother was lacked humanity. For instance, when her mother in-law came to Semarang to pick Y’s daughter, the mother in-law did not apologise for her son’s behaviour and beg her to return to Bandung; she brought all Y possessions from Bandung to Semarang. It meant that she was expelled from Bandung: this been performed in the presence of her mother and her family members. Her mother-in-law took Y’s daughter because Y gave her guardianship right of her daughter to her husband since she cannot afford the health treatment of her daughter which reached to IDR 3 million (AUD 300) every month.

5.2.1.2.1.2. Legal Aid: Religious principles become an obstacle

Being rejected so many times (in Bandung) did not make Y frustrated; after returning to Semarang she struggled to find legal aid. One of the legal aid personnel she

47 Ibid.
approached belonged to a Catholic university. She had high expectations of this institution since it was her place to study for years (although she did not finish the study because of her marriage). Unfortunately, the legal aid representative of the legal aid could not assist her because the institution’s principle, as a Catholic institution, is not to help arrange a divorce. The legal aid representative, then, referred her to other private law firms. She was really disappointed with the services from the university legal aid because she expected to get support from the university where she had studied; moreover, she was trying to deal with circumstances at that time which she described as hopeless and helpless.

The religious principle of ‘not facilitating divorce’ is also implemented by other Catholic faith-based legal aid personnel and so they could not assist her, as was shown when she went to other Catholic faith-based legal aid centres that gave her the same response that they could not arrange divorce for her. The legal aid services gave her three reasons for denying help: as the Catholic faith-based legal aid service they could not arrange divorce, their purpose had changed from helping urban community to assisting farmers; and because her religion is Buddhism.

After I told the story of my problem, the representative of legal aid from the university said “The university could not help [with a] divorce, it is our commitment.” I was disappointed as someone who had studied there; and I wanted to be assisted; like where [can I] seek protection? It broke my heart not to [get] the legal aid again because of [my] actual experience in Bandung, if later being in trouble again.48

Following from the Catholic university [experience], I had in mind… “Why did not anyone help me?” Yesterday, I went to legal aid [service] behind of the Blenduk church; I got a recommendation from mama’s friend who had even used the services to arrange a divorce for her son. When I went there, the staff did not want to help, the first reason because my religion is Buddhism, second, both legal aid centres have a Catholic background. Third, they had changed [their] course to help poor farmers, so I’m stuck again. I’ve hoped and been disappointed several times. I got to think… what a life,

really like this, cannot do this cannot do that…  

These reasons have raised feelings of disappointment and a perception of being discriminated against; she questioned why Buddhist or Confucian faith-based legal aid services are not available. If they were available, they could help her to arrange a divorce. She blamed the unavailability such legal aid on political policy which appears to have favoured the development of Catholic institutions including the legal aid services, in comparison with Buddhist and Confucian institutions.

She, then, went to private lawyers close to her place of residence and asked whether they could help or not; and, both lawyers asked for IDR 20 million to arrange her divorce. She felt that the fee was too expensive.

I once asked a lawyer whose office was next to my house, he asked me for 20 million rupiah. The one in the back of the house also asked me for 20 million rupiah. I am confused, what do I have to do. I have to save 20 million to [give to] a lawyer, then when can I arrange for [a divorce]? Twenty million, if I save 200,000 each month, how many years [will it take]? I continued to be a new arrangement; do I hang [on] for years? This holds me to the track of how the law works? I myself had never heard about Buddhist legal aids…

Her lawyer friend who helped her by providing psychological counselling also advised to be patient and wait for two years. She could file the divorce herself without any help from the lawyer and the fee is very affordable—only IDR 1 million. However, she argued that two years is too long because the torture is going on even though they live in different cities.

I must take care of him continuously because he often asking for my signatures, asking for marriage licenses, et cetera. Continuing contact with him makes me sick, while he does not want to know about me. I [am] only used by him for signature to issue his legacy. So I [am] like a maid, his sisters just exploited me, keep doing anything… Though I am younger than they, I am still their sister-in-law…

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51 Two years separation is one of the divorce grounds which are regulated by the Marriage Law 1974.
52 Interview with Y, a small entrepreneur (Semarang, Indonesia, 22 January 2012).
Y’s experience has shown that while she has accessed many resources (both formal and informal), unfortunately, they did not provide a satisfactory expected result. Despite her lack of financial support, her efforts, struggles and strategies adopted to seek help to cope with the violence and confront power within the ecological layers are extraordinary. It can be said that she was unlucky not to have found the right institutions to help her. The obstacles seem likely not derived from her but rather from the structures, values and norms which have restricted the available institutions in relation to their helping women victims of domestic violence. For instance, the police officer who was bound by the legislation and procedures; the Catholic faith-based legal aid services who were bound by religious principles and unable to arrange divorce; and the lawyers from private legal firms who charged fees that are for many unaffordable, particularly women victims who often lack access to independent financial support.

The reluctance of Catholic faith-based legal aid services to arrange divorce has led to other Catholic respondents (ID and EL) in this study to bring their cases to lawyers at private legal firms. In the case of Y, Catholic legal aid will help her deal with domestic violence but not in regard to arranging divorce. This phenomena has shown that there is no space within the Catholic legal aid where women victims can ask for help when it relates to divorce, even though this need is created by domestic violence; however, in regard to other actions related to other domestic violence (such as reporting the case to police and processing the case in the criminal court), Catholic legal aid will assist her. So, the policy of Catholic legal aid has spaces within it in where it cannot help (namely actively assist with divorce) despite the need being caused by domestic violence. Domestic violence and divorce seem to be seen as separate matters but they often have a strong correlation when domestic violence arises in a marriage. Unfortunately, Catholic legal aid services in the case of Y seeking for help have
separated the issue into two which seem unrelated to each other; as consequence they must be treated in differently and in different spaces. It has also shown that the Catholic religious tenet of ‘what God has united, let no man put asunder’ is adhered to not only in regard to a marriage – private matter – but also at the institutional level where guidance is offered dealing with a public matter, that is, domestic violence regardless the religion of the clients. Thus the church’s principle is seen as having priority over the client’s needs.

The experience of Y has also shown that the power she has was not enough to influence or to confront other power which was embodied in the dominance of her husband and his extended family, the police who were very positivist and tended to be bound by the law books, the lawyers who bound themselves to religious principles in their organisations, and the lawyers who had emphasised money rather than a sense of humanity. It is clear that when seeking help to deal with domestic violence either through litigation or non-litigation, processing may have been done with the assistance of legal aid services that belong to non-government organisations or local government agencies that are concerned with such issues or with the assistance of a lawyer from a private legal firm. Therefore, the difficulties in regard to divorce for Y (and others in a similar situation) are in finding the right institutions or legal aid services that are ready and willing to help her arrange a divorce, or having enough money to access the power that belongs to the lawyer from a private legal firm to arrange divorce.

5.2.1.2.3. Religious and cultural identity: Prayer and fasting to save the marriage and being regarded as a ‘jinx’

Y is the youngest respondent in Indonesia who is staying in the abusive marriage relationship, although Y is a Buddhist and a Confucian and despite her acknowledging that both religions allow divorce. Her decision to stay in the abusive marriage
relationship is mainly caused by her expectation that her husband will change; and she, as a housewife and in her religious and cultural identity, has struggled to defend her marriage by prayer and fasting. These actions are strongly encouraged by Javanese people when facing a problem. By doing these rituals, it is believed that the problems will disappear or a solution will be found for the problem. However, after nine years of struggling, the expected result did not materialise.

The reason I carried on for nine years [was] because I expected him to change, the second I did not dare to go home because my economic condition was not good [in term of] capability…First still trying to ‘yes, attempt with prayer’. Our customary Chinese-Javanese [way] still in use, so we like it [and] fast [too]. Who knows whether if we pray or we fast he can be better.\(^{53}\)

Y acknowledged that her experience of violence was caused not only by financial issues but also by the some difference in social status and ethnicity (despite both being of Chinese ethnic origins).

Both of us are Chinese but I come from Java [Central Java] and he is from Sunda [West Java]…I think Javanese are different from Sunda. Javanese people [show]…understanding and respect of others; while Sunda have principle: ‘Up to you, you are you, I am I”, was influenced by the people of Jakarta. They can say [things] in a honey [ed] manner but the treatment was very different. So I got abandoned by the Sundanese, not only by my husband and his family but also [by] my friends who do not want to be a witness. [From] then until now [they have] not been in contact…\(^{54}\)

Y has also identified that the difference in culture between them as a Javanese and a Sundanese need to be discussed in order to get mutual understanding. However, the communication between them never happens, even for trivial matters such as food.

Y has indicated that her marriage problems were not only caused by financial issues, but exacerbated by her husband and his family’s belief that she had brought him bad luck. Such an assumption may have been whispered to her husband and it is believed by her husband. As consequence, she has been treated badly by her husband.

\(^{53}\) Ibid.
\(^{54}\) Ibid.
She has also recognised three big moments where they accused her of being ‘a jinx’; and such thinking has influenced her husband and family members’ bad treatment of her.

What I am worry about it actually because of the family influence. I feared that if he thinks I’m jinxed. If people still hold traditional Chinese [beliefs], there is an assumption that someone was bringing bad luck to the family. What I fear it, because after we married her father then passed away; after [my] giving birth to premature children he had to spend a lot of money on the child and other needs; and, during the running of his swallow nest business [the income] had fallen many times even until minus…

She did not want to be accused of being a jinx because based on her logical and rational arguments, it did not make sense. However, her marriage relationship did not improve; her husband remained neglectful and kept away from her.

There may be whispering at behind that makes me accused of bad luck, but there is no proof. Yes, because of Chinese custom that is so. When his father passed away, how could I make someone’s life short, I did not determine [the length of] someone’s life even my life. Then, when his job [had a] downturn, it was caused by his decision to put much money into his swallow nest business. [The downturn] occurred globally … the nest bird price, firstly, was 25 million rupiah/kg [AUD $2500/kg], after ten years the price just 3 million rupiah/kg [AUD $300/kg]; so, can I be blamed? He lost because he was invested big capital; meanwhile he ran that business by borrowing people’s money. In my opinion, [it] would not be fair if I am to be blamed…

As an abused woman, she reported the psychological violence to a police officer in Bandung; however, the police could not do anything since the violence is psychologically and the law does not recognise it as yet. The police only suggested that she bring witnesses in order to report violence so that the police can respond it legally to the court. Unfortunately, as mentioned above, her limited access to friends and finance has resulted in her having difficulty in find witnesses, and in gaining access to other resources. These difficulties have, in the end, led her to go home to her parent’s house in Semarang.

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55 Ibid.
56 Ibid.
In Semarang, Y’s experiences have shown that her identities as a housewife, Buddhist, Confucian, and a holder of an identity card of Bandung residency while she lives in Semarang have brought her difficulties in accessing resources in the justice system dealing with her case. Her identity as a Buddhist and Confucian has led her to find difficulties particularly in finding the legal aid when she had plans to file for divorce.

As mentioned above her experiences of accessing legal aids were negative due to the religious principles and a court fee unaffordable for her. The religious principle of no civil divorce for Catholic believers means that faith-based service providers may provide ‘no arrangement for divorce’. This is the situation that faced her when she attempted to use Catholic faith-based legal aids services. They could not therefore help her or other seeking divorce. (Annulment or declaration of nullity is available to Catholics, but this is a religious (Canon Law) not civil procedure and declares the marriage not valid. It does not constitute a divorce as such. Lack of consent, lack of intention to keep one’s vows from the outset, and inability to consummate the marriage are among the grounds for annulment).)

The legal aid service’s representative of Catholic University in Semarang insisted that the institution was committed to not arranging divorces; he, then, suggested that she contact private law firms. From this institution, she went to other Catholic faith-based legal aid services who also gave the same response, that is, that they could not arrange divorce. In this instance more than one reason was given for their inability to help. Not only was that based on the fact that as Catholic faith-based legal aid services but also that their purposes had changed from helping members of the urban community to helping farmers, and because of her religion. She therefore felt disappointed and discriminated against, and she questioned why there were no Buddhist or Confucianism
faith-based legal aid services available to help members of their faiths. If such a service were available, she argued, they could have helped her to arrange a divorce. She blamed the unavailability of such legal aid on ‘political policy’ under which Catholic institutions had developed, including legal aid, while Buddhist and Confucian institutions had failed to develop similar services.

Despite feeling disappointed, she continued to struggle to find information about divorce by contacting two private law firms close to her place of residence and has obtained information that she must allocate 20 million rupiah ($AUD 2000) to fund arranging a divorce; an amount of money which according to her still cannot be afforded from her own finances.

The above descriptions have shown that religious and cultural identities as well as that of a housewife have significant effects on access to resources which are needed to overcome the violence. Moreover, respondents in this study have experienced being neglected financially and psychologically for years which made their struggle to overcome the violence more complicated. The presence of children sometimes made their decision to leave harder than before because of the limited access to resources as did concern for the children’s continued welfare. As a result, many decide to stay with the abuser and continue to depend on the abuser both financially and socially as they can see no alternative available.

However, the experience of the absence of the abuser from daily life (where such an experience is prompted by the victim leaving the abuser as in the case of Y), seems to have given her the opportunity to undertake more activities, including improving herself by accessing resources (this can be knowledge, work and social opportunities previously denied them). Further, in certain cases, the woman’s religious identity can be an additional obstacle (or facilitator) which has a significant influence on
the victim’s decision making or access to the justice system. The experience of Y, for instance, has shown that her religion became the main obstacle to access to legal aid services, and it has affected her opportunity to access justice and to overcome her circumstances rapidly.

5.2.1.3. The case of GE

5.2.1.3.1. Access to resources: Wasting time and money

When violence first emerged in her marriage, GE insisted that she did not care because she was busy with her work and still loved him, although she suspected her husband’s unfaithfulness (which involved extra-marital relations with many women during their marriage). Finally, however, she could not stand it as she saw with her own eyes that her husband was consorting with his mistress. The depth of her love for him was equalled by her feeling of being betrayed and this had a significant impact on her mental health. She attempted suicide many times, and, fortunately, these attempts failed (see Chapter 4).

As a merchant in the traditional market, GE had, however, developed an extensive social network. She has many friends who told her about old people who usually give advice regarding various rituals, and the KJHAM. Firstly, she contacted elders, who (according to her) gave her advice and directions regarding rituals that must conducted, but she came to the conclusion over times that this was just a waste of time and money.

I also asked for suggestions from the old people, in order for a husband to return, but [that has not happened right up] until now. Well, a lot of people I had asked. If I complained they suggested to going over there, take a ritual bath, yes I went there, but no results, so it’s only wasting money; I spent millions…

57

She also reported to the administrator neighbourhood but they did not respond

57 Interview with GE, a motorcycle park keeper (Semarang, Indonesia, 24 December 2011).
well. Even, the neighbourhood administrator had approved her husband’s application for a ‘boro’ (a removal letter). The letter has the function of stating that someone has moved from one place to another; it is usually requested by the neighbourhood administrator from the new place where someone wants to stay for a long time to demonstrate that the person is leaving or has left the former place of residence. Since her husband had obtained the removal letter and conducted an illegal marriage to another woman, there is no further contact with her husband.

The experience of GE has shown that while she had been abused for years, her willingness to remain within the marriage was finally exhausted when she saw with her own eyes that her husband was having an affair with another woman. Her husband responded to her anger with physical violence and she was beaten in her workplace (the traditional market). In term of support at the time in the workplace, no friends or people helped her as her husband forbade them to be involved by arguing that it was a ‘family matter’ between him and his wife.

5.2.1.3.2. Access to the Justice System

5.2.1.3.2.1. The Police: Giving orders without doing any real action

When her husband physically abused her in a public place, that event caused her to break the silence by seeking help from police. However, she felt that the police were not sufficiently aware of her position; what the police had done was only give directions as to what she should do without doing any real action to help as a victim of domestic violence.

Finally, I reported to Gayamsari [police station]. Officers said “You were not from East Semarang area so you could not report here [at] central Semarang region. We could not decide.” Then, he told [me] to go to Kalisari, but I did not have money, [and] I should give cigarettes to the police...

58 Ibid.
The response of police of only giving an instruction to go to another police station without any real action disappointed her. She argued that moving from one police station to another was not easy for her because of the long distance between them, and she did not have enough money to reach the places indicated. She noted the negative response of the police officer who only gave a direction to go to another police station, although he argued that the police in the region in which she reported had no jurisdiction to respond. This also demonstrated that the matter of jurisdiction has created gaps in services and a space where little help is provided. This is created by a difference between the ability of a police officer at the police station which has jurisdiction and another police station which has no such jurisdiction in regard to process the report of domestic violence. If the police officer ignored the jurisdiction, the conflict might have been revealed and action taken because such violence was considered as an action in breach of the rule of law. This is an example of how the legal rule in regard to the police’s jurisdiction has created a space wherein no action could be taken. The jurisdiction, which has been determined by police authority through its legal system and its structure, is a rule that must be implemented by police officer despite creating a space that disadvantages women victims of domestic violence; meanwhile, the jurisdictions were basically ‘spaceless’ for women victims of domestic violence because the need to respond to the victim seeking help cannot (and her ability to express such a need for help) should not be limited by spaces. Again, the existence of spaces (for instance in the case of GE, the jurisdiction between a police station and another, family and public matters, domestic and public sphere) has created an obstacle to helping women victims of domestic violence and to ending the violence.

However, she acknowledged that if she had money to access the other police station, she would have gone there and would have been able to provide cigarettes to the
police. Based on GE’s accounts, it seems that to police cigarettes are the equivalent of money, and the provision of cigarettes was a common currency for obtaining service at such stations. In other words, if someone has an issue dealing with police and wants a good result, she/he must prepare her/himself by providing cigarettes (or money) to lobby them. Whether giving cigarettes to police is a bribe or not, such an attitude in regard to police behaviour is common among Indonesian people. Generally speaking, giving cigarettes is not compulsory; however, it is common in the Indonesian community as a symbol of ‘friendship’, and sometimes it is very useful approach to expedite a case.

5.2.1.3.2.2. The Religious Court: No documents, No divorce proceedings

After cancelling her plan to report her husband to police, GE had tried to file for divorce in a religious court; however, because her certificate marriage had disappeared, she could not have it processed. The marriage certificate is used to fulfil administrative requirements and to prove the existence of her official marriage before judges in a hearing in the religious court. The certificates of marriage are issued in two books, for a husband and a wife. The first book belongs to her husband and was used to file for divorce; however, her husband was reluctant to say the pledge of talak. As a consequence, the marriage remains in existence. However, she did not take the certificate back and it has been stored up for years in the warehouse of religious court. She went to the religious court officer to collect her marriage certificate but the officer was reluctant to comply because it was in a warehouse and would be difficult to look for. These circumstances had forced her to cancel her plan to file for divorce.

Feeling like giving up, she forgets her goal to divorce her husband and gets involved in a support group which is supervised by KJHAM. In this group she feels happier than before because she has more friends and gains access to broader
knowledge than ever before and her goals change.

Then I was included into domestic violence events in KJHAM. I later had to give up. However, I am able to gather with friends and it is fun, [I] can join this meeting and it is fun. So I’ve forgotten the affairs of my husband. I have no desire to divorce. I’ve given up, but my desire is to imprison my husband. To [have him] pay for my hurt; I am not afraid of a bad family name because I was persecuted. He will be poor because he went to prison. I am extremely [desirous] of revenge on him. I want him to feel as hurt as my heart [is].  

5.2.1.3.2.3. Impact of traditional cultural identity: Healer as an option to solve domestic violence issues

When her husband committed physical and psychological violence against her many times, GE did not consider it as domestic violence for a number of reasons. First, she did not know about the issue of domestic violence as she was working hard every day as a seller in a traditional market in Semarang. Secondly, she loved her husband and believed that her husband always loved her and would not leave her for another woman. Thus, as a woman and a housewife, she believed in the ‘power of love’. However, when she had caught her husband cheating on her by her own eyes, she could not stand herself being angry and fighting to her husband. Her identity as an abused woman had given her strength to fight against her husband, but at the same time it affected her psychologically and completely undermined her identity as a ‘wife’. This, in turn, had led her to attempting to suicide. She tried many times, but these attempts failed as neighbours repeatedly saved her life.

As an abused woman and a housewife, she brought the physical violence case to police; however, the police told her to report it to another police station because the police station to which she should report was in different place so he could not process her report. She recalled that, at the moment, she decided not to go because she did not have enough money not only to transport from one police station to another, or to

59 Ibid.
provide the police officer with cigarettes (a form of ‘influence’ often used to ensure a matter is followed up when reporting to police or, conversely, for stopping a report being followed up). The experience of GE has shown that in her mindset based on her knowledge as a lay person and a housewife, she must provide cigarettes to police officers when dealing with them to facilitate her affairs; it was the similar experience with MI.

Being a powerless woman without hope in conventional means of access to justice led her to go to a healer. As a seller whose earnings are limited, she had thought that going to a healer would overcome her problems and it would not take too much money. In fact, her decision and the result were beyond logic, but also reflected her identity as a traditional woman who ended like many to rely on more traditional knowledge or folklore.

In addition, the experience of GE has shown that as a Muslim, she did not mind filing for divorce; moreover, she felt injustice at her husband’s behaviour. Her decision to file for divorce was triggered by her disappointment with the police performance; however, the obstacles in terms of the financial issues and the loss of her marriage certificate have caused her willingness to struggle to file for divorce to diminish. These circumstances had forced her to cancel her plan to file for divorce. She insisted that divorce was not her final goal because she was disappointed with the justice system; moreover, she cannot afford the court fee though she actually had a chance to be freed from the court fee by using a ‘pro bono’ procedure.

The experience of GE has shown that she has struggled to obtain her rights as an abused woman, but the difficulties of finances have thwarted all her strategies and decisions which are needed to response to the violence. Finally, feeling the strain of the difficulties in processing her husband through criminal law and family law (difficulties
that were mainly caused by financial issues) has made her forget her case, but she insists that if she had a chance she wanted to put her husband in jail.

5.2.1.4. The case of FA

5.2.1.4.1. Access to resources: Limited to her inner circle

FA, another respondent in this group, never contacted legal aid, the police or court during the violence that occurred in her marriage. Her contact with KJHAM is accidental, and occurs because of her daughter’s trafficking case (the trafficking having been done by her husband – see Chapter 4). Hence her experience in accessing the justice system will not be presented in this section.

FA has also the same experience with MI in an arranged marriage. Obedience to husband has also been embedded in her. Although she did not like the man who was to be her husband, she did not complain to her parents, even, when he later neglected her needs and was physically violent towards her.

Physical violence initially experienced by FA in her second year of marriage because of her husband’s anger was caused by her coming late to give medicine to her sick child. Further violence was also triggered by financial issues due to her husband’s irresponsibility as a husband in terms of failing to provide for the needs of family members; her husband preferred to gamble rather than look for a job and provide for the needs of the family. The persistent violence was not only physical and targeted her and the children, but also non-physical violence such as neglect, verbal abuse, and forcing her to have sexual intercourse.

The only person she had shared the truth about her situation in marriage with was her brother who advised her to file for divorce. His reaction is one that demonstrates that not all men consider violence against a spouse acceptable; perhaps this is particularly the case if that woman is one’s own sister, as was the case here.
However, she acknowledged that she did not have enough information about how to access divorce and, at last, banished her plan. She acknowledged that during her thirty years marriage, her husband seldom had given her sufficient money to live nor did he treat her well; the reality she experienced was very different to her understanding of how the relationship between a husband and a wife should be.

Actually it should be [that] the husband must love his wife, but my husband really did not care [he] even beat [me]. Now beating is rarely – only [when he] get angry. This had been [happening for a] long time so I became depressed; I sometimes was not given any food, [as] not given money; until kids up set. His mother used to give us food my mother-in-law’s [food]. If I worked I was asked for money by my husband… I did not know if beating [one’s] wife is a domestic violence. Now I know a little bit…

As result, she has tried to look for a job. She does not have a formal education background, so she seeks temporary or casual jobs, such as a cleaner in a household or work at food stalls. However, her earnings were sometimes taken by her husband who used them just for his pleasure. She was also abused sexually by her husband, but she does nothing because if she refused to comply or she complained she would have been beaten by him. Lack of financial resources both on the part of FA and her husband led to the sexual exploitation of her daughter. FA had refused initially to agree with her husband’s idea; however, she did not enough power to prevent it since she was traumatised from being beaten yet again and for fear of further repeated beatings if she refused to agree.

During the violence, the only family members who supported her were her mother-in-law and her children after they grew up. Her mother-in-law always told her husband to stop the violence when she saw that FA’s husband had been violent towards her; however, it did not work because the violence was repeated.

When I was beaten my children were still little, just before [this] his mama said “If you beat your wife you’d better just beat me”. When my husband beat up my son, his

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60. Interview with FA, a housewife (Semarang, Indonesia, 29 December 2011).
mother also defended her grandson: “Instead of beating my grandchild, you’d better beat me”. If his mama said so he then stopped, but if he wanted a recurrence, he did it again…\textsuperscript{61}

After her children grew up, she often left the marital house to stay at the home of a friend of her parents-in-law. By staying away from her husband, she feels better than before. The response of contacting legal aid is not an approach deployed by FA. This is due to her being extremely dependent on her husband, financially, emotionally and intellectually. Her husband is very rude to her both verbally and physically. She never complains about her husband’s treatment of her, even if she was being physically abused she never cried out, she always kept silent.

The extreme violence and trauma of being beaten has affected the ability of FA to respond to the violence adequately, even to protect her own daughter. She has been living under pressure for almost 32 years. There are no family members who helped her because she also never disclosed the situation to them. She feels that it is ‘a family matter’, and she is afraid that if she tells others about the matter, her husband could beat her again. The violence has affected her psychological and physical health; she feels pain in her chest and head and may even faint suddenly.

Based on the description above, the existence of family members sometimes can support the victims in their attempts to reduce the violence; but, on the other hand, it can also serve to exacerbate and perpetuate the violence. In the case of FA, the support of family members is less than that offered to MI. Moreover, her lack of self-confidence, information and financial support has exacerbated her circumstances. In the case of MI, her parents and sisters offered a positive active response to her experience. They assisted her when she needed help, but by no means did she merely depend on them; she is sufficiently independent to cope with the violence. The assistance from her

\textsuperscript{61} Ibid.
family has encouraged her to access other resources such as legal aid which is very beneficially to her overcoming her difficulties. Although she has decided to stay in the marital relationship due to a number of considerations, she keeps struggling to access other resources to obtain her rights which have been neglected by her husband for years. In the case of Y, the intervention of her husband’s family members did not resolve the problem but exacerbated the violence instead. As result, she does not have significant access to other resources which are needed to overcome the violence.

5.2.1.4.2. Impact of traditional cultural identity: The responsibility for not disclosing the family problems in public

When FA was beaten by her husband, she did not report the violence to police because she did not recognise it as a criminal act. Moreover, she identified herself as a wife who has responsibility for not disclosing the family problems in public; further, being powerless because of being weak physically and afraid of being beaten again were other reasons for her to keep silent.

I never found out outside if there were family problems because I did not know how, could not talk, just scared of my husband why telling family problems. Yes I still think it’s a family problem…\textsuperscript{62}

FA is a housewife who did not finish her elementary school due to limited intellectual abilities; as a result, her opportunities to obtain a good job are also limited. Meanwhile, her husband has no full-time job and his hobby is playing games (gambling), which has exacerbated their financial condition. Her decision to stay in the abusive marriage relationship is influenced by her dependence on her husband financially, although her husband is not able to provide for her and the children’s needs properly. Her husband has exploited not only her financially, but also her daughter who suffers from mental retardation and is used as a prostitute at the father’s behest. Again,

\textsuperscript{62} Ibid.
FA, as a mother and abused woman, could not do anything because of financial difficulties and the threat of being beaten.

It’s okay for me for a divorce, the children also. The children are good to me not to their daddy. I don’t know how to divorce. Actually, the religion stated not to be divorced, but it's okay. I’ve been lazy, scared of being beaten. Now it is rare, but he likes to get angry. My children were also beaten, my daughter was often beaten for not looking for money, I was also treated the same…63

At the beginning of the marriage, she insisted that as a Christian she had to avoid filing for divorce against her husband; however, her mind has been changing since her daughter was trafficked by her husband. Her accumulated suffering has finally changed her belief in marriage as a lasting union. Nevertheless, her plans to file for divorce faded since she realised that she cannot afford the court fee.

The experience of FA has shown that she is really financially and socially dependent on her husband; and such circumstances have made her really powerless. Although her identity is one of an oppressed woman, she cannot respond to this in a manner that would allow her to exert her independence because of her limited access to resources which has affected her ability to obtain the information that is needed to give her knowledge (for example of pro bono actions) to determine a strategy and to make a decision other than to stay. Her extreme dependence has left her and her daughter most vulnerable to continued exploitation and violence.

5.2.2. Leaving the abusive marital relationship

It has been mentioned above in the introduction that leaving is often seen as the only response that confirms a woman’s unwillingness to tolerate the violence.64 Separation from the partner was and still is seen as the ultimate, or only, act of resistance.65 In fact, the decision to leave has shown the women’s active response and

63 Ibid.
64 Cavanagh, above n 19.
65 Ibid.
she is not seen merely as a helpless, dependent and passive person.\textsuperscript{66} The factors and considerations involved in a decision to leave an abusive marriage, and the extent to which a woman’s personal resources (including their identities), social support and the degree of institutional responsiveness with which she engages will all be explored in this section as they have a significant effect on the coping strategies adopted by women victims of domestic violence.

In general, the respondents’ accounts of the ideal relationship between a husband and a wife are relatively similar as they emphasise respect, sharing, having mutual trust in each other and the necessity of being in harmony. In principle, an equal relationship between a husband and a wife is a must. All respondents in this group stressed that the abuse that occurred within their marriage relationship is ‘unjust’. These accounts emerged because all respondents, in fact, have the same perspective on equal marital relationship between a husband and a wife; this perspective, in turn, has raised their consciousness of their rights to be treated as human beings. In addition, respondents stressed that they tolerated nonphysical violence to a certain level, and they did not refuse the intervention of the state in order to protecting women victims if physical violence exists, as the following women’s accounts show.

In my opinion if the problem is not too big, it can be solved internally since it is still a family problem, but if a wife was beaten and then divorce or call the police then it becomes a public issue. If there has been no word of divorce, it should still be able to be negotiated.\textsuperscript{67}

The problem of domestic violence is not just a family problem but a national problem. Nation’s problems might be an international problem as well. We’re married, it does not mean colonising and [being] colonised … [by] each other. We remain an individual of different ones to be new personality… So there is no domestic violence, the existing problems need to be resolved with communication…\textsuperscript{68}

\textsuperscript{66} Rhodes and McKenzie, above n 20, 391; see also Peled et al, above n 20, 14–6; see also Hollenshead et al, above n 24, 272; see Bally, above n 24, 2298–9.

\textsuperscript{67} Interview with NA, a dressmaker (Semarang, Indonesia, 29 December 2011).

\textsuperscript{68} Interview with ID, a property entrepreneur (Semarang, Indonesia, 3 January 2012).
…If [a] husband has a high temper, then domestic violence occurs; if the family could not fix it automatically governments must help because in Indonesia, women seemed not to be taken care of or [are] ignored, neglected. We as women should be developed primarily in studying especially in the fields of law... If we have a husband we should be independent, cannot rely on a husband. If anything happens we can stand alone, not dropped or blank or we could be crazy. So we can overcome everything... If it’s [the violence] been too much, [then] yes, the police should intervene because so many are depressed who do not dare to [speak up], while she was beaten black and blue. For me the issue of husband and wife is family problem, except when it comes to any physical violence. It may also be a public issue as well…

Some of the respondents acknowledged men’s domination of women, but they rejected absolute domination because of their concept of the need for equality between men and women. Moreover, they argued that the household is not merely in the husband’s hands since the wife has a significant role to earn money at a workplace or their own business. Only few of respondents emphasised the important role of a husband as a main household head, although even then it was emphasised that by no means should a husband act in an arbitrary manner.

It is the man in power but he should be believed as well, if you suppose to have the power but cannot then do what you want. Households become dormant because everything was done by you; so, it must be a mutual respect… My first husband and the second were similar, self-centred (but the first husband was not physically violent). The second one liked to destroy things…

There is a belief, an open, mutually trustworthy. If a man with status as head of the family [he] cannot be replaced by a wife but [by] no means [does this mean he is] to intimidate his wife. Status as a wife should be obeyed as well. This is my personal experience, if my experience because as a Muslim wife also has the right and obligation to straighten [things] out…[T]he wife has the rights [in regard] to the husband because we are husband and wife. Our obligation is to align as a wife because of religious factors obliges us to remind each other that it [violence] can still be redirected. As a woman it is not wrong to act decisively… I have even heard of [this] but never thought in-depth [about it]. I was just aware after experiencing my own [violence from my husband], so [then] directly explored…

The marital relationship is supposed to be [one of] equal respect, [and] appreciation, meaning that one is not either higher or lower. The position of the wife still does not have to be a ‘partner of the kitchen’. So it is just equal, the wife has her own roles; if the role of wife less equal an imbalance will occur. So, each of them has a role to establish a

69 Interview with EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012).
70 Interview with V, a food entrepreneur (Semarang, Indonesia, 12 January 2012).
71 Interview with MR, a bridal decorator (Semarang, Indonesia, 24 December 2011).
72 Interview with IN, a worker in a private company (Semarang, Indonesia, 28 December 2011).
“sturdy building”.73

There should be communication and mutual and open understanding. If there is no communication there is no continuation [of the relationship]. Maybe we still have this problem then we are silent, so there is no settlement. The important thing is communication with each other and we should appreciate the position of husband and wife. Husband also understands the position of wife and wife understands husband’s position, mutual trust and the importance of faith. The role of faith here means, we are not married just for sexual intercourse but if there is a problem we first have to be quick to apologise. Even though he was right or wrong, we proceeded to apologise. If we forgive each other, domestic violence will not happen like that. So, mutual trust, understanding and communication are important.74

The marital relationship should be open and [there should be] …communication with each other. Yes it is still the most important…[The] husband does not have to be head of the family and the wife have to yield because nowadays many women help and [it is] not always the husband who becomes head of the family, a lot of women who could find the money [allows husbands and wives to] help each other. In general, men should be responsible…75

The respondents’ accounts have shown that Indonesian women’s expectations of an ideal marital relationship were different from the realities they encountered in their lives due to the presence of domestic violence. The patriarchal values mentioned by respondents have significant influence as a cause of domestic violence which, in turn, oppresses the respondents. Nevertheless, the oppression has been used as the springboard for resistance. The resistance has also resulted in various strategies being adopted by the wives such as looking for employment, leaving the marital house, giving advice to the husband, reporting to police, asking a husband to file for divorce or filing for divorce themselves. These strategies were usually taken by respondents step by step or simultaneously, depending on their needs and the access to resources. If a particular resource or resources generate a positive response, the respondents will continue to access that resources until a level of violence is reached that can be tolerated or violence is not seen as a threat anymore, or a certain level of violence is encountered which is

73 Interview with ID, a property entrepreneur (Semarang, Indonesia, 3 January 2012).
74 Interview with EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012).
75 Interview with V, a food entrepreneur (Semarang, Indonesia, 12 January 2012).
intolerable to the party prompts different action (such as leaving). Below is a table that shows the various strategies adopted by the respondents in regard to leaving their abusive marital relationship via accessing resources and the justice system.

### 5.2.2.1. The experience of Indonesian women in Indonesia leaving abusive marital relationships

**Table 5.2. The Respondents (in Indonesia) Leaving Abusive Marital Relationships: Their Access to Resources and the Justice System**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Access to Resources and the Response</th>
<th>Access to the Justice System and the Response</th>
</tr>
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<tbody>
<tr>
<td>SS</td>
<td>1. Parents: support her financially and psychologically; 2. Brother: supports her with information about legal aid; 3. LRC KJHAM: legal assistance, shelter and psychologically and legally counselling; 4. Friends in recitation and in business.</td>
<td>1. Police: the police were reluctant to process her report which had been withdrawn; 2. The Religious Court: the judges were unable to make a decision due to her husband being reluctant to pledge <em>talak</em>; she then files for divorce against her husband.</td>
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<tr>
<td>MR</td>
<td>1. A friend who advised her about the strategy to adopt to encounter the reluctance of her husband to divorce; 2. LRC KJHAM (psychologically and legally counselling).</td>
<td>1. Police: the police were reluctant to process her case due to their anticipation of a pattern of 'report and cancel'; 2. The Religious Court: the judges approved her divorce lawsuit.</td>
</tr>
<tr>
<td>PJ</td>
<td>1. Her sister and brother who support her in sending letters to education institutions; 2. Her friend who advised her to send complaints to education institutions; 3. KJHAM to assist her in psychological and legal issues; 4. Health services: the staff had asked her to undergo <em>visum et repertum</em> but she was reluctant. 5. Educational institution/ her husband workplace; 6. Other agencies/ institutions: Regional Regulatory Body; Regional Employment Body, the Mayor’s Office and the Regional Parliament.</td>
<td>1. Police: she had done <em>visum et repertum</em>, but she was reluctant to report the violence; 2. The Religious Court: the judges decided her living rights. 3. Education institutions/her husband workplace: take the side of the perpetrator rather than PJ. 4. Other agencies/institutions: Educational institution, Regional Regulatory Body, Regional Employment Body, the Mayor Office and the Regional Parliament: the authority has given her rights to living.</td>
</tr>
<tr>
<td>IN</td>
<td>1. Neighbours; 2. LRC KJHAM: legal assistance, shelter and psychologically counselling.</td>
<td>1. Police: the officer had taken advantage of her case; 2. The Religious Court: the judges approved her husband’s divorce lawsuit.</td>
</tr>
<tr>
<td>GI</td>
<td>1. Neighbourhood Administrator; 2. Her cousin to pay the health services; 3. Health services; 4. A doctor who opened her stitches, and advised her to contact KJHAM to deal with her case; 5. LRC KJHAM legal assistance, shelter and</td>
<td>1. Police: the officer was reluctant to process her report because of her husband’s age; other officers asked her for a sum of money to process her report about her husband; 2. The Religious Court: to file for divorce against her husband.</td>
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psychologically counselling.

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<tbody>
<tr>
<td>RB</td>
<td>1. Friends in the traditional market; 2. Neighbourhood administrator who issues the letter to submit in the divorce proceeding; 3. LRC KJHAM: legal counselling dealing with divorce proceeding.</td>
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<td></td>
<td>1. The Religious Court: the judges approved her divorce application.</td>
</tr>
<tr>
<td>ID</td>
<td>1. Friends: helped her to contact with legal aid; 2. A Lawyer from a legal aid: did not fight for her living rights; 3. Her husband work place: her proposal to earn living rights as a divorced woman was rejected by the management.</td>
</tr>
<tr>
<td></td>
<td>1. The State Court: the judges did not make any decision about her living rights.</td>
</tr>
<tr>
<td>EL</td>
<td>1. Father: who had advised her to go home, to be patient as the violence was ‘a test from God’; 2. Pastor: she had received similar advice to that of her father; 3. The Neighbourhood Administrator: the administrator advised her to leave the marital home for her and the children’s safety; 4. Water Corporation: to get her living rights; 5. A lawyer: to process divorce and custody rights</td>
</tr>
<tr>
<td></td>
<td>1. Police: the officer asked her to ‘think deeply’ before her husband was taken away; 2. The Religious Court: judges were unable to make a decision because her husband did not want to say ‘talak’; she then processed her divorce proceeding against her husband.</td>
</tr>
<tr>
<td>V</td>
<td>1. Friends; 2. Parents who gave her information about LRC KJHAM; 3. LRC KJHAM for legal assistance during the divorce proceeding.</td>
</tr>
<tr>
<td></td>
<td>1. The State Court: judges approved her divorce lawsuit.</td>
</tr>
<tr>
<td>NA</td>
<td>1. Parents who support her financially and psychologically; 2. A neighbour whose job as a lawyer; 3. LRC KJHAM</td>
</tr>
<tr>
<td></td>
<td>1. Police: the officer has advised her to seek witnesses. No progress after two years; 2. The Religious Court: to respond to her husband’s divorce lawsuit</td>
</tr>
</tbody>
</table>

Source: Interviews with respondents between in July 2011 and January 2012

Hence, to what extent the respondents in this group have access to resources and to what extent the resources give advantage to women victims is examined below. Following is the description of women victims who leave the violent marriage by gaining access to resources and utilising them.

5.2.2.1. The case of SS

5.2.2.1. Access to resources: Positive and negative responses

At the beginning of her marriage, SS first experienced non-physical violence, such as verbal abuse and being neglected economically, but she did not recognise this as domestic violence. Moreover, because she married to a man who was her own choice
and she always remembered what her parents had said about not regretting her decision, she stayed despite the violence.

   Here it was, the first time in our marriage [and] there were no charges and [you can’t] regret [because] this was your choice. So this is what I am holding [on] so I never said anything.  

   Her husband’s character had been recognised by SS as vulnerable because he was easily influenced by his family members. Even her husband agreed to the suggestion of his brother to divorce her when she had conflict with her brother-in-law. Given that her husband committed physical violence many times, SS could not stand it anymore and broke the silence by seeking help from her family of origin. She shared the truth about the violence with her brother who suggested that she contact a person from a non-government organisation. This person then gave her information about KJHAM.

   She went to KJHAM in 2007 in where she sought help, particularly when she was beaten. Though her husband did not like her relations with KJHAM, but even when she was beaten, she kept communicating with KJHAM.

   Every time I called Miss Eva I immediately got hit, “Called your Miss Eva, anything is always being Miss Eva”. My cell phone, then, was slammed until I could not call anymore…

   In 2007, she reported her husband to police, and the response of her husband was to sue her for divorce. Her husband had pressured her to cancel the report; otherwise, he would continue to file divorce. Because of the pressure, she had, at last, withdrawn her report. She acknowledged that at that time she was afraid for being a ‘widow’ (the status of a divorced woman is very low).

   Then the report was almost convicted in the prosecution and before Eid he apologised. With no confirmation to Ms Eva, I cancelled the report, I was scolded by Ms Eva and my family was also angry. Ms Eva asked, “Why did you cancel? Are you afraid of

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76 Interview with SS, a private employee (Semarang, Indonesia, 21 December 2011).
77 Ibid.
Thus one can see that the withdrawal of a complaint is not always an indication that there has been no violence, but rather that husband may have threatened further neglect or violence towards his wife or their children. Retraction of a complaint is often far from a ‘whim’ of the women victims; it may be just a further indication of the depth of fear and violence in a relationship rather than of a genuine effort at reconciliation (or an admission that the complaint was false).

After withdrawal of the complaint, the tension between SS and her husband actually increased. Her husband took his revenge on her. He took an opportunity to imprison her by arguing that she had slapped their daughter until she fainted. She argued that she only slapped her daughter once, and her reason for slapping her daughter was just to remind her to behave well because her daughter had delivered a baby prior to marriage and such conduct had brought shame to family; in fact, her daughter after being slapped did not faint. Her husband, then, reported the matter to police and let his wife be jailed. Instead of supporting and helping her during the detention, her husband and his family members forced her to sign a divorce agreement. After two days in the detention in police station, she was released from detention because of support from her family of origin which had provided bail. After having been released from detention, she then arranged her divorce by asking for assistance from KJHAM.

SS emphasised the important role of social network members, such as friends, neighbours, and recitation colleagues, as well as of non-government organisations such as KJHAM dealing with her case. Support provided by these members of social networks were many and various and associated with SS’s needs and interests (see

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78 Ibid.
Chapter 4). Her relationships with friends increased her self-confidence to the extent that she was able to obtain money for means of providing a living for herself and her children from her own business (because she is an expert cook and has run a business of selling snacks for a long time) and being in private employment. Moreover, she is happy to live in Semarang rather than in Lampung to run the palm tree plantation because she has many friends who supported and helped her during the hard times.

5.2.2.2. Access to the Justice System

5.2.2.2.1. The Police: The problem of continually ‘reporting and cancelling’

SS encountered an unpleasant response from police officers when she went to report a repeat of earlier violence. She felt that police officers did not act consistent with a document that had been created after the previous episode or in line with the promise that she understood had been made in regards to prosecuting the perpetrator on the basis of the letter of agreement and the facts. There appears to have been a misunderstanding over whether the document had an expiry date beyond which it no longer applied and a new complaint would have to be lodged.

Her husband apologised in the police station and made a letter of agreement not to be violent again; the document was witnessed by a lawyer from KJHAM; the statement was made and signed and the seal affixed before a police officer. The police officer told her that if her husband violated the agreement, he could be reported. However, when she was beaten again, the document had no function since the police said that it had already expired and therefore it was no longer in effect. She felt tormented and condemned, that the law which could not protect her.

Finally he apologised and made the statement/letter of agreements before police officer and [it was] witnessed by Ms Eva (lawyer from LRC KJHAM). The content said that if it was violated it could be reported. However, in fact, I could not report it [the violence when it occurred]. The officer said that it could not be applied because it expired and had been cancelled. The officer had even said if I got hurt psychologically and physically I could report. The police officer promised it could be used. I want to be
protected; I did not want to be hurt. Where is the law? My husband did not obey the agreement; I did not accept such treatment…79

Then there is also the attitude of victims to report and then cancel is all too familiar to police. A victim may first report an incident to police (perhaps even as an attempt to gain a respite from violence and ‘pull the perpetrator into line’ with the threat of police action) and then cancel such report, perhaps from fear of the perpetrator (who may in the interim intimidate, threaten or even assault a victim to make her withdraw the complaint) or from a genuine belief that there would not be a repeat of the action by the perpetrator. The perpetrator, however, does not genuinely reform and the same pattern of ‘violence, complaint, withdrawal of complaint’ by victims may occur again and again. Police being later contacted may therefore consider that when victims report, they will cancel again, so police become reluctant to deal with such complaints and reports. Unfortunately, on the other side, the husband does not change as may have been the victim’s expectation; perpetrators inability or lack willingness to change becomes a cause of why women victims, particularly those most vulnerable for a number of reasons (some of which have been outlined earlier) are in such situations on a repeated basis.

According to a lawyer at KJHAM, the police were reluctant to respond to SS’s report based on her own pattern of behaviour that to report and then cancel repeatedly. She admits that this is the case.

For example, perpetrators interrogate or pursue [the victim] in order [that the complaint or report] be revoked so he escapes the legal process. Well if it is cancelled [the violence] will happen again, [and]…impact on the victim that’s why the police seemed so reluctant to deal with it [i.e. yet another report made by a victim with this pattern of behaviour]. Report, cancel, report, cancel the report made the police also consider that later when [victims] report they will cancel again, so they are reluctant to deal with it.80

79 Ibid.
80 Interview with Eva, a counsellor and lawyer in KJHAM (Semarang, 25 January 2012).
Then, there can be other unexpected outcomes of violence towards the complainant. In 2009, SS’s husband reported her to police (with an accusation that she had slapped her daughter until the daughter fainted) and she had been sent to jail in a move that she perceived as an act of revenge against her. During her detention, her husband and family members forced her to sign a divorce agreement letter. KJHAM as her lawyer, then, assisted her in regard to her imprisonment; however, she had been released by her family who provided money. Such a course of action (bribing police) is not allowed by KJHAM as KJHAM is committed to not using or giving money to police, judge or other legal person who have any part in ongoing cases or in resolving cases.

   I was imprisoned by my husband in 2009. In 2007 I [had made a] report, well he may be vengeful…Oh God, what’s my fault? My family came and they (police) were given money, I did not know how much because they did not want to talk. Ms Eva actually did not allow [such a process] “Do not use money [bribery].” After that I was evicted from the house. Then my older brother brought me to Jakarta.  

5.2.2.1.2.2. The Religious Court: Refutation of the pledge ‘Talak’/divorce

   Hence despite all SS’s efforts to avoid divorce (including tolerating repeated violence), her lodging a report as an attempt to reduce the violence appears to have prompted him to evict her from the marital home and then divorce her, for when she was in Jakarta, her husband sued her for divorce. Although he instigated the divorce, even then it was not a smooth process. When the court process had been underway for eight months, her husband, at the last moment he did not want to pledge ‘ikrar talak’ but he gave no reason. SS indicated that her husband’s reluctance to pledge ikrar talak was due to his not wanting to pay iddah and mut’ah living which was estimated to total five million rupiah.

   The trial process was eight months, but he would not say the pledge and not give … 5

81 Interview with SS, a private employee (Semarang, Indonesia, 21 December 2011).
million rupiah, whereas it was a 23-year marriage. I did not understand why he did not want to give that much money. I held him and also said that I don’t need the money. 82

Judges in *Pengadilan Agama Semarang* (Semarang Religious Court) cannot decide for a divorce unless the plaintiff (in the divorce) says the pledge. SS in this case had asked the judges to decide (or ‘knock the hammer’), but the judges said it could not be done because the husband had to say divorce statement (*ikrar talak*) first, and then the marriage was considered to be broken up. His refusal then prompted her to finally take action in this regard, even though it then means she (as a female instigator of divorce) will receive no maintenance and so on.

After having been abused and humiliated by her husband who had sued her for divorce but then was reluctant to pledge ‘talak’, his action in sending her to the police for detention (as mentioned above) combined with her previous experiences had eventually convinced her that the relationship within the marriage was unhealthy. Finally, she decided to file for divorce to relieve her stress. She is no longer afraid of being a ‘widow’ since her psychological and legal consultations with KJHAM, who have encouraged her to face life and court procedures. The decision has not been determined yet by judges because the court process is still continuing (at the date of submitting this thesis).

The circumstances have shown that her husband was more powerful and able to control SS in financial and social matters. This is despite her position as breadwinner within marriage, which is in fact, stronger than that of her husband. Moreover, she was also the important person who had looked for a job for her husband, but her husband had never appreciated her efforts, instead he had dominated all aspects of the marriage.

The experience of SS in overcoming the violence has shown that the assistance

82 Ibid; See Saraswati, above n 48.
and support of KJHAM had had a significant influence on her; she had become aware of her rights, and has had the courage to leave an abusive marriage by suing her husband for divorce. She was reluctant to report her husband to police again. This was not only caused by her bad experience with police but also fear of her husband’s revenge; moreover, she wants to live in peace, and she believes that divorce has become the only avenue. The above account has also shown that the justice system as the last opportunity for justice is ultimately not totally satisfactory in achieving justice for SS.

5.2.2.1.2.3. Awareness of her rights

SS insisted that she was abused psychologically by her husband at the beginning of the marriage; however, she did not recognise it as domestic violence as the only violence she recognised was physical violence. It later became physical. Her mother’s concern was such, however, that she had even suggested that SS return to her parent’s house in Medan (Sumatra), but she refused due to being afraid of being a ‘widow’. Further, her decision to marry her husband without her family’s consent was also supplied as the reason for her to stay in the marriage.

Her identities as a daughter, woman and wife had simultaneously forced her to stay in the abusive marriage relation. She had tried to confront the violence by acting in what she perceived as a gender-appropriate manner, such as doing everything what her husband said and wanted. However, it did not reduce the abuse against her. Her fear as a traditional wife and woman of being a ‘widow’, her memories as a daughter who disobeyed her parents (and perhaps shame at their being proven right) was finally overcome by her experience of violence and the fear that produced at least temporarily. Her identity as an abused wife, at last, had led her to breaking the silence and brought her into contact with KJHAM. Psychological and legal counselling which were obtained from KJHAM had encouraged her to report the violence to police; however, the report,
then, had been withdrawn because her husband filed for divorce at the same time. It seems that her husband knew her weaknesses and her fear of being a ‘widow’ (divorced woman), and, then had tried to control her socially and emotionally; the strategy taken by her husband was successful.

As a Muslim woman, she argued that she had no hesitation to divorce; therefore she filed for divorce against her husband in the religious court. She insisted that she did not pursue the living right since she knows her husband behaviour; what she needs is just to be left in peace. She did not mention a cent or rupiah about her husband when her husband did not pledge *talak* because of his reluctance to pay *iddah* living (the value of which currently is to five million rupiah).

He was ungrateful. First, he did not work, and it was me who got him a job. I got confused. The trial process was eight months, but he would not say the pledge and not give money of 5 million (for *iddah* living), whereas it was a 22 year marriage I did not understand why he did not want to give that much money. I came to him and also said that I did not need the money.\(^3\)

Based on her experiences, it have shown that her identities as an abused woman, a housewife, a mother, an employed person and a Muslim worked together to influence and support her in making the decision to leave her husband and then to file for divorce; there is no dominant identity in SS’s case since all identities have the same significant role in influencing her decision making.

5.2.2.1.2. The case of MR

5.2.2.1.2.1. Access to resources: Positive and negative response

MR, another respondent, also experienced physical and psychological violence. She works as a bridal decorator, and lives in Semarang. The economic violence perpetrated by the husband was triggered by his behaviour as he liked drinking,

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\(^3\) Ibid; Saraswati, ‘Justice and the Identities of Women’, above n 48.
gambling and using the services of prostitutes. MR’s earnings from decorating were always taken by her husband to finance his pleasure.

He started performing [acts of] violence [on me] three years after the marriage, being violent when he had a little problem, for example like...[when] I asked for the money to be paid to me because he would use the money to drink, gamble and have sex with prostitutes.  

MR, had an experience for being dominated by her husband. Although she had own earning from her job as a bridal decorator to meet the family needs, this did not guarantee that she would be appreciated by her husband.

Well, it’s the man in power but he should be believable as well. If the male is supposed to have the power but it does not mean that he can do what he wants. Households become neglected because everything was done by me. So it must be a mutual respect. My first husband and the second were similar, self-centred (but my first husband was not physically violent). The second one liked to destroy things...

MR contacted with KJHAM to seek help and legal support in reporting the violence and processing the divorce. KJHAM personnel accompanied her to report the violence to police although the report ultimately was useless due to an individual police officer who helped her husband and released him from any allegation of domestic violence. For the processing of the divorce, KJHAM personnel did not accompany her because she was considered by KJHAM to be capable in financial matters and strong psychologically. KJHAM gave her two options: processing the divorce on her own or to do so accompanied by KJHAM in which case she would have to pay the KJHAM’s lawyer. She, in turn, decided to process the divorce by herself.

84 Interview with MR, a bridal decorator (Semarang, Indonesia, 24 December 2011).
85 Ibid.
5.2.2.1.2.2. Access to the Justice System

5.2.2.1.2.2.1. The Police: The power abuse places the victims in a seemingly powerless situation

MR had reported her husband’s violence to police; however she had a bad experience in term of police performance. She had reported the physical violence against her to police, but her husband had never been arrested; the police officer who was a friend of her husband always protected him by releasing him from detention.

I reported to police but they did not respond because they considered that [everything would] “be good again after being handled” [and] “it’s no use, when it is over it is just all that” [and] “There is no use in continuing because they will be good [reconciled] again”. However, if [the report] was not processed, he had a chance to do it again.86

Her expectation that police would arrest her husband had faded because the police had argued that arresting her husband as the perpetrator of domestic violence was useless. The police already deployed their mindset that involved a stereotypical view of the victims of domestic violence. Such an attitude had been mentioned by the KJHAM lawyer – the phenomena of ‘report-cancel, report-cancel’ had created a bad image of women victims of domestic violence in general as it increased police reluctance to deal with such incidents or reports. On the other hand, this circumstance has also revealed the police’s lack of awareness of the characteristics of domestic violence cases which are different from those of other crimes.

Although her husband had been arrested and prosecuted in an infidelity case in which he had been caught with a prostitute, he had never been arrested on charges of domestic violence.

He had even been arrested and kept in the cells for a week for the case [involving his use of] prostitutes. For domestic violence cases, he was taken by his friend. So it’s useless if you want to be processed, because he [would say to the officers] “Don’t process. He is our own friend.” [The one] who handled my husband was closer to my

86 Ibid.
husband. I was accompanied by Ms Etty (from legal aid) but it did not work [it was as] if [I was] on my own.87

His friendship with police officers had given her husband an advantage; meanwhile, she has no such friendships or power to influence to ensure that the police would arrest her husband. Even assistance from her lawyer had no significant effect on her case; her husband had been removed from detention by his friend (a former police officer). The charges then appear to have been dropped or not processed by the officers.

As I experienced physical violence and sustained injuries, these were examined in the hospital, [and] had been reported but not [the report] processed, or later [it] was taken by someone, I would despair. My husband’s friends were police so they released my husbands with their assurance, it became difficult. [An officer] said “That’s our own friend” so even though I asked while crying or howling, well [the outcome] is just the same, until I feel sad. My husband was never arrested for violence in [our] house.88

The experience of MR has shown how the police abuse of their power had an effect on women victims; police power had been used to protect the perpetrator rather than to protect the victim. The power abuse had a significant effect, placing the victim in a powerless situation in that particular legal space by denying MR her rights. It has also shown that the institution of the police as public institution in the public space cannot always protect women victims of violence, particularly from violence within the family sphere, particularly when police are subject to bribery or allow personal friendships or loyalties to prevent them doing their duty. Officers whose position is crucial in domestic violence cases must be more active in giving victims the necessary protection that is available under the law. In this instance, as in a number of other accounts contained in this thesis, they clearly did not do their duty as required by the law. Fortunately, the victim did not surrender to such circumstances, and as consequence, the victim then sought help from other institutions, such as the religious

87 Ibid.
88 Ibid.
court which with its ‘personal status’ jurisdiction deals with what ‘private’ that is ‘family law’ and personal status matters for Muslim families (such as divorce, custody, inheritance and so on, basically in accordance with Shari’ah as is allowed by the State). Based on its jurisdiction, the court only has authority to solve the family matter dealing with husband-wife relations and marital breakdown but has no jurisdiction in regard to prosecution for domestic violence.

MR’s account is one of a respondent adopting a number of strategies to deal with her situation. It describes the experience of a respondent who, when she did not obtain positive response from one resource, then sought help from other resources. The impact of the negative response from police officers has also been examined and revealed that women victims remain essentially powerless against police power and/or corruption. (Although in another instance that of SS, corruption allowed a woman to be released from jail when a bribe was paid, more frequently a man’s access to wealth generally affords him greater opportunity to bribe officers with either money or cigarettes and so have a ‘report’ disappear or fail to be processed).

5.2.2.1.2.2.2. The Religious Court: Using a smart approach in an alternative legal strategy

Feeling disappointed with the response of police and observing that the friendship between her husband and police made her powerless, she then took action by filing for divorce. She took care of her own divorce because KJHAM personnel did not accompany her as she was considered by KJHAM to be capable in financial matters and strong psychologically. However, that was not a simple process either. She went to the religious court three times because during the mediation process which was conducted prior to the court hearing her husband promised to change.

I took care of my own divorce. I take [my] case to Pengadilan Agama/religious court
until three times proposing divorce. First he wanted to change. The Judge said “That’s it ma’am, your husband would have changed if he repeats again later then I’ll decide.” Not until one week [later] he had repeated his actions. So [again] before the trial the judge had reconciled [us]. Secondly, he [my husband] did not want to be divorced, he’s threatening [me] “Be careful if you continue I will cut your hands apart, I’ll make you disabled and I’ll destroy all.” I was frightened, finally I did not divorce. After three years, he’s not threatening [any longer] but [he] made it complicated because he did not want to [divorce].

Being tired of her husband’s behaviour and threats, she sued her husband for divorce for the third time. Her application for divorce had been proposed three times to the religious court because her husband always refused to be divorced. MR recalled that she nearly gave up as her husband’s decision was always deny her a divorce. Fortunately, her friends had advised her to go to the court very early in the morning

I was told by my friends to come in the morning. At half past five I was number one on the list. When the number one was called he [was at home] waking up a little late in the daylight. I had finished the trial before he came. [And then] well because he did not come three times…then it was decided [in my favour].

She had deployed a new strategy by coming early to court and had left her husband behind; by her coming earlier the court hearing also started earlier, and her husband missed the court hearing. If her husband did not come three times, it means that he had released his right to defend himself against the application and was disposed to being divorced. As a result, her husband missed attending the court hearing three times, and consequently her husband no longer had any chance to defend his objection to being divorced.

The instance of MR demonstrates how a woman disappointed in having her husband prosecuted for violence can adopted the strategy of applying for divorce in order to end it by seeking the help of the religious court. There too she must struggle to divorce her husband because a husband remains powerful. In MR’s case, her husband’s

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89 Ibid.
90 Ibid.
threats convinced her to withdraw the lawsuit. In addition, traditional values meant that the judge in the mediation was also able to force her to reconcile instead of approving her proposed divorce. Thus, even in the religious court the power differential between women victims of domestic violence and their husbands as the perpetrator still remained. Violence was not given the consideration that most victims believe that it deserves. Rather, the judge and the perpetrator appear to share a position that perpetuates the power of the male and undervalues the pain and suffering of the female by insisting on reconciliation (rather as the police too often did in a number of these accounts). A simple strategy adopted by the woman, however, was successful in ensuring the divorce and achieving her aim of removing her from the violence. By attending the religious court early (a course of action advised by her friend), she could defeat her husband, and, at last, divorced him. The experience of MR has also shown that a woman must struggle to access to justice; there are many spaces both secular and religious, private and public in which women have been oppressed even though the law has provided certain regulation to protect the women victims of domestic violence. Nevertheless, these same spaces and power have also supported the victim if they know how to take advantage of the weaknesses also found in the space, power and the law itself. The friend’s sharing of the knowledge of a possible successful strategy to address MR’s specific difficulties facilitated her divorce. Therefore, it is very relevant in regard to this power seizing activity to at last, come to an observation on the role of knowledge. Only a person who has obtained relevant knowledge will attain their purpose; of this, MR is the exemplification.

5.2.2.1.2.3. Financial independence as an element of identity

MR argued that her decision to report her husband to police was to teach her husband a lesson and thus prompt him to modify his behaviour. However, the response
of police was negative and tended to stereotype her as a typical victim of domestic violence, one who always reports instances of violence and then repeatedly cancels any reports made. She felt that her identities as an abused woman and a housewife were not respected by the police. She insisted that she was not afraid of reporting her husband to the police because she considered her husband’s behaviour as violence. She also did not worry about the absence of a living allowance if her husband were jailed because she has an own job as a bridal decorator; therefore, in the absence of her husband, MR insisted that she can feed herself and her children due to her own independent earnings. Hence the financial independence to the ability of a woman to exercise her rights is important.

Her identity as a Muslim also gave her a chance to file divorce against her husband. The regulation is grounded not only in the Compilation of Islamic law but also the Marriage Law Act 1974.\textsuperscript{91} However, the Compilation of Islamic Law states that a wife who files for divorce against her husband is not entitled to obtain her living rights; and this was the experience of MR and other respondents in this study who taken the initiative to file for divorce against their husbands. The experience of MR has shown that her understanding about her husband’s behaviour as (domestic) violence and her identities, particularly as an independent woman in financial matters, combined to influence her decision to leave the abusive marriage relationship by filing for divorce against her husband.

In addition, based on her experience in proceeding with the divorce by herself, she insisted that she had obtained many valuable experiences, from preparing the lawsuit, using strategies to confront her husband three times (as he did not want to be divorced), and in regard to preparing the witnesses. By processing the divorce on her

\textsuperscript{91} Saraswati, ‘Justice and the Identities of Women’, above n 48.
own she only spent money one million rupiah on it. For the decision on the division of
*gono-gini* (shared assets which are obtained during a marriage) she was accompanied by
an LRC KJHAM representative, because she felt that *gono-gini* matters were more
complicated and she was also busy with work.

**5.2.2.1.3. The case of PJ**

**5.2.2.1.3.1. Access to resources: Moving from one ‘space’ to other ‘spaces’**

PJ’s case began when her husband was caught in an affair with a colleague (see
Chapter 4). The change in the behaviour of her husband had increased PJ’s curiosity as a
wife and she sought to investigate and follow her husband whenever he went out, until
she found that her husband had married another woman who was already five months
pregnant when PJ discovered her husband’s relationship with her. Her husband was
married *stri/nikah siri* (in secret). And when he was having *nikah siri*, he took the
school principal to witness for him because the woman said that the *siri* marriage had to
be attended by an agency head or official.

I found that statement. I didn’t know what was there between my husband and the
principal. The woman asked for it because she was also a teacher although an assistant
teacher.92

Being caught by PJ in 2007, her husband did not end his affair but instead of
asked her to be willing to be in a polygamous marriage; PJ resisted her husband’s idea.
Her resistance had an impact as her husband terminated the payment of her living costs
and failed to pay for more than two years. This had a significant influence on her life as
a housewife. Without enough to live on, she then looked for a job and sold the car that
belonged to her and some of her husband’s property.

…as long as I was not given a living, I worked, at that time I was psychologically
shocked until I did realised what I should do. So confused, I did not know what to do. I
also tried to do for the sake of the child; the child was also shocked, because their father

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92 Interview with PJ, a housewife (Semarang, Indonesia, 27 December 2011).
was not like that, but [was now revealed] to be like that...  

She insisted that the reason for not disclosing the violence to her family of origin was because she is the eldest in the family and she wanted to set a good pattern for her siblings. Her decision to break the silence had begun when she met her friend who had become a member of parliament and also her contact with KJHAM. Her friend had told her to stop crying and do something. PJ insisted that her friend had brought to her mind the idea of getting her rights and had advised her to make a report not only to the institution but also to higher institutions in order to obtain better responses. Furthermore, her contact with KJHAM had also increased her self-confidence to such an extent that she was prepared to work towards obtaining her rights which had been neglected by her husband.

5.2.2.1.3.2. Access to the Justice System

5.2.2.1.3.2.1. The Education Department: Protect the abuser

She experienced physical violence when suing and arguing for living cost in her husband’s works place.

There is physical violence when I asked for a living to feed my child. The occurrence was in the office. The school principal did not want to help. The school principal told me: “I have tried to [change] Mr Y but he does not want to, I cannot do anything else.” Then I told Mr Y to ask for money in a good manner; however, suddenly, I’ve clogged [sic] my mind, I took a cutter in his office, my husband did not try to take it even pushing finally … into my hands and kicked [me] as well. He tried to eliminate all the evidence, I also wanted to [get a] visum but I still thought about it all, then, what I can get next, if he is in jail. I still thought a lot.

At the beginning, she did not report his violence to police because she was thinking about her future if her husband was in jail. She reported the violence after her husband sued her for divorce in a month later; unfortunately, the evidence was not

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93 Ibid.
94 Ibid.
strong enough since the cut and the wound had disappeared. PJ, then, reported it to the institution for which her husband worked. In response to her report, her husband had asked for support for legal aid from his institutions, PGRI (Persatuan Guru Republik Indonesia)/the Teacher Union of the Republic of Indonesia).

He asked for legal assistance to PGRI (Persatuan Guru Republik Indonesia)/Teacher Union of the Republic of Indonesia. All the teachers knew the problem, but they said they did not know, so the case could not be brought to trial, [it] stagnates. I knew I did not face Mr Y only, but … [also the] people behind Mr Y. 95

Her husband had used his power as a prominent person in the community to obtain the principal’s permission to arrange a divorce and was given a unilateral statement that tended to marginalise her; the statement was used as a reference letter to arrange divorce. PJ’s response to the unilateral statements was to ask the head of the village to annul the statement claiming – that she was an arrogant and a cheating wife as these claims were false. The ability of her husband to lobby such an influential person has been acknowledged by PJ. As her husband was an influential person in his neighbourhood and education institution, he had no difficulties in gaining permission and the references letters.

Mr Y was one of outstanding teachers who maybe should be defended or how in PGRI or in Korps Pegawai Negeri Republik Indonesia (Corps of Civil Servants of the Republic of Indonesia). If in the office no one dared because they had already known all of the case, especially principal... Who sued for divorce was Mr Y because of the unilateral statement and I couldn’t take it. Then I reported to the head of village and the city government. I asked for a statement of the village head stating that I was an arrogant and a cheating wife were wrong – it was not right. The head of village did not know my households so he gave one-sided information [based on my husband’s information]... 96

The response from her husband’s institution was only to impose a disciplinary sanction; demotion from supervisor (IIID) to IIIB. She then went to the Semarang City government administrator not only in response to the letters but also in response to the

96 Ibid.
decision by her husband’s institution to impose her husband disciplinary sanction, namely demotion from supervisor (IIID) fell to IIIB. Feeling shock at the decision (which according to her was very lenient), she asked for advice from her friend, a member of the regional parliament, who advised her to make a report not only to the institution but also to higher institutions in order to obtain better responses. Then, she sent a complaint letter to higher institutions such as the level of principal, Bawesda /Badan Pengawas Daerah (Regional Regulatory Body), BKD/Badan Kepegawaian Daerah (Regional Employment Body), the mayor and to Commission D in the Regional Parliament. She argued that the response of the agencies was both for and against and that the approach had advantages and disadvantages and took time due to the bureaucracy.

PJ recalled that her first contact with legal aid began after she had undergone a medical examination to be reported to police. She realised that there would be many legal issues regarding to her case which she did not know how to deal with; therefore, she sought information about legal aid services. She found information about KJHAM from other legal aid personnel; and, she acknowledged the many benefits she got from the assistance and services of KJHAM.

After complaining I’m sure there is continuity that maybe I cannot handle it. Then I found information about LBH. I continued to LBH of Parangkembang, having made the chronology, saw the development of the case then I was referred to KJHAM because I need the companion who knows the case of women and children like this. KJHAM is very helpful because there I was also counselled, treated for psychological recovery, there was a meditation, talking every day to restore my memory. All free. The counselling related the case until [it was known] the extent [my] expectation to which expectations and what I would like, which government agencies I have to deal with because I do not go to school, to be honest, so I do not want to be lied to. So I’m guided on how I should deal with it, live with it. I was also given the directions [regarding] the rules, and they asked me to learn it. Eventually I learned that I knew what I [could] demand.97

97 Ibid.
She insisted that to penetrate the bureaucracy in the educational institutions was initially difficult; and, she, then, wought help from KJHAM to accompany her. The existence of KJHAM was apparently quite influential for obtaining a response. After having trouble then she went to KJHAM, because she had sent letters to whichever party. KJHAM supported her.

“Just come in routine. If you get invitation letters just go.” In the city government I got counselling, too, the city government had worked well. Once I came to complain, I was then interrogated by many people, I think they were the officials, I was also called in by the Bawesda/ Badan Pengawas Daerah (Regional Supervisory body), called in by the BKD/Badan Kepegawaian Daerah (Regional employment Body) I was also asked. They investigated and interrogated all of my problems from the beginning. I had been called by the city government since 2008. I think the worst response was at the school. They wanted to help him but he was wrong, [they] did not help but he was their friend...98

The experience of PJ has shown that the world of work of her husband had also treated her unfairly. The husband’s workplace preferred to protect her husband rather than her as a victim of domestic violence. PJ believed that the response of the institution for which her husband worked was negative. However, such a response has given her strength to pursue her rights as the wife of a teacher (that is, a public servant). She acknowledged that the response from agencies was some for and some against. There were those who helped her and the others who did not.

Her struggle to obtain her rights was finally approved by the institution at which her husband works, based on the decision of the appropriate person within the higher institution who examined her case. Further, in the religious court in which her husband filed for divorce, the judges had decided that her marriage was over, and she qualified for the livings that are then granted after divorce to a woman who is divorced by her spouse.

98 Ibid.
5.2.2.1.3.2.2. The Religious Court: She obtained her rights

During the processing of the complaint, she also was sued for divorce by her husband. Prior to the court hearing, there was a mediation process which occurred several times over six months. Because her husband insisted on divorce and she was considered passive in the mediation, the divorce process continued. The divorce process also took much time. As a defendant, she was entitled to *mutah, iddah* and was owed living costs.

Finally, the divorce was on 23 December 2010, then in January 2012 I got the decision about the division of salary from city government, but the cashing procedure was a bit difficult because the other side threw there, throw here. In the end my husband asked whether the money had run out. Finally, I reported to the local administration. Finally, I took care of myself; I did not want to listen to people who said “Poor Mr Y. He has got a sanction, but he is still asked [for money] by his wife. Now the salary is requested.” I kept closing my ear, that’s what he wanted not me. He continued to look for reason in order that his salary can be divided in two with me. I said “No, not yet, my child does not get anything. If my child go home and suddenly ask for studying to college, who will pay for college? You get out of hand. Do not run away from responsibility.”

It is regulated in PP 10/81 section 8 that if a divorce process is initiated by a husband, he must give a portion of salary to his wife. The division of salary is one third for the husband as a civil servant, one third for his wife and one third for children. If a divorce is initiated by a wife, she has no entitlement to the portion of her husband’s salary that would otherwise have been hers unless the ground for divorce is that the husband has had an affair with another woman; and this must be proven.

The description above has shown the struggle of PJ and the responses to her case, particularly when she was confronting the power of her husband in not just private but also public spaces, such as educational institutions, institutions in Semarang Local Government and the religious court. Her experience has shown that many resources had been used to obtain her rights as a woman and a wife; and the account shows that it not

99 Ibid.
easy to access resources in order to gain justice. Though the institutions and legislation have been provided by governments to facilitate women to obtain their rights, in fact, the women still struggle to obtain their goals. On the other hand, men in these cases always use their power to defeat women; the power belongs to men who have used it to abuse and oppress women whether in private or public spaces. Although PJ felt it was difficult to gain access to justice, she insisted that she was sufficiently satisfied with the results, in particular the division of salary. Moreover, her ex-husband’s wife has been penalised by her current employer and she only can apply as a teacher or civil servant outside of Semarang City.

5.2.2.1.3.3. Unwillingness to be trivialised as a woman as an element of identity

PJ recalled that as a mother and a wife she struggled to keep silent because of the shame involved. She insisted that the other reason for not disclosing the violence to her family of origin was because she is the eldest in the family and she wanted to set a good pattern for her siblings. Her decision to keeping the pattern and pretence of a happy family by closing the problem to herself had impact on her mental health. Over the years she had to undergo treatment in a hospital, and her life depended on the medication for years.

She did not want to divorce because she wanted her family to remain intact. Moreover, she was convinced that her husband would come back to her; her conviction was supported by her belief as a wife who had already been a companion to her husband during twenty years of marriage and as she knew the character and behaviour of her husband very well. Even after two years of being neglected by her husband, she remained reluctant to be divorced but also resisted her husband’s idea to of being involved in a polygamous marriage. Her husband’s neglect involved not providing a living for almost two years. Her husband adopted this action in order to force PJ to
approve of his proposal of polygamous marriage because he knew that PJ was ‘only a housewife’ and that her life depended on his earnings.

Her decision to break the silence was germinated when she met her friend who had become a member of parliament and her contact with KJHAM. Her friend had told her to stop crying and do something. PJ insists that her friend had brought to her mind her identities as a woman, wife and mother to struggle and fight to get her rights. Furthermore, her contact with KJHAM had also increased her self-confidence to such an extent that she was prepared to work towards obtaining her rights which had been neglected by her husband.

As she did not want to be trivialised as a woman, a housewife and a mother, she, then, reported the violence to educational institutions and other local Semarang government institutions. Her struggle, in turn, yielded the result available by law to women in her position as the wife of a public servant, that is, to have a living from the husband’s earning every month until her death or she remarries. This is based on the implementing regulation of the Marriage Act 1974 No 10 of 1981. In addition, she also obtained the relevant religiously determined livings (mut’ah, iddah) in a religious court decision based on the Compilation of Islamic Law because the party who initiated the filing for the divorce was her husband.

The experience of PJ has shown that her identity as a housewife had been abused by her husband whose education and social status level are higher than hers. She argued that compared with her husband, she has no power or adequate resources to support her; she considered herself an uneducated woman since her education extended only to the completion of elementary school. At the beginning of the violence, she emphasised that she felt that she had no power and no strategies to confront her husband’s violence against her, but, at last, because of her contact with other resources
and legal aid services such KJHAM, she was empowered by increased knowledge and encouragement to struggle and fight against her husband’s power and the power of others within public institutions where she demanded her rights as a mother, wife and abused woman until she secured those rights.

Thus, being oppressed by her husband did not make PJ surrender to the circumstances; from those experiences have emerged greater self-esteem and an increased ability to confront oppression. Her struggle to obtain her rights was finally approved by the institution at which her husband works, based on the decision of the appropriate person within the higher institution who examined her case. Further, in the religious court in which her husband filed for divorce, the judges had decided that her marriage was over, and that she qualified for the livings that are then granted after divorce to a woman who is divorced by her spouse.

In addition, she argued that the presence of KJHAM as the place for her to consult with person on her case was very helpful, and she has been empowered by contact with KJHAM personnel in regard to the relevant legislation, such as the Marriage Act 1974 and the Implementing Regulation of the Marriage Act No 10 of 1981. By reading and learning about the legislation that applied to her, she understood what kind of demands she was able to make of her husband. Her experience has shown that the law (both legislation and regulations) provided by the state are available to protect women’s rights; unfortunately, most community members do not know exactly the content of the legislation.

5.2.2.1.4. **The case of IN**

5.2.2.1.4.1. **Access to resources: Lack information about her own case**

IN’s case was about forged letters. When her husband married to her, he was still married to another woman and still bound to that marriage; they had only separated but
had not yet divorced. During the separation he approached IN and then married her with ‘bachelor status’ according to the documents presented as required for marriage. Entering the marriage while maintaining that he was bachelor when he was actually married to another woman meant that the marriage between IN and her husband was illegitimate (it was neither a legal monogamous marriage nor a legal polygamous marriage as he had not permission of the first wife, nor was a polygamous marriage being freely entered into by IN). All the required documents that were used by her husband to marry her were false; and her husband’s sister (who had becomes a head of village in Semarang City) seemed to have had an important role in the provision of the fake documents.

After he gained his divorce from the first wife, her husband did not marry IN legally, instead he married yet another woman – his ‘third’ wife (but in law only his second wife). Based on this, IN then reported her husband in order to teach him a lesson. However, the report was turned against her because she also could be accused of adultery, and such conduct can result in being sentenced in accordance with the Penal Code.

When confronting the marriage problem, she did not tell to her family, although she had contacted social network members to seek help and support. IN acknowledged that access to resources helped her to obtain the information she needed as evidence of her husband’s action. She recalled that the search for evidence of her husband actions was initiated by her and the information she needed was derived from many sources such as friends and the neighbourhood.

Her contact with legal aid personnel began when she, at last, became suspicious that her husband had used forgery. Her initial report had backfired on her. Her husband possessed a great deal of ‘power’. He had a company and was the boss; his education is
as an engineer while IN did not pass elementary school. Such access to power and resources (such as money, education and ability to lobby authorities) gave him disproportionate power, and yet he too could be subject to police intimidation (see further below). He was finally released without any being subject to any conditions.., otherwise as a forgery suspect, he would have to report twice a week to the police station. However, with him cleared of the accusation she could then become the suspect. Being afraid of police intimidation, she then looked for information about legal aid. Bearing mind that her case contained domestic violence issues, she finally found a legal aid service that referred her to KJHAM.

5.2.2.1.4.2. Access to the Justice System

5.2.2.1.4.2.1. The Police: Taking advantage of her case

In 2008, IN reported the forged documents which had been created by her husband when he married to her and then the ‘third’ wife; her purpose was only to ‘teach her husband a lesson’.

At first I went to the police station with a blind eye [that is, unaware of the facts], [I] reported my husband to give [him a] lesson. But once learned I had no right to report this one (third wife) because I had the potential to be reported by the first because [my marriage] was considered adulterous. But, my husband could be charged repeatedly. 100

Unfortunately IN did not initially know that her situation could be reported as adultery because she was in a relationship with a married man. This occurred due to her husband’s use of fake papers as ‘proof’ of bachelor status to marry her; she was not aware that the report could backfire on her. IN insisted that she did not have any knowledge of the law and police attitudes, nobody told her about the consequences of her case, and she was not assisted by legal aid. That lack of representation and knowledge perpetuated a power imbalance between her, her husband and the police. In

100 Interview with IN, a worker in a private company (Semarang, Indonesia, 28 December 2011).
such a situation, police can abuse their power deliberately and easily in regard to a woman. At that time, IN had expected that the police would release her husband soon, and the case would not take much longer. However, in fact, her expectation was far from the reality. The police took advantage of her in her case. Her husband had undertaken a criminal act by forging documents that were required for a marriage to be conducted, but the police recognised that her husband was a wealthy man. Hence, while both IN and her husband could be sued for criminal conduct, her husband as a man of wealth was the only party who could be ‘squeezed’. Her husband had even sent her a text message telling about this matter: ‘He told [me] via SMS that if the case had reached 350 million rupiah (AUD $35000) more. Who will win? Not you or me but the apparatus.’

She had tried to make an agreement with her husband in order to obtain the solution but there was no result. All negotiation were ultimately facilitated by police, and the police had pressured her to withdraw the report. Feeling tired with the pressure and intimidation by the police, she, at last, surrendered to the circumstances. The result was that her husband was released without any conditions while she, meanwhile, had become a suspect in regard to adultery; she became a prisoner on bail who must report twice a week and her bail had been provided by her husband’s brother.

She felt that the police did not help and support her although she was basically a victim of domestic violence and had been deceived by her husband’s acts of fraud. She argued that her husband had power (derived from money, high education, high social status) might have had significant influence on the case; moreover, he had also obtained support and help from his brother and sisters who are wealthy, educated people and have good jobs and positions within the community. They had more power to enforce their will and to lobby the police; this power affected IN’s detention and secured the
released of her husband.

That the individual police had an illegal and wicked plan could be seen, in fact, from the beginning when the police told her not to disclose her case to legal aid personnel; however, she was not aware of it at that time. Her breaking her silence in regard to police intimidation occurred when she became a suspect for forgery. Although she had been advised not to disclose her case to legal aid, she finally contacted legal aid since she felt unsafe and intimidated by the police officer; moreover, her husband’s henchmen came to her house and to force her to solve the problem peacefully.

… I finally got to KJHAM and slept in the shelter. At the shelter I was picked up by Mrs M (a volunteer in this shelter)….I just figured out that I could not stay in shelters out of consideration for my child, how about the school later. After a week at the shelter…then I returned home again. In there [shelter] I was also treated. I’ve been convinced...  

Her contact with legal aid-KJHAM had no effect on her case because she had withdrawn the report; and the lawyer of KJHAM has argued that after the report was revoked the police were too lazy to follow up. KJHAM had indicated an instance of corruption in IN’s case and reported the poor performance of the police who handled her case to the police ethical commission at the national level.

IN emphasised that she had been disappointed with the justice system, notably with police because the police also act as mediators and this is an arrangement that does not work well. The report to police ethical commission was also to no avail because they asked S (IN’s husband) and KJHAM to give evidence; otherwise they will also be sued in return. In addition, the key persons involved in the forged documents were not prosecuted, and to investigate judges is also difficult since there is an assumption that judges cannot be called as an expert witness. The main problem was caused by the difficulties encountered in trying to reach witnesses and because one of them is a judge.

101 Ibid.
5.2.2.1.4.2.2. The Religious Court: Her husband manipulated the data

When IN took the divorce certificate from the religious court, she discovered that her husband had manipulated her data on the identity card and family card so that the data regarding her place of occupation and so on were different from the places where she then lived. By giving false information about the address, the court trial summons will be delivered to an incorrect address; and, as result, IN never knew about the processing of the divorce and then he married another woman (the ‘third wife’). She knew her status was that of a divorcee after obtaining information from the Grand Mosque, where her husband and his ‘third’ bride were to be married.

Finally, she realised that her case would be better discontinued because any decision would depend on the judge, and on whether the judges were willing to open her case again; moreover, to bring witnesses was not easy due to the witnesses who knew of her marriage being her husband’s friends.

So the case is now stopped because the judge could not be called. Because there are witnesses who must be brought in…a judge, S (IN’s husband) and witnesses who witnessed the divorce, and I am sure all of them will take sides [with] S, Mrs Lurah (S’s sister who become head of village) who issued a bachelor statement to S. Further, the Police asked for me and KJHAM to provide key witness (who witnessed the divorce), crown witnesses (S, my husband), expert witnesses (retired judge who has no defects during his/her career).

As a matter of fact, her case still can be processed in regard to issues of child custody, demand for the rights of children in term of maintenance/living and in regard to neglect; however, she has not pursued the matter as she has not had plenty of time since she has obtained a job. In addition, she feels she cannot rely on KJHAM since KJHAM has many cases and she is not the only person who needs to be helped. She thanked God because her marriage status was now clear and that she has a job; so being an independent woman has made her happy.

102 Ibid.
The experience of IN in gaining access to justice began with a police officer who had given her a bad experience and image of the police performance. The family matter was brought into the public spaces (the justice system) in order to ‘give the husband a lesson’; however, her expectation that the police would give her husband lesson and protect her as victim of domestic violence disappeared since she was accused of being a suspect (in a different crime, that of adultery as well as fraud) instead. She became powerless during the processing of the case rather than being empowered. Her husband with his financial power and the police had negotiated to end the case by taking advantage of her powerlessness in financial terms and in regard to legal matter as she had been put in disadvantageous place as a forgery suspect. Her husband’s conduct had not only made her be regarded as a suspect at the police station, but he added to her suffering by divorcing her without any notice. As consequence, she could not defend her rights as divorced wife in the religious court. The only public space that had any concern for her case was KJHAM which supported and helped her by providing shelter and legal aid during the hard times.

The police in her case preferred to implement the Penal Code that the Domestic Violence Act 2004. This has shown that police officers with their power can decide which laws are more ‘appropriate’ to be implemented in a certain case. If the police had a greater awareness of domestic violence cases and of the plight of the victims, they might deploy the Domestic Violence Act; unfortunately, the police officer in her case did not have any awareness of the issues. Police with their power decided to base their action on the Penal Code and put her on the wrong place by accusing her of perpetrating forgery. Meanwhile, KJHAM has insisted that her case was basically a domestic violence issue that could be addressed by applying the Domestic Violence Act 2004. Hence, there is a contested insight between police and KJHAM based on the choice of
law that must be applied to her. That the law creates the space within which everyone including police officer, KJHAM legal counsellor and the victim can make an interpretation based on the knowledge they have, has been examined. The person’s different perspectives on the law and domestic violence issues will create and manipulate spaces and the exercise of power which, in turn, affect the victim; whether she will be protected or ignored.

5.2.2.1.4.3. A woman’s spousal and faith identities influence her ability to act decisively as a woman’s right

Her decision to report her husband who had married another woman by falsifying the document was influenced by her identity as a wife and a Muslim who believes that as a Muslim wife she has a right and a responsibility to bring to her husband’s attention where he has made mistakes. She did not mention any Islamic teaching but she insisted that by arguing:

This is my personal experience, if my experience because as a Muslim wife also has the right and obligation to straighten [things]out; that the wife has the right [in regard] to the husband because we are husband and wife. Our obligation is to align as a wife because religious factors obliged us to remind each other that it [violence] can still be redirected. As a woman it is not wrong to act decisively.¹⁰³

However, because of a lack of knowledge on legal issues she did not know the intricacies and consequences of her husband case which, in turn, affected her. Her decision to report her husband’s behaviour without any companion from legal aid services had given an individual police officer the opportunity to take advantages of her lack of legal knowledge. On the other hand, the individual police officer also took advantage of her husband’s wealth. Her husband, however, knew how to deal with police and IN by using his power, intellect, and money. Thus, IN’s decision to report her husband which was made on the basis of her identities as a woman, housewife, and

¹⁰³ Ibid.
uneducated woman might not compatible with the decisions made by her husband who has greater power, education and wealth than her. Her husband’s power had been used to scare her and put her in detention as a forgery suspect (this was actually done by her husband and her husband’s sister) (see Chapter 4).

Because of her being treated unfairly by the individual police officers who were in charge of her case, IN, decided to contact legal aid provider, KJHAM. By her identifying herself as the victim of domestic violence and a housewife with inadequate financial resources who had also been accused unfairly as a forger, KJHAM then supported her by providing free legal aid and other services such as shelter and psychological counselling. The response of her husband after learning that IN had obtained legal aid from KJHAM was to hire a lawyer and he had further oppressed IN to force her to revoke her report to police.

This has shown how her identities as a housewife, a mother, and a common person have finally brought her to confronting her husband and the police. Her powerlessness had led her to go to KJHAM to seek help. After having been assisted by KJHAM, however, IN cancelled the report and the case was dismissed. Although feeling disappointed with the performance of the police officers and the judges in the religious court who decided the divorce verdict, she never regretted having reported her husband’s attitude and behaviour towards her, and she became quite self-confident and able to proclaim that her identities as an uneducated woman for that had meant that she could learn more and her knowledge and reputation increased due to her case and encouraged her to speak out when dealing with domestic violence cases.

The experience of IN has shown that the identities of IN had, on the one hand, influenced her decision, and, simultaneously affected her response. Her identities had oppressed her but at the same time also given her strength. Thus, it can be said that there
is no single dominant identity had influenced IN to make her decision.

5.2.2.1.5. The case of NA

5.2.2.1.5.1. Access to resources: Getting support from social network

The next respondent is NA. She was pregnant before marriage, but during pregnancy her boyfriend never looked after her. Even, when their marriage ceremony was being conducted her boyfriend did not come voluntarily; instead he had to be asked many times to come. After marriage her husband left her and hardly stayed in her house. NA has tried to settle her marriage problem with her husband; however, the intervention of her husband’s family has significant impact on their marriage breakdown instead. Her husband was persuaded by his brother who offered him a job with a high income if he left his wife; and her husband agreed. NA was divorced by her husband only five months after the marriage; the husband’s brother also financed the court fee. During times of hardship, both before and after her marriage, it was her parents who fully supported her.

Her husband had taken her identity card (family card and ID card) and refused to make the daughter’s birth certificate. Her parents had asked her to sue her husband in order to get the letters. She had tried to ask politely for the letter but her husband never responded. She had also sought advice from the neighbourhood administrator who suggested that she demand the letters from her husband.

I have ever told to my parents. My parents’ advice was to sue my husband [for divorce]; actually I'm tired of thinking about it. My parents were actually not demanding a lot, only the letters, mainly for my child's birth certificate, my KK (family card), and my KTP (ID card). So if I go anywhere and there is a requirement of KTP, I cannot do anything. The suggestion of neighbourhood administrator (RT/ RW) was to ask my husband, I was just afraid if he strikes back if it's fake KTP, although it is not a fake one. Then, my father just suggested to just waiting for the decision of the Supreme Court.\textsuperscript{104}

\textsuperscript{104} Interview with NA, a dressmaker (Semarang, Indonesia, 11 January 2012).
NA has also insisted that the role of friends is important as they support her psychologically. Although she had received legal aid from the lawyer of her father’s friend, she asserted that her contact with KJHAM has also given her advantages not only in terms in gaining friends but also knowledge, such as on health and legal issue.

5.2.2.1.5.2. Access to the Justice System

5.2.2.1.5.2.1. The Religious Court: The Court decision stands in her favour

She has experiences in accessing the justice system dealing with her case, such as religious court personnel, police and lawyer. After a five months marriage, NA was sued divorce by her husband. Her father supported her so she could deal with the lawsuit. Her father sought help from a lawyer neighbour and he was willing to give free legal aid for the court processing. NA responded to her husband lawsuit by asking him to pay the 75 million rupiah living cost (child support) that must be paid directly and to make their daughter’s birth certificate; however, her husband refused to do so.

At the first level, he also reneged on his daughter because of different name. The difference occurs because he had not been communicating the name with me. Then the judge said, I was told to take my daughter and my husband was told to take his daughter. In the trial he could not bring his daughter, so the judge made me win. In the divorce decision at first level in religious court, the right of my child was mine. He refused to pay the total of child living rights reaching about 75 millions. He was asked two or three times for payment. In economic terms, he is well-off. When [was] having relationship with him, he said that his family is the richest family in Jrakah, Semarang. He just gave us money 200,000 in instalments for months. I did not want that decision. He never talked to me, I also saw him rarely. In the court, he said it was a mutual deal but, in fact, he wanted a divorce. I then asked the appeal to the higher court as the living support for child is not paid in instalment and for the child’s birth certificate was made. But he did not want to, and he appealed.\(^\text{105}\)

During the processing in the court dealing with the divorce case, her lawyer is very helpful in her struggle for her rights. Even, at the first level the lawyer had indicated the judge in the religious court had been bribed by her husband, because in the lawsuit she did not want to be divorced but in the decision it said that she wanted to be

\(^{105}\) Ibid.
Mr T, my lawyer, knew that the judge in PA was bribed and then the judge was dismissed. It was detected because I did not want to be divorced, the result [had said that] I wanted to be divorced with a living of 200,000. The first level decision decided that I was divorced; and then I decided to appeal that I did not want to be divorced. I want to be divorced when I got the living money of 75 million; the demand was as the same as at the first level.\textsuperscript{106}

She acknowledged that the performance of the agencies in the justice system were not entirely satisfying because the responses she obtained were various; however, she insisted that Religious Court at a certain level acted correctly, as the judges at the second level decided in her favour. Then her husband appealed to Supreme Court. Further, she has an expectation that she will win her case in the Supreme Court.

5.2.2.1.5.2.2. The Police: No result after waiting for years

Then, NA reported to police, bearing mind the behaviour of her husband who had neglected her not only before and after marriage but also other misbehaviour such as having taken her identity card and refused to make the daughter’s birth certificate. She acknowledged that the police gave a positive response when she reported it. The police asked her to provide the witnesses necessary for the case of neglect to be reported to the police; and the police gave her reference to go to Seruni, a government organisation that belongs to Semarang City Government that is concerned with violence against women and children. After contacting Seruni, the witness came to the police station the next day and NA went to the police station again and they said that the case was in the hands of the prosecutor. However, after waiting for long time there is no the progress that had been expected.

I reported a crime but they made it complicated [for me]. They promised later and later [it would be dealt with] but it has been two years and no results. I indicated that the police had been bribed since Mr T (my lawyer) said to me and the personnel in the

\textsuperscript{106} Ibid.
police station had just [had] lunch with my husband’s brother…107

Based on the description above, it has been shown that police apparatus as the agent of justice system is one institution that has most disappointed the respondents in this study. The initial positive response given by the police officer at the beginning of the reporting process was in this instance, the only positive. There is no certainty in regards to the sequel and solution. NA has less power in terms of finance, unlike her husband. This has had a significant effect on her access to other powers belonging to police, as by having much more money her husband had more opportunity to approach the police in order to achieve his goals. The necessity for a ‘culture of justice’ to be developed to oppose bribery at all levels, and involves the widespread adoption of a higher ethical standard by police is a prerequisite for access to justice, particularly by those who have fewer financial resources.

The experience of NA has also shown how she had to defend herself to obtain her rights by confronting her husband’s power when he had bribed a judge in the religious court. She was fortunate in having a lawyer concerned with her case who was aware of such practices and who was willing to ensure that the bribed judge was reported (the judge in question had been transferred to another institution). Equally important, these accounts have examined the reality facing women. From this person’s and other respondents’ experiences it can be seen that when the performance of police was not deemed to be satisfactory, the victim of domestic violence then sought help from other resources, such as a family court in order to access justice and to cope the violence.

107 Ibid.
5.2.2.1.5.3. A desire to fulfil her duty to daughter and to defeat the rich as an element of personal identity outweighs shame of divorce: Conflict within a cultural identity

NA realised that her husband’s family did not like their marriage. Moreover, she was pregnant before her marriage. After marriage her husband only stayed one night and, afterwards, he never stayed for longer than two or three hours. When she delivered their baby, her husband did not come to look after her initially but came only at her father’s insistence; the same thing occurred in the months after the baby’s birth. NA did not actually want to divorce because she did not want to be a ‘widow’ after such a brief marriage. As a Javanese woman, such a thing was shameful. She, as a mother and housewife, was also thinking about her daughter’s future, which is a value supported by culture, but her husband insisted on divorce.

Furthermore, her husband did not want to allow her to have their daughter’s birth certificate processed and prevented this by keeping some of NA’s documents and refusing to give them back until the divorce process went to the supreme court (a matter that had not been finalised at the time of interview). As a result, NA had found difficulties accessing services provided by the government wherever such services require the sighting of an identity card, family cards and certificate of marriage; without these cards she could not have her daughter’s birth certificate processed.

After having been treated so arbitrarily by her husband who never gave her the livings to which she was entitled, she became aware of her identity and status as a neglected woman, wife and mother and this encouraged her to struggle and to fight. Finally, she was ready to be divorced, but she still defended her daughter interests by engaging a lawyer who gave her free legal aid from the first level to the Supreme Court in the divorce case, and in reporting the case to police.
As a Muslim, she battled in the religious court to obtain a just decision in terms of her daughter’s interests and also in obtaining her own rights. As a mother and a wife, she did not want her husband to give her daughter only IDR 200 every month. She wanted her husband to give IDR 75 million rupiah in cash (and exclude her rights for living entitlements). Her reason for asking for such a sum was that, on the basis of previous experience, she was afraid that her husband would again neglect her. Her husband had previously not given her the IDR 200 in cash, and when he did it was several months late. In addition, she also asked her husband to lodge her daughter’s birth certificate because the certificate is important for school enrolment and in regard to the identity of her daughter (as the legitimate child of a legitimate marriage), inheritance, and for identification purposes (travel, subsequent marriage and so on).

She emphasised that she had been reluctant to keep silent and give up because she did not want to be trivialised by her husband. She wanted to show that as a woman, a poor woman and a wife, she had the same chance to be successful in court.

If I win [against his] appeal it means I can beat the rich who are arbitrary. In the penal law, if he was convicted, it did not matter to me, so that he would become deterrent. So not only the money but also wanted to show that poor people can beat the rich. Right now I had better divorce, [I] do not need to defend [against] my husband anymore because [if married]I am worried that I will be hurt even more.  

Descriptions above have shown that the oppression undertaken by the husband did not make NA powerless. She insisted that facing domestic violence (neglect) was an unexpected experience for her, but it has increased her awareness of women’s rights. Therefore, she decided to confront her husband lawsuit in the religious court. She insisted that she is fortunate to have a neighbour who is a lawyer by profession and who supported her with free legal aid during the court procedures; therefore, she did not need to worry about the court fee and could focus on her lawsuit against her husband.

\[108\] Ibid.
5.2.2.1.6. The case of GI

5.2.2.1.6.1. Access to resources: The role of the neighbourhood administrator

GI as a worker in a traditional market had a struggle to remain in an abusive marriage. She stayed because she wanted to keep her family together and to keep her children feeling secure. Her husband was always accusing her of having an affair with another man. GI, insisted that her world of work, a traditional market, often was the source of rumours that made her husband jealous. Although she has tried to convince her husband that the rumours were not true, her husband did not believe it. His jealousy finally had resulted in physical violence against GI.

She insisted that physical violence against her occurred frequently; and she as an abused woman could not accept the violence although the perpetrator was her own husband. She went to the neighbourhood administrator to seek help and a solution. The neighbourhood administrator had argued that such ‘violence’ was common within a family, particularly in the relationship between a husband and a wife; this was an opinion that was different from her understanding as a woman, a wife and an abused wife.

I went to RT [neighbourhood administrator] to report the violence that I experienced. Mr RT just said ‘Oh it is usual in household ...’ I said ‘Are you sure it is like that in households?’ I frequently reported to the RT, then, my husband was called and told “Sir, don’t act so”.

The physical violence perpetrated by husband has, however, only served to increase her strength and her feeling of injustice that had been buried for long time due to other previous verbal and economic abuse by him. The extreme physical violence finally brought her to report to police and to sue him for divorce. She has contacted other resources such as doctor, and a lawyer at KJHAM to help with her case.

109 Interview with GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011).
5.2.2.1.6.2. Access to the Justice System

5.2.2.1.6.2.1. The Police: Too old to enter into divorce proceedings

In the beginning, when GI reported the physical violence against her, the police refused to arrest her husband, reasoning that her husband was too old for her to divorce him, and suggested that she reconcile instead.

… I went to police station and the police commented: "Your husband is old. Do you really want to send him into the jail and divorce?" I then said, “Yes essentially the penal [court] and divorce [court] at once. The police said again, “Don’t be like that ma’am, he is old.” I said, “No sir, I was hurt.” The police replied, “Solve it amicably.” I said, “I could not say [that], sir.”

The response of police officers sometimes seemed to be an automatic response, sometimes being an expression of their view of what they (the police) think should be the correct outcome for the victim’s situation or an outcome that they believed was ‘best’ for the situation. Then, when she moved to another police station where she reported the violence, the female police officer clearly stated that for police to imprison the perpetrator, they would require some money to be paid, although she did not mentioned the exact amount of money.

Over there, the female police said… “What did you want?” I replied, “Yes, [I want him] brought to jail.” She replied, “Did Mrs GI think first? Did you have think very carefully? It was not good.” Then she said, “If you wanted to imprison the person you should have used money. It must be, [you] must give us [so we can be able] to feed him.” I then said, ‘Oh… I see mercenary police.” Then, she said, “Shut up.”

GI did not expect such responses from the police officer. She thought that the officer would help her by willingly arresting her husband, given the strong evidence that was available. Her husband expressed remorse over his conduct, and the police, then, asked her husband to make a statement that he would not do any further violence against GI. Nevertheless, GI was not satisfied with that because she was already hurt by

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110 Ibid.
111 Ibid.
her husband’s behaviour. An ‘unhelpful’ response from police officers was that where an officer asked a victim (GI) for money to detain the perpetrator of violence. Such an approach is evidence of blatant corruption and a willingness on the part of an officer to take advantage of a situation and benefit from the victim’s suffering and desire for safety.

5.2.2.1.6.2.2. Health Services: Failure to consider women victim’s safety

GI was disappointed with the services she received from a private hospital where she had gone after she had been hurt and was bleeding because of having been hit by a glass container. The hospital preferred to prioritise the administration procedure rather than to give her first aid.

In 2008, hospital officials said, there must be [cost] a bearer. I said, “Yes Sir, I recently contacted [my] nephew”. I was disappointed with the service of hospital at that time why did they just ask for money instead of about security for my life, instead of helping. But now with the social security, the service is better…\(^\text{112}\)

However, she had good and quick response from a doctor who helped her to remove the stitches and recommended her to arrange a payment from Indonesia’s social security regime (‘public security for the poor’) and to contact the referral agency, KJHAM, to support her case.

The improved system and services to victims of domestic violence, especially by health service system, are also acknowledged by the lawyer and counsellor at LRC KJHAM. Moreover, there is a policy from the health department in Semarang City in 2012 that all hospitals can be reimbursed by the health department as long as the victim is accompanied by a companion both from a non-government organisation or other appropriate local organisations.

\[^\text{112}\] Ibid.
5.2.2.1.6.2.3. The Religious Court: Victims can be assisted by pro bono system

Following her contact with KJHA GI decided to sue her husband for divorce. After filling in and lodging the paperwork to obtain jamkesmas (security insurance for the poor), she was accompanied by KJHAM personnel to file for divorce in the religious court.

GI has also insisted that her life will be better without her husband because during their marriage her husband never gave her enough for living expenses as the husband’s earning were consumed by gambling and drinking. The needs of the children mostly were met by her earnings.

In the religious court (Pengadilan Agama/PA) there was my own neighbour. He did not believe I had experienced it. I am honest. After 31 years of marriage, I was only given once a living of Rp.600,000, Rp.250,000 once, Rp.80,000 once during 30 years of marriage. He was married [but] just used his money for gambling.

She acknowledged that court processing was not going to take long time; she was very satisfied because she did not to pay a single cent during the court processing by using jamkesmas (security insurance for the poor).

… So I divorced, the court processing was free by using jamkesmas. One week I was called, two times I was called to bringing a witness…[it] may take two and a half months to be completed.113

The descriptions above have also shown that the women victims of domestic violence must struggle to access to justice; they must move from one space to other space in order to access friendly and helpful resources. GI felt powerless before the police officer; however, in the face of other resources, for instance in hospital after being advised a doctor to apply public security for the poor, in the religious court and at KJHAM which are in public spaces, she is empowered. The role of the law has had significant influence on the success of her case, in particular divorce case, because it

113 Ibid.
helped her to access to pro bono procedure in the religious court.

5.2.2.1.6.3. The ability to consider a better future is supportive of action as is financial independence

GI as a worker in a traditional market had a struggle to remain in an abusive marriage. Her husband was always accusing her of having an affair with another man. She stayed because she wanted to keep her family together and to keep her children feeling secure. Because of his jealousy, her husband had restricted her by not allowing meeting with friends in her workplace.

As to my husband, I should not get along; people in the market were different with village people. They said “Cheating, cheating”, he said. If our husband said we are cheating but we were not cheating we would not like it, would we? People in the market are such [loud] mouths…

She insisted that physical violence against her occurred frequently; and, she as an abused woman could not accept the violence although the perpetrator was her own husband. Then, she decided to report the violence to police. However, the police response was negative as they were considering that the couple’s age was advanced, that is, that her husband was too old for him to be jailed, and she was too old to send her own husband to jail. The second time she went to police, the police officer asked her for IDR 5 million. The reason given by police was that the funds were needed to meet the needs of the prisoner. She realised that as a carrier in the traditional market who earns only between IDR 5000 and IDR 10,000 per day, she was not capable of providing the money; the money demanded by police was unreasonable for her and she argued that it was similar with a bribe. As result, she abandoned the idea of having her husband gaol ed.

As she had experienced a severe physical abuse, she, then decided not to try and save her marriage any longer. The physical abuse had totally changed her attitude in

\[114\] Ibid.
relation to marriage relations. Her suffering as a wife and mother during the years of a marriage where (as she described it) her husband never gave her a living adequate for daily needs also became a consideration in her decision to file for divorce. Moreover, by working as carrier in a traditional market she gains her own earnings to meet the need of herself and the children. Though some of her children did not agree with her idea of filing for divorce due to her age, she insisted on continuing through with her decision.

I felt [it was] no matter filing for divorce, because there is my husband but I am also looking for my own living, not my husband [who is] searching for a living, no husband is better. I continue to sleep well, nobody annoys [me], then I do not think, [rather I] focus forward, thinking about child. I am thinking about my future and my child who is not independent yet.\textsuperscript{115}

Her decision to contact with KJHAM was a good option because this institution assisted her during the processing of her divorce, as with her level education she did not have any knowledge and information about the legal issues and procedures in the religious court. In addition, by getting involved in KJHAM, she argued that there were many benefits obtained such as information about legal, health and other issues, and friendship with other members of a support group.

The experience of GI has shown that her identities as a mother, wife, a carrier in a traditional market and an abused woman had led her to the decision to leave the abusive marriage relations. There was no single identity that had become dominant, and almost all identities have a significant influence on her decision making.

5.2.2.1.7. The case of RB

5.2.2.1.7.1. Access to resources: Positive response from the social network

Being cheated by her husband was the experience of RB. After more than twenty years of marriage, her husband had been caught having a romance with another woman;\textsuperscript{115} 

\textsuperscript{115} Ibid.
it occurred after her husband changed his profession to that of a driver. RB felt hurt by her husband’s infidelity.

My husband always lied, he told me [that he had] a lot of work but he has other girls. As consequence, I was looking for my own living; busy myself because having a husband [for me] is like not having a husband. So I decided to file for divorce.\(^{116}\)

RB emphasised that the world of work provided positive and negative responses to her life. The world of work had a significant effect to her husband’s behaviour. Her husband changed his profession from a merchant to a driver a job which, according to R, has a lot of temptation. She disagreed with her husband’s wish, but, at last, she agreed because her husband had convinced her that everything would be all right. However, her fears came true; her husband had an affair with another woman. Her husband hardly stayed in their marital home again after the relations with another woman produced children. This had also significantly affected the life of RB because her husband never gave her enough living for almost three years. Without sufficient living she had been forced to get a job; she returned to her previous job as a merchant in the traditional market. By running her own business again, she obtained positive responses because she was earning her own living, and made many friends as she came to know many people through the market, and (most importantly) they gave her the information that she needed to overcome her marriage situation. This will be discussed in the next section below. After struggling for years and now feeling strong both psychologically and economically, she at last filed for divorce.

RB has also insisted on the importance of the role of social network, such as friends and KJHAM, who had helped and supported her by giving her further information about domestic violence and about the process of obtaining a divorce. These supports convinced her to file for divorce; and she has herself filed for divorce in

\(^{116}\) Interview with RB, an entrepreneur (Semarang, Indonesia, 24 December 2011).
the religious court, preparing the witnesses and attending the hearing. However, not every response was positive. She faced negative responses from social network members (in particular, the neighbourhood administrator) when she asked for a reference letter that was required to process the divorce.

She insisted that the first public officer whom she had contacted was a neighbourhood administrator who was reluctant to give a letter of recommendation for the divorce because he argued that RB and her husband were too old to divorce; he also suggested that RB reconcile with her husband.

Being ‘old’ sometimes has been used as the reason for not filing for divorce. This reason being given was not only experienced by RB but also other respondents such as GE and GI. The community seem to look at older people as a group of people who do not have a right to enjoy their life or to be happy in their later years. The suggestion from neighbourhood administrators has shown their belief that an abused older woman should (as an older woman) be passive and wait for the husband to return, although, in this instance, the husband had already taken a new woman as his wife and created a new family. Being active in taking the initiative and filing for divorce against a husband seems likely to be viewed as misbehaviour when it involves older women.

Although having difficulties in obtaining the reference letter, she convinced the administrator about her firmness to divorce her husband since her husband had neglected her and their children for years. Moreover, her husband had already had children from the second marriage.

5.2.2.1.7.2. Access to the Justice System

5.2.2.1.7.2.1. The Religious Court: A satisfying decision

To process the application through the court by herself she must provide recommendation letters from the neighbourhood administrator. However, it was not
easy to obtain this document because the administrator had been influenced by the
commonly held values and norms. The common values from men’s viewpoint had been
tried to be implemented in her life. Given that the administrator’s advice was not suited
to her needs or in her interest; she insisted to the administrator that she could not keep
the marriage together anymore by giving the facts to him that her husband had
neglected her for years, had already married another woman and had more children;
then, the recommendation letter was given at last.

Then, she processed the divorce in the religious court. She did not find any
difficulties in gaining the divorce settlement because as a plaintiff she had no
entitlement to the living from her husband; moreover, for RB, the living from her
husband was not important because she can live on her own earnings. She noted that the
court process took two months and her husband never came to the court hearing.
Besides, she is satisfied with the court decision that approved her divorce proposal, and
she only spent IDR 1 million to pay court fees; the cost which according to her was
affordable.

In addition, according to RB, the court’s decision was satisfying because it was
not complicated, and was facilitated perhaps by the fact that the husband did not attend
the court. RB took as witnesses outsiders who knew the character of her husband. She
insisted that by joining the KJHAM support group she obtained benefits not only from
the regular meetings, which have given her important information about legal, health
and other issues but also about financial aid for the members of the support group that
was available to assist them be more independent in economic terms.

5.2.2.1.7.3. Waiting for the right time to act: Role of a victim’s responsibility for
children and also her financial independence

Although RB had understood her husband had relations with another woman in
the twenty years of their marriage, and, she found that after that time her husband did not give her living for three years, she still remained in the marriage because she was thinking about her children needs as they were studying at high school. Her husband is the person who provided the money for her children’s education; therefore, as a mother, housewife and abused woman, she had planned to be patient and waited for her children to finish school. When her husband did not give her a living, she, then, came back to the traditional market as a merchant. After her children finished school, she decided to file divorce, but before filing for the divorce she asked her friend about the fee and court procedures.

Her contact with KJHAM occurred accidentally when she was invited by the village leader to attend a meeting conducted by KJHAM. At the meeting she obtained information about the court fee and domestic violence issues. Then, she ventured herself into the office (court) of religion to ask what must be provided.

The experience of RB has shown that she had implemented her strategy to file for divorce after all her children had finished their school. This was based on her consideration of the fact that it was her husband who paid all for the children’s education. As a mother and a housewife she considered the children’s interest first. She also considered her ability in financial matters, and therefore she chose to wait for years until her children had finished their study, and, then, filed for divorce. Having access to her own earnings as a merchant in a traditional market encouraged her decision to divorce because she did not want to stay with her husband who had abused her emotionally and economically; she knew that she could support herself.

The experience of RB has shown that financial independence has contributed to her self-confidence and hence to her willingness and ability to sue her husband for divorce. The response from the social network did not always satisfy (for example the
response of the neighbourhood administrator); however, in other public spaces she found a positive response, such as that of KJHAM, which has given her knowledge and an understanding of domestic violence. This knowledge has encouraged her and convinced her to file for divorce, where she acted as plaintiff on her own. Though the neglect by her husband was revealed in the court hearing, judges in religious court did not mention it as a type kind of domestic violence. In the verdict, the judges only mentioned articles within the Marriage Act 1974 and the Compilation of Islamic Law as having been considered in arriving at their decision.

This phenomenon has shown that domestic violence remains a public matter where criminal law has jurisdiction. However, while the Domestic Violence Act 2004 has its own space in public; divorce case prompted by the presence of by domestic violence remains within the jurisdiction of family law (a jurisdiction regarded as a ‘private’ spaces). The 2004 domestic violence law mentioned in a divorce verdict (or even of domestic violence in its various forms within the marriage) seems in practice to be inappropriate and unusual, although there are no laws prohibiting judges from referring to legislation from different jurisdictions.

5.2.2.1.8. The Case of ID

5.2.2.8.1. Access to resources: From a ‘cage’ to a public space

Respondents who were deserted and then divorced by their husband have argued that the role of social networks were important. Although they seemed likely to be less active than the respondents who had left and divorced their husband in term of looking for information about how to struggle and cope with the violence, in fact, they also found similar difficulties. The experience of ID, for instance, has shown how she found difficulty finding family members or friends who would be prepared to be witnesses since her husband had isolated her and she herself had kept the violence close to her
chest and not disclosed it. ID acknowledged that non-physical and physical violence occurred at the beginning of her marriage; and the violence together with the intervention of her husband’s family members had perpetuated the violence, until she was divorced by her husband.

Suddenly I was sued divorce after 20 years of marriage. The violence occurred since the beginning of marriage… I tried to cover up the family problem until I had been sued for divorce and no one knows [about the violence]; [then]…it was a troublesome to find witnesses. Witnesses, who? Finally, I invited my sister as a witness. So I am protective about this even until this moment. Many did not know, because I was really trying because my child was ashamed. Not many know that I experienced this.

Her husband has controlled her financially; she was never given appropriate living costs, or even the freedom to choose her own clothes. Her response was just to keep quiet to prevent her husband getting very angry and being physically violent. She thought that by playing the traditional gender role she could reduce the violence, though it sometimes did not work.

She did not disclose the violence because she felt that it was a family disgrace. She also never asked for visum et repertum after being beaten because she understood (erroneously) that reporting violence must be accompanied by a divorce suit; meanwhile she, as a Catholic, did not want a divorce. Further, she insisted that since her parents had a principle that she had to bear responsibility as her husband had been her own choice, so all the problems that happened within the marriage became her responsibility.

She acknowledged that the isolation created by her husband had consequences in terms of her limited number of friends and limited financial resources. She nevertheless insisted that the role of the friends she did have was very important as they supported her psychologically and financially during the court procedures.

Then there was my elementary school friend who used to play up here, I accidentally told her I did not want to talk actually. Yeah I was about to be sued for divorce, she

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Interview with ID, a property entrepreneur (Semarang, Indonesia, 3 January 2012)
seemed shocked, so shocked. Why does Miss ID have this? But it is probably God’s way…

Through her friend’s assistance, she was able to contact with legal aid. Below is her experience of going to court.

5.2.2.1.8.2. Access to the Justice System

5.2.2.1.8.2.1. The Lawyer: Lack of integrity in regard to a client’s lawsuit

ID was sued by her husband for divorce. To defend her rights she had hired a lawyer and through her lawsuit in the state court ID had sued for living cost against her husband, but she never obtained the living.

A lack of adequate explanation to clients about the processes, their rights, and appropriate expectations appears common. Whilst the lawyers may be very familiar with the divorce, settlement and maintenance process and rights of clients, they need to explain the matters clearly to these women for whom this may be their first and last encounter with court procedure and the law.

She insisted that there are two factors that had resulted in her demands not being fulfilled. First, she blamed the system in the state court, and, second the lawyer.

I asked for a living but none fulfilled. I did not know the reason for not fulfilling it because I had given all to his lawyer. I also did not ask again because it was the decision of court. His lawyer also said no not given. I myself sometimes thought what’s going on? It could be, based on my predictions there might be an agreement between my lawyer and his lawyer; and, I was not involved. So, I thought I was a Catholics different from the PA (Pengadilan Agama/Religious Court), the PA has this and this…

She felt that the system in the state court and the religious court were different and that the latter is more likely to make a decision that provides for a living for a divorced woman rather than that the state court. In the religious court if a husband sued a wife for divorce, the husband must give his wife rights such as *iddah, kiswah*, that is

\[118\] Ibid.

owed living. These rights will be determined by judges automatically. However, she did not know about women suffering when the husband did not pledge at marriage or utter the divorce formula; the marriage relations then still exist, and this was the experience of many Indonesian Muslim women, even in this study. Even if a husband continues to commit violence, a wife stays in an abusive marriage. Otherwise a wife acted as a plaintiff to sue her husband for divorce, and while she may be released from the abusive marriage, she is not entitled to the same rights as a wife whose husband has initiated the divorce.

She suspected that some communication had occurred between the lawyers either her husband’s lawyer or her lawyer had secured an agreement on this matter; however, she did not know exactly what kind of compromise they had made and how it worked. Compromise or ‘mafia/mob’ arrangements between lawyers, or police and judges taking advantage of client’s case often happens in the Indonesian courts; and, this circumstance is inevitably disadvantageous to clients who are not in a position of wealth that can be used to influence the outcome. Losing the right to maintenance (including religiously determined ones such as iddah, mut’ah, kiswah) might have been caused by these practices (for instance in the case of ID).

She was disappointed by the performance of the lawyers, but she did not want to make official accusations because she did not want to spend money and time again for yet another battle. Being released from the abusive husband was enough for her, though her feeling of injustice remains.

Further, ID had also tried to go to her husband’s office to ask for the living costs payable from that organisation to be allocated; however the response was negative due to a misunderstanding about women’s rights and gender bias.

The above account has shown the power struggle that occurred in the court
between women victim and perpetrator through the lawyers. Her power as a housewife, particularly in financial issues, might not much stronger than her husband as the breadwinner and that had significant effect in regard to controlling or making demands of her by the lawyer to obtain her goals. She must also confront the power of patriarchal attitudes in her husband’s office where they had refused to give her rights as divorced wife.

5.2.2.1.8.3. Changing Identity: From traditional shame to supporting other victims through a paralegal yet maintains religious identity

ID was a housewife when she was married to her husband. Although she had experienced physical, psychological and economic violence in the first years of marriage, she never disclosed the violence to friends until she was divorced by her husband. Her reasons were her desire to maintain the ‘image’ of her family, and due to her desire to place the children’s feelings first and also to avoid a deep sense of shame.

When experiencing physical violence I did not ever tell, I covered it up because it is a disgrace. The neighbours must notify. So it was the time when I thought domestic violence is a family problem and I am the one with that opinion. But I get a lesson to tell other people, friends. I open the eyes of their heart to let them know… I keep it because I did not want them (children’s) ill. I did not say they were hurt. But I also teach the child, if you just let people know, just let it be, indeed this is the situation. If they did not know you should not tell, I never tell if I am the victim of domestic violence, but I also do not deny it.120

She insisted that her identity as the only child of her parents had contributed to her staying in the abusive marriage because she did not want to disappoint her parents.

In addition, she recounted that patriarchal value had also been a factor that made her stay on the abusive marriage for twenty years.

I used to beaten until swelling [occurred] and then compressed. My father was actually suspicious but since the family has the principle that you’ve been taken by another man [in marriage] so that it is your family affairs, you and your husband’s. Well… then where should I run? Moreover, my parents have that principle. After all, it’s also my

120 Ibid.
own choice.\textsuperscript{121}

She said that as an intellectual person (and graduated from an Indonesian university) and with her husband a graduate with a Masters from an Australian university, she feels shame in having experienced domestic violence. However, her religious background has given her strength to confront the violence and the divorce lawsuit proposed by her husband.

In addition, as a Catholic woman she was concerned about the marriage principle of ‘till death do part us’ that in a certain cases does not provide solution to women or men who experienced of domestic violence in their marriage. This is particularly the case when women seek help from traditionalist clergy or of community members with no knowledge of the process of annulment. Annulment is frequently thought of as a religious not secular form of ‘divorce’ but differs from the latter significantly in that it does not ‘dissolve’ an existing marriage but rather determines that a valid marriage never actually existed due to one of a number of factors enumerated in Canon Law (for example, lack of consent, lack of intent to be faithful or prior valid marriage in existence at the time of the marriage and so on) and which may or may not apply depending on the individual characteristics of the individual case presented to the relevant Ecclesiastical Tribunal. It is not a substitute for secular divorce. Moreover, annulment is not always able to be obtained and while in some cases it may provide a solution to domestic violence by separating the couple, annulment (like divorce) may not entirely end the violence. In some instances separation may serve to escalate the violence, at least temporarily. However, remaining in an abusive relationship is not a healthy choice for many women. Such violent behaviour is not acceptable to the vast

\textsuperscript{121} Ibid.
majority of modern Catholics and is not part of the ideals of the religion whose
scriptures enjoin good treatment of one’s spouse and mutual service and care. The
reality is, however, that these ideals are not always the lived experience of Catholic (just
as is also the case in Islam)

She insisted that her religious principles remain living in her heart, soul, mind
and are her beliefs; therefore, she believes that in spite of the secular divorce she
remains in union with her ex-husband till death does really part them. Hence, she
considers herself bound not to remarry until that time.

In court, the judge had said, “You know what; you divorce is only on a piece of paper
but not religiously.” I am embarrassed if people know the real situation and as Catholics
we never divorce. And my kids also say that papa and mama did not divorce. Otherwise, only death constitutes “divorce”… 122

In addition, she accounted that her strength was supported by her family
background as a prominent family; her family background had been a source of pride
and they were proud of her too and soon helped her to recover.

I was lost in the positioning of everything. I did not have any brothers, but don’t
misunderstand, materially I am rich. Because I grew up in a family with a different
caste; I am from Batak, apparently with a background like that, you should not be far
different. My family is quite prominent: …blue blood [with] …good manners, while my
husband is of ordinary people. 123

Although she felt disappointed with the court’s decision, she had tried to get the
living right as a widow from her husband’s institution; 124 however, she encountered
another disappointing response from her husband’s institution which, according to her,
had shown adherence to patriarchal values and devalued women’s gender role.

What I wanted was justice where women’s rights were granted and there were warnings
so he would not do [violence] anymore. Because in practice I [am] supposed to get a
third of his salary, then after going to the finance department in his office [this] was not
given because the officers are his friends and the reason was that my husband was the

122 Ibid.
123 Ibid.
one who was working. Again the patriarchal culture; the energy and time taken by women as housewives were never considered. My husband was superior and women inferior.\textsuperscript{125}

Her identity as an abused woman, who did not obtain justice, neither during the marriage relationship nor even during the divorce procedure, after the end of marriage had encouraged her to establish a paralegal service to help other women who have experienced domestic violence and are seek legal aid.

The government just issued Acts but [these are] in fact not effective, [which is] why I created Saraswati [her paralegal centre of services for women]… …victims of domestic violence who experience accumulated violence did not get justice, because justice is for those who possess money. That’s what happened. Fortunately, here there are institutions like LRC KJHAM. But even so, they only helped in [terms of] legal assistance; while for other things [these] must be borne by themselves. The victims bear [much] themselves…\textsuperscript{126}

She is committed to this service since she found it difficult to obtain her rights an abused woman; and she considered that state intervention in providing support and services was less than satisfactory in coping with the violence, so she also refers women to other non-government organisations such as KJHAM which has made extraordinary efforts in providing support and services to the victims of domestic violence.

The descriptions above have shown that identities belonging to ID as a mother, a wife, a Catholic and an abused woman had made her stay in the abusive marriage relations until she was divorced by her husband. By using her identities, she had tried to obtain her rights for the living either from the court or her husband’s institution, but her struggled failed. Nevertheless, her identities as the only daughter who came from a prominent family has given her benefits because after being divorced by her husband she does not find any difficulty in financial issues as her father has given his property business to her to manage; and, to date she has managed it well. She emphasised that

\textsuperscript{125} Ibid.
\textsuperscript{126} Ibid.
she enjoys with her role as a single parent and has decided not to remarry, a position in accordance with her traditional Catholic religious faith which rejects remarriage of a divorcee.

5.2.2.1.9. The case of EL

5.2.2.1.9.1. Access to resources: When violence viewed as a test from God

EL had experienced domestic violence since the beginning of her marriage. As a Catholic woman who married to her husband in an Islamic way, she still held the Catholic religious principle of marriage, until she, at last, decided to file for divorce to save the life of her children who had almost been killed by her husband.

It was the first time, I had a first child. In 1985 I was married then had a child, the first child experienced domestic violence, battering…. I am a Catholic if we are united [by] God [in marriage] [we] are not going to be divorced by humans. Indeed, I hold this [belief] but I was married in Islam. In my family all Catholics are instructed [that], when we are united we cannot be divorced. It continued until the birth of second child. The child [as he grew] wanted to kill his father; the second child was also struck on the head…

Since she had recognised her husband’s family background which involved a polygamous marriage and his character was very violent, she had prepared herself to be an independent woman by working and doing everything without any help from her husband.

From the beginning I had never relied on my husband, I worked because I became aware of the character of my husband after marriage. He is the child of the fourth wife [of his father]; I was ready because I knew the family background after marriage. Moreover, he always said, “Divorce, if had to be done, it had to be Islamic but he…continued. I feed my own children, whatever was by my own…

Her identity as a Catholic had forced her to stay in the abusive marriage. Although she had even gone home seek help from her father, her father suggested she

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128 Ibid.
129 Interview with EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012)
130 Ibid.
return and reminded her that the violence might be a trial from God, instead. Considering her father’s advice and trying to be a good daughter, wife and mother, she then returned to her marital home. She had also asked advice from a priest who had given her similar advice to that of her father.

I used to have Romo/priest, … [he] just advised patience: “This is a test from God. Mother had been married by God.” So, in my religion we cannot divorce. Two times I went to the priest; [I received] the same advice. Most married in the church [and] there is no divorce...  

Moreover, her decision to stay was caused by her expectation that her husband would change.

I did not think it was time to divorce my husband because [I had] hoped he would change. I returned to my father to teach him a lesson. My father also feared that his children would have nothing, so he keeps giving the direction [for me] to patient. In my opinion, such advice is useless, but if you can change it will be very useful. But yes because there are children, so a wife must survive. Now I do not agree that the wife should be told to be patient and hold on. [If] the wife did not get her rights, then the wife would be destroyed. Yes indeed all households do not like this, but most experience this.  

However, after twenty years of marriage her husband never changed his behaviour. Due to her prolonged experience, she insisted that as a woman, a wife, a mother and an abused woman, she did not agree with advice which is usually given by parents or priests to be patient in confronting domestic violence.

EL noted that the responses from her family or her husband’s family to any appeal for assistance or support were negative. Her father just kept asking her to be patient and her mother-in-law had no power to control her son’s behaviour. She discovered the reality that her family and her husband’s family could not help her with her problem, so she struggled for herself and the children and stood unaided upon her own feet in much of her action. She, finally, petitioned her husband for divorce, though

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131 Ibid.
132 Ibid.
in accordance with her religion it is not allowed, but she did it in order to rescue her children from her husband who had tried to kill to them. She had also sought help to the neighbourhood administrator; the administrator always issued a directive to her husband not to be violent again, but he had no other action at his disposal to prevent the violence being repeated. The neighbourhood administrator finally had advised EL to leave the marital home after severe physical violence occurred in 2010; this violence led her to file for divorce after her thirty-one years of marriage. Such initially mild responses and then the much delayed advice to leave from the neighbourhood administrator may also reflect their underestimation of the severity of the problem and overall ignorance about the issue of domestic violence. They might also be ignorant of the presence of the Domestic Violence Act (which was issued by government in 2004) and of their responsibilities under it. If they are aware of the Act, they should know that not only can they report the violence based on the article 15, but they have the responsibility to do so.

5.2.2.1.9.2. Access to the Justice System

5.2.2.1.9.2.1. The Police: Feeling sorry for the children

EL had experienced physical and nonphysical violence throughout her marriage. She reported the physical violence to police, and the response of police was positive because they would arrest her husband immediately; however, when the police saw her little children they suggested that EL think again before deciding whether her husband would be taken by police or not (although the police still insisted that they were ready to take and arrest her husband at the time). The police suggested she might consider the children’s future if the father was taken and arrested by police. They played upon her role as a mother in order for her not to have her husband arrested.

I reported to the police, the police [came] here three [of them]; at the time, the kids were
little. The Police said, “Did you not feel sorry mom? Kids are little; If you wanted [him] to be taken he could be taken tonight. If you told us to take [him], we would take him now, but think first mum. I also thought and thought.133

EL, at last, did not ask the police to take her husband away, even though the violence was recurrent. Reasons were that not only she did not want to bother her neighbour but also she expected that her husband would change. However, her expectation for change was never met. At last, considering her children’s safety (due her belief that her husband and sons would kill to each other), she, decided to sue her husband for divorce.

5.2.2.1.9.2. The Lawyer: Lack of integrity

To file for divorce in the religious court she hired a lawyer. EL is a Catholic, but she married to her husband in the Islamic manner as he is a Moslem and so a divorce would have to be sought in the Religious Court. She had asked the lawyer to sue for the living cost for the children. EL hired a lawyer from her own finances to go to court to undertake the court processes. She argued that she was not satisfied with the work of the lawyer because the lawyer came late to the court hearing and the decision had been determined without the representation of the lawyer. She was very angry with the lawyer but she could nothing; she did not want to sue the lawyer for her unprofessional conduct because it would take her time and money. She felt that her lawyer at a certain level did not really fight for her demands.

I submitted [for] divorce in 2003 by hiring a lawyer, at that time I paid 2 million rupiah. The decision was issued in 2004. I submitted also that there was domestic violence, but the [consideration of] the existence of Domestic Violence Act did not appear in the judge’s decision. I asked my lawyer to process the living allowance for my children; unfortunately, the lawyer came late in the court hearing. By coming late she cannot defend to my rights, absolutely. I was actually angry. She was really not professional I wanted to sue her but it was costly…134

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133 Ibid.
5.2.2.1.9.3. Consequences: Willingness to approach employer and the second wife

A result, the Water Corporation (Perusahaan Air Minum/PAM) did not want to allocate part of her husband’s salary for the children because it had not yet been decided with whom the children lived; the employing institution gave the decision to her husband (as the salary recipient) as to whether he would contribute it or not. The Water Corporation could not cut his salary because it is up to employees.

I asked for …[an allocation for] his son; [but], it’s up to employees. Because there has been no decision about a child [that is, in regard to who] cares [for him]…whereas [indeed] the children [were] in my hands. Because [it had] not [been] specified in the hands of anyone PAM rejected [my claim]…

After her husband passed away in 2007, she had visited her husband’s office to process her children allowance because she still had a small child. However, there she again confronted obstacles which derived not only from the institution itself but also her husband’s second wife who had tried to gain access to all her husband’s superannuation. Based on the legislation PP10/83, EL remains entitled to the living (for the children’s interests) from her husband even though she sued her husband for divorce (unless the divorce was due to her fault as outlined in the Act or if she remarried). Therefore, she continues to struggle to obtain her rights by asking for legal aid from KJHAM for this case.

I asked for help KJHAM for my new case; before, I contacted Seruni because I am a member of Seruni. However, the cost was so high; Then, I went to KJHAM asking for legal aid to target his retirement funds so that 40 per cent would be set apart for the children.

The descriptions above have shown that to access to justice a victim must access many resources in one space to another (public, both civil and religious, and in the ‘world of work’) which are supervised by different laws. Financial independence has

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135 Interview with EL, a retired pharmacist (Semenang, Indonesia, 3 January 2012)
136 Ibid.
also influenced this victim’s decision to leave her husband immediately when she felt that the unhappy circumstances in her marriage relations could not be justified again, particularly when considering the safety of her children. She herself financed the action, hiring a lawyer when processing the divorce in the religious court; however, the performance of the lawyer dissatisfied her and it affected the decision on child support. As a consequence, she lost the right over her husband’s salary, and she must struggle again to obtain the support payment for her youngest child. However, the presence of her husband’s second wife whose ambition it was be the recipient of all her husband’s superannuation also formed an obstacle. Nevertheless, she did not give up. By hiring KJHAM as her lawyer she continued an action to process the matter on behalf of her youngest child. Her struggle to obtain maintenance for the child has shown that the Marriage Act 1974 and the implementing regulation (PP 10/1981) which is deployed as the law in regard to the Water Corporation’s dealing with its employee’s marriage obligations has been ignored, but it was not the mistake of the administrative staff as the decision was made on the basis of a religious court decision on child maintenance. Furthermore, exercising her power by using the service of KJHAM, she then had to confront another woman and sue to ensure her rights. It is suggested that seizure of power occurred not only between a woman and a man but also between a woman and a woman.

5.2.2.1.9.4. A question of emphasis: Identity as mother and cultural/religious identity or woman as a victim of abuse and the principle of the best interest of the child

As a Catholic woman who married to her husband in an Islamic way, EL still
held the Catholic religious principle in marriage, until she, at last, decided to file for divorce to save the life of her children who had almost been killed by her husband. As an educated woman, she had recognised her husband’s family background of a polygamous marriage and his violent character. He always said: ‘divorce’; therefore, she had prepared herself to be an independent woman by working and doing everything without any help from her husband.

Her identity as a Catholic had influenced her to keep in the abusive marriage. Although she had even gone home seek help from her father, her father suggested she return and reminded her that the violence might be a trial from God, instead. Considering her father’s advice and trying to be a good daughter, wife and mother, she then returned to her marital home. She had also asked advice from a priest who had given her similar advice to that of her father.

She reported the physical violence to police, and the response of police was positive; however, when the police saw her little children they suggested that EL think again before deciding whether her husband would be taken away by police. It seems that her identity as a mother and wife became the main consideration of the police in not taking action against her husband, but the police had neglected her identity as a physical abused woman.

EL, at last, decided to file for divorce. Although she held on tightly to her religious principle, she could not continue to tolerate her husband’s behaviour, as he even wanted to kill their children. It was triggered by her children’s complaints about her husband’s behaviour as one who had always abused her. The children and the father then fought each other, and they had almost killed each other. Thus, EL had to neglect her marriage principle and place greater emphasis on the safety of her children.

140 Ibid.
Therefore, divorce is the last resort for her; although her religion is Catholic and does not allow her to divorce, it is the route she finally takes. Meanwhile, her husband who is a confessed Muslim often said the words for divorce but never processed the divorce.

She went to a religious court to process the divorce and she hired a lawyer to manage it because she was busy employed in public hospital as a pharmacist. However, the performance of the lawyer was disappointing because the lawyer did not struggle for her right to some support or alimony. Because there is no decision on the right to economic support, she found it difficult to arrange for the living to be deducted from her husband’s earning and transferred to her. She went to her husband’s institution many times in order to obtain her rights as a wife and mother of her children. However, it seems likely that her husband’s workplace does not support her effort. Moreover, the presence of her husband’s second wife has made her effort to get her living allowance more difficult because the second wife is eager to obtain her husband’s earnings and superannuation (after his death). Having difficulties in obtaining her rights from her husband’s employing institution, EL then asked for legal aid from KJHAM.

The experiences of EL have shown that her identities as a Catholic, a mother, and a wife had determined that she remain in the abusive marriage for many years. However, as violence against her children escalated and they too become involved in fights with her husband, she adopted a new course of action where she no longer prioritised her religious principle as her prime consideration and thus remain the marriage. On the contrary, she abandoned that religious principle in favour of prioritising the best interest of her children, and filed for divorce. Therefore, her identities as a mother became a dominant factor in her decision to file for divorce. In addition, her identity as an employed person and independent financially had also encouraged her to make such decision.
5.2.2.1.10. The case of V

5.2.2.1.10.1. Access to resources: Impact of being the one who experiences the violence

V insisted that she had recognised her husband’s abusive behaviour as early as when they were dating; however, she continued with relationship and contracted marriage because she loved him. Although her husband did not perpetrate physical violence, his verbal abuse remained extremely hurtful. Because of feelings of shame, she did not speak about the violence to everyone. Though she never disclosed the violence to them, some of her family members had already known of her husband’s behaviour; yet the only person who gave advice to her husband was her husband’s grandmother. The grandmother knew about the grandson’s behaviour from the time when V was thrown while she had been in dating her husband-to-be; however, the advice did not have any significant effect on his behaviour.

His grandmother also often advised him, he was close to his grandmother when his mother died. He had been often advised “Do not be like that.” But if he was angry [it was if] he was…getting possessed by devils; if he drove he liked racing seemed [as if] to hit [something]. He had ever shown his attitude in front of my uncle without being shy...\(^\text{141}\).

The personal history of her husband being a witness to violence when he was child has affected his behaviour to V, not only when they were dating but also after they married. Although she had already known about her husband’s behaviour, she decided to continue her relationship with him because of her love for him and a (perhaps misplaced) expectation that he would change his behaviour. Though feeling irritated at first and upset so much that she would cry, she acknowledged that she had adjusted over time and become immune to the verbal abuse.

Given that her husband was her own choice of marriage partner; she felt

\(^{141}\) Interview with V, a food entrepreneur (Semarang, Indonesia, 12 January 2012).
ashamed to disclose the violence to her parents. She had tried to keep the marriage in harmony; however, as her husband’s behaviour became cruel and she felt that it was more like torture and affected her mental health and her daughter’s behaviour as well, she then decided to file for divorce.

I never told my parents, because it’s also my own choice [of husband], so I was afraid if my parents will also think low of me. Finally, because he became very cruel did a lot of torturing I became rebellious because I could not stand [it any longer]. So I proposed a divorce. Actually, my parents also disagreed with my proposal for a divorce. I just went forward. He also did not give us a living, too rude behaviour; I think I could find the money myself. Why should I have such a husband, actually it seemed burdensome?¹⁴²

She also argued as a woman able to find her own earnings because she is an educated woman and she also knew how to run a business. Moreover, during the marriage the couple had run a food business together, but because of her husband’s debt their business had collapsed. She had tried to keep the marriage in harmony by giving her husband an opportunity to change; however, her husband did not change his behaviour after a year.

Her parents basically objected to her decision to file for divorce because of the shame this entailed and out of concern for her future life, but she convinced them that she can survive.

My family objected to me getting divorced because of embarrassment. What parents would want their child to divorce, especially because my child was still very young, [they were concerned] whether it is possible for her to be maintained? I was also difficult at that time, I challenged all of my family and none of them supported me…¹⁴³

She insisted that deciding to divorce was a difficult decision because she thought about her parent’s reputation and her child’s life as well as of herself. She had asking for advice from friends. Their advice, in turn, was unsatisfactory her because she realised that she was the person who had to live with her abusive husband not someone else, and only she knew how much suffered from the relationship with her husband.

¹⁴² Ibid.
¹⁴³ Ibid.
At that time I only thought about parents, then the child as well. I even asked others how, but [the life] I live myself [I] found it is not nice. Others suggested that carry on. At that time I tried for one year, all right for one year, but still not nice. As to the others who would like to say selfish or anything, I am the one who experience it not you, so there was conflict with many people. “I live with it not you.” Sometimes I myself cried, nobody knows. I am the kind of person who if I have problems, I keep them to myself. I thought I will be stressed myself. That’s it.144

Seven-year marriage, I still survived, still lose, but in the end I cannot stand it no longer, I can’t. When I used to love [him], all he did to me was fine; I was just able to cry. I never told anyone because I thought if it is a family matter. I will be shy to let someone else know; I kept it inside because I was shy. I was married in the Catholic manner because his father is Catholic. When I wanted to divorce, [my husband] even told me that Catholics are not allowed to divorce, [the marriage ends when] one of them died. I said, “This is a law state not a religious state.” Well, I felt relief when the divorce process was over. I have a good life. …at that time I promised my parents [that I would] not make troubles. …I also tried to find my own living because they thought if I divorce it will only add more burdens.145

She, at last, asked for legal aid from KJHAM to assist her during a divorce court hearing in Pengadilan Negeri/State Court. She had to go to the district court because of her marriage had been conducted in Catholic way though her religion is Buddhism.

5.2.2.10.2. Access to the Justice System

5.2.2.10.2.1. The State Court: The mediator forces her to reconcile

V had experience of accessing the state court to arrange the divorce. V is a Buddhist and married her husband in a Catholic ceremony. Though her husband did not want to be divorced due to the religious tenet of no divorce permissible, she insisted on filing for divorce because she could not stand to live any longer in an abusive marriage. She obtained the information about KJHAM from her parents who facilitated her sister filing for divorce years before. She emphasised that the assistance of a lawyer from KJHAM was helpful because the organisation had not only helped her to confront her husband (who always present at the hearing), but also had provided assistance at an affordable cost to her by paying IDR 6 million; she compared this with her friend who

144 Ibid.
145 Ibid.
had paid a lawyer for IDR 20 million to arrange a divorce. KJHAM also warned her not to give any money to those of the court apparatus.

At that time the court had asked for money, but Mr E said that we are from KJHAM [and it] will not spend any money on them. When it was through a lawyer of law firm it might be different. My friend spent quite a lot about 20 millions. I paid myself with the lawyer from KJHAM. My sister also used KJHAM to divorce and my parents asked for help there, so I also asked for help there. At that time I went there, the lawyer in KJHAM said, “...the wealthy subsidise the poor.” I spent about 5 to 6 millions. It’s also hard for me because he was always present, he did not want to divorce, If I didn’t use a lawyer the story will be long.146

Before the court hearing, there was a mediation process held by a judge as mediator. V acknowledged that the mediation was left her unsatisfied her because of the judge’s performance as a mediator. She felt that the judges tended to impose their will, and in her case this meant an effort to convince her to reconcile with her husband.

In mediation, I came because I was ordered to come by Mr E (lawyer from KJHAM). The Judge tried to reconcile [us], “How about he be given another chance?” I gave the reason but the judge instead said, “Do you have any one else ... why don’t you want to?” Wow, what a lousy judge. I just said, “I just can’t stand [it], sir”. The judge replied, “Why don’t you want to? He wants to change.” In my heart I just said, “You do not know his nature ...”. I still said, “No’ is ‘no’.”147

She insisted that during mediation and the court hearing her husband had still tried to force her to withdraw the lawsuit; and his wishes to maintain the unity of family were always stated before the court. In her lawsuit, she requested living costs for her daughter and an increase child maintenance of 10% per year (to cover cost of living increases over time); however, the latter was not granted by the judge on the basis that she had failed to supply a reason for such an increase. In addition, she did not ask for gono-gini (property settlement) because her husband had nothing, because their food-court business had collapsed and she had asked only for living costs of IDR 1 million per month. For a few months after the court’s decision, her husband was still sending

146 Ibid.
147 Ibid.
the money; however, after that he had never sent it again.

V’s experience has shown that the presence of KJHAM as her legal aid was very helpful in confronting the power of her husband and the court. Accessing the state court to deal with a family case, however, did not mean that she obtained justice easily. This circumstance supported the feminist account that the family law court does not guarantee that women will be protected though the system but has given more opportunity to women to make a choice of accessing the Family Court rather than the criminal justice system. The reality is that women must struggle to access justice through the state court not only in terms of finance in terms of meeting lawyer’s fee and court processing fees, but also in terms of providing witnesses and documents which sometimes are difficult to present due to people’s reluctance to be involved in family matters and in court processes.

5.2.2.10.3. The identity of a caring mother: How is thinking of the child’s future to be manifested

She argued that as a woman able to find her own earnings because she is an educated woman and she also knew how to run a business. Moreover, during the marriage the couple had run a food business together, but because of her husband’s debt their business had collapsed. She had tried to keep the marriage in harmony by giving her husband an opportunity to change; however, her husband did not change his behaviour after a year.

She insisted that deciding to divorce was a difficult decision because she thought about her parent’s reputation and her child’s life as well as of herself. She had asking for advice from friends. Their advice, in turn, was unsatisfactory her because she realised that she and not anyone else was the person who had to live with her abusive husband, and only she knew how much she suffered in that the relationship.
Although she did not want to expose her marriage matter to other people because of her opinion that it was a family problem, she had discussed it with a Buddhist friend who advised her to think about her daughter future’s rather than herself if she remained staying in the abusive marriage. V also insisted that her religious background (Catholic and Buddhist) had no influence on her decision of whether to divorce.

In Buddhism there is a saying, “Why live with one whom we don’t like because it will only give more suffering?” But the saying is not to suggest divorce but rather questions why people should torture ourselves by being in a violent relationship when a primary tenet of Buddhism is non-violence.

I even discussed [the matter] with my Buddhist friend, but she is not bante (a Buddhist leader), [however] he knew the character of my [now] former husband. He said “If you can’t stand it, then you are suffering, especially you want to raise your child. Later you will be stressed; if you are angry and stressed [have] pity on your child.”

This way is freer and a nice way to live. Problems of finance still can be handled and not added to by more problems.

I do not know the marriage concept in Buddhism. I don’t use the background of Buddhism in the decision for a divorce. I was married at the request of his father in Catholic marriage ceremony in the civil registration office... I’m still Buddhist but never go to the monastery, [rather] regular prayers at home.148

Further, she did not demand that the property be shared because she knew her husband had nothing. She insisted that she had no made many demands because she has confidence in her ability to fulfil her needs.

When proposing a divorce, I asked for a living of one million rupiahs. … At that time he worked, so he gave it; after that he stopped working, [then] he worked in Medan so it was almost six months he did not give. Now he works again, but I don’t know whether he will give it or not. I don’t also demand him to give it or not, it’s up to him. I don’t want to be bothered by arranging for many things, as long as I can satisfy myself, and as long as you don’t demand anything. No gono-gini because nothing was demanded from

148 Ibid.
him. He has nothing. Our joint business had been closed…

The descriptions above have shown that V’s identities as a mother, wife, and an abused woman have led her to make a decision in the best of interest of her daughter and herself by leaving the abusive marriage relations and taking the initiative in filing for divorce. Her other identity as a food entrepreneur supported her decision as it convinced her that she can support herself in regard to financial issues. Meanwhile, her religious background had no significant influence on her decision.

5.2.2.2. The experience of Indonesian women in Australia leaving abusive marital relationships

Table 5.3. The Respondents (in Australia) Leaving Abusive Marital Relationships’ Access to Resources and the Justice System

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Access to Resources and the Response</th>
<th>Access to the Justice System and the Response</th>
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<tbody>
<tr>
<td>ML</td>
<td>1. Parents: support her psychologically; 2. Brother: supports her when she moves out; 3. Centrelink (information about legal assistance, and other agencies); 4. Priests: the advice given by the third priest had given her strength to file for divorce.</td>
<td>1. Police: the police responded well and issued ADVO to her husband; 2. The Family Court: judges has made a parental sharing of care arrangement</td>
</tr>
<tr>
<td>L</td>
<td>1. Her husband’s friend to discuss her settlement; 2. Mediator to discuss the parental sharing of care arrangement.</td>
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</tr>
<tr>
<td>SR</td>
<td>1. Her father and brother: looking after her children during working in Australia, and when she filed for divorce 2. Her friend who advised her to file for divorce</td>
<td>1. The State Court (in Indonesia): judges approved her divorce lawsuit.</td>
</tr>
<tr>
<td>PH</td>
<td>1. A friend who helped her to move out; 2. A Priest who advised her to not feeling continually guilty; 3. Health services; 4. Marriage Registry Office.</td>
<td>1. The Family Court: judges approved her husband divorce lawsuit.</td>
</tr>
</tbody>
</table>

Source: Interviews with respondents between in July 2011 and January 2012

Indonesian women victims of domestic violence who live in Australia had access to various resources in the justice system depending on their needs and interests.

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149 Ibid.
If women felt that the violence was not severe, they may have approached fewer agencies and services than those who experienced severe violence. The response of such agencies might also be greater and more immediate where severe violence was present due to prioritisation of available resources.

5.2.2.1. The case of ML

5.2.2.1.1. Access to resources: Convinced by a priest’s advice

ML, an Australian citizenship holder is an Indonesian woman who has been living in Australia for more than ten years. Her originally place of origin was West Java, Indonesia. She married to an Indonesian man in Australia, and has a daughter from that marriage. She experienced psychological and physical violence which were caused by the attitude of her husband who believed in rigidly defined gender roles and a patriarchal parental system. The violence affected her emotionally and physically. The physical violence came not only from him but could also be self-inflicted.

ML recalled that her identities as a worker and student might have caused her husband’s jealousy. These identities forced her to spend much time in the public space rather than at home. Further, as the breadwinner ML had also held the money; therefore, her husband really did not have financial power and control of ML. She worked hard as it was her responsibility to feed her family due to her husband did not yet having a job. However, the response of her husband was different to what she had expected. Her husband controlled her through psychological and physical abuse.

She survived seven years of marriage because she had expected her husband to change. However, she finally could not stand it since she felt that she had sacrificed much but her husband had not made any change. After she was out of this situation she realised that her husband was not likely to change.

After accessing many resources through her inner circle (such as her parents and
her brother) and outer circle (such as friends, priest) in order to obtain resolution dealing with her case through her inner circle (such as her parents and her brother) and outer circle (such as friends, priest), she finally made the decision to file for divorce.

ML had found a priest who advised her to leave the abusive marriage out of consideration for her safety; moreover, she realised that by staying in such relationship there was no life for her and her daughter in the future. The advice from this priest with whom she shared her story had strengthened her plan to leave her husband and to file for divorce; she also obtained information from this priest about Centrelink (a federal government agency), where she could get information about various agencies and services dealing with domestic violence, such as police, lawyers, Centrelink and the Family Court.

5.2.2.1.2. Access to the Justice System

5.2.2.1.2.1. The Police: Everything was under the police arrangement

ML contacted police when she was beaten by her husband. She acknowledged the positive response from the police.

Everything was under the police arrangement, from the statements, evidence. I thought at that time he was stressed, then I returned home. During the walk he just grumbled and did not dare do anything. AVO (apprehended domestic violence order) I was told [by the police] this way, for example, if I am at work he is not allowed to come to my workplace, then he should not bother me, if I want to go to my friend’s place or my mom, it’s up to me[as] he cannot ban [such contact]. I and he remained in one home. If he violated AVO, I would call the police and he would go to prison. For a year he still grumbled but not curses. Well after that, he also joined the anger management course.150

After the AVO finished, her husband’s verbally abusive behaviour reappeared although he by then had a job. He even had stalked ML during her work time.

The AVO was done in one year, he began [to be] angry again. He got a job, each time he came home from work he was always angry. Even at work he always called me, he could call me a dozen times, if not answered he was angry. I didn’t know how to deal

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150 Interview with ML, a student (Sydney, NSW, Australia, 5 October 2011).
with him, I was always wrong...\textsuperscript{151}

She did not report her husband stalking her husband to the police. Her consideration was to avoid her husband retaliation. Given that she could not stand anymore with her husband’s psychologically abusive behaviour, she decided to file for divorce.

The experience of ML has shown that police can have a positive response to women victims of domestic violence. The police as public servants had done their duty in helping women victims of domestic violence in regard to the collection of evidence and in relation to seeking the issuing of an AVO. They are empowered to act under legislation, such as the \textit{Crimes (Personal and Domestic Violence) Act 2007} (NSW) and the \textit{Law Enforcement (Power and Responsibilities) Act 2002} (NSW). Under the \textit{Crimes (Domestic and Personal Violence) Act 2007} (NSW), victims will be protected by an Apprehended Violence Order if their alleged perpetrator is charged with certain serious personal violence offences. Criminal prosecution arises if the defendant then infringes the protection order. Breaching of such order can incur a maximum penalty of imprisonment for 2 years or 50 penalty units or both. Based on the \textit{Law Enforcement (Power and Responsibilities) Act 2002} (NSW), if the police officers suspect or have reasonable grounds to suspect that a person has committed an offence, they have the power to arrest the person who is suspected of the offence of breaching the AVO without having first to obtain a warrant.

\textbf{5.2.2.1.2.2. Centrelink: The supporting agency}

She brought her situation to Centrelink which gave her information about agencies and services that could help her deal with domestic violence. These included access to a lawyer and the Child Support Agency.

\textsuperscript{151} Ibid.
I brought this issue to Centrelink. Through this [agency] the problem was so easy as they connected me with institutions related to my problem. Each institution has cooperation with other institutions, for example there is a relationship between victim services with the Centrelink, legal aids. But that depends on the case as the case may be different from one another. Like me, I just went to the Family Court to determine my child custody. Luckily I did not have collective property. To determine the custody of the child it took me 1.5 years through hearing 1.2 and the final. If I have a property it can take longer. 152

When she was no longer working because she had delivered a baby, she filed for divorce against her husband. Given that she did not have any earnings; she then, went to Centrelink asking for legal aid.

I got the lawyer from Centrelink. They gave me a list of lawyers and then I contacted some of them and finally got one. When I did not work I reported to Centrelink to get legal aid. The requirements to get legal aid are single mom, have kids and not working. The lawyer services for legal aid remained the same because they are paid by the government. By chance, the lawyer I got from legal aid was the lawyer who handled me. He still worked well although I did not pay. Even I got the good barrister so that my husband lies were revealed… 153

She insisted that the existence of Centrelink was very helpful to her as a victim of domestic violence, because it is not only gave her the information that she needed but also provided real assistance in the implementation of a solution. For example, Centrelink helps low income families by supplying a payment to help with the living costs and for raising children on the basis of an assessment of the income received by that family. Legal aid helps with specified relevant legal matters and court proceedings and can also help with the legal costs for low income earner based on the assessment.

5.2.2.1.2.3. The Lawyer: Professional lawyer

ML insisted that court processing for child custody had cost her time and money (when she was working). She had to hire a lawyer because her husband had done so. Moreover, she was afraid if she did not hire a lawyer, she could be defeated by her husband and loose custody of her daughter. She recalled that when she was earning

152 Ibid.
153 Ibid.
money, she herself paid the fee of the lawyer, and she spent almost of her earnings just for hiring a lawyer.

To pay a lawyer was $400/hour. I spent $10,000 to pay lawyers. At the final hearing the cost for the barrister was $8000 per day. The $10,000 for consulting, paper preparation, in the courts it was just ½ hour. So I worked out the money to pay lawyers, annoying. He always said to his lawyer [that] I did not pay attention to the child, so I also have to spend much money. If I did not use lawyer I would lose because his lawyer was smarter.154

She acknowledged the burden during court processing was to pay the lawyer due to the high cost; however, she did not want to lose her rights because her husband had also hired lawyer. She got the lawyer via Centrelink. They gave her a list of lawyers and then she contacted some of them and finally got one. When she did not work she reported to Centrelink to get legal aid (the terms for getting legal aid - are being single mom, have children and not working). The lawyer’s services for legal aid remained the same because they are paid by the government.

By chance, the lawyer I got from legal aid was the lawyer who handled me. He still worked well although I did not pay [He is paid by the State]. I even got a good barrister so that my husband lies were revealed.155

This amount she paid when she was working. When she was no longer working she obtained legal aid through contacting (in the first instance) Centrelink. She insisted that she was satisfied with the performance of the lawyer whether the lawyer was paid or not (that is, was paid by the government).

5.2.2.1.2.4. The Family Court: The problem of equal ‘share care’ parenting

ML also went to the Family Court of Australia (FCA) to obtain more information about court proceedings, costs, documents and forms and other relevant information about divorce, child custody and care arrangements, and a property

154 Ibid.
155 Ibid.
settlement.

I prefer the court to [a] mediator because the court was more assertive, the judge who decided [the case]. Whereas if you used a mediator, the mediator was only silent, we both had to talk: I was lazy by the way again. After determining child custody and [the amount for] child support every month I just filed for divorce. So divorce is only legal formality. I didn’t ask my spouse [to provide spousal] maintenance because he would think I hope from him, just [maintenance] for my kid. 156

Her decision to choose the Family Court to solve her problem in regard to the abusive marriage relations was prompted by her belief that a judge in the Family Court would help her as the victim of domestic violence; moreover, the judge would take into account the violence within her marriage in making decisions based on the ground of the ‘best interest of the child’. Nevertheless, she insisted that she was not fully satisfied with the court decision, particularly with shared parenting arrangement where the judge tended to impose on her an obligation to give her husband greater access to their child.

I cannot say that I fully satisfied with how the court ruled out the decision for my child. For some [points], I agreed with what the court has decided, but also I disappointed for the law that allowed my daughter to have access to her father who [had] been involved in violence. Somehow, they forced me to give more access to the father rather than to reduce the time spent [with him]. 157

The decision was made based on the Family Law Act of 1975 and its amendments which assume that father and mother must have the same opportunity to look after the child (unless there are circumstances that make such an arrangement not in the best interest of the child). Then, she criticised the law.

The current law states that the father has the right to have the 50/50 access to the children. This kind of arrangement doesn’t always [work] out as different family has different case and background to separation. It might work for this family but it might not suitable for another family. But the legal representatives and the Court always tried to make the arrangement to 50/50 between the parents as they considered as fairness. But how about the safety concern of the children who has been exposed to the abuse and violence? And how the victim (in most [cases] mothers) of the abuse and violence has to live their life? The reason that they separated is because of the abuse and violence. The victims live in fear enough and now because the law and court ruled out

156 Ibid.
157 Ibid.
the fairness, they pushed the victims to give their children to see the abuser even more rather than concern about their safety and wellbeing. The law should be able to protect the community, family and the victims.\textsuperscript{158}

This matter has been criticised by feminists in Australia who believe that such a policy will disadvantage women victims of domestic violence. The making of an order for equal shared parental responsibility triggers an obligation on courts to consider making orders for the child to spend equal, or substantial and significant time with each parent (section 65DAA). Moreover, The Australian Institute of Families Studies’ (AIFS) Evaluation of the 2006 family reforms (‘the Evaluation’) showed widespread misconceptions about the changes introduced ‘50/50’ in regard to a presumption – of ‘50/50’ share of care; and noted that both parents and some system professionals believed that this to established ‘an entitlement’ to equal time for each parent. The concept of the ‘friendly parent provision’ – that is section 60CC(3)(c) which requires ‘willingness’ to facilitate and encourage, a close and continuing relationship between the child and the other parent’ as a relevant consideration for the court – has emerged as a problem for women because it has the potential to disadvantage women seeking to limit access where a father is abusive.

It should be acknowledged that while there is the presumption of equal shared parental responsibility with parents to consult on long term issues dealing with the child or children, in all such arrangements dealing with custody, share care and access, the best interest of the child are to be considered and subject to the provision of section 60CC of the Act. Thus while ‘equal time’ may first be considered where such a shared care arrangement is not practicable, consideration is given to ‘substantial and significant’ time with each parent. With separation being the only basis of dissolution of marriage, consideration of shared parenting may be the first forum where the matter is

\textsuperscript{158} Ibid.
mentioned. In the absence of charges laid by police over incidents within the marriage, some women (though none in this study) even fear that raising the matter of domestic violence may leave them open to accusation of ‘parental alienation syndrome’ and result in even greater access by the violent partner to the child. However, where violence clearly exists, it should be noted, no presumption of shared care is said to exist.

Regardless of her disappointment at the judge’s decision in the Family Court, ML insisted that her case be brought to the Family Court was more comfortable for her rather than pursuing him in the NSW Criminal Court system for the incidents of domestic violence because she did not want her husband to seek revenge on her after being released from prison (an outcome she believed to be highly likely if she pursued legal action in the Criminal Court). She noted that she is feeling better some the three years after divorce.

Her experience in the Family Court also revealed the power struggle between ML and her husband; she felt that to win the case she must hire a lawyer to confront her husband’s power who had also hired a lawyer. She insisted that without hiring a lawyer she would lose her right in regard to custody of her children. She did not want to participate in a mediation process this was a conscious decision and her strategy to avoid her husband’s power to talk or discuss their marriage since she did not want to reconcile again. She preferred to go to the Family Court and submitted her marriage problem to judge in this court that was to determine custody and access arrangements. However, the judge in the Family Court also deployed its power on the part of ML by imposing on her a requirement to share her custody right. ML believes that in determining custody and access, insufficient weight was given to the record of domestic violence within the family. It has shown that law with its power has constructed the attitude of judges to implement the law as a rule book; but they may yet neglect other
facts, such as the violence, despite the legislation saying that it must be considered in regard to the best interests of the child in such matters by underestimating its presence in the relationship and impact on the children. This can (at least in part) be due to a lack of evidence of the violence as the woman has (from fear of retaliation) not reported the violence to police or medical personnel. The nature of the violence in some instances might also have dissuaded a woman from lodging a complaint (for example, economic and psychological rather than physical). Short interviews with children may also be inconclusive as they too may be fearful for their mother (or themselves) or not fully understand due to age (infancy). Nevertheless, the impact of underestimating the violence present can have devastating consequences for some families.

5.2.2.1.3. The Identity: Multiple identities influence her decision making

As previously indicated, ML believed that her identities as a worker and student might have provoked her husband’s jealousy as she had to spend much time in the public rather than domestic space. Her earnings also meant that her husband could not control her financially. Instead, her husband controlled her through psychological and physical abuse. At the time ML herself had never thought that her husband’s jealousy of her was due to her identities as a worker and student. She herself did not mind if her husband stayed at home while waiting to get a job; but she had wished that her husband could do more than the traditional role allocated to males by their gender role when staying at home. However, the longer her husband stayed at home, the worse the circumstances became.

As a mother and wife, she worked hard as her responsibility was to feed her family as her husband was unemployed. She did not expect her husband’s to respond as he did to the situation. Her husband accused her of having an affair because she went home in the morning and, at last, abused her physically. The physical abuse led her to
contact police. After the AVO finished, her husband’s verbally abusive behaviour reappeared although he by then had a job. He even had stalked ML at her workplace.

ML argued that her husband did not respect her roles as a working woman, a student, a wife and a mother. It was clearly that her husband’s mindset remained that both husband and wife must adhere to the traditional gender roles; therefore, he always complained about his wife’s multiple roles. She recalled that after she delivered the baby, her husband never helped her to take care of the baby. She recounted that her identity as a wife who has already delivered a baby was not respected by her husband.

Finally, she decided to move from her marital home to her parent’s home as her husband’s behaviour had affected her and her daughter’s mental health. Moreover, she, as a mother, considered her daughter’s safety as her husband was also violent towards her in front of their daughter.

Because I could not take it anymore, I finally decided to leave the house. I was assisted by my younger brothers to take my stuff. I took the decision because the advice from the pastor and also consideration for my child’s safety. Because my child often saw her father angry and saw me cry, my child often had nightmares. Once [my husband] took a knife and threatened me, he also prevented me from going out. He locked the door of his house. He was always thinking negatively, like “What should I buy a car; you will break it later,” as well as when he got a knife he said, “Here if you want to kill me.”

She insisted that although a Catholic, she did not really strongly hold the principle of marriage as a union made by God. She acknowledged that before she met the third priest, she had met two priests in the Catholic Church in Australia who had advised her to continue to stay in the marriage despite the violence; and she had tried to implement this advice, but she considered her daughter’s future life as her daughter had been abused psychologically as well.

She, as an abused woman, argued that she preferred using court processing due to her belief in the performance of judge in comparison with using mediation where she

159 Ibid.
was reluctant to talk to and argue against her husband.

I prefer the court to mediation because the court was more assertive, [it is] the judge who decides. Whereas if you used a mediator, the mediator was only silent, we both had to talk; I was lazy by the way again. After determining child custody and child support every month, I just filed for divorce. So divorce is only legal formality. I didn’t ask my spouse for maintenance for me because he would think I hope from him, just [maintenance] for my kid.\textsuperscript{160}

Though she believes more in the court in deciding her case rather than in mediation, she insisted that on a certain point, in regard to the best interest of child, she was not fully satisfied with the court’s decision. She argued that as a mother and a survivor of domestic violence, the court’s decision to permit contact with her former husband does not consider the safety of the child and woman as the victims of domestic violence, because the court decision tend to implementing the legislation literally rather than considering the desire for justice of the victim of domestic violence and the child (see above).

According to ML, she feels better than before after three years divorce. She did not want to report her husband to the criminal court because she was afraid that he might retaliate. In addition, she also argued that her citizenship as an Australian might have had a significant influence on her case and result in her succeeding in divorcing her husband and gaining custody of their child; while, her husband, an Indonesian man, was only a permanent resident. She feared that to also pursue criminal charges might be counter-productive. Furthermore, she thought that his status made him more vulnerable; so, he may not continue his wrong-doing after the divorce

I did not report to the criminal court because I did not want him to take revenge after he escaped from prison. It is better this way, after three years I feel my life is better. I am the citizen that’s why I won [instead of] him. If he did something wrong, he could be deported.\textsuperscript{161}

\textsuperscript{160} Ibid.
\textsuperscript{161} Ibid.
The descriptions above have shown that identities belonging to ML had been used by her husband as the way to oppress and to control her; fortunately, she can use her identities simultaneously to empower herself. She had confronted her husband’s identities during the court hearing. Her husband as a man, a husband and a permanent residency holder, had the power and money to hire a lawyer and had tried to defeat her. ML did not want to be defeated by her husband and she had struggled to defend her rights by hiring a lawyer as well. She hired a lawyer at her own expense. Then, when she did not work and had no earnings available to hire a lawyer, she contacted Centrelink, an agency provided by Commonwealth Government of Australia, to get information about gaining free legal aid for her case. She finally obtained a lawyer who defended her rights in the Family Court. This has shown that the state has considered the identity of a woman as the victim of domestic violence to be supported in accessing justice, even though the judge’s decision in the Family Court did not satisfy her on a certain level. In addition, her struggle to defend her rights is evidence that her identities can be oppressed by the other parties but the oppression had increased her consciousness of her rights; and this had encouraged her to fight to obtain her rights.

5.2.2.2.2 The Case of L

5.2.2.2.1. Access to resources: Limited access

Another respondent who has been living for years in Australia is L. She married an Australian man, and they have two children. Her relationship with her husband started through internet dating, and then they met and married in Indonesia after the short period of dating. She experienced non-physical violence because her husband did not allow her to study until their children were aged eight years. Moreover, the attitudes and behaviour of her husband was described by L as stubborn and dominating, and his tendency to keep deferring issues rather than dealing with them contributed to their
problems.

L had experienced non-physical violence, including economic and psychological violence. She argued that the violence had not really had a serious impact on her physically or psychologically, therefore she had tried to solve matters amicably with her husband.

He never played the hand (physical violence) because people here [in Australia] already [know] the laws. I was given a living; I only did not dare to ask too often. In addition I was also not allowed to go to school; the reason was [given that this was okay] later after children aged 8 years already. But I think it is okay if after the age of 8 years he [kept] his promise, what if he did not? If he changes his mind again my time is delayed, isn’t it?\textsuperscript{162}

She, then, decided to leave the marital house and rent a unit. Before leaving, her husband had given her AUD 25,000. She actually had asked her husband to divide the shared property, but she emphasised that she had less power to argue with her husband in discussions about this. She even asked her husband’s friend to mediate this matter, but her husband was very tough and wanted to keep the property.

I do not have friends to talk so I think and I decide by my own. Well, I talked to my husband to find the solution. There is also a friend, my husband’s friend, he’s like a mediator but my husband is harder. So I only asked $ 25000. I did not arrange for the problems of children and property before the divorce because I thought the money was enough.\textsuperscript{163}

As a result, due to a mutual decision (reached by the husband and wife together) her husband did not give her a share in property but only allocated her a once only payment of AUD 25,000, and agreement to share parenting of their children. L acknowledged that she had no power to force her husband to give more money because her husband had more power not only in financial matters but also in access to legal resources. Although feeling an injustice had been done to her by her husband’s decision

\textsuperscript{162} Interview with L, a student (Campsie, NSW, Australia, 11 October 2011)  
\textsuperscript{163} Ibid.
to give her less money than might otherwise have been granted her in accordance with
the Family Act 1975 (Cth), she attempted to accept such a decision and thought
positively that she could also find a job to earn a living.

The experience of L has demonstrated that her financial dependence on her
husband had affected the balance of power between them. Her husband had controlled
her not only in financial issues but also in social and psychological matters. Her
husband had taken advantage of her relative powerlessness by manipulating the legal
aspect and forcing her to accept a payment of money where the amount was less than
that which she may have legitimately obtained under the processes related to property
division in divorce (or in regard to ongoing maintenance) under the provisions of the
Family Law Act 1975. It is proven in the case of L that limited access to resources (that
is, limited information and reliance on her husband for ‘legal’ advice) affected the
bargaining power that was needed to exert her rights and gain the best outcome for her
and the children involved.

5.2.2.2.2. Access to the Justice System: Mediation

After living separately in a year, they divorced and the children were placed into
her custody. However, after several months she felt that the lack of a formal share-care
parental agreement had resulted in a number of inconveniences; thus, L and her ex-
husband decided to go to a mediator to determine a shared parenting agreement. This
mediation process was occurring at the time of interview.

We were [took it in] turn for the shared parenting. But he often disturbed my privacy
because, for instance, I was going to the City he called to see the children. I then
thought to make any agreements so it would be mutually beneficial. We then went to the
mediator provided by the government. We did not go to the court or a lawyer because it
is expensive.164

The reason for choosing a mediator rather than a lawyer was simply that mediation was

164 Ibid.
considered to be cheaper rather court processes with representation of both parties by lawyers. She argued that the mediator had given her information about the training and programmes that government provided prior to deciding a shared parental responsibility arrangement. Currently, the mediation process has been running for two months, and has not been completed because they should adjust the time when they could.

5.2.2.3.3. The identity: Being an independent woman

L, an Indonesian woman and holder of Australian permanent residency, met her husband via the internet, and after a brief period of dating they were married in 2006. She recalled that her decision to file for divorce was because her husband did not allow her to study until their children reached eight years of age. She argued that she did not mind waiting until her children were eight years old, but the problem was that she did not trust with her husband’s words because her husband could change his mind by saying other words and making different promises again.

She argued that as a young married woman she did not want to waste her time by staying at home and looking after the children; she wanted to improve herself by having more education and greater skills. She had a different idea from her husband on this matter; this became the trigger of psychological violence. She, then, decided to leave the marital home and rent a unit. Before leaving, her husband had given her AUD 25,000. She actually had asked her husband to divide the shared property, but she emphasised that she had less power to argue with her husband in discussions about it. She even asked her husband’s friend to mediate in this matter, but her husband was very tough and wanted to keep all property.

L is now studying accounting and has a casual job. She argues that she is happy because she can study and work at the same time, and has become more of an independent woman than before. Moreover, she can make friends and go to social or
religious events more frequently than before. The experiences of L have shown that her identities as a mother and housewife had restricted her activities; and, her husband, on the other hand had taken advantage of such circumstances. However, because she wanted to improve herself, she, can achieve her purpose by using her identities which had been oppressed by her husband. Although the divorce settlement was unsatisfactory in her view, she is optimistic that she can fulfil her needs and those of the children because she has job and her study in few next year will be beneficial as it will help her to find a better job with a better salary.

The decision made by L has shown that her identity as a young woman had brought her consciousness of her future. She wanted to have a better life by having advance study and having own earnings rather than staying and looking after the children at home. She insisted that she did not mind her role as a mother and a wife, but she wanted more because she was still young and she did not want to be isolated and with her role limited to that being of a traditional mother and a wife dependent on her husband rather than as an educated woman and working mother.

5.2.2.3. The case of SR

5.2.2.3.1. Access to resources: Approach to relatives

The next respondent is SR. She is an Indonesian woman who lived in Medan city (Sumatra). She had been married to her first husband for ten years, until she decided to flee to Australia because of the treatment by her husband who, according to her, did not appreciate her parents and herself as a wife. Moreover, her husband was deceitful in the financial matters.

SR experienced psychological and economic abuse. The way her husband treated her and also her parents constituted psychological abuse; meanwhile, economic abuse was caused by her husband’s extreme control over the business which SR had
herself pioneered. SR had also insisted that in regard to the ‘world of work’, she had been forced to leave her marital home because her husband treated her unfairly. Both she and her husband ran the grocery store which was held in her parent’s house. However, her husband did not give her an appropriate share of the earnings; her husband had argued that what SR did was a part of a housewife’s duties.

Feeling the injustice of her husband’s treatment was not the only reason for SR leaving; another cause was his disregard for her parents. SR then left the marital home in Indonesia and came to Australia. She obtained the information about Australia from her relatives. After several years working in Australia, she sued her husband for divorce. He failed to adequately recognise her contribution as a working woman in the business.

5.2.2.3.2. Access to the Justice System: Filing for divorce

SR married her husband in Indonesia and had experience of economic and psychological violence. Then, after ten years of marriage, she came to Australia. After collecting sufficient funds, she then sued her husband for divorce; her earnings from working as a cleaner were used to pay for the court processing.

And I cannot immediately be granted a divorce-after all I’ve got two children. In Indonesia you know, if a bachelor graduates works in the office they only get a month salary of two million [rupiah]. How would I raise [the children] especially as a single mother? There is no way anymore, I immediately fled to another country, even though as a dishwasher I was still constantly employed.\(^{165}\)

She argued that by having money and a job in Australia she felt more independent rather than in Indonesia, because her husband in Indonesia always controlled her not only in financial matters but also in psychologically.

I have money and in Indonesia everything can be bought by money. And this is one of the witnesses of my life (pointing to her friend, a woman); she also helped, because there is money in Indonesia we could take care of everything.\(^{166}\)

\(^{165}\) Interview with SR, a student (Sydney, NSW, Australia, 1 November 2011).

\(^{166}\) Ibid.
The money she earned from working in Australia, then, was used to process the divorce in Indonesia. It cost IDR 30 million to process and arrange for a divorce in Indonesia. The costs included the cost of accommodation and transportation for her father from Jakarta-Medan.

5.2.2.3.3. The Identity: Changing the mindset

SR, an Indonesian woman and a bridging visa holder in Australia, had planned to file for divorce against her husband in the first year of marriage because of the way her husband treated her parents and herself. However, she felt that she was not strong enough financially.

I actually had already planned it ten years ago. Actually it would have been in the early years of marriage because his treatment was so bad. But in Indonesia, being “a widow” was all so difficult. Ten years later I have my own work and can be independent.\(^\text{167}\)

Then, she left her husband and came to Australia. She left her daughter behind with her father and her brother. In Australia she has a casual job and collected some money to process her divorce in Indonesia.

It has shown that her identity as a wife was controlled by her husband. The oppression exerted by her husband, in turn, had empowered her to leave him and look for a better life. She insisted that by having own earnings and living in a different country, the cultural barriers which genuinely are an obstacle to filing divorce (such as feeling shame of being ‘widow’, having difficulties of being independent because of husband’s control) seemed disappear; and, this encouraged SR to file divorce, at last.

Moreover, money and social culture in Australia have given her power to sue her husband for divorce. Also her knowledge about the situation in Indonesia, that is, ‘that everything can be bought’ convinced her to file for divorce. It is suggested that her ability to identify her needs and the circumstances in society made it easier for her to

\(^{167}\) Ibid.
reach a decision than in circumstances where a woman cannot clearly identify the factors affecting the outcome of a decision.

5.2.2.4. The Case of PH

5.2.2.4.1. Access to resources: The Bible and the priest

PH, another respondent in this study, experienced psychological and sexual violence. She is an Indonesian woman from Manado (Sulawesi Island) who lived in Jakarta before moving to Australia. She married twice, first to an Indonesian man and secondly to an Australian man. Both marriages have led to her experiencing domestic violence. The presence of psychological abuse in the first marriage was caused by his treatment of her as a wife when he embarked on a relationship with another woman. PH and her husband were a wealthy couple who ran a dockyard company in Jakarta. According to the interviewee, the wealth attracted other women to tempt her husband by using black magic. His infidelity had created the suffering on the part of PH. She filed for divorce despite her belief as a Catholic Roman, but stayed in the home for the children’s sake, leaving only when her husband’s mistress was to move in. The relationship between her husband and yet another woman then produced a child. She acknowledged that during her hardship, she did not tell her marital problem to her family or friends.

She insisted that her religious background had strengthened her to confront the violence. She argued that her destiny had already been echoed in the Bible.

…but our suffering has been in the Bible Job. The devil asked God, “God can I try Job because he’s rich, but not his soul.” I got to take the Bible. It turns out I was just like Job’s suffering…168

She recalled that her decision to leave their home had led her to a friend who invited her to go to Australia to run a food business. She acknowledged that she suffered

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168 Interview with PH, a retired beautician (Belmore, NSW, Australia, 19 October 2011).
the first time she came to live in Australia. Her friend who invited her had tricked her and used her skills in cooking. However, she struggled to confront the difficulties; but this endurance had been supported by her religious background.

If I did not have a friend who invited me to Australia I might not be here. I gave my company to the child, but his father took over. I was also suffered here [Australia]. Let say, I bore my own cross. I was here until 1986. I wanted to commit suicide here. My friend tricked me like this… PH would you like to go to Australia? And at that time my company was great, she offered me a job in a bakery in the financial department, I came here and in fact my friend’s business was a take away and she did not say to buy wool clothes in winter...169

She came to Australia in 1986. In Australia, she met her future husband and married him. However, the marriage first lasted only a week because not only could she not comply with her husband’s passion for sexual relations twice a day, but also he placed restrictions on her contact with friends and family members. In this second marriage PH suffered sexual abuse, including forced sexual intercourse and possible physical injury resulting from that, notwithstanding the emotional trauma that this must have caused her, as well as enforced social isolation. PH, like many women, had trusted promises of change, only to be disappointed.

The same approach of keeping the marriage problem to oneself was also used by PH, not only because her brothers and sisters did not want to intervene in her marriage problem but also she did not want to bother them with her marriage problems. However, when she experienced violence in her second marriage, she had tried to share her marriage problem with a priest whom she had sought out for help.

Then, the experience of PH in her second marriage has also shown that priests as members of the social network of believers have an important role. In her case, the priest played an important role in convincing her not to blame herself for her unhappy marriage. The priest had told her about the story of prophets who still made mistakes

169 Ibid.
during their lives. The advice had strengthened her and enabled her to confront her marriage problem, and it had an influence on her decision to leave her husband. After a year-long separation, her husband finally sued her for divorce.

5.2.2.4.2. Access to the Justice System: Access to the marriage registry office

PH accessed a marriage registry office when she wanted to end her marriage which had occurred just a week earlier. The reason for ending the marriage was that she could not adjust to her husband’s behaviour in sexual relations, which she described as ‘different’ to Indonesian behaviour. Moreover, she also felt guilty about her new status since she had a belief that her first marriage never been ended despite her being divorced; that is, she believed (in line with Catholic teaching) that she was only genuinely free to marry again if her first husband were dead. At the time she married to her second husband, her first husband in Indonesia was still alive. She went to a priest for counselling and the priest had advised her not to feel guilty all the time. The staffer in that registry office advised her to return to Indonesia and not come back for a year. By separating for one year the marriage will be considered irretrievably broken down under Australia law and recognised as the valid basis of a divorce action.

So the marriage only lasted a week. After one week I thought it can’t be like this, he just wanted to use my body. At that time I was at the age of 47, but at that time my life seemed to be sinful. Finally I waited and not until a month [later] in June 14\textsuperscript{th} I went to court and said if I wanted to cancel the marriage. He [the staffer] was told to go home if it’s been one year and you don’t come back it means the marriage [is] broken down.\footnote{Ibid.}

She, then, returned to Indonesia; her husband asked her to return and he promised her that he would not repeat his behaviour. She, at last, came back to Australia and stayed with her husband again. However, she insisted that the circumstances became worse because her husband did not allow her to contact friends and her husband also imposed sexual relations on her without her consent.
But when I was in Indonesia just five months, he telephoned me if he would be not like that anymore. In November I was back again, ah in fact it was even crazier, I was not allowed to see my friends from Indonesia, received a call from my friends, I kept bleeding because I was afraid all the time. I was hospitalised and I had been really tormented.\textsuperscript{171}

Given that the circumstances were no better, she sought help from an Indonesian friend to move her from the marital home. After being separated for a year, her husband sued her for divorce. Her husband then arranged for a divorce because they had been married for more than one year but had had sexual intercourse just in two months.

5.2.2.4.3. The identity: Hold tight to religious principle

PH, a retired beautician and an Australian permanent residency holder, experienced domestic violence in her first marriage to an Indonesian man and in her second marriage to an Australian man. In the first marriage, although her husband had another woman she had tried to remain in the marriage for a number of reasons. First, she held the marriage principle that the union created by God should not be undone; second, she wanted to keep family harmony for the sake of her children. She argued that as a Catholic her faith in her religion is stronger than her husband who while professing to also be Christian, was a protestant. Thus, because her husband was not strong in religion, he was easy to bewitch. (As can be understood here, many people hold a combination of beliefs that are not always consistent with their professed faith).

He was not strong in religion, so that one was not \textit{Bugis}, mainly it is the region in \textit{Makasar} who made (charms), but he still cared about the kids and me... I just prayed during our stay in Kebon Sirih... I prayed that he could return. You know, Manado People’s principle “You can, I can?” But I cannot. I just prayed, may God know my suffering. At that time, I still ran the catering, salon...\textsuperscript{172}

She insisted that her religious background had strengthened her to confront the violence. She argued that her destiny had already been echoed in the Bible (as

\textsuperscript{171} Ibid.
\textsuperscript{172} Ibid.
In Australia, she took beautician course at TAFE so she could open her own hairdressing salon in Australia. She was also involved actively in an International Christian Church where she met her second husband, an Italian man and an Australian citizen.

She acknowledged that her second marriage became a nightmare because her religious background had made her feeling guilty for marrying a new man as her husband was still alive. She held a principle based on her religion that she was still united in marriage despite divorce (as it was a secular divorce). Therefore, she felt guilty and it influenced their marriage relations, particularly in regard to having sexual intercourse. Moreover, her husband’s behaviour in sexual intercourse was different to her expectation since she compared it with Indonesian culture.

...Finally, I’ve said if [he had been an] Indonesian [he would have had] sexual intercourse only once a week, but he wanted twice a day. I felt pain, my legs were trembling...[M]aybe it is like this because in Catholicism we should not get married if our husbands have not died even though we’re divorced. Maybe God told me...here it is that you wanted, can you [accommodate this]?

Feeling guilty with her decision to marry again, she, then, went to the pastor to tell him about her problem and obtain advice. The pastor advised her not to feel guilty and used a story taken from the Bible. However, the explanation and advice from the pastor did not make her feel better. She remained feeling continually guilty and sinful. Finally, she decided to go home to Indonesia and wanted to end the marriage.

He then arranged for a divorce because we had been married for more than one year but gathered [had had a sexual intercourse] just in two months. The Family Court sent a letter, but I phoned first and they said that I did not need to come. Finally, we separated. Never met, there was care but no love. My love was brought by my first husband.

173 Ibid.
174 Ibid.
Based on description above, PH has used her religion as the basis of her decision whether to stay or leave her husbands in the first and the second marriage. She basically disagrees with divorce, but in the first marriage she decided to divorce her husband because she could not stand to see her husband’s mistress share the home in which she lived with her husband. Despite the divorce, she had remained in the marital home with her husband for the sake of their children until the woman was to move in. In the second marriage, she decided to leave her husband because she held to her principle that she was still bound religiously to the first husband despite the divorce. As a result, her principles influenced her approach to her second marriage relationship, the failure of which was triggered by her second husband’s approach to and expectations of married sexual life which (according to her) were totally different from such expectations within her culture. Finally, her husband filed for divorce.

After separating, PH dedicates herself to service in the church. She believes that God has destined her to be a prayer person for those in need of prayer. Thus, in the case of PH, religion became the dominant identity for her decision to leave her husbands; meanwhile, the other identities such as the cultural reasons and her self-confidence in financial issues supported that decision.

The experience of PH has shown that her religion and beliefs had led her to conclude that she could not validly marry another man before her first husband had died. This belief had influenced her marital relations with the second husband. As result, she could not enjoy the married life. Furthermore, her husband’s attitude to sexual life was not in accordance with her perceptions, beliefs and culture. Her husband insisted that having sexual intercourse twice a day was a normal. He even argued that he was entitled to ask her for sexual intercourse at any time because she was his wife. Hence, the different perceptions, insight on beliefs and culture between PH and her husband
had a significant impact on their marriage.

5.3. Discussion

5.3.1. Access to resources and justice: Confronting power and law within different spaces

Generally speaking, access to resources dealing with domestic violence is basically a new experience for respondents because they never imagined they would ever be a victim of domestic violence; moreover, they never imagined that access to justice is difficult or that it would become a long journey. The experience of respondents has shown that they had to move from one to another resource, from one person to another, and from one space to another, from private to public spaces, and even from a one public space to other public spaces in order to find the resources that really would support and help them with their case of domestic violence. This phenomenon has demonstrated the interrelationships among layers within the ecological framework; the lack of boundaries between one layer and others is visible when respondents in this study access resources within spaces either singly or simultaneously.

Resources are available in spaces, both private and public; and it seems that the more resources accessed, the more information will be accumulated. However, simply increasing the number of resources does not always guarantee increased accuracy of information accessed (see the experiences of Y and GE), or that access will advantage the women automatically because each resources has its own important role and the outcome depends on the needs and the goals of each respondent and the relevance of the resources accessed. When respondents can access the right resources whether they are derived from private or public spaces, and they match their particular requirements, then it seems likely that it will give them power which can be used to minimise the violence.

Access to resources is basically access to information or knowledge.
Respondents in this study have various experiences in regard to access to resources which are available in private and public spaces. The resources were very helpful in their determining strategies and pursuing access to other resources. By accessing resources they gained new knowledge and more power because they obtained the information needed to decide the strategy that would be taken to overcome the violence. Nevertheless, all information from the resources, whether from individuals or institutions, or from private and public spaces may not be advantageous to women victims of domestic violence because of the inadequacy, inaccuracy, or inapplicability of those resources to their particular instance of domestic violence. In some instances adequate resources were unavailable due in certain quarters due to a lack of awareness or concern for issues of domestic violence among persons or agencies contacted (whether these persons be relatives, friends, or persons in authority, such as police, judges or social services and so on) or the prevalence of bribery (see the cases of GI, MI, MR, SS and NA), corruption (see the case of IN) or lack of empathy for the victim of violence (see the case of ID and EL).

Most of respondents recalled that members of their family of origin (such as father, mother, sister, brother) usually supported them financially and psychologically when they experienced domestic violence; only a few such persons, particularly fathers, did not help the respondents because of the principle that such matters were between a husband and a wife (a ‘private matter’), or a belief that such a matter was a ‘test from God’ (see the experience of EL). Friends became another resource. They were approached by the respondents, regardless of the response of family members, and sometimes they had been approached by respondents at the simultaneously to those respondents seeking help from family members. By approaching friends who usually were present in the broader societal layers or spaces than family members, further
information was obtained by the respondents. Most of the respondents who contacted friends received information about various institutions, either private organisations or government institutions, which correlated with their situation and were needed to resolve the case. In addition to contacting friends, the respondents also corresponded with other members of their own social networks, such as priests, imams or a healer, whose advice to the respondents was varied. Some encouraged the respondent to leave the marriage marred by abusive relations (see the experience of ML), but a few of them discouraged such actions and stressed to them the importance of staying in the abusive marital relationship because of particular religious principles about the indissolubility of marriage and the need for continuous reconciliation rather than divorce or due to a conventional concept of marriage (see the experience of EL, ID and PH). However, the religious factor is not only the single consideration for some respondents to stay in the abusive marriage relationship. Unemployment or low income status is indicated as the cause of domestic violence and also associated with its perpetuation. Poverty has often forced the respondents to stay in an abusive relationship. In the case of respondents leaving or staying in an abusive marriage, it is true to say that most of those who left are more independent in financial matters when compared to those respondents who stayed. The responses to Indonesian women in this study were varied, but most of the respondents insisted that they took to heart from the information which gave them greatest benefit and was in accordance with their needs and in their interest.

Some respondents took advantage of the ‘world of work’ because it gave them power not only financially but also psychologically; however, for others, it did not give support and tended to perpetuate the violence. The positive response obtained by respondents was not merely given by the staff in the workplace (see the experience of MI), but could come from customers (see the experience of GE and RB), and also from
the endeavours of the women themselves. Women who were successful in obtaining their rights had penetrated the power within bureaucracies which they had never approached before. Meanwhile, negative responses created and perpetuated violence against the women. Therefore, the role of social networks will probably have had a significant effect on the life of respondents who decided to leave their marriages. The networks may have a different impact upon each of the respondents because the needs and interests of respondents who are leaving or staying are different from one to another. Moreover, the capacity or the quality of the social networks, the trust of the respondent’s places in the networks and the willingness of respondents to come out from the violence are important factors that have correlations with each other and also support each other which, in turn, elevates the respondent’s power (see the experience of PJ, MR, RB, GI, SS, IN, NA, GE, V, ML, SR, L, and PH).

Respondents who have experienced physical violence did not always go to a health care professional straight away. The decisions of respondents in regard to health care professionals took one of two main approaches: (i) to seek care to heal any wounds or other injuries without requesting a visum et repertum because the victims were not ready to report the abuser to police, such as was the experience of PJ and PH; or (ii) to seek care for any injuries and request a visum et repertum so that a report of the abuse (and the purported abuser) could be made to police, such as in the experience of GI, SS, MR, and ML. One of the respondents (EL) did not go to health care professionals because she cared for herself based on her knowledge as a pharmacist. After the passage of the Domestic Violence Act 2004, the awareness of health care professionals of domestic violence issues increased as was demanded by the Act and the need of victims (see the experience of PJ and GI).

Whether access to health care professionals was advantageous to a victim of
domestic violence or not will depend on their ability to recognise domestic violence issues which deal with not only the physical injuries suffered by the victim but also the psychological and legal issues. Requesting that a *visum et repertum* be done to report the perpetrator to police becomes a difficult decision, given that the victims sometimes are not ready both in psychologically and financially for the situations that arise (in the absence of social support) if their husband (the perpetrator) is jailed. By giving a victim more time to think, a more measured decision (and one that suits the victims circumstances) may be made by the victim. Thinking deeply in such circumstances is inevitably difficult for the victim; however, they do need to do so. Otherwise the legal issues mentioned by a lawyer from KJHAM may arise, that is, that the victim may make an emotional decision to undergo a *visum et repertum* and lodges complaint and then later withdrawn the complaint. This can occur due to the perpetrator’s intervention. This can be through his influence on local police who appear to ‘lose interest’ or claim to have ‘lost the details of the case, or advise the complainant not to pursue the matter and thus intimidate her. Or, perpetrators may repeatedly interrogate, verbally abuse or threaten further violence (against the complainant or other vulnerable family members) or pursue the victim in order for the complaint to be withdrawn so that he can evade any legal consequence for his action. If the initial report is cancelled, however, it is extremely likely that the pattern of violence will continue. Police may also appear unwilling to act due to a pattern of making complaints and their withdrawal by other victims or by even the current complainant. This will impact on the victim because the police may seem so reluctant to deal with a complaint.\textsuperscript{175} However, the increased awareness of medical and other health professionals has proven that there is shift in thinking on such matters and a growing understanding about domestic violence issues;

\textsuperscript{175} Interview with Eva, a lawyer KJHAM (Semarang, Indonesia, 5 January 2012).
and the shift has given an advantage to women victims because the health care professional can prioritise treatment, and ensure thorough attention is paid. In certain cases immediate attention cannot occur, for example, if there is an emergency patient because of traffic accidents. Receiving appropriate attention is in itself an affirmation of the value of the woman, and the medical encounter also provides an opportunity for referral for legal or other support as is acceptable to the victim, strengthening her often limited social and supportive networks, providing her over time with greater choice than might otherwise have been the case.

Not all respondents in the study have taken their cases to family violence services; however, only three of the eighteen respondents had not done so. The rest had contacted family violence services in order to have psychological, and/or legal counselling and legal aid (either on civil or criminal matters). Most of the respondents interviewed from Semarang, Indonesia had also accessed LRC KJHAM, a non-governmental organisation that is concerned with issues relating to violence against women. The women victims could do so through three mechanisms: by phone (office telephone or via mobile phone directly), by internet (email, facebook or the blog), or by meeting directly with the staff, that is, face to face. The task of LRC KJHAM is to explore with the victim any potential courses of action until the victim makes her own decision as to whether she will take the case to a solution involving litigation or take course of action that did not involve litigation. Giving the decision to the victim is basically implementing the principle of ‘self-determination’ which has been deployed by LRC KJHAM to empower the victim of domestic violence. Thus, the LRC KJHAM facilitator explores with the victim potential courses of action but it is the victim who makes the decision because the one who knows herself best is the victim; LRC KJHAM

\[176\] Ibid.
focuses more on the provision of facilities. One of the facilities that LRC KJHAM has is a shelter. Three of the respondents had accessed this shelter namely, SS, MI and IN. They lived for a number of weeks there when they sought for safety due to the violence. In this shelter, they had been empowered through legal and psychological counselling; through this ‘space’, these respondents had been prepared to encounter the complex problem of dealing with domestic violence. Meanwhile, one respondent interviewed who is living in Australia had also contacted family violence services provided by the government through Centrelink services (Centrelink is the federal government’s social security agency). Centrelink staff will provide information and referral to victims of domestic violence so that the victims can have contact with appropriate agencies and support services.

The respondents had also identified that several resources in the public space. Some such resources belonging to the local or other levels of government in Indonesia had not provided the necessary information nor adequately supported women victims of domestic violence. The role of police in Indonesia in this regard is particularly pertinent. They are supposed to give protection but, in the women’s experience, they often fail to live up the women victim’s expectations. This circumstance was mainly caused by attitude of police officers who view domestic violence as a ‘family matter’ and essentially ‘private’ (see the experience of EL, MI, GI). Further, the experiences of Indonesian women victims of domestic violence in Indonesia have demonstrated that the negative responses mainly come from the police.. The presence of bribery, corruption, and a ‘friendship’ between the police and the perpetrator seemed to become the primary cause of such a lack (see the experience of MI, MR, IN, Y, GI, GE and SS). However, acts of bribery or corruption are not viewed by these women as corrupt practices because it happens commonly and is rampant, for example the perpetrator
giving cigarettes (see the case of MI) to an officer, having lunch with officer (see the case of NA), or the police asking for money for police operations or being offered such funds (see the case of GI), or releasing someone from jail as a result of bribery (see the experience of IN). As a consequence, for female victims of domestic violence, legal and police protection is difficult to access and many women struggle to exercise their human rights.¹⁷⁷

Police officer can at a certain level also give a positive response to domestic violence issues and its victims (see the case of EL). However, in general their performance is far from meeting the expectations of women victims of domestic violence in this study and the Domestic Violence Act 2004. This circumstance has demonstrated that the passage of the Domestic Violence Act 2004 seems likely not to have changed the mindset of police officer significantly as they appear to be strongly influenced by patriarchal values and norms. However, police performance is expected to be somewhat better than before because the police now have a special unit for women and children and the Attorney General’s Office has a special task force to deal with gender issues and tightened coordination of services and standards in a number of regulations issued between 2006 and 2010.¹⁷⁸ Nevertheless, Indonesian feminists have


argued that there are at least two things that are reasons that the law enforcement officers and the judiciary and associated personnel do not implement the Domestic Violence Act effectively. First, the police, prosecutors and judges do not fully understand the Domestic Violence Act. This happens because there is regular transfer of law enforcement officers and this affects the level of understanding of the Act at anyone police station. The law enforcement officer (in this case mainly police officers) who had been trained by non-government organisation which are concerned with this issue will move to another place, and the police who replace them often do not understand as well as the previously trained officers about domestic violence and gender issues. Second, the law enforcement officers understand the Domestic Violence Act 2004, but they are reluctant to implement the Act. For example: the reporting of domestic violence according to the provisions of Article 26(1) of the Domestic Violence Act 2004 can be done anywhere (could be at the crime scene or where the victim was living, including temporary residence), but the police never receive such a report as they argue that there is no ‘mechanism’ and/or the crime is outside their jurisdiction and therefore not under their authority\footnote{Abdul Hamim Jauzie, Memutus Impunitas KDRT [Breaks the Impunity of Domestic Violence], see the full text: <http://ikanidiy.blogspot.com/p/artikel.html>}. Further, a domestic violence victim is entitled to obtain the protection (see the Articles 10 and 16 of the Domestic Violence Act 2004) from police after a report of domestic violence, but some police argue that ‘there is no implementation guidance’ (see the experience of Y who reported the psychological violence); a similar reason is also given by judges who must provide the protection order (see Article 28 of the Domestic Violence Act 2004). Then, it can be that the attorney who represents the interests of the victim is not fighting for the interests of
victim, the lawsuit which is made by the attorney tend to the ‘favour’ of perpetrator instead (due to ignorance or corruption or sheer inattention to the matter). As a consequence, the burden on the victims is increased due to their limitations (financial, knowledge, and power). This can include the victim having to provide witnesses and other evidence, to pay for the *visum et repertum*, to seek shelter on their own, and to establish herself as a victim.\textsuperscript{180} Thus, the obstacle to implementation of the Domestic Violence Act 2004 mainly comes from the culture, the structure and the substance of the criminal legal system.

Police officers in Australia, however, gave more positive responses to reports of domestic violence, particularly after the passage of the *Crimes (Personal and Domestic Violence) Act 2007* (NSW). However, the experiences of an Indonesian woman victim of domestic violence in Australia in this study have demonstrated that she must be active in accessing and exercising her rights regardless of the existence of the laws.

Other resources are public institutions belonging to local government where the staff have been identified by respondents as lacking an understanding of or sensitivity to domestic violence issues, not just in relation to the issue of violence itself but also in regard to when respondents demand their rights to a living for themselves as wives and for their children (see the experience of EL, ID, MI and PJ in Indonesia). Women victims argued that they must struggle to obtain their rights which have been provided for under Indonesian legislation. Hence, the existence of the laws dealing with the women’s rights in cases related to domestic violence and divorce will not guarantee that they will obtain their rights automatically. In the other words, the women victims must

\textsuperscript{180} Devi Rahayu, *Analisis Peran Aparat Penegak Hukum dalam Penanganan Kasus-Kasus Kekerasan dalam Rumah Tangga di Pamekasan* [The Analyse of the Role of Law Enforcement Officer in Handling domestic violence cases in Pamekasan] (2010) 3 (1) *Pamator* 1, 10; Musdah Mulia, *Akhiri Kekerasan terhadap Perempuan* [Stop Violence against Women] (Kompas, 8 Maret 2014); see also Jauzie, above n 179.
be active to obtain their rights despite the existence of laws guaranteeing them their rights. The obstacles to obtaining their rights came not only from the institutions, but also from other parties, such as a second wife who had struggled for the same rights (see the experience of EL).

Legal assistance, either from law firms or legal aid provided by non-government organisations in Indonesia, also created a space in which women victims sometimes felt powerless or these agencies were not of great assistance to them in their plight. For instance, there is the situation of Indonesian women victims whose religion (Catholicism) does not allow divorce, but they feel they have to divorce when domestic violence is present in their marriage. They often face difficulties in finding legal aid to support their lawsuit. Such women in the end preferred to utilise a secular legal aid rather than continue to struggle to gain assistance from a faith-based legal aid services which, due to the restriction on divorce in that religion, did not offer the services required. The alternative of separation (which lacks the legal rights accorded women under a state recognised divorce) or the process of annulment (available in rare cases in Catholicism and after a lengthy process) were not considered by respondents to be suited to their situation. Only a few respondents could afford to hire a lawyer from law firms, and the remainder asked for legal aid from non-government organisation such as KJHAM that provided free legal assistance for the poor. Those not categorised as ‘poor’ were considered as able to afford the court fees.

Meanwhile, in Australia, the respondents acknowledged that legal assistance was obtained by either the woman herself hiring a lawyer or provided by the government and had given adequate assistance to her plight. This circumstance has demonstrated that legal assistance assistance (either through government funded legal aid services or the assistance of a privately funded lawyer) has an influential role in assisting women
victims of domestic violence when they confront the legal system and legal space (such as in the court) in terms of reducing their powerlessness. In generally, the assistance from legal aid or a lawyer has a significant effect in dealing with empowerment of women victims of domestic violence, particularly in determining their demands dealing with legal issues. In addition, a woman having her experiences validated by the attention of a lawyer and associated staff is empowering for her.

Assistance from legal aid or a lawyer, at a certain level, is needed for women victims of domestic violence, given that the legal system, legal issues and legal environment are basically the ‘spaces’ that seem far away from normal experience and hard to reach as the women victims had never imagined they would get involved with the law. Therefore, if women victims of domestic violence have no adequate knowledge about these ‘spaces’, they might lose their legal rights in the ‘legal battle’ due to these ‘spaces’ with their power able to create ‘spaces’ within ‘spaces’. Not all experiences in the court and with legal personnel are positive. The experiences of EL and ID have demonstrated that within a legal space, especially court rooms, they had been cheated and disempowered by their lawyer. The lawyer had knowledge on legal issues but did not use it appropriately to support their clients; they have abused their ‘power’ in the space which they do really understand and are familiar with to confront these women who do not have enough sufficient ‘power’ in terms of knowledge of the legal issues and how to play such a ‘power’ within ‘space’ in court rooms.

Although the justice system (both criminal and family law systems) has disappointed several respondents, – this study has demonstrated that the justice system is the last resort for the respondents in obtaining their rights but utilised after accessing resources from personal approaches or social networks members and where such responses were inadequate for the victim’s situation. The first face of the justice system
they approached was often the criminal law system when they contacted the police in regard to the violence suffered. When the response from the police could not overcome the matter, the respondents then went to the family law system as an alternative, that is, by proceeding with divorce they sought an end to the violence. The respondents insisted that divorce was the final resort to stopping the violence within their marriage relations.

In the Indonesian context in particular, respondents as litigants argued that filing for divorce was also difficult because they had to provide documents required by the neighbourhood administrator, find the witnesses prepared to support their demand for divorce, attend mediation processes prior to court hearings and attend the court hearings. Moreover, becoming litigants, particularly in the religious court in Indonesia, resulted in substantial financial losses for the woman and their children because successful women litigants then have no right to ask for a living to be provided by their former husband after the divorce (although there are exceptions, see further below). If the husband is the litigant, the women’s rights generally were maintained by judges, subject to the wife not having been identified by judges as nusyuz or recalcitrant. The decisions were made on the basis of not only the Compilation of Islamic Law but also the Marriage Act 1974. In addition, however, Muslim women as litigants can demand the living right after divorce if their husband is a public servant by

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182 Ibid.
183 Ibid.
184 Ibid.
185 Nusyuz is one of the grounds for divorce according to Islamic teaching. Nusyuz has been understood as a wife’s disobedience to her husband. Nusyuz represents the wife’s disobedience of the husband’s order, infidelity and the other conducts which may have disrupted the harmony of family. Although it is always attributed to a wife in terms of her treatment of her husband, nusyuz can be attributed to a husband in terms of his treatment of his wife, such as by neglecting his responsibility as a husband to his wife (wives) (for example, failing to supply food and clothing, hitting the wife if she conducts nusyuz, does not making his wife a joke by saying something hated, and not avoiding the wife. See Nurudin and Tarigan, above n 19.

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giving evidence before the court, including presenting witnesses to the presence of domestic violence within their marriage relations. If the evidence or the witness is convincing, the judges will consider their right to a living as having to be maintained. Such a decision is made on the basis of implementing regulation Number 10 of 1981.

Meanwhile, for non-Muslim applicants in the state court, the right to a living after divorce (as regulated by the Marriage Act 1974) is not automatically decided by judges if this is not declared and demanded explicitly in the lawsuit. As result, several respondents in this study did not obtain their right to a living after divorce. The opportunity to have maintenance after divorce is greater for women litigants whose husbands are public servants. By giving statements and presenting evidence before the court that they filed for divorce on the basis of domestic violence, judges will consider that their rights to a living must be maintained.

The descriptions above have demonstrated that the different treatment of violence under legislation governing divorce created different ‘spaces' and ‘power’ distribution applying to female victim and male perpetrator between one woman victim of domestic violence and another because of their religion. Such legislation based on religion does not exist in Australia as this country has a strong tradition of secular government.

However, the governments in both Indonesia and Australia provided legal aid for those who are not able to afford the court fee. In Indonesia, the litigants who declared themselves as poor could obtain the free legal court services by providing the relevant eligibility card issued by the government. Meanwhile, respondents who were financially more secure usually hired a lawyer either from KJHAM or other law firms. Thus, these

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187 Ibid.
188 Ibid.
facts have shown those respondents who are independent in financial matters will have access to a wider range of resources compare to those who depend on their husbands financially. By having their own earnings, women victims felt more able to make decisions because financial issues were not an obstacle to be considered. In addition their financial security has supported their access to the justice system, particularly access to a lawyer and the court; and, this helped them to make decisions as to their course of action where violence was present in a marriage.

Thus, the experience of respondents in this study in accessing various resources, and moving from one resource to another, from one space to another, was that doing this had provided knowledge that was important in increasing their power, or discouraging their use of power or even diminishing their power in regards to deciding the strategy to adopt to overcome the violence. The respondents’ struggle to obtain their rights was also difficult since they had to confront the other powers operating, both individual and institutional, either in private or public spaces, where the existence of this power and spaces had also been justified by the law. This fact supports the proposed concept about the relations between law, power and space dealing with domestic violence cases. Each of the elements of the relations between law, power and spaces contributes either singly or simultaneously to the respondents in their accessing resources which, at last, influenced their accessing the justice system.

5.3.2. Indonesian women’s identities and their influence on making a decision

Generally speaking, the identities of women in this study are various. The identities either singly or simultaneously had significant influence in regard to decisions involving other parties who have more power, such as the husband, family members and public institutions and utilise their power to oppress women. Nevertheless, based on the women’s experience in this study, the oppression also had significant influence in
provoking resistance and encouraging the women out of such oppression by using their various identities.

For instance, respondents in this study have identities in terms of relationships as mother, wife (often housewife in addition to other roles) and woman. These identities had been misused by their husbands. Committing violence against their wives, using their power to control much of their wives’ lives, and neglecting their wives’ rights were common forms of oppression of wives by their husbands. The response of the women in this study to this violence was initially to try to be patient with an expectation that the husband would change his behaviour. As a mother and wife, these women had struggled in the abusive marriage because they thought about their children and the need to maintain family harmony. At the same time, since their identities as mother and wife had been neglected by their husband physically, psychologically and financially, they had often endeavoured to fill their needs, particularly in relation to financial issues, by looking for employment. Several respondents in this study were housewives and they were really dependent on their husbands when the violence occurred, therefore, finding a job was really difficult as they had not enough skills to offer employers; and, in some cases, these women had the experience of being isolated by their husbands or having the opportunity for employment (and training) limited because of the presence of small children. Some of these respondents acknowledged that the identities as mother and wife had given them a pleasant social status, and they became shocked and confused when faced with violence. The violence had brought them to complicated circumstances and the need to decide whether to leave or to stay within the abusive marriage; the decision is not easy to make because of social, economic, legal and cultural considerations.

Further, their identities as mother, wife and woman, in fact, did not restrict
themselves from seeking information about everything that they needed to confront the violence, including information about legal aid. Both Indonesian women who lived in Indonesia and Australia took the initiative to seek information about legal aid. This information had been obtained from different resources (see discussion on accessing resources and the justice system mentioned above). Most of the respondents had found the right legal aid that could help and support them in confronting the violence, but a few of them were struggling to find the right legal aid.

For respondents who already had a job before marrying their abusive husband, the presence of violence had affected their identities as mother and wife because they had had an expectation of having a good family life for them and their children. Nevertheless, for these respondents financial issues rather than the issue of children’s safety was not an essential matter when they decided to file divorce (although for some the issue of children’s safety was crucial). Being independent financially, however, had made it easier for them to make the decision to file for divorce, to access to legal aid, hire a lawyer and access the court in order to regain their rights, all of which issues involve the public spaces. This phenomenon has supported the previous research conducted by anthropologists who have examined the lives of Indonesian women. The anthropologists have reported that, traditionally, many women have had considerable power, particularly economic power, within the family domain and in market trading.\textsuperscript{189} A study on marriage and divorce in Indonesia in 1996 showed that Indonesian women have considerable power within the family and society.\textsuperscript{190} Some three decades earlier, in ‘The Javanese Family’ Greetz argued that Javanese women have power within the


\textsuperscript{190} Kate O’Shaughnessy, \textit{Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law} (Routledge, 2009).
family as they have control over domestic finance, and also in the public sphere due to their activities in market trading. Such power has given them opportunity to file for divorce easily.\(^{191}\)

Several of the women in the study had argued that they, as mother, wife and woman, were abused in psychologically and physically; and, they responded to it by reporting to police and seeking legal aid. Most of the Indonesian women living in Indonesia argued that they were not satisfied with the response and performance of police which according to them had abused their identity as the victims of domestic violence, but they were very satisfied with the response and performance of legal aid services such as KJHAM who is very concerned with domestic violence issues. Several respondents who had hired a legal firm insisted that they were disappointed with the performance of the lawyer because, at a certain level, they neglected the women victim’s rights as a mother, wife and abused woman by ignoring their lawsuit or being less attentive (whether intentionally or not) to defending in Court the women’s access to their legally available rights, such as child maintenance, living for the wife and division of property. The only respondent in Australia who reported the violence to Australian police noted that she was really satisfied with the response and the performance of police. She insisted that the police were very concerned with her as the victim of domestic violence. Nevertheless, she recalled that she was not really satisfied with Family Court decision on 50:50 shared parenting which according to her was inappropriate given the presence of domestic violence in the marriage and the history of the divorce.

Domestic violence was experienced by many women regardless of their

education. The educational background of respondents in this study varied but mostly it was at the level between elementary school and high school, and only a few of them were in the level upward of high school. A higher education level of a husband in this study did not guarantee that the husband would treat his wife well. Several respondents in this study whose husbands had an education higher level than their wives committed abuse and continued to do so (see the experience of IN and ID). The higher education level and the knowledge and power that accompanied their education had been abused to oppress their wives.

Educational background identities had a significant influence on couples understandings of the accepted relations between a man and a woman as a husband and a wife, on domestic violence, their response and decision making. These respondents, however, had the same goal – to end the violence by accessing many resources. The resources, access and the results of access were different from one woman victim to another since the violence and other factors surrounding it also differed. The different education background identities, however, did not become an obstacle for respondents in accessing resources and decision making since the information, services and support for the victims of domestic violence are available and are provided by government and non-government organisations. Most of respondents, can access resources and the justice system. Nevertheless, educated women in particular find it easier to access these than uneducated women. However, whilst women argued that domestic violence was a source of shame, they did not deny it was a part of their life, and they insisted that they are ready to help the other victims who need help and support.

The other particularly pertinent identity is age. Age has sometimes been used by other community members as an important reason for not allowing the respondents to leave the marriage relationship despite the violence. This study has demonstrated that
age was a barrier for respondents to take such action. Some of respondents argued that their identity as an ‘older person’ was a factor in the response and expectations of others. This was particularly the case in regard to a respondent who was over 45 years of age (see the experience of RB, GI, and GE). In GI’s case, her age had been used as reason for other parties (such as children, neighbourhood administrator and police officers) to fail to take action. These parties thought that it was inappropriate at their age to file divorce or to report the husband to police despite the violence. They often instead advised this respondent to reconcile, and to wait for the return of her husband (see the experience of RB and GE whose husbands had left them for another woman for years and, in fact, never returned). These phenomena have shown that the understanding of the community members (especially in Indonesia) of domestic violence issues, not only in private spaces but also in public spaces, were influenced by the value of family harmony and the marriage principle. The values themselves represent an ideal, but sometimes such an ideal does not consider the reality of the women’s situation and ignores the reality that is the violence, which was experienced by the respondents for years; the respondents’ needs to be happy and have a better life have been sacrificed to a value which cannot protect the respondents’ lives and wellbeing (and in some instances that of their child or children). Nevertheless, the respondents who experienced the imposition of such a stereotype on them and their situation did not surrender with circumstances; they insisted on pursuing their plan. To understand the influence of age and the duration of violence to respondents’ decision making dealing with their case, the following table is presented. The table below will demonstrate the correlation between the age, the duration of the violence and the response of all respondents in making decisions in regarding with ending the violence, especially to file divorce or not.
Table 5.4. Age, Duration of the Violence and the Respondent’s Decision Making

<table>
<thead>
<tr>
<th>No</th>
<th>Respondents</th>
<th>Age</th>
<th>Duration of the Violence (years)</th>
<th>Divorce/ Not Divorce</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>SS, Indonesia</td>
<td>44</td>
<td>20 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>2</td>
<td>MR, Indonesia</td>
<td>44</td>
<td>15 years from early marriage</td>
<td>ND</td>
</tr>
<tr>
<td>3</td>
<td>GI, Indonesia</td>
<td>47</td>
<td>2 years (after 20 years of marriage)</td>
<td>Divorce</td>
</tr>
<tr>
<td>4</td>
<td>RB, Indonesia</td>
<td>50</td>
<td>3 years (after 29 years of marriage)</td>
<td>Divorce</td>
</tr>
<tr>
<td>5</td>
<td>GE, Indonesia</td>
<td>50</td>
<td>30 years from early marriage</td>
<td>ND</td>
</tr>
<tr>
<td>6</td>
<td>MI, Indonesia</td>
<td>48</td>
<td>27 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>7</td>
<td>PJ, Indonesia</td>
<td>42</td>
<td>2 years (after 20 years of marriage)</td>
<td>Divorce</td>
</tr>
<tr>
<td>8</td>
<td>IN, Indonesia</td>
<td>34</td>
<td>7 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>9</td>
<td>FA, Indonesia</td>
<td>43</td>
<td>25 years from early marriage</td>
<td>ND</td>
</tr>
<tr>
<td>10</td>
<td>NA, Indonesia</td>
<td>26</td>
<td>2 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>11</td>
<td>ID, Indonesia</td>
<td>52</td>
<td>20 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>12</td>
<td>EL, Indonesia</td>
<td>44</td>
<td>19 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>13</td>
<td>Y, Indonesia</td>
<td>32</td>
<td>9 years from early marriage</td>
<td>ND</td>
</tr>
<tr>
<td>14</td>
<td>V, Indonesia</td>
<td>31</td>
<td>10 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>15</td>
<td>ML, Australia</td>
<td>30</td>
<td>7 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>16</td>
<td>L, Australia</td>
<td>29</td>
<td>4 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>17</td>
<td>SR, Australia</td>
<td>29</td>
<td>10 years from early marriage</td>
<td>Divorce</td>
</tr>
<tr>
<td>18</td>
<td>PH, Australia</td>
<td>67</td>
<td>1 year from early marriage</td>
<td>Divorce</td>
</tr>
</tbody>
</table>

Source: Interviews with respondents between in July 2011 and January 2012

There are four younger respondents in Australia whose ages are 29 and 30 compared to the older 14 respondents in Indonesia. This demographic variation can be attributed to two reasons: namely early marriage and the empowerment. At their ages (29 and 30) these women have already disclosed their experiences of being abused which occurred almost 4, 7 and 10 years earlier. From their age and the duration of
domestic violence, it can be surmised that they married in their 20s and in their first year of marriage they had had experience of domestic violence. Indonesian women respondents whose ages are greater than these respondents have experienced a similar phenomenon in that the respondents in Indonesia were married at the same age (in their twenties); however, the process of empowerment to disclose of the violence is quite different. The respondents in Australia encouraged themselves to disclose their experience at a very early stage, while respondents in Indonesia have kept their ‘secret’ longer and kept struggling to live in harmony despite the violence which occurred for more than half of their married lives; some of them, have even been living with their abusive husband between 20 and 30 years.

On the basis of their stories, feeling of shame and being afraid of being a ‘widow’ are the most frequent obstacle to responding to the violence properly (that is in a manner that will reduce or eliminate the violence such as by filing for divorce). Domestic violence is a complex situation and divorce itself is a complicated decision for women victims of domestic violence. There are many social, cultural, financial, religious and legal reasons for most Indonesian women victims of domestic violence in this study to delay before making a decision to file for divorce, therefore divorce is not easy to be done. ‘Feeling shame’ as an obstacle is evident in this study and this supports the previous research which has been mentioned by the researcher in relation to the fourth reason for selecting Indonesian women as the subject for this study, namely that through the Marriage Law, the state has also established a sense of shame for Indonesian women that affects women’s self confidence in the event of domestic violence and prioritises maintaining family harmony despite the violence (see Chapter 1).

These evidence supported Kate O’Shaughnessy’s study on divorce and shame.
She argued that shame was used by the state to restrict divorce; however, it built on existing negative cultural constructions of the female divorcee. ‘Shame’ was so constructed that female initiated divorce was regarded as shameful while a divorce initiated by a male is not accompanied by the same sense of shame for the husband. Moreover, being a widow is also stigmatised by public, though less so than a divorced wife;192 hence, why a divorced woman often refers to herself as a widow to reduce stigmatisation. Unsurprisingly too the concept of shame has been indicated as one of the barriers that women face in disclosing their marital problems, in this instance domestic violence. As maintaining harmony – a happy as well as healthy home – is seen as primarily the role of the wife, it is she that often bears the greatest social stigma, if separation and divorce occur. Consequently, women victims refuse to report the case to police or bring the case before the court, and continue to keep silent, regarding the violence as a ‘private’ or ‘family’ matter and shameful for them and their families. At the present time, this concept continues to exert influence on and within Indonesian women since it has been culturally and legally embedded.

This study has demonstrated that older Indonesian women seemed still hold tight the values and norms of their responsibility for ‘harmony’ within a family and maintain a discourse of conventional femininity as a woman and a wife within both the private and public sphere (as mentioned in the third of reason for selecting Indonesian women as the subject for this study, see Chapter 1). Moreover, the aim of marriage in the Indonesian community is not only to procreation, but to build a happy family and also as a form of responsibility to God. (This can be traced through the definition of marriage in the Marriage Law 1974) Therefore, when a marriage breaks down

192 O’Shaughnessy, above n 190, 88. Indeed the State even promoted the concept of the widow who devoted herself to the children rather than remarrying: 70. A ‘model wife’ and ‘model mother’ of the 1970s to the 1990s did not divorce: 69–70.
(regardless of the reasons) and divorce is inevitable, feelings of shame remains embedded in these women as the value to keep ‘harmony’ has been embedded culturally. Being a ‘widow’ as the consequence of divorce has also a negative image for divorced women (see the comments of SR, SS, and NA on this issue). This situation is totally culturally different from that of Australian culture and its legal system. The barriers which come from cultural, social, religious and legal factors might not have a significance influence for Australian (white) people, but these factors may become barriers for immigrant women and women from a non-English speaking background. However, for the four Indonesian women in Australia, the cultural, social and religious factors seemed largely irrelevant considerations. The issue of domestic violence may be more problematic for Indonesian women who live in Australia because of differences in the culture as well as in the legal system they encounter compared to that with which they are familiar in Indonesia, and the discourse that Indonesian women who are or have been living in Australia might confront difficulties in disclosing the violence (due to cultural barriers, the unfamiliar and very different legal system, and a lack of language) but it seems likely that the women encountered in this study did not greatly suffer from being impeded in their response (unless initially the case) largely due to the availability of social services (Centrelink, supporting parent benefit, legal aid, and so on). However this finding cannot be generalised because of the implemented qualitative approach in this study.

In addition, religion as one of women’s identities has a significant influence on several women respondents in this study in their responses to domestic violence, in their making a decision and in accessing a court regarding divorce. This study examined abused women who shared their experiences with spiritual figures, such as priest, pastor, and imam or marriage counsellor. These women were often advised to work
through the marriage relationship, and they were not provided with referrals to the justice system or social services. Further, faith in God was the main source of strength for women but this could have two contradictory effects: first, it helped them to leave the relationship and begin to heal; second, it could keep them in the abusive relationship because of a belief that violence was a test from God or that they were not entitled to separate or divorce. Although there is no evidence that violence is more frequent or severe in families of faith, religious women are more vulnerable when they are abused.\textsuperscript{193} They are less likely to leave because of a belief that the abuser will change and many mainstream Catholics believe strongly in their promise made ‘before God’ to stay together ‘until death’ parts them. As a consequence, some cling to a fantasy of change and others harbour notions of working harder to ensure the marriage lasts.\textsuperscript{194} These phenomena occur due to beliefs which are commonly held and strongly reinforced by a religious ideology that sees women’s roles primarily as wife and homemaker.\textsuperscript{195} In this study, such phenomena were experienced more frequently by some respondents, particularly those who confess Catholicism rather than those of other religions.

The demographics of respondents (as mentioned above in Chapter 1) have shown that Islam is the dominant religions among the respondents. Nine of the eighteen respondents are Muslim; Christian and Catholic number three and four respectively; and two respondents are Buddhist. Only two of the nine Muslim respondents explicitly declared themselves to be Muslim women who have a responsibility to discipline and advise their husbands (see the case of IN and MI). The similar idea that a woman has the same role as a husband within a family in Islam (as present in some texts) has been

\textsuperscript{194} Ibid.
\textsuperscript{195} Ibid.
emphasised by these respondents; these ideas clearly refute the ideology of patriarchy. Other respondents who did not mention religion explicitly as among their identities argued that the important principle that they hold is that the relationship between a husband and a wife should be harmonious, and that they should be mutually giving and receiving; and where there is no mutual decision or a disagreement, the matter should be discussed and the couple should not hit each other.

For the Catholic respondents, they had insisted that their religious tenets on marriage became their marriage guidance. They believe that a man and a woman within a marriage are united by God, despite violence; and that the divorce itself is a cause of shame. ID, EL and PH, for instance, feel of embarrassed about their marriage; however, they acknowledged that. The principle of ‘united by God and not separated by humans’ had been part of the advice given by priests to respondents. As a result, these respondents had struggled to stay in abusive marriage relationships. Nevertheless, religious background was not the only reason for them to struggle and stay in these relationships. The experience of ID, for instance, has shown that she remained in an abusive marriage and did not disclose the violence to her parents because she married to a man based on her own choice. As a consequence, the emergence of a family matter involving the couple was held to be a matter only for the ‘wife and husband’. In the early part of their marriages, most Catholic respondents (such as EL, PH and ML) held the principle; however, when the circumstances within their family continued getting worse, they decide to move from the marital home; and, then, decide to file for divorce.
Table 5.5. Religion and Respondents’ Decision Making Dealing with the Violence

<table>
<thead>
<tr>
<th>Religion</th>
<th>Number</th>
<th>Decision</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Divorce</td>
<td>Not Divorce</td>
</tr>
<tr>
<td>Muslim</td>
<td>9</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Catholic:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Australia</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>2. Indonesia</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Christian:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Australia</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>2. Indonesia</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Buddhist (Indonesia)</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>18</td>
<td>14</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Interviews with respondents between in July 2011 and January 2012

For other religious groups such as non-Catholic Christian (Protestants), the same principle was not disclosed as explicitly. In the interview, the non-Catholic Christian respondents never mentioned the same principle as the Catholics; and, they never rejected the idea of divorce when violence occurred within a family. Two out of three non-Catholic Christian respondents had been divorced; meanwhile, the outcome for the remaining respondent is not yet totally certain, as a divorce has not yet been processed.

Next, the experiences of other respondents who hold the Buddhist religion have shown that divorce is not a ready suggestion in spite of a saying in Buddhism that “Why live with one whom we do not like because it will only give more suffering”; the experience of two Buddhist respondents had shown such phenomenon. V is a Buddhist, but she married her husband in the Catholic manner. When she proposed to divorce, her husband refused it by arguing that ‘Catholics are not allowed to divorce’, but she decided to continue with the action. A similar reason was also implemented by Y. Though she confesses to be Buddhist and Confucian, the religions had no significant
influence upon her decision to leave the abusive marital relationship.

Religion as an Indonesian woman’s identity for those who stay in Indonesia has an important role in determining in which court they can arrange a divorce. For Indonesian Muslims they must go to the religious court, while non-Muslim must process the divorce in the district court. In certain cases, for instance, EL who married in the Islamic manner, she must submit herself to the Islamic way; therefore, when filing divorce she must go to the religious court. For Indonesian women who stay in Australia, there are no such regulations dealing with the religion as women of all faiths or none access the legal system of the Family Court.

In addition, the descriptions above have shown that when women’s identities oppressed, these oppressed identities will try to find the appropriate or supported resources or spaces in order to release them from the oppression. The appropriate resources and space sometimes will be found in the resources or spaces which have a similarity to these identities, but it sometimes can be found in the neutral spaces. A neutral space in this context is an affordable space able to be accessed by everyone regardless of their identities.

The neutral spaces basically can be identified from their function and mostly belong to government, such as police officers and court. However, in the neutral spaces, such as police stations, for example, police officers may act in such a way that is not a neutral space and continue oppressing the woman’s identity as a victim of violence. It may not offer a neutral space when the response of police is far from the victim’s expectations and also far from the proper implementation of the law that should be provided by those police officers. In another example, a law firm should be a neutral space for everyone and every case, but it might not be a neutral space available to the poor who cannot afford the lawyer’s fee. Legal aid will be a neutral space if it does not
belong to specific institution, religion, or other identities because it welcomes for everyone regardless of these identities. However, it will not be a neutral space for certain people whose identities differ from that of legal aid. The case of Y has shown this phenomenon. KJHAM, however, can be categorised as a neutral space for women victims as it assists them regardless of their identities, but it will probably not be a neutral space for men victims because the organisation has declared itself as an organisation that has is concerned with women and children’s issues, particularly those dealing with domestic violence cases. Hence, men who have experienced domestic violence may be discouraged from disclosing the violence to this organisation because it is only for women and children, not men.

The court seems a neutral space since it is provided by the state to service public interests regardless of the people or community’s identities. However, in fact, particularly in Indonesia, the court is not a neutral space since the division on the basis of religion in family law between Religious Court and State Court. The litigants must approach the process in conformity to their religion and its practices, considering the rule and procedures before access is granted to the appropriate court dealing with marriage and divorce cases, otherwise the court will reject an application because it is not under the court’s jurisdiction. Corruption in both relevant religious courts and civil courts as well as the criminal justice system, however, can render these spaces oppressive to women victims. High ethics at all levels is required to enhance access to justice for women victims of domestic violence.

Meanwhile, a faith-based court dealing with marriage and divorce cases is not available in Australia. The Family Court of Australia seemed likely to be the neutral space for everyone has access to it regardless of their religious identities. In their decision making, the judges have tried to be neutral for everyone despite the violence.
This arrangements were not always considered satisfactory by female victims of violence. ML, for example, insisted that the judges had forced her to accept a 50:50 arrangement for shared parenting in spite of a history of domestic violence in the marriage.

These circumstances have shown that the law through its legislation and regulation has an important role to regulate and to determine what is appropriate and not under the law. The legislation provided by the state has been imposed and the apparatus of the law utilises and interprets it to determine outcomes for people and their space based on their identities in accessing to justice. The legislation has also created a space within a space based on the women victim’s identities. It means that legislation may be imposed on an institution which is initially a neutral space to create a new space to support, or to protect or to fulfil the women’s rights as the victim of domestic violence. For instance, the case of PJ has shown that the education institution and local government agencies as the neutral public spaces might have had less concern about domestic violence issues, but the case of PJ illustrates the specific concerns within the institutions and the case must be treated differently from other cases. The case of ML has shown a similar phenomenon. The Family Court has the jurisdiction to handle marriage and divorce cases; as a neutral public space the Court will treat every case equally. Thus, when the issue of domestic violence comes before the court, the judges must consider it in their decision in order to protect the victim; however, according to ML, the judges’ decision in the shared parenting did not reflect the awareness of judges on domestic violence issues and the identity of women as the victims of domestic violence (see Chapter 5 on the experience of ML in accessing the justice system). For the other respondents, such as SS, ID, EL, MR, GE, GI, IN, and Y, their concern regarding their identity as the victims of domestic violence as expressed from the public
institutions where they demanded justice and their rights was far less compared with the experience of ML and PJ.

Based on the description above, the justice system seems likely to be unable to give justice to meet the victim’s expectations. The experience of MI had shown that the legal system, both criminal and family law, at that time did not support the victim being able to obtain her rights. The criminal law in 1985 referred to the Penal Code in which the treatment of domestic violence issues was limited, and there was a lack of awareness of police officers and communities generally on this issue as well. Nevertheless, from the experience of many respondents after the Domestic Violence Act 2004 was issued, there seems little evidence that the pattern of police behaviour towards the victim of domestic violence has changed. That services remained unsympathetic towards the victims of domestic violence is shown the lack of unawareness of police officers in cases of domestic violence, not only in the case of physical violence but also in instances of non-physical violence, even after the passing of the Domestic Violence Act in 2004. The experiences of GE and Y who reported their cases to police occurred between 2010 and 2011 (which was about seven years after the enactment of the Domestic Violence 2004). Their experiences revealed that the zero tolerance of domestic violence policy (planned and gauged by government a year after the issue of the Act) seemed to have failed as neither the Act nor the Policy seemed to have had any effect on the police officers. Although this cannot be blamed solely on the shoulders of police, as their attitude were also affected by the attitude of victims who tended to ‘report the violence and withdraw repeatedly’ which has also made the police confused (and reluctant to respond). Unfortunately, this attitude that may have been shown by a few women victims has been generalised by many police officers to all women victims. These phenomena are acknowledged as obstacles to the implementation of the Domestic

These circumstances have shown that the success of the Domestic Violence Law depends not only on the police officer as the law apparatus but also the women victims. However, the role of police as the spearhead of law enforcement remains important, so that police discretion and concern for domestic violence cases are both needed. Further complicating matters is the fact that police are accustomed to dealing with and processing charges related to physical violence, but not for non-physical violence (such as the psychological violence experienced by Y). It should be recalled that the Domestic Violence Act covers non-physical violence such as psychological, economic, and sexual violence.

In addition, the Domestic Violence Act 2004 also provides victims with the right to get legal assistance regardless of their background and the violence, but in fact some women victims have difficulty getting legal assistance. It appears that it is not obvious to a victim as to whom to seek advice from as has been shown by the experiences related above; and this is the case especially in regard to legal advice and assistance. In all likelihood, if Y had not had contact with a particular person (in this case, the author) she may probably have not found the right institution (in this instance KJHAM) to help her case, particularly in regard to arranging divorce. In regard to the experiences of MI and other respondents who had left or were leaving abusive marriage by using the services of KJHAM, it has been shown that the result and the assistance process satisfied them. At the time of interviewing, the researcher advised Y to contact this institution in order to obtain information about another alternate source of legal aid that can help her to arrange divorce for an affordable fee.

The other factor that is an obstacle for accessing justice is money (whether the lack of money on the part of the victim and/or greater availability of funds for the
perpetrator). For respondents in this study, a lack of money seems likely to be a direct and indirect factor in access to justice. In family law, the system has given opportunities to parties to litigate before the court, and the intervention of the state is less than in criminal law.\textsuperscript{196} The party who initiated the litigation process has to self-finance. Justice seems likely then to be afforded only by people who have money. This situation has shown that having money can mean having ‘power’. In the case of IN, for example, she lost her ‘battle’ because her husband has ‘power’ through his education, financial ability and social status. In family law, in the case of MI and SS, for instance, their husband refused to pledge \textit{ikrar talak}/divorce because they had no money to pay all maintenance that would be due. MI finally did not want to sue her husband for divorce and it was not merely about money, but she had to consider her son who suffered from mental illness. Moreover, she adopted smart strategies such as waiting for her husband’s superannuation which will come in six months later due to her as her husband’s legal wife. Meanwhile, SS remained in her decision to file for divorce because she has financial resources to support her divorce proceeding. In the case of Y, the difficulties in arranging a divorce not only were caused by her inability to hire a lawyer, but also because she did not find the right institution to help her to arrange the divorce. However, the other factors such as her religious affiliation as the seeker for justice and the service provider institution’s religion-based policy in relation to divorce seemed likely to be a barrier to access to justice. Although the other non-Muslim respondents in this study did not have similar experiences to Y, this phenomenon has shown how in some instances the spaces and women’s identities cannot work together, while in other cases the different spaces and women’s identities can support to each other.

The experience of some respondents in Australia has demonstrated this

\textsuperscript{196} Saraswati, ‘Justice and the Identities of Women’, above n 48.
phenomenon as well. SR, for example, has demonstrated that she must struggle to find
the amount of money in Australia in order to file for divorce against her husband who
lived in Indonesia. There is also the effort of ML in looking for money to pay lawyer.
Their experiences have shown that money can become an important element in
accessing justice, given that without hiring the lawyer she would be lost of her chance
to obtain custody of her daughter. Another example is that of L. L was really financially
dependent on her husband; this dependency has made her to accept any decisions which
are made by her husband in regard to property settlement, but the decision was far from
satisfying a sense of justice or meeting expectation generated by legislation. Although
some respondents in this study are employed and are earning to fulfil their living
expenses, they had forced themselves to get extra money to ‘buy’ justice because
accessing the justice system remains costly.
CHAPTER 6
CONCLUSION

6.1. Summary

The relations between law, power and space have brought a new awareness in the broader community in regard to domestic violence issues; domestic violence is no longer merely a private matter but has become subject to public scrutiny. This consciousness, in turn, has had a significant effect not only on the development of relevant legislation but also on the Indonesian women in this study in regard to their access justice in the legal system dealing with domestic violence. The significant effect on Indonesian women in this study occurred because the increased community awareness of the problem and their individual experience of increased consciousness of themselves as victims of domestic violence has given them new knowledge and more power to be able to obtain a better life.

By implementing the concept of knowledge as power, including law as the representative of power developed by Foucault, the accessibility of respondents to power, knowledge and law can be obtained through the resources which are available in private and public spaces. In the case of domestic violence issues, there are two aspects of the law dealing with domestic violence; the criminal law aspect has been regulated in the Domestic Violence Act, and the civil aspect has been regulated in the Family Law Act or the Marriage Act. Each of these Acts has its own power embodies certain knowledge, and applies in different jurisdictions. This, in turn, has brought about the discussion upon space.

Historically, domestic violence has been considered a private matter; however, the development of knowledge and accompanying changing attitudes has resulted in it now being seen as a criminal matter, where the intervention of state is needed to
eliminate it. The issues became a concern of the United Nations and global communities because such violence occurs in various parts of the world and affects women physically, psychologically, and socio-economically.

New knowledge on the issue has led the United Nations to issue the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), and the states parties to sign and ratify the convention and implement it in their national legislation. ‘Space’ is important in the development of law and the exercise of power. CEDAW is evidence that law, power and space approach are significant at the global level in addressing domestic violence cases in that context. Then, at a state level, such as in Australia and Indonesia, this knowledge has been integrated within new legislation that deals with the issue of domestic violence. The legislation, in turn, is expected to change the old paradigm of domestic violence as a private matter to a public concern in order to increase the awareness of community members and to provide a means to address the violence as well as supply more services and support (legislatively and otherwise) to the victims of domestic violence who seek to help, and by the presence of such legislation and services, to encourage them to do so.

Next, from the women’s point of view, the law through legislation has given new knowledge to women victims, enabling them to recognise domestic violence and provided different ways to cope with it. This can be by accessing resources in private or public spaces, either provided by the government or non-government organisations, and this can include, for example, formal complaints and prosecutorial processes, the availability of legal aid, access to counselling and/or material support. The change from the old paradigm on domestic violence is evidence that the law is not merely oppressive but also can be a tool of empowerment that gives better knowledge about the issues in terms of the best interest of the victims, and it is particularly powerful as it has given the
usually female victims’ rights that are found in that legislation. The rights have been provided by the government/state through the agencies and services within two different areas of legislation, namely the criminal and family law. Through legislation in different jurisdictions women have gained a better understanding or knowledge of the law’s different powers and of how to access the power to support their demand to obtain their rights.

More broadly, the knowledge has imposed on institutions, particularly in public spaces, a concern for domestic violence issues and women as the victims. The institutions, such as police, court and other public institutions, have created new spaces for the women victims to support their needs and allow them to obtain their goals. The government provides the framework legislation and polices with which the public institutions and others must comply. However, it cannot be denied that, in reality, accurate knowledge is not always easily accessible or affordable nor readily comprehensible by everyone. This particularly relates to the law apparatus. Nor was it that the law was always upheld by the institutions charged with that responsibility; instead it could at times be perverted by corruption or simply ignored if inconvenient or not in alignment with the officials’ own viewpoint. Thus, in certain spaces, the women victims did not find the law as the representative of power/knowledge that could empower them. As result, they had to empower themselves by implementing what knowledge they had; nevertheless, the knowledge that the women victims had sometimes did not support them in overcoming the violence or in meeting their needs when such knowledge was intimately connected with their identities or their ability to put into action a plan (such as divorce) that might eliminate the violence was limited by their particular circumstances.
Knowledge about domestic violence, together with the women’s identities, had significant influence on their decision making as to whether to terminate the marriage relationship or not, and, then, on their access to court. The women’s choices to cope with the violence by accessing court have been largely determined by the nature of law to which they are subject, that is, by whether the law and the space it creates is appropriate to the women’s individual case, and, even, to each woman’s identity. In Indonesia, for example, women have to adjust their justice seeking activity to their identity, in particular their religious identity, before accessing the court. For example, if a woman wishes to obtain a divorce as a means of ending the violence or to seek maintenance and so on for herself or her children, she must seek it in the appropriate religious or secular court, and her rights may vary according to the basis of her marriage and even whether her husband is a public servant or not. The use of the criminal court for prosecution of domestic violence is, however, the sole avenue for punitive measures. In Australia (unlike Indonesia), the women’s identities may not have a significant effect on their access to court (due to divorce, for example, being a secular process and obtainable on a ‘no fault’ basis, an ‘irretrievable breakdown’ of the relationship characterised by 12 months separation (which may include still living under the same roof). The case that they have and the aims that they want to achieve will, however, have a significant influence on their choice as to which court is appropriate, that is, whether the Family Law Court for divorce or Criminal Court for prosecution of the violent offender, or both.

Regardless of their identities, Indonesian women victims in this study have pursued their access to justice system by accessing resources by going from one resource source to another, from one space to another, and from one legislative framework to another, in which each of these elements has its own power to be
contested. After manoeuvring within and between these resources and spaces, and coming to an understanding of the applicable legislation and recognising the various power operating that might have been become barriers to obtaining their rights and meeting their needs or facilitate such activities, the respondents in this study decided upon the strategy they would adopt to confront the violence. Thus, the experience of Indonesian women in accessing justice has been done through accessing law, power, and space; these elements have either singly or simultaneously oppressed and empowered them in their seeking to obtain their rights due to the extent to which power, knowledge and jurisdiction embodied in those space have interacted with the individual women in their circumstances and the nature of that interaction.

6.2. Findings

There are two sub-questions in this study as the avenue to examine whether the relations between law, power and space exist within Indonesian women’s experience of domestic violence. The approach of examining the relations between law, power and space is deployed to support the claim of the researcher that previous theories on domestic violence (such as the ecological, empowerment and intersectionality theories) are basically discussing these relations but the theorists have not generally mentioned these matters as such.

6.2.1. The causes of domestic violence

The findings have shown that domestic violence is caused not only by a power imbalance between a man and a woman in marriage relations but also between a woman and a man, a woman and a man more generally, a woman and social institutions (family, neighbourhood, non-government organisations), a woman and social norms, and a woman and the state (court, police station, other institutions and justice system). Thus, the cause of domestic violence varied due to the individual factors, social
networks, and institutional and cultural factors which occurred not only in private but also in public spaces. This circumstance has shown that each of the layers within the ecological framework has contributed to domestic violence either at work singly and/or simultaneously.

In this study then, the law in the context of the ecological approach is not merely referring to the formal regulations or legislation issued by the state or public institutions, but also norms and values which are available and alive within the community. However, in this study too the law that is emphasised is that dealing with the family and criminal behaviour in relation to domestic violence issues. The laws dealing with domestic violence have been established based on the best interest of the victim of domestic violence (see the discussion on the development of the legislation dealing with this issue in Chapter 3), but the agencies of the law such as police, lawyers, and judges also have an important role to play in ensuring that the victim is able to exercise her rights. It is demonstrated in this study that the implementation of the formal laws and the response of law agencies have, at certain levels and in a number of cases, disappointed the victim and allowed the violence to continue (see also Chapter 5).

The experience of the respondents is evidence that the existence of correlations among the layers within the ecological framework is incontestable. It also bears evidence that the relations between law, power and space actually exist in the ecological framework. The layers are basically representative of spaces, and each of the layers contains a degree of power regardless of its function, whether it is oppressive or empowering. Oppression can even serve to foster a reactive empowerment. Power, as based on the theory developed by Foucault, has shown that it no longer belongs only to the state or certain people, but rather it belongs to everyone who has access to resources that are available within the layers.
6.2.2. Indonesian women’s access to resources and the Justice System

Another theory which has been employed on domestic violence issues is that of empowerment (see Chapter 2). This theory emphasises the ability of the women victims to access resources which, in turn, will empower them to cope with the violence. Access to resources is basically access to information or knowledge. The experience of respondents has shown that they had to move from one another resources, from one person to another, and from private to public spaces, and, even, from a public space to another public spaces in order to find the resources that really would support and help them to overcame the domestic violence they encountered in their particular case. By accessing resources they gained new knowledge and more power because they obtained the information needed to decide upon the strategy that would be used to overcome the violence. Nevertheless, the information obtained from resources (whether from individuals or institutions or from private and public spaces) did not always meet their needs or serve their interests.

The phenomena in this study have shown the justice system is often the last resort for the respondents to obtain their rights, utilised despite the results that they obtained from accessing resources via personal approaches or from social networks members. The first justice system they approached was often the criminal law system when they contacted the police;¹ when the response from the police could not solve the matter, the respondents, then, resorted to the family law system and sought divorce as an alternative.² The respondents insisted that divorce was the final resort to stop the violence within their marriage. Respondents as litigants in Indonesia argued that filing for divorce was also difficult because there they had to provide a number of required

² Ibid.
documents from the neighbourhood administrator, prepare witnesses to support their demand for divorce, attend the mediation process prior to court hearing and attend the court hearings.\(^3\) Moreover, becoming litigants, particularly in the Religious Court, had made them essentially ‘losers’ in the situation because women litigants have no rights for living allowance (maintenance) after divorce. If the husband is the litigant, the women’s rights mostly were guaranteed by judges as long as the wife was not identified by judges as *nusyuz* or recalcitrant (disobedient or not fulfilling her duties), such an issue being able to be considered in the Religious Court. The decision is made not only on the basis on the Compilation of Islamic Law but also the *Marriage Act 1974*. Muslim women as litigants can, however, demand the living right after divorce if their husband is a public servant if they are able to place before the court evidence of or witnesses to the presence of polygamy within their marriage relations (as public servants are not permitted to engage in polygamous marriages). If the evidence or the witness is convincing, the judges will consider that the woman’s rights must be maintained. The decision to award living rights is made on the basis of the *Implementing Regulation No 10 of 1981*.

For non-Muslim applicants in the state court, the living right (maintenance) after divorce (which is regulated by the *Marriage Act 1974*) is not automatically decided by judges if it is not declared and demanded explicitly in the lawsuit.\(^4\) As result, several respondents in this study did not obtain their living right after divorce. The opportunity to have living rights after divorce is wider for the women litigants whose husbands are public servants. By presenting a statement and evidence before the court that their filing for divorce was caused by domestic violence,\(^5\) women will be considered by judges to

\(^3\) Ibid.
\(^4\) Ibid.
\(^5\) Ibid.
be able to be awarded a living right (spousal maintenance or allowance). The decision to give the living rights is made on the basis of the *Implementing Regulation No 10 of 1981*, just as it is for women who approach the Religious Court. However, even, when respondents argued that they had experienced domestic violence within the marriage, judges never mentioned this fact in their legal consideration and decision on the divorce in their verdicts in both religious and secular courts. In Australia, such matters are irrelevant in relation to the application for a divorce, but relevant in matters pertaining to child welfare, access and custody matters resulting from the divorce. In each of these jurisdictions, the women may feel as if their experience is not being given the attention it deserves in terms of being the basis for the divorce itself. Even in the Indonesian religious court an ‘inability to get along’ may be cited in the actual decision rather than actual violence on the part of the husband (and thus essentially act as a euphemism for varying degrees of violence).

These experiences of respondents have shown that they had struggled to obtain their rights because they confronted the power exerted both individuals and institutions in private or public spaces and which acted as a means of oppression. Moreover, the existence of this power within the various spaces had also been justified by the law. Thus, it can be said that law, in reality, does not always empower the vulnerable – and this is true even of particular legislation that may have been initially enacted to empower the victims. The failure of the victim to seek or exercise her rights could not be blamed solely on the victim since there is an indication of a failure of the law apparatus (both persons at the ‘coalface’ such as police and magistrates and the legislation itself) to recognise relevant issues and a need for it to be more aware of and responsive to the needs of the victims and thus empower her.
6.2.3. Women’s identities and their influence in making decisions in relation to domestic violence issues

Generally speaking, the identities of women in this study vary. The identities either singly or simultaneously had significant influence in relation to other parties that through these identities have more power to oppress women, with such parties including victims’ husbands, family members and also public institutions. Nevertheless, based on the women’s experiences in this study, the oppression had significant influence in causing them to want to resist and to encourage them out of such oppression by using their identities (see Chapter 5).

For instance, respondents in this study have identities as a mother, housewife and woman (as well as daughter, sometimes employee or businesswoman, educated or uneducated, or identifying with certain cultural or religious group). These identities had been misused or manipulated by their husbands. Committing violence, exercising a controlling physical, social or economic power within the relationship, and neglecting wives’ rights were common forms of oppression utilised by the husbands. As a mother and wife, these women often had to struggle in the abusive marriage because they thought of their children and the need to maintain family harmony. At the same time, because their identities as mother and wife had been neglected by their husband physically, psychologically and often financially, many had endeavoured to fulfil the neglected need, particularly in terms of financial issues, by looking for employment. Some of these respondents also acknowledged that the identities as mother and wife had given them a pleasant social status, and they became shocked and confused when facing the violence. The violence had brought them to complicated circumstances involving questions of whether to leave or to stay within an abusive marriage. This is a decision
which is not easy to determine because of social, economic, legal and cultural considerations.

Further, the identities as mother, wife and woman, in fact, often did not restrict their efforts seek information about everything that they needed to confront the violence, including information about legal aid. Both Indonesian women who were in Indonesia and those in Australia took the initiative to seek information about legal aid and this had been obtained from different resources. Most of the respondents had found appropriate legal aid that could help and support them in confronting the violence, but a few of them did struggle to find appropriate legal aid.

It was easier for respondents who were financially independent than for respondents who were financially dependent on the abuser to make the decision to file for divorce, to gain access to legal aid, and/or hire a lawyer and go to court. All of which issues are dealt with in the public spaces for the purpose of women victims gaining their rights not just to a living but to a peaceful existence.

Domestic violence was also experienced by many women regardless of their education. The educational background of respondents in this study varied but most respondents had completed elementary school or part of secondary school, and only a few had completed high school. Educational background identities had a significant influence on their understanding of domestic violence, their responses and decision making; nevertheless, all women victims had the same goal to end the violence. This they attempted to do by accessing many resources where the results differed. The varying educational background identities did not become an obstacle for respondents to access resources and decision making since the information, services and support to victims of domestic violence are available and have been provided by government and non-government organisations to women with no reference to their educational
background. Most of the respondents, particularly educated women, argued that domestic violence was a source of shame, but they did not deny it as a part of their life, and they insisted that they are ready to help other victims who needed help and support.

Some of the respondents argued that their identity in terms of age, particularly a respondent who was above forty-five years old, had been used as a reason for other parties such as their own children, neighbourhood administrators and police officers to try and force them not to take certain actions in order to obtain their rights as victims of domestic violence. These parties expressed their belief that at the victim’s age it was not appropriate to file for divorce or to report the husband to police despite the violence; they advised such older respondents to reconcile, or to wait for their husband’s return if he had left. Such phenomena have shown that community members’ understanding on domestic violence issues, not only in private spaces but also in public spaces, was influenced (and limited) by the value placed on family harmony and the marriage principle, further complicated by an ageism that minimised the suffering of the older women victims of violence who might seek their rights after enduring years of abuse. Nevertheless, the respondents who experienced such stereotypical attitude did not surrender to their circumstances, and insisted on continuing with their plan.

In addition, religion as one of women’s identities had significant influence on several women respondents in this study in terms of their responding to domestic violence, in making decisions and in accessing the court regarding a divorce. This study noted that abused women who shared their experiences with spiritual figures, such as priest, pastor, imam or marriage counsellor, were often advised to work through the marriage relationship, and they were not provided with referrals to the justice system or social services. Only one man in this study (a priest) had referred a respondent to social services provided by the government. Whilst faith in God, particularly for those who
profess to be Catholics, was the main source of strength for respondents who decide to leave the relationship and begin to heal; conversely in a number of instances it also gave them strength to stay in the abusive relationship due to the belief that violence was a test from God or that the relationship should be maintained until death.

The religion that characterises an individual Indonesian woman’s identities, particularly for those who stay in Indonesia, can play a crucial role in determining in which court they can arrange for a divorce. Indonesian Muslim women must go to the Religious Court, while non-Muslim women must process the divorce in district (secular) court. There are further complexities. In certain cases, for instance, EL who married in Islamic manner (although not a Muslim herself) must submit to the Islamic way, and therefore, when filing divorce she must go to the Religious Court. For Indonesian women who are in Australia, there are no such regulations dealing with the religious identity of the female victim as all women equally must access the Family Court system to obtain a divorce and for other matters pertaining to divorce (for example, maintenance, care and control of children of the marriage and so on).6

Hence, the descriptions above have shown that when women’s identities are oppressed, these oppressed identities will try to find the appropriate or supportive resources or spaces in order to release themselves from the oppression. The appropriate resources and space sometimes will be found in the resources or spaces which have a similarity to these identities, but it sometimes can be found in the neutral spaces. A neutral space in this context is an affordable space able to be accessed by everyone regardless of their identities.

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6 Only a few women apply for a Catholic annulment in the religious forum available to them, but that is over and above the secular divorce. An annulment is not recognised as a divorce. Some apply as a prerequisite for remarrying in the Catholic Church as without an annulment they will not be allowed to marry “in the church” but will be permitted a secular marriage, but will not be able to fully access the sacrament of the Eucharist.
Neutral spaces can be identified from their function and mostly belong to government, such as police stations and courts. However, a neutral space, for instance, a police stations or office, sometimes becomes other than a neutral space when the response of police fails to meet the victim’s expectation and the law that must be implemented by the police officer. Another example is that of the law firm, which may theoretically be a neutral space for everyone and every case, but it might not be available for the poor who cannot afford the lawyer fee (and so is income biased rather than neutral). Legal aid can attempt to fill that gap in services and is generally restricted to lower earning individuals, particularly in Australia. However in Australia and Indonesia services will often provide a neutral space if it does not belong to a specific religious or cultural institution, religion, or is restricted in terms of other identities because it welcomes everyone regardless of such identities. A service will not be a neutral space for certain people whose identities differ from the service provision targeted by specific legal aid agencies, as has been demonstrated in the case of Y. Then, non-government organisations such as KJHAM that are concerned with women issues can be categorised as a neutral space for women victims regardless of their identities, but it would probably not be a neutral space for men victims because the organisation has declared itself as an organisation that has a concern for women and children’s issues and particularly in dealing with domestic violence cases. Thus in this instance, gender as an identity rather than identity as a victim takes precedence. Such support has yet to be developed and is beyond the ambit of this thesis.

Then, the court seems as a neutral space since it is provided by state to serve public interest regardless of the person’s or community’s identities. However, in fact, particularly in Indonesia, the court is not a neutral space since a division is made in family law on the basis of religion between religious court and state court. The litigants
must adjust their expectations and practices in regard to seeking justice in a manner that is in line with their religion, and considers the rules and procedures before accessing the appropriate court that deals with marriage and divorce cases in their circumstances, otherwise the court will reject to application because it is not under that particular court’s jurisdiction. A court dealing with marriage and divorce cases on the basis of religion is not available in Australia. The Family Court in Australia seems likely to provide a neutral space for everyone to access regardless of their various identities. In their decision making, the judges there have tried to be neutral for everyone despite the presence of violence.

These circumstances have shown that the law through the legislation has an important role in regulating and determining what is appropriate and not appropriate. The legislature in each state enacts its legislation, creates the legal apparatus and determines the people and their space based on their identities in accessing justice. Such a space or access to it can be limited by various identities. The legislation has also created ‘a space within space’ based on the women victim’s identities. It has also meant that legislation that created the judicial institutions and which were initially a neutral space have increasingly created a new space to support, or to protect or to fulfil the women’s rights as the victims of domestic violence, for example by shifting the understanding of violence to one that views it a public rather than private matter and open to public scrutiny for the safety of women and their children as matters of greater priority. This fundamental ‘spatial’ shift is crucial in the evolution of the rights of women victims of domestic violence.

6.3. Conclusion

To conclude, the researcher argues that the relation between law, power and space affect the empowerment of Indonesian women victims of domestic violence in
their access to justice in the legal system. This argument is supported by the findings that whether their access to resources and the justice system in different spaces is positive or negative, Indonesian women victims of domestic violence become more aware of their rights. It happened because the interaction between these women and law, power, and space has brought them to new knowledge about the power of law, the power of ‘power’ and the power of ‘space’ belonging to others either individually or institutionally (private and/or state). For example, the interaction between the respondents with non-government or government agencies has brought them the information and support that they need. This can be a non-government organisation concerned with this issue such as LRC KJHAM in Indonesia (which provides board ranging counselling and information as well as referral to legal aid) or a government agency such as Centrelink in Australia (which can also provide contacts with appropriate personnel such as social workers, reference to accommodation services such as those offered by women’s refuges, and information about financial support should the woman leave her violence partner) There are a number of means by which women are empowered. After reading the relevant legislation, which they may never have read before, they understand about their rights; or their contact with other people from different places, institutions, experiences and identities background has increased their insight about various strategies that are able to be implemented in various situations and spaces. Their growing understanding of knowledge and power affects their awareness and is affected by their identities. The experiences of respondents in this study have demonstrated that knowledge of the power of their identity became the main factor in their survival. New knowledge and its power, then, has led them to face domestic violence issues, obtain information on possible solutions, and finally, to make a decision on the basis of their needs and interests when dealing with domestic violence issues.
However, to obtain justice for these respondents was not easy given that other people (especially a husband as the perpetrator) and institutions (private and/or public) have their own knowledge and power, and most of them know how to use their ‘power’ both in private and public spaces to their benefit.

6.4. Recommendations

6.4.1. The Legal System

The experiences of Indonesian women living in Indonesia have demonstrated that they consider as negative most of the police responses when the women victims reported the violence. Therefore, the police officers must share a similar or common understanding of domestic violence (or a lack thereof) in theory and have similar basic standards or ideas on how to treat the victims of domestic violence. A new common standard must be acquired by them so that they are more responsive to the needs of women victims of domestic violence and are able to better respond to them. Having appropriate standard operating procedures to deal with victims of domestic violence and instances of domestic violence will not only help the victims but also will improve officer performance in response to women victims of domestic violence regardless of the type of violence. This should lead to a greater willingness to report violence and a greater capacity to have both perpetrator and victim dealt with appropriately.

The Domestic Violence Act of 2004 was issued by the Indonesian government and gives police the authority to protect the victims of domestic violence, so there is no reason to refuse a victim’s demand for protection. Police should be upskilled and appropriately trained to handle such situations. Police must also develop the networks among them in order to further support the victim seeking help. The victim could then access an appropriate police officer more easily even though there are different regions and their police authorities may have some other minor differences between them.
Currently, a victim of domestic violence is always asked to go to another police station when the police at the station to which the victim initially reported argued that they lacked authority to handle it and so the report must be made to another police station. Meanwhile, the victim sometimes has financial difficulties in accessing transportation to go to the other police station. This situation cannot continue.

The response of police has been indicated by respondents in this study is also perceived as negative because the police did not arrest the perpetrator when the perpetrator committed acts of violence against them. The perception that domestic violence is ‘a family matter’ still persists in the police mindset. As a result, police always advise the victim to reconcile with the husband who had already abused them. This approach, taken repeatedly by police officers, reflects a lack of insight into the problem and the position of the woman as victim. Asking the victim to reconcile with her husband or perpetrator, even where an apprehended violence order exists, has also shown that apprehended domestic violence orders in Indonesia are not applied appropriately.

Moreover, the legislation in regard to apprehended domestic violence orders in the Domestic Violence Act 2004 states that such an order is issued by a judge after a case is brought before the court. Police lack the authority to issue an apprehended domestic violence order under the Act. If police were given the authority to issue an interim apprehended domestic violence order on behalf of the victim of domestic violence, this would better protect victims until the matter formally came before the court. It would also create ‘circuit-breaker’ where women are not subject to violence in the interim and so may become more empowered in their longer term decision making. Consequently, the Domestic Violence Act 2004 should be amended to give special authority to police to issue an interim apprehended domestic violence order.
The police still find obstacles in handling non-physical violence which was experienced by women victims, although the legislation has regulated non-physical violence such as psychological, economic and sexual violence. Therefore, police should take the initiative to find the evidence to support the victim’s report and prosecute the perpetrator before court. This process must be improved because the experiences of Indonesian women victim in Indonesia have shown that they, not the police, became the party who must be active and prepared to find the evidence.

Given that issues of bribery and corruption persist in this study (in Indonesian context), it is important to eliminate such behaviour within Indonesian Police Force. Further, to improve the performance of Indonesian police dealing with domestic violence issues, the integration of the Domestic Violence Act 2004 in the curriculum of the institutions of the legal apparatus becomes a necessity.

Part of the legal apparatus on which the important role in the case of domestic violence then falls is the judges. Given all respondents in the study did not proceed with a case in the criminal court, a recommendation regarding this court could not be given. Most of the respondents have brought their case to the family court, whether secular or religious. That domestic violence is revealed before the court as a fact in the matter, but it has never been recognised as the legal matter. As result, judges in the family court, particularly in Indonesia (either in state court or religious court) still avoid recognising domestic violence within their legal considerations and determinations/decisions as to the divorce verdict. This issue is important as a consideration in other legal aspects such as custody and sharing property but it is never mentioned by the judges as the important issue for women victims regard to the divorce proceeding with the divorce themselves. Therefore, it is important to establish a Family Court in Indonesia. The Religious Court and the State Court are seen as an Indonesian ‘Family Court’ that deal with marriage
and divorce matters; however, since the enactment of the Domestic Violence Act 2004 which regulates the correlation between criminal and family law, both the courts have not really completely resolved the problems associated with marriage and families issues, such as custody, sharing property, living rights, protection order and so on which all are required in regard to women and children victims of domestic violence. The complexity of having two systems the criminal legal system and the (further divided – religious and secular) family legal system affects the opportunity of women victim of domestic violence to access justice simply, quickly and inexpensively.

In Australia, the recognition of domestic violence within court decisions has occurred within the Family Court of Australia because the legislation has regulated the issue of domestic violence within the Family Law Act 1975 (Cth) in regard to the guidance of judges in divorce cases when they are dealing with other legal aspects of a divorce or separation, such as share parenting and property allocation. The one Indonesian women respondent in Australia who accessed the Family Law Court was still not satisfied with judge’s decision on shared parenting, as she believed that the judges had forced her to accept a 50:50 arrangement which, according to her, was unfair and improper because of the history of domestic violence in the marriage.

The Indonesian Marriage Act 1974 and the other implementing regulations have regulated the responsibility of the parents and the right of each party to children and property after separation, but this legislation does not mention domestic violence as an important aspect for judges to use as a guide that must be considered by them in their legal consideration and decision on a divorce verdict, particularly in regard to the best interest of the children and the women victims. Therefore, amendment of this legislation is needed. Moreover, the demand to amend the Marriage Act and its prevailing
implementing regulations either in state or religious court has been repeatedly expressed by Indonesian feminists.

Although the Government with its institutions and non-government organisations had early referred to the issue of domestic violence and the passage of the Domestic Violence Act 2004 and had publicised the issue through leaflets, education, training, seminars and conferences, evaluation of the implementation of the Domestic Violence Law must be on-going, and the performance of the legal apparatus and legislation must be continuously improved, and ceaseless campaigning on the elimination of domestic violence must be undertaken. Moreover, as a state party that has ratified the Convention on the Elimination of All Forms Discrimination against Women and the Convention on the Rights of Child and undertaken to integrate it into national legislation and service provision, Indonesia must improve the services for and support to the victims of domestic violence in the performance of the legal apparatus.

The ‘one stop’ service system, such as is provided by the various levels of government at women’s crisis centres in Indonesia, has played a significant role in supporting women victims to access justice, and particularly in regard to their receiving necessary psychological counselling. However, for the legal counselling the ‘one stop’ service system must refer women to other organisations belonging either to a government organisation or non-government organisation so that the victims can obtain a lawyer who will assist them with legal issues and before the court. Regardless of the performance of the ‘one stop’ service system, the presence of this service is very helpful to women victims in the period before they decide upon legal action. Therefore, improvement of the performance of this system provided by the Indonesian government, and in particular by local governments, is necessary. Moreover, the women victims usually have no appropriate information and face financial difficulties in their
attempts to access to the justice system. Similar information and services to support the women victims of domestic violence has also provided by Centrelink, a Commonwealth government agency present in all Australian states. By contacting Centrelink, women victims can access services or agencies that they need. The victims who have very few means may also be supported by the government to obtain free legal aid in particular specified action.

Most of the respondents in Indonesia who experienced physical violence must pay their own medical and hospital expenses using their own funds. This situation is caused by the absence of legislation to support and rehabilitate to victims of violence (that is, there is no compensation available to them, as well as a lack of a universal publicly funded health scheme as exists in Australia). Therefore, the state has a responsibility to issue such legislation for the purpose of the interest of the victims. Although in this study there was no respondent who lives in Australia who had obtained such compensation, legislation on the matter is provided by the New South Wales government through the Victim Support and Rehabilitation Act 1996. It embodies state responsibility in ensuring the rights of the victims (see Schedule 1 for direct reference to compensation of victims of domestic violence).

6.4.2. The women victims

The behaviour of the women victims in reporting and, then, withdrawing the report repeatedly is indicated as having a significant bad impact on the response of police to women victims. The police argued that such actions taken by a number of victims had shown that the women victims were not serious when they reported the

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7 Victim Support and Rehabilitation Act 1996 (NSW) Sch 1 notes standard compensation between $7,500 and $ 10,000 for victims of domestic violence. This is a statutory compensation. It should be also noted that ‘if a person is convicted by a court of an offence…compensation [of up to $ 50,000] …to any aggrieved person…’ may be payable from the offender’s property: s 71.
violence to police. Based on such accounts, the police have generalised all domestic violence cases from their experience of those who do withdraw accusations after having lodged a complaint; they then refuse to process other cases properly. As result, the actions taken by police (or the lack of such actions) have been evaluated by the women victims as unprofessional and one not reflecting an attitude at all sympathetic to the victim as would be the case in relation to other victims of violence. Therefore, to prevent a bad image being formed of the women victims who are seeking help, access to psychological assistance to the women victims or legal counselling is needed before they report to police. The assistance is important as it would give the victims a knowledge and understanding of their position in the legal system, and perhaps enable them to feel greater support which, in turn, might make them not only less likely to withdraw a complaint once it is made but allow them to have broader knowledge of the options before them and the consequences of particular options. The women victims would, therefore, be more likely to have a logical reason and taken a decision that is suitable for them and takes into account the legal, social, economic and cultural consequences of their actions. When the decision is taken to lodge a complaint, such women would be far less likely to withdraw it.

Further, the women victims must contact the institution or organisation provided by local government or non-government organisation that is concerned with the issue in order to obtain a professional resolution. The professional institutions which provide services and agencies which support the victims of domestic violence are needed to support the women victims in their bid to access justice. The experiences of the women victims in the study, particularly in Indonesia, have shown that the women victims sometimes have access to inappropriate resources which affected not only their satisfaction in regard to the course of action they take (which may not be the best
resolution given their circumstances) but also may negatively impact their financial situation. Women victims must be given information about the services and agencies that can be accessed so that they may be assisted in gaining accurate knowledge as to available options so that they are better be able to select an appropriate solution to the violence they face.

Being financially independent is also necessary for women victims. By having their own earnings, women victims can make an independent decision without worrying about financial difficulties in the future. Further, having their own source of income also helps them access more resources that are needed to overcome the violence and also to meet their needs and help them to obtain their rights. Being independent in financial issues is important to the women victims since all the expenses have to be paid by the victims themselves, and the government, particularly Indonesian government, does not offer any compensation to the women victims of domestic violence in the Domestic Violence Act 2004. It can be argued that these women, as the victims of violence, are entitled to some compensation. It is particularly helpful in situations of violence where women victims are unable to secure wider family or community support (see below) to leave their situation and/or pursue their rights in family law (and in regard to perhaps pursuing criminal proceedings).

‘Breaking the silence’ is also an important recommendation. It is a necessary part of encouraging women to obtain their rights and to resolve the issues of violence in their lives. The experiences of respondents have shown that respondents have had opportunity to access many resources when they started ‘breaking the silence’ and reaching out to others (individuals and agencies) in regard to the violence they were suffering at the hands of their husbands, although it must be acknowledged that not all resources were helpful and useful for individual cases. However, by breaking the
silence the chance of overcoming the violence is opened up more widely as they gained
further information, new knowledge and more power from accessing to resources. This
previously was limited when they kept silent about the violence.

6.4.3. The community

General speaking, the responses of community members to domestic violence
experienced by respondents were varied. Based on the experiences of the respondents in
this study, most community members supported the victim to obtain a better life by
giving information, providing shelter, supporting the decisions which were made by the
respondents either to report the violence to police or to file for divorce. The community
would give support if the respondents disclosed the violence. This phenomenon has
shown that the response of community members will depend on the approach of the
respondent. If they are silent about the violence, help cannot be offered; once the
violence is in the open, the community is given the opportunity to respond it. It can be
said that the responses of many community members were passive; however, blame was
not to be placed on their shoulders personally because their attitudes are shaped by the
prevailing religious, social and cultural values. These have important roles in shaping
their deepest held perceptions of family affairs as an issue that belongs solely to a
husband and a wife. As a result, often community members did not want to intervene in
a family affair without permission from one party or the other of the couple.

Nevertheless, once the woman victim breaks the silence, community members were
ready to support the victim in seeking help because she had convinced the community
members that women victims really want and need help and support, which in turn had
led the community members to take the action with and for them.

Only a few community members rejected the idea of a respondent divorcing her
husband despite the violence. The reasons given included the age of the respondents, the
overarching need for family harmony (for which it appears the wife had prime responsibility) and the shame engendered by divorce. Nevertheless, it did not mean that they agreed with domestic violence, but rather they kept arguing that the family’s unity had greater importance even than that (which, therefore while being worked against, and disapproved of, must ultimately be tolerated). Such an attitude is caused by the influence of patriarchal, religious, and social-cultural values which had deeply affected their mindset which, in turn, influenced their thought, words and actions dealing with domestic violence.

Therefore, given that barriers that exist to supporting the victims have been caused by the values such as whether domestic violence is a family matter or not, a continuously running campaign on eliminating against domestic violence must be undertaken through education, training and socialisation on the legislation and the government’s program on the issues. Regardless of the effectiveness of the implementation of domestic violence laws, the efforts against domestic violence undertaken by the state both in Indonesia and Australia (as has been acknowledge by researcher in this study by presenting the evidence from the literary and empirical research throughout all chapters), the researcher has also recognised that not all community members in both countries have a similar level of understanding on the issue; therefore, a continuous campaign that engages community members at every educational level, of every age, and social-cultural and ethnically diverse background must be undertaken in order to change the community members’ mindset which remain influenced by the gender role, patriarchal, social-cultural, religious and other values and norms which have tendency to subordinate, marginalise and discriminate women to men. Change is best effected by a combination of State legislation, its effective
implementation and a populace that shares the attitudes on which the legislation is based.
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**Interviewees**

EL, a retired pharmacist (Semarang, Indonesia, 3 January 2012)

FA, a housewife (Semarang, Indonesia, 29 December 2011)

GE, a motorcycle park keeper (Semarang, Indonesia, 24 December 2011)

GI, a carrier in the traditional market (Semarang, Indonesia, 24 December 2011)

ID, a property entrepreneur (Semarang, Indonesia, 3 January 2012)

IN, a worker in a private company (Semarang, Indonesia, 28 December 2011)

L, a student (Campsie, NSW, Australia, 11 October 2011)
MI, a housewife and volunteer in a women’s crisis centre (Semarang, Indonesia, 27 December 2011)

ML, a student (Sydney, NSW, Australia, 5 October 2011)

MR, a bridal wedding (Semarang, Indonesia, 24 December 2011)

NA, a dressmaker (Semarang, Indonesia, 29 December 2011)

PH, a retired beautician-respondent in this study (Belmore, NSW, Australia, 19 October 2011)

PJ, a housewife (Semarang, Indonesia, 27 December 2011)

RB, an entrepreneur (Semarang, Indonesia, 24 December 2011)

SR, a student (Sydney, NSW, Australia, 1 November 2011)

SS, a worker in a private company (Semarang, 21 December 2011)

V, a food entrepreneur (Semarang, Indonesia, 12 January 2012)

Y, an entrepreneur (Semarang, Indonesia, 22 January 2012)
Re: Letter of Invitation

To:

Dear,

I am writing to invite you to participate as a participant in our research project which is investigating public and private dichotomy in relationship with Indonesian women’s access to justice dealing with domestic violence cases [in Indonesia/Australia]. The project is being conducted by Rika Saraswati, a PhD scholar at the Faculty of Law, University of Wollongong.

You have been invited to be a participant because of your experience, particularly in seeking for justice in domestic violence cases and in regard to the issues of the distinction between public and private laws [in the Indonesian/Australian legal system].

The attached Participant Information sheet briefly summarises the project’s aims. It also contains the following important information: my contact details and my supervisor Dr Nadir Hosen; a brief overview of the methods I will employ and the demand on you should agree to participate; advice on the possible risks, inconveniences and discomforts to you of participating in the project; and, finally, an outline of the process of ethics review by which this project has already received approval and details of how you can register any complaints or concerns you have about how the research is conducted.

I look forward to hearing from you and hope that you will agree to participate in this important project. Should you agree to participate, I will send you a Consent Form which I ask you to complete, sign and return to us in hard or soft copy. I will then contact you to make arrangements for the interview which will be in person.

Yours sincerely,

Rika Saraswati
PARTICIPANT INFORMATION SHEET FOR WOMEN

TITLE
Public and Private Dichotomy in the Legal System: Indonesian Women’s Access to Justice Dealing with Domestic Violence Cases in Indonesia and Australia

PURPOSE OF THE RESEARCH
This is an invitation to participate in a study which is being conducted by a PhD scholar at the Faculty of Law, University of Wollongong, and it is totally independent of the court and prosecution services. The purpose of this study is to investigate the experience of women in domestic violence cases, including their responses to the violence and their access to legal institutions.

INVESTIGATOR
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METHODS AND DEMANDS ON PARTICIPANTS
You will be asked to participate in a two-hour-interview visit by Mrs Rika Saraswati. The place of interview will be based on an appointment between participant and the researcher. The interview will be done face-to-face and it will be recorded using an audio recording device. The goal is to ascertain the common experiences of women in situations of domestic violence and in accessing justice as provided by legal mechanisms and institutions. Your identity will be recorded; however, it will be protected and treated sensitively and respectfully. You are also allowed to bring a person to support you during the interview.

Typical questions in the interview include:

- Do you think the case of domestic violence is a family matter?
- Do you believe that a husband has a right to chastise his wife?
- Do you think that your family and community tolerate interpersonal violence?
- Have you ever told to other person (your family member, friends, legal aid counsellor, health services, priest, imam) about your situation or your case?
- Did you think that their advice was acceptable for your case?
- Did you bring the case to public institutions (public health and/or legal services)?
- Did you have enough information about those institutions before making the decision to contact them?
- Was it easy or difficult to access those institutions?
- Did you find any discrimination by those institutions in dealing with your situation?
• How long did your case take to finalise? Were you satisfied with the way the case went and were you satisfied with outcome of the case?

VOLUNTARY PARTICIPATION AND COMPENSATION
Your participation in this research is voluntary and you may withdraw your participation at any time and withdraw any data that have been provided. Your decision to participate or not to participate has no bearing on your case, and has no affect on your claims, entitlements, services or legal proceedings. You will not receive any compensation for your time to participate in this study.

RISK AND INCONVENIENCES
It is possible that you could be upset by the interview questions. You have the right not to complete the interview process, or to decline to provide an answer to any questions, and/or to discontinue your participation at any time. Should the interview process is postponed and have it conducted again at another times. You can also request the researcher to visit you with your counsellor at a place you consider safe. If you need any counselling, please contact Semarang Legal Resources Centre for Gender Justice and Human Rights (LRC-KJHAM) on hotline: 62 24 70558000; and Wollongong Women Crisis Centre on 61 2 42281499.

MANDATORY REPORTING REQUIREMENTS
Regarding any relevant mandatory reporting, the researcher has to report any information regarding the abuse of children to the relevant authority.

BENEFITS
Although there may be no direct benefit to you, the possible benefit of your participation is that you will have the opportunity to tell your stories and experiences in a more open and free conversation without any pressure. Your stories are heard and it is expected that the outcome of this research will improve access to justice for victims of domestic violence in general.

CONFIDENTIALITY
Your identity will not be provided on the transcriptions. The data provided will be kept in a locked office. The information obtained in this study will be used for the purpose of writing a PhD thesis and may be presented at academic conferences or published in journals; however you will not be identified in any way.

ETHICS REVIEW AND COMPLAINTS
This study has been reviewed by the Human Research Ethics Committee (Social Science, Humanities and Behavioural Science) of the University of Wollongong. If you have any concerns or complaints regarding the way in which this research has been conducted, please contact the Ethics Officer, Human Research Ethics Committee, University of Wollongong on 0242 21 4457 or rso-ethics@uow.edu.au

Thank you for your interest in this study.
PARTICIPANT CONSENT FORM

Public and Private Dichotomy in the Legal System: Indonesian Women’s Access to Justice Dealing with Domestic Violence Cases in Indonesia and Australia

I have read and understood the information sheet provided about this study, and/or the interviewer has explained to me the purpose of the research.

I understand that my participation in this interview is voluntary.

I agree to my interview being audio recorded. No ☐ Yes ☐

I have been advised of the risks and benefits of the research.

I have the right not to answer any question I do not like or to stop the interview and withdraw my answers, at any stage of the interview, without having to explain the reasons for that decision.

I understand that what I say will be kept confidentially by the researchers and will only be used for academic writing such as a PhD thesis, conference paper or journal articles. My identity will not be used in any research reports and nothing will be published that might identify me.

I understand that researcher has mandatory reporting requirements for any information regarding the abuse of children.

I understand that if I have any further questions I can contact one of the researchers listed on the information sheet. If I have any concerns or complaints regarding the way in which the research is or has been conducted, I can contact the Ethics Officer, Human Research Ethics Committee, University of Wollongong on 0242 21 4457 or rso-ethics@uow.edu.au

Declaration:

I,………………………………………………………………………….. agree to be interviewed for this research study.

Signed: ……………………………………………………………………..(Participant) Date: …/…/…..

University of Wollongong