

Gender Inequality in *Khul'* and Judicial Divorce: Feminist Islamic Family Law in Indonesia

Mayang Nurfatia¹, Mustiqowati Ummul Fithriyyah²

^{1,2} UIN Sultan Syarif Kasim, Pekanbaru, Indonesia

Correspondence: mayangnurfatiah076@gmail.com

Article History

Submitted:
Dec 26, 2025
Reviewed:
Apr 01, 2026
Approved:
June 01, 2026

Abstract

*This article examines gender inequality in women-initiated divorce under Indonesian Islamic family law, focusing on *khul'* and judicial divorce (*cerai gugat*). The study aims to clarify how legal doctrine, court procedure, compensation rules, evidentiary burdens, social stigma, and post-divorce enforcement shape women's access to marital dissolution within contemporary Indonesian courts and communities. Previous studies have discussed divorce procedures, patriarchal norms, and women's vulnerability after divorce, but few have integrated classical *fiqh*, Indonesian legal doctrine, Islamic feminist theory, and local dispute-resolution practices into one coherent analytical framework. Using normative-philosophical library research and feminist legal analysis, the study analyzes *Qur'*anic divorce principles, classical *fiqh* texts, Indonesian family-law instruments, and contemporary scholarly literature. The findings show that inequality appears through five interrelated indicators: access to legal mechanisms, autonomy in decision-making, proportionality of procedural and financial burdens, protection from harm, and enforceability of post-divorce rights. The article argues that a gender-just reading should distinguish divine ethical principles from historically situated *fiqh* formulations, interpret *khul'* compensation through *ma' ruf* and *ihsan*, and strengthen women's legal agency through gender-sensitive adjudication, legal literacy, and community support. Its contribution is a feminist-Islamic evaluative model for legal interpretation, judicial practice, policy intervention, and future empirical research in Indonesian Islamic family law.*

Keywords: *khul'*, judicial divorce, Islamic family law, Islamic feminism, gender justice

INTRODUCTION

Divorce in Islamic family law is often presented as a legal exit from an unsustainable marriage, yet the social and institutional pathways to that exit are not equally experienced by men and women. In Indonesia, Muslim divorce is administered through the Religious Courts, and both a husband's repudiation-based divorce and a wife's claim for judicial divorce must

pass through a formal legal process. This court-based system is important because it prevents the idea that a man may dissolve a marriage entirely outside institutional supervision. Nevertheless, judicialization alone does not eliminate gender inequality. Inequality may remain in the reasons that must be proven, the costs that must be paid, the evidentiary narratives expected by judges, the strength of post-divorce remedies, and the social meaning attached to a woman who initiates divorce. Therefore, the central issue is not simply whether women are formally allowed to sue for divorce, but whether the law and its interpretive culture give women equal agency, equal protection, and equal dignity when they seek to end a harmful marriage (Law Number 1 of 1974; Presidential Instruction Number 1 of 1991; Tucker, 2008).

The terms *khul'* and judicial divorce need to be distinguished carefully. *Khul'* refers to a form of dissolution in which the wife seeks release from the marriage and may return all or part of the dower or provide another form of compensation, depending on the legal school and the factual circumstances. Judicial divorce, commonly discussed in Indonesian legal vocabulary as *cerai gugat* when filed by the wife, refers to a court claim requesting termination of marriage on legally recognized grounds. Conceptual precision is necessary because *khul'*, *cerai gugat*, and *cerai talak* refer to different legal mechanisms within Islamic family law and Indonesian legal practice. In a revised formulation, the correct comparison is between male-initiated *cerai talak* and female-initiated *cerai gugat*, while *khul'* is analyzed as a specific doctrinal mechanism that may overlap with, but is not identical to, the wider procedural category of judicial divorce. This conceptual clarification is essential because imprecise terminology weakens the article's claim of inequality (Al-Nawawī, n.d.; Al-Sarakhsī, 1993; Al-Shāfi'ī, 2001; Ibn Rushd, 2004).

The problem becomes sharper when divorce is examined through the lived conditions of women. In many families, women's request for divorce does not arise from a casual rejection of marriage, but from accumulated harm: neglect, economic abandonment, emotional abuse, domestic violence, polygynous pressure, or the impossibility of maintaining a dignified household. Yet legal and cultural discourse may still frame women's divorce as impatience, disobedience, or failure to preserve family harmony. The consequence is a double burden. Women must first survive the harm that makes divorce necessary and then justify their decision before legal, familial, and communal authorities. Men also face legal

consequences when filing for divorce, but the symbolic burden of being blamed for the breakdown of the household tends to fall more heavily on women. This article therefore treats gender inequality as a structural pattern, not merely as an individual dispute between husband and wife (Rahmawati, 2020; Supreme Court Regulation Number 3 of 2017).

Studies on gender and Islamic family law have produced several important insights. Classical fiqh literature describes the doctrinal architecture of talaq, khul[‘], fasakh, maintenance, dower, custody, and the waiting period. Contemporary legal scholarship has shown how modern Muslim states transformed many family-law rules through codification, court supervision, and administrative regulation. Feminist Muslim scholars have added a crucial hermeneutical argument: many rules often perceived as timeless Islamic law are actually human interpretations produced in historically patriarchal societies. In Indonesian gender scholarship, Muwazah has published works on Islamic feminism, gender ideology in Islamic legal thought, women’s rights in marriage, mubadalah-based marital guidance, and comparative family-law inequality. These studies are valuable because they show that gender is not a peripheral issue, but a lens for analyzing religious authority, law, education, culture, and family relations (Esposito & DeLong-Bas, 2001; Mir-Hosseini et al., 2013; Tucker, 2008; Welchman, 2007).

However, three limitations can be identified in the existing discussion. First, many writings describe women’s vulnerability in divorce without developing clear indicators for measuring inequality. General statements such as “the law benefits men” are analytically weak unless they are supported by indicators such as access to court, cost allocation, evidentiary burden, bargaining position, enforceability of rights, and stigma. Second, feminist theory is often mentioned only as a moral commitment to equality, while the article does not specify whether it uses liberal feminism, radical feminism, Islamic feminism, intersectionality, or feminist legal theory. Third, local wisdom is frequently introduced as a solution, but it is rarely examined critically. Customary deliberation can protect women when it creates support, reduces hostility, and mobilizes family responsibility. At the same time, it can reproduce patriarchal pressure when it asks women to remain silent for the sake of family honor. This ambivalence must be analyzed rather than romanticized (Hasyim, 2012; Junaidi & Hadi, 2010; Muhtarom et al., 2023; Zulfa et al., 2023).

The research gap addressed in this article is the absence of an integrated feminist-Islamic framework for assessing khul' and judicial divorce in Indonesia. This article reconstructs the argument by combining classical fiqh, Indonesian legal doctrine, feminist legal theory, Islamic feminist hermeneutics, and local Indonesian practices. Its novelty lies in proposing five analytical indicators: legal access, autonomy, proportionality of burden, protection from harm, and post-divorce justice. Through these indicators, gender inequality can be discussed more precisely. The article also distinguishes between critique of fiqh as human juristic reasoning and critique of Islam as a normative ethical tradition. This distinction is vital because Islamic feminism does not reject Islamic law wholesale; it asks whether specific historical interpretations continue to serve the Qur'anic principles of justice, kindness, and protection from harm (Ali, 2006; Barlas, 2002; Mir-Hosseini, 2015; Rahman, 2024; Wadud, 1999).

Based on this gap, the article addresses three research questions. First, how do khul' and judicial divorce create or reduce gender inequality for women in Indonesian Islamic family law? Second, how can feminist theory, especially Islamic feminism and feminist legal theory, be used as an explicit analytical framework for evaluating women-initiated divorce? Third, what reforms can be proposed at the level of interpretation, court practice, legal literacy, and community-based support so that khul' and judicial divorce become more gender just without abandoning the ethical foundation of Islamic family law? This article aims to clarify the legal concepts of khul', cerai gugat, and cerai talak; identify the concrete indicators through which inequality appears in women-initiated divorce; criticize gender-biased fiqh interpretations while preserving the normative distinction between divine revelation and juristic construction; and formulate recommendations for a more equitable divorce regime in Indonesia. The article contributes to Islamic family-law scholarship by moving the discussion from general description toward a structured analytical model. It also contributes to feminist legal studies by showing how women's agency in divorce must be read not only through formal rights, but through the material, institutional, and symbolic conditions that shape whether those rights can be exercised (Ali, 2006; Crenshaw, 1991; Mir-Hosseini et al., 2013).

This study uses library research with a normative-philosophical and feminist legal approach. It is normative because it analyzes legal norms found in Islamic legal sources,

Indonesian family-law instruments, and doctrinal writings. It is philosophical because it evaluates those norms through the ethical concepts of justice, equality, human dignity, *ma'rūf*, *iḥsān*, and the prevention of harm. It is feminist because it asks how law distributes power between men and women, how apparently neutral procedures may produce unequal effects, and how women's experiences can become a legitimate source for legal critique. The study is not an empirical court-file study and does not claim to measure the statistical frequency of women's experiences. Its contribution lies in conceptual and doctrinal analysis supported by scholarly literature (Ali, 2006; Barlas, 2002; Mir-Hosseini, 2015).

The primary sources consist of Qur'anic verses relevant to divorce, particularly Q. 2:229 on release with kindness and compensation in *khul'*; prophetic traditions concerning the wife of Thabit ibn Qays as a doctrinal foundation for *khul'*; classical fiqh works such as *al-Mabsūṭ*, *al-Umm*, *Bidāyat al-Mujtahid*, and *al-Majmū'*; Indonesian legal instruments including Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law, the Religious Courts framework, and Supreme Court Regulation Number 3 of 2017 on adjudicating cases involving women before the law. Secondary sources include peer-reviewed journal articles, books on Islamic family law, feminist legal theory, Islamic feminism, and selected *Muwazah* articles on gender, Islamic thought, family law, and women's rights. *Muwazah* references are included to align the manuscript with the journal's scholarly conversation (Al-Nawawī, n.d.; Al-Sarakhsī, 1993; Al-Shāfi'ī, 2001; Ibn Rushd, 2004; Law Number 1 of 1974; Presidential Instruction Number 1 of 1991; Supreme Court Regulation Number 3 of 2017).

The literature was selected through four criteria. First, the source had to address Islamic family law, *khul'*, divorce, women's rights, feminist hermeneutics, or gender justice. Second, contemporary articles were prioritized when published in reputable journals or indexed Indonesian journals, while classical fiqh texts were selected because of their canonical doctrinal authority rather than publication date. Third, sources were included when they helped explain one of the analytical indicators: access, autonomy, proportionality, harm prevention, or post-divorce justice. Fourth, sources that were merely popular, polemical, or not traceable to a credible author or institution were excluded. This selection strategy was used to ensure that the article relies on credible, relevant, and academically traceable sources (Aziz et al., 2025; Muhtarom et al., 2023; Permana et al., 2024; Rahman, 2024; Zulfa et al., 2023).

The analytical technique is thematic analysis. The first step was familiarization: reading the primary and secondary sources to identify recurring legal and gendered issues in women-initiated divorce. The second step was open coding: assigning codes such as “compensation,” “judicial proof,” “husband’s consent,” “stigma,” “maintenance,” “custody,” “legal literacy,” “patriarchal interpretation,” and “local mediation.” The third step was categorization: grouping these codes into broader themes of procedural inequality, economic inequality, interpretive inequality, social inequality, and remedial inequality. The fourth step was feminist interpretation: assessing each theme through liberal feminist concern for equal legal agency, Islamic feminist concern for egalitarian interpretation of religious sources, and intersectional concern for class, education, and social dependency. The final step was synthesis: formulating reform recommendations that connect doctrine, court practice, and community support (Crenshaw, 1991; Mir-Hosseini et al., 2013).

The methodological limitation is that the study does not present new interviews with divorced women or statistical data from Religious Court decisions. Consequently, its claims about social stigma, access, and bargaining position are presented as normative and literature-based arguments rather than as empirical measurement. This limitation is also an opportunity for future research. Subsequent studies could examine court decisions, conduct interviews with women who filed *cerai gugat* or *khul’*, and compare regional court practices. Nevertheless, doctrinal and feminist analysis remains necessary because legal inequality often begins not only from case outcomes but from the assumptions embedded in legal categories (Bargain et al., 2022; Rahmawati, 2020).

DISCUSSION

Mapping the Findings: Gender Inequality in *Khul’* and Judicial Divorce

The analysis of the selected legal texts, classical fiqh literature, Indonesian legal instruments, and contemporary gender scholarship shows that gender inequality in women-initiated divorce does not emerge from one isolated rule. It appears through an interconnected structure of doctrinal interpretation, procedural burden, economic consequence, evidentiary expectation, social stigma, and post-divorce vulnerability. The main finding of this study is that *khul’* and judicial divorce provide women with formal legal routes to exit marriage, but these routes are not always equal in their practical operation. Women

may have the right to initiate divorce, yet that right can become difficult to exercise when it is mediated by compensation, evidentiary demands, limited legal literacy, economic dependency, and pressure from family or community norms (Tucker, 2008; Welchman, 2007; Rahmawati, 2020; Bargain et al., 2022).

The first indicator of inequality is access. Access does not only mean the formal right to submit a divorce claim before the Religious Court. It also includes the practical ability to understand legal procedure, prepare evidence, pay litigation-related costs, reach legal institutions, and receive legal assistance. Indonesian legal instruments show that Muslim divorce must be processed through formal court mechanisms, while gender-sensitive adjudication can help reduce unequal effects in divorce proceedings. However, court-based divorce does not automatically remove gender bias. The existence of a court mechanism must therefore be evaluated through the practical conditions that determine whether women can use it effectively (Law Number 1 of 1974; Presidential Instruction Number 1 of 1991; Rahmawati, 2020; Supreme Court Regulation Number 3 of 2017).

The second indicator is autonomy. Women's autonomy in divorce refers to their ability to make a legally and morally recognized decision to end a harmful or unsustainable marriage. In many patriarchal settings, a woman's decision to seek divorce is not always treated as an exercise of legal agency. It may be framed as disobedience, impatience, emotional instability, or failure to preserve family harmony. This symbolic burden differentiates women's divorce from men's divorce. A husband who initiates divorce may face legal responsibility, but his decision is less likely to be interpreted as a violation of ideal masculinity. A wife who initiates divorce, by contrast, may be required to justify not only the legal grounds of divorce but also the moral legitimacy of her decision (Ali, 2006; Barlas, 2002; Rahmawati, 2020; Bargain et al., 2022).

The third indicator is proportionality. In *khul'*, the question of compensation is central. Classical *fiqh* often discusses *khul'* through the return of *mahr* or another form of financial settlement. This arrangement can be fair in certain circumstances, particularly when the wife voluntarily seeks release from a marriage without fault-based harm from the husband. However, compensation becomes problematic when it is applied mechanically, especially where the marital breakdown is caused by neglect, violence, coercion, or economic abandonment. In such cases, requiring the wife to return *mahr* or provide compensation may

shift the cost of marital harm onto the injured party. Proportionality therefore requires the court and legal interpreters to evaluate the factual background of divorce rather than treating compensation as an automatic price of women's freedom (Al-Sarakhsī, 1993; Al-Shāfi'ī, 2001; Ibn Rushd, 2004; Al-Nawawī, n.d.; Ali, 2006).

The fourth indicator is protection from harm. Divorce law should not compel women to remain in harmful marriages merely because the evidentiary path is difficult. Women who experience domestic violence, emotional abuse, economic neglect, coercive control, or abandonment may not always possess formal evidence. Harm often occurs in private and may not be documented through medical records, police reports, or third-party witnesses. A gender-sensitive divorce system must recognize patterns of harm, credible testimony, digital evidence, economic records, and contextual vulnerability. Supreme Court Regulation Number 3 of 2017 on Guidelines for Adjudicating Cases Involving Women Before the Law provides an important normative basis for gender-sensitive adjudication in Indonesia (Supreme Court Regulation Number 3 of 2017; Crenshaw, 1991; Rahmawati, 2020).

The fifth indicator is post-divorce justice. A woman may obtain a divorce decision but still fail to receive substantive justice if post-divorce rights are not enforced. Maintenance, child support, custody arrangements, *mut'ah*, and economic recovery are crucial because divorce does not end women's vulnerability at the moment the marriage is dissolved. Feminist legal analysis emphasizes that rights must be enforceable, not merely declarative. A legal system that grants women formal access to divorce but leaves them with unpaid support, insecure custody, social stigma, and weak enforcement mechanisms cannot be described as fully gender-just (Tucker, 2008; Welchman, 2007; Rahmawati, 2020; Bargain et al., 2022).

Feminist Legal Theory as an Analytical Framework

In this study, feminism does not function merely as a general moral language of equality, but as an analytical framework for examining legal agency, power, and gendered consequences in divorce. It must operate as an analytical framework. Liberal feminism is relevant because it emphasizes formal equality, individual autonomy, and equal access to legal institutions. Through this lens, *khul'* and judicial divorce must be assessed by asking whether women and men possess equal legal capacity to initiate divorce, negotiate its consequences, and receive legal protection. If women's exit from marriage requires additional burdens that

men do not face, liberal feminism identifies a problem of unequal legal agency within family law (Ali, 2006; Mir-Hosseini, 2015; Mir-Hosseini et al., 2013).

However, liberal feminism alone is not sufficient because inequality in divorce is not only a matter of formal access. Many women formally have access to Religious Courts but remain constrained by economic dependency, social stigma, lack of legal information, or fear of losing children. Radical and structural feminist perspectives are therefore needed to reveal how family law can reproduce patriarchal power even when the legal procedure appears neutral. Patriarchy is not only an individual belief that men are superior. It is a social structure that normalizes male authority in marriage, distributes economic resources unequally, and treats women's endurance as a moral virtue. In divorce cases, patriarchal assumptions appear when women are expected to preserve marriage despite harm, when men's authority is normalized, and when divorced women receive stronger social blame than divorced men (Mernissi, 1991; Hasyim, 2012; Junaidi & Hadi, 2010; Syukron, 2009).

Islamic feminism gives this analysis a more specific relevance to Islamic family law. Islamic feminist scholars such as Amina Wadud, Asma Barlas, Kecia Ali, Fatima Mernissi, and Ziba Mir-Hosseini argue that Islamic legal interpretation must distinguish between divine revelation and human juristic construction. This distinction is essential because the critique of gender inequality in *khul'* and judicial divorce should not be framed as a rejection of Islam. The core issue is whether historically developed *fiqh* formulations continue to reflect Qur'anic ethical principles of justice, kindness, reciprocity, and protection from harm. Islamic feminism therefore allows the article to criticize gender-biased *fiqh* interpretations while preserving the normative integrity of Islamic ethical values (Wadud, 1999; Barlas, 2002; Ali, 2006; Mernissi, 1991; Mir-Hosseini, 2015).

Intersectionality further refines the analysis by showing that women do not experience divorce in a uniform way. A woman with education, independent income, legal assistance, and supportive family networks faces a different situation from a poor woman who depends economically on her husband or his family. A woman with children also faces a different bargaining position from a woman without children. A woman who suffers physical violence may need immediate protection, while a woman experiencing emotional neglect or coercive control may face a more difficult evidentiary burden. Crenshaw's (1991) concept of intersectionality is useful here because it shows that gender inequality is intensified by class, education, geography, family dependency, and unequal access to legal information.

Therefore, a gender-just analysis of divorce must avoid treating “women” as a single homogeneous category (Bargain et al., 2022; Crenshaw, 1991).

This theoretical clarification strengthens the article’s argument. Feminism does not require every divorce mechanism to be identical for men and women. Different legal procedures may exist as long as the burdens are justified, proportionate, and protective. What feminism rejects is legal differentiation that systematically reduces women’s agency or makes women bear heavier consequences for leaving a marriage. *Khul’* may remain a valid mechanism when compensation reflects a fair and autonomous settlement. Judicial divorce may also remain evidence-based when evidentiary standards are sensitive to the realities of domestic harm. The problem arises when compensation, proof, consent, stigma, or enforcement failure turns women’s formal right to divorce into a materially unequal process (Ali, 2006; Barlas, 2002; Mir-Hosseini et al., 2013).

Khul’, Compensation, and the Ethics of Proportionality

Classical *fiqh* remains indispensable for understanding *khul’* because it preserves the doctrinal vocabulary of Islamic family law. However, it must be read historically and ethically. Jurists developed rules of divorce in societies where marriage was organized around male financial responsibility, lineage, guardianship, and gender hierarchy. In that context, *mahr*, maintenance, obedience, and divorce were structured through assumptions about men as providers and women as dependents. These assumptions do not always fit contemporary realities, where women may contribute income, perform unpaid domestic labor, support children, and still occupy a weaker bargaining position within marriage (Al-Sarakhsī, 1993; Al-Shāfi‘ī, 2001; Ibn Rushd, 2004; Al-Nawawī, n.d.; Tucker, 2008).

The key issue in *khul’* is compensation. Qur’an 2:229 refers to marital release and the possibility of what the wife gives to redeem herself when the spouses fear that they cannot maintain the limits set by God. Classical jurists then developed extensive rules concerning the return of *mahr*, the permissible amount of compensation, and the role of the husband’s consent. A feminist-Islamic reading does not deny the doctrinal basis of *khul’*. It asks whether compensation should be treated as an automatic financial burden or as a context-sensitive settlement. If the wife seeks divorce because of the husband’s abuse, neglect, abandonment, or violation of marital duties, requiring her to provide compensation may

contradict the ethical principles of ma‘rūf and iḥsān. If the divorce occurs without fault and the wife seeks release despite the husband’s willingness to continue the marriage, compensation may function as a negotiated form of fairness (Al-Sarakhsī, 1993; Al-Shāfi‘ī, 2001; Ibn Rushd, 2004; Al-Nawawī, n.d.; Ali, 2006).

The concepts of ma‘rūf and iḥsān are therefore central to gender-just interpretation. Divorce in the Qur’anic moral framework is not merely a technical termination of contract. It must be conducted with recognized goodness, kindness, and avoidance of harm. These values require courts and legal interpreters to prevent khul‘ from becoming an instrument of economic pressure. A husband should not be allowed to use khul‘ as a strategy to recover financial benefit after contributing to marital breakdown. A court should not impose compensation mechanically without considering harm, economic capacity, and the purpose of the rule. Families and community mediators should not pressure women to surrender property merely to avoid public shame. When ma‘rūf and iḥsān guide interpretation, khul‘ becomes a lawful path to dignity rather than a financial penalty imposed on women (Wadud, 1999; Barlas, 2002; Ali, 2006).

The issue of consent also requires critical attention. Some classical formulations treat khul‘ as a contractual exchange that requires the husband’s agreement. If this view is applied rigidly, the husband may refuse release or demand excessive compensation. This would allow the husband to control the very exit mechanism designed to release the wife from an unsustainable marriage. Modern court-based systems can reduce this risk by allowing judicial evaluation of whether the marriage has irretrievably broken down and whether any compensation is fair. Islamic feminism supports this shift because it preserves the doctrinal structure of khul‘ while preventing male bargaining power from defeating the ethical purpose of divorce (Al-Sarakhsī, 1993; Al-Shāfi‘ī, 2001; Ibn Rushd, 2004; Mir-Hosseini et al., 2013).

Judicial Divorce, Evidentiary Burden, and Post-Divorce Justice

Judicial divorce or *cerai gugat* gives women an important legal route to terminate marriage through the Religious Court. This mechanism is significant because it enables women to bring marital harm into a formal legal forum. However, the quality of this route depends on how courts interpret harm, evidence, and women’s credibility. If judges require women to prove harm only through formal documents or witnesses who are often

unavailable in domestic settings, the procedure may become formally legal but substantively inaccessible (Law Number 1 of 1974; Presidential Instruction Number 1 of 1991; Supreme Court Regulation Number 3 of 2017; Rahmawati, 2020).

Domestic violence, emotional neglect, coercive control, and economic abandonment often occur within private spaces. Women may not always have police reports, medical records, or witnesses. A gender-sensitive judicial approach should therefore recognize patterns of behavior, credible testimony, digital communication, economic traces, and contextual vulnerability. This approach is consistent with Supreme Court Regulation Number 3 of 2017 and Rahmawati's (2020) argument on gender mainstreaming in Islamic family law. Judicial discretion should not be understood as arbitrary freedom. It should function as a legal capacity to interpret procedure in a way that protects vulnerable parties and prevents formal rules from producing unequal outcomes (Crenshaw, 1991; Rahmawati, 2020; Supreme Court Regulation Number 3 of 2017).

Judicial divorce must also be connected to post-divorce justice. The end of marriage does not automatically end women's legal and economic vulnerability. A wife who obtains divorce may still struggle to secure maintenance, child support, custody arrangements, and enforcement of court orders. Feminist legal theory emphasizes that remedies are central to justice. A right that cannot be enforced is a weak right. Therefore, gender inequality in divorce must be evaluated across the full legal sequence: access to court, evidentiary process, judicial reasoning, divorce decision, financial order, enforcement, and social reintegration (Mir-Hosseini et al., 2013; Rahmawati, 2020; Tucker, 2008; Welchman, 2007).

This point is especially relevant in the Indonesian context because women's economic vulnerability after divorce may be intensified by childcare responsibilities and weak enforcement of post-divorce obligations. Legal literacy also matters. Women who do not understand their rights may accept unfavorable settlements or fail to request maintenance, custody protection, or enforcement mechanisms. Thus, a gender-just divorce regime requires more than formal judicial availability. It requires legal aid, gender-sensitive adjudication, accessible information, enforceable remedies, and institutional accountability (Bargain et al., 2022; Rahmawati, 2020; Supreme Court Regulation Number 3 of 2017).

Local Wisdom and Its Ambivalence in Divorce Settlement

Local wisdom should be examined critically because it can function both as a source of social support and as a mechanism that reproduces patriarchal pressure. Local wisdom must be analyzed through its ambivalence. Indonesian communities often rely on *musyawarah*, family deliberation, religious counseling, and community mediation when marital conflict occurs. These mechanisms can support women when they reduce hostility, mobilize family responsibility, protect children, and create social pressure on husbands to fulfill obligations. In this positive form, local wisdom can become a bridge between formal law and community life (Hasyim, 2012; Junaidi & Hadi, 2010; Muhtarom et al., 2023; Zulfa et al., 2023).

However, local wisdom can also reproduce patriarchy. *Musyawarah* may be dominated by male elders. Family deliberation may prioritize the preservation of marriage over women's safety. Religious advice may urge women to be patient without asking whether patience has become complicity in harm. Customary norms may shame divorced women or pressure them to surrender financial claims for the sake of family honor. Therefore, local wisdom cannot be romanticized as an automatically gender-just alternative to court procedure. It can protect women only when it satisfies the indicators of access, autonomy, proportionality, protection from harm, and post-divorce justice (Hasyim, 2012; Muhtarom et al., 2023; Syukron, 2009).

The role of local wisdom should therefore be supportive, not substitutive. It may assist women before, during, and after divorce, but it should not replace judicial protection. Community mediation should inform women of their legal rights rather than persuade them to abandon those rights. Family deliberation should ensure the husband's responsibility for children and support, not merely ask the wife to compromise. Religious counseling should emphasize that Islam values justice and kindness in divorce, not only endurance in marriage. Local leaders should also be trained to recognize domestic violence and refer women to formal legal protection when necessary (Zulfa et al., 2023; Supreme Court Regulation Number 3 of 2017; Rahmawati, 2020).

This critical position is consistent with contemporary gender scholarship in *Muwazah*. Studies on Islamic feminism, gender ideology in Islamic legal thought, and *mubadalah*-based marital guidance show that gender justice in Muslim family life requires reinterpretation, reciprocity, and institutional support rather than mere repetition of inherited norms (Hasyim, 2012; Junaidi & Hadi, 2010; Muhtarom et al., 2023; Zulfa et al., 2023). Local wisdom becomes

valuable when it is filtered through these principles. Without such filtering, it may function as a cultural mechanism that disciplines women rather than protects them.

Comparative Insight from Muslim Family-Law Reform

Comparative legal scholarship shows that Islamic family law has never been static. Muslim-majority jurisdictions have translated classical doctrines into modern legal systems through different institutional arrangements. Egypt's khul' reform under Law No. 1 of 2000 opened a judicial route for women to seek divorce, although it also retained financial consequences through the return of dower and waiver of certain rights. Morocco's 2004 Mudawwana strengthened the language of mutual responsibility between spouses and expanded women's access to divorce mechanisms. Tunisia has long placed divorce under strong judicial control, limiting unilateral repudiation outside court. These examples indicate that reform can occur within Muslim legal traditions, although reform is not automatically feminist (Htun & Weldon, 2011; Mashhour, 2005; Welchman, 2007).

Mashhour (2005) demonstrates that contemporary legislation in Tunisia and Egypt reflects different attempts to reconcile Islamic law and gender equality in the fields of divorce and polygyny. Htun and Weldon (2011) also show that state power, religion, and women's rights interact differently across legal systems, meaning that family-law reform depends not only on doctrine but also on political and institutional design. These comparative insights are important for Indonesia because they prevent the discussion from relying on a vague statement that "other countries are more equal." The more precise lesson is that institutional design matters: court supervision, contextual compensation, enforceable post-divorce rights, and gender-sensitive adjudication can reshape how Islamic divorce doctrines operate in practice.

The comparative perspective also helps answer the objection that reform is un-Islamic. The diversity of Muslim family-law systems shows that fiqh principles have been interpreted through different legal arrangements across time and place. Codification, court-based divorce, restrictions on arbitrary repudiation, legal registration, and child-custody reform are all examples of legal adaptation in Muslim societies. Therefore, reform of khul' and judicial divorce in Indonesia can be justified through the broader principles of maṣlaḥah, siyāṣah shar'īyyah, justice, and prevention of harm. The question is not whether Islamic family law

may change, but whether legal change better realizes the ethical purposes of marriage and divorce (Welchman, 2007; Mashhour, 2005; Htun & Weldon, 2011).

Toward a Gender Just Model of Women-Initiated Divorce

The discussion above suggests that gender justice in khul' and judicial divorce requires reform at four levels. The first level is conceptual reform. Legal scholarship must clearly distinguish khul', cerai gugat, and cerai talak. Without conceptual precision, the argument about inequality becomes vulnerable to doctrinal error. Khul' should be understood as a doctrinal mechanism of marital release that may involve compensation, while cerai gugat refers to a wife's judicial claim for divorce on legally recognized grounds. Cerai talak refers to a husband's divorce petition processed through the Religious Court (Al-Sarakhsī, 1993; Al-Shāfi'ī, 2001; Ibn Rushd, 2004; Presidential Instruction Number 1 of 1991).

The second level is hermeneutical reform. Classical fiqh should be respected as juristic heritage, but it should not be treated as immune from ethical evaluation. Islamic feminism helps distinguish divine ethical principles from historical legal formulations. Compensation in khul' should be interpreted through ma'rūf, iḥsān, proportionality, and protection from harm rather than through mechanical return of mahr. Judicial divorce should be interpreted through gender-sensitive evidentiary standards that recognize women's lived experience of harm (Wadud, 1999; Barlas, 2002; Ali, 2006; Mir-Hosseini, 2015).

The third level is institutional reform. Religious Courts should strengthen gender-sensitive adjudication, ensure effective enforcement of post-divorce rights, and prevent litigation from becoming an additional burden for women. Judges should evaluate compensation contextually, especially when the husband's conduct contributed to marital breakdown. Courts should also ensure that maintenance, child support, custody arrangements, and related orders are enforceable in practice (Supreme Court Regulation Number 3 of 2017; Rahmawati, 2020).

The fourth level is social reform. Legal change will remain incomplete if women continue to face stigma after divorce. Community education, legal literacy, religious counseling, and rights-based musyawarah are needed to reduce the symbolic burden attached to women who initiate divorce. Local wisdom should be transformed into a supportive structure that strengthens women's autonomy and post-divorce recovery, not into a

mechanism that pressures them to remain in harmful marriages (Hasyim, 2012; Muhtarom et al., 2023; Zulfa et al., 2023).

This synthesis clarifies the novelty of the article. The novelty is not the general statement that women experience inequality in divorce. Many studies have already made that point. The novelty lies in the construction of a feminist-Islamic evaluative model for assessing whether *khul'* and judicial divorce operate justly. A divorce mechanism can be considered gender-just when it provides meaningful access, respects women's autonomy, distributes burdens proportionally, protects women from harm, and secures enforceable post-divorce rights. Through this model, the study moves beyond descriptive claims about patriarchy and offers a more operational framework for legal interpretation, judicial practice, policy reform, and future empirical research (Ali, 2006; Crenshaw, 1991; Mir-Hosseini et al., 2013).

CONCLUSION

This article concludes that gender inequality in *khul'* and judicial divorce in Indonesian Islamic family law is not produced by a single legal provision, but by the interaction of doctrine, procedure, economic burden, interpretive authority, social stigma, and weak post-divorce enforcement. The main synthesis of the findings shows that women may formally access divorce through *khul'* or *cerai gugat*, yet their legal agency is often limited by five indicators: access to legal mechanisms, autonomy in decision-making, proportionality of procedural and financial burdens, protection from harm, and post-divorce justice. A gender-just reading of Islamic divorce law therefore requires conceptual clarity between *khul'*, *cerai gugat*, and *cerai talak*, as well as a distinction between divine ethical principles and historically situated *fiqh* formulations.

This study is limited to normative-philosophical library research and feminist legal analysis. It does not present new empirical data from court decisions, interviews with divorced women, or statistical analysis of Religious Court practices. Consequently, its claims about women's legal access, stigma, bargaining position, and post-divorce vulnerability are developed through doctrinal interpretation and literature-based analysis rather than direct empirical measurement. Several practical recommendations follow from these findings. Religious Court judges should apply gender-sensitive adjudication when assessing women's

divorce claims, especially in cases involving violence, neglect, coercive control, economic abandonment, and unequal bargaining power. Compensation in *khul'* should not be imposed automatically, but should be evaluated contextually according to harm, fault, economic capacity, and the Qur'anic ethics of *ma'ruf* and *ihsan*. Legal aid institutions, universities, women's organizations, and religious/community leaders should strengthen legal literacy on *cerai gugat*, *khul'*, maintenance, custody, and enforcement of post-divorce rights. Future research should test the feminist-Islamic evaluative model proposed in this article through empirical analysis of court decisions, interviews with women litigants, and comparative studies across Indonesian Religious Courts.

REFERENCES

- Al-Nawawī, Y. ibn Sharaf. (n.d.). *Al-majmū' sharḥ al-muhadḍhab*. Dār al-Fikr.
- Al-Sarakhsī, M. ibn Aḥmad. (1993). *Al-mabsūṭ*. Dār al-Ma'rifah.
- Al-Shāfi'ī, M. ibn Idrīs. (2001). *Al-umm*. Dār al-Wafā'.
- Ali, K. (2006). *Sexual ethics and Islam: Feminist reflections on Qur'an, hadith, and jurisprudence*. Oneworld.
- Aziz, A., Nugraha, I. S., & Hakim, L. (2025). Women's rights in choosing a partner in marriage: Gender justice perspective in Grobogan Regency. *Muwazah*, 17(1), 47–68. <https://doi.org/10.28918/muwazah.v17i1.9178>
- Barlas, A. (2002). *Believing women in Islam: Unreading patriarchal interpretations of the Qur'an*. University of Texas Press.
- Bargain, O., Loper, J., & Ziparo, R. (2022). Traditional norms, access to divorce and women's empowerment. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4141996>
- Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43(6), 1241–1299. <https://doi.org/10.2307/1229039>
- Esposito, J. L., & DeLong-Bas, N. J. (2001). *Women in Muslim family law* (2nd ed.). Syracuse University Press.
- Hasyim, Z. (2012). Perempuan dan feminisme dalam perspektif Islam. *Muwazah*, 4(1), 70–86. <https://doi.org/10.28918/muwazah.v4i1.9994>

- Htun, M., & Weldon, S. L. (2011). State power, religion, and women's rights: A comparative analysis of family law. *Indiana Journal of Global Legal Studies*, 18(1), 145–165. <https://doi.org/10.2979/indjglolegstu.18.1.145>
- Ibn Rushd. (2004). *Bidāyat al-mujtahid wa nihāyat al-muqtaṣid*. Dār al-Ḥadīth.
- Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam [Presidential Instruction of the Republic of Indonesia Number 1 of 1991 on the Compilation of Islamic Law]. (1991).
- Junaidi, H., & Hadi, A. (2010). Gender dan feminisme dalam Islam. *Muwazah*, 2(2), 1–17. <https://doi.org/10.28918/muwazah.v2i2.8787>
- Mashhour, A. (2005). Islamic law and gender equality: Could there be a common ground? A study of divorce and polygamy in Sharia law and contemporary legislation in Tunisia and Egypt. *Human Rights Quarterly*, 27(2), 562–596. <https://doi.org/10.1353/hrq.2005.0022>
- Mernissi, F. (1991). *The veil and the male elite: A feminist interpretation of women's rights in Islam*. Addison-Wesley.
- Mir-Hosseini, Z. (2015). *Men in charge? Rethinking authority in Muslim legal tradition*. Oneworld.
- Mir-Hosseini, Z., Al-Sharmani, M., & Rumminger, J. (Eds.). (2013). *Gender and equality in Muslim family law: Justice and ethics in the Islamic legal tradition*. I.B. Tauris.
- Muhtarom, A., Rohayana, A. D., Ahmad, M., Muhajarah, K., & Hamid, N. (2023). Gender ideology in the study of Islamic legal thought at Postgraduate UIN K.H. Abdurrahman Wahid Pekalongan. *Muwazah*, 15(1), 37–58. <https://doi.org/10.28918/muwazah.v15i1.1420>
- Permana, D., Kurniawan, C. S., & Jambunanda, A. J. (2024). Challenging gender inequality through deconstructing power dynamics: Nawal El Saadawi and Egyptian family law. *Muwazah*, 16(1), 64–84. <https://doi.org/10.28918/muwazah.v16i1.7370>
- Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum [Supreme Court Regulation of the Republic of Indonesia Number 3 of 2017 on Guidelines for Adjudicating Cases Involving Women Before the Law]. (2017).
- Rahman, R. A. (2024). Contextual interpretation of Asghar Ali Engineer: Efforts to reconstruct nash on the women position in primordial society. *Muwazah*, 16(1), 1–18. <https://doi.org/10.28918/muwazah.v16i1.6846>
- Rahmawati, S. (2020). Mainstreaming of gender equality in Islamic family law: Opportunities and challenges. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 4(2), 360–374. <https://doi.org/10.22373/sjhk.v4i2.8110>

- Syukron, A. (2009). Islam dan feminisme: Perspektif rekonstruksi hukum Islam. *Muwazah*, 1(2), 61–78. <https://doi.org/10.28918/muwazah.v1i2.8771>
- Tucker, J. E. (2008). *Women, family, and gender in Islamic law*. Cambridge University Press.
- Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan [Law of the Republic of Indonesia Number 1 of 1974 on Marriage]. (1974).
- Wadud, A. (1999). *Qur'an and woman: Rereading the sacred text from a woman's perspective* (2nd ed.). Oxford University Press.
- Welchman, L. (2007). *Women and Muslim family laws in Arab states: A comparative overview of textual development and advocacy*. Amsterdam University Press.
- Zulfa, N., Tri Darmaningrum, K., Hermawan, R., & Rosida, D. (2023). Mubadalah marriage guidance to prevent divorce in Pekalongan City. *Muwazah*, 15(2), 207–226. <https://doi.org/10.28918/muwazah.v15i2.2062>