



The Women's Rights in Divorce and Discourse of Gender Equality in the Dynamics of Divorce in Madura

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Abstract: This study investigates the dynamics of divorce in Madura and women's rights in divorce from a gender perspective. There are three main issues addressed in this study, those are the dynamics of divorce in Madura, women's rights in divorce, and gender equality. This study is a field research based on the type of empirical qualitative research with the Islamic jurisprudence and sociological Islamic law approach. The data used comes from primary data and secondary data. By conducting an in-depth analysis based on the sociological theory of gender, particularly Talcott Parson's theory of structural feminism, this study found: that *firstly*, the number of divorces, either from *talaq* divorce or judicial divorce, in Madura in the last five years has increased. This is because of the decline in ethics such as polygamy without the permission of the first wife, the low-income factor, the presence of a third party either due to parental interference or infidelity with other people, and disharmony due to disputes and differences of opinions; *secondly*, the number of divorce cases in Madura in the last five years has been dominated by judicial divorce rather than *talaq* divorce. *Thirdly*, the phenomenon of increasing divorce by law in Madura indicates that there has been a shift in perception among women about the meaning of divorce, as a response to the presence of legislation that provides room for legitimacy for women to file for divorce. In the perspective of contemporary feminism, the space for legitimacy contains the meaning of gender equality, and the patriarchal culture begins to collapse which has long been attached to the social system of the Madurese community.

Keywords: Women's rights in divorce, gender equality, patriarchy, social dynamics, Madura

|| Submitted: March 4, 2022

|| Accepted: June 18, 2022

|| Published: June 27, 2022

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DOI: 10.22373/sjhc.v6i1.12804

Abstrak: *Studi ini mengkaji dinamika perceraian di Madura dan hak cerai perempuan ditinjau dari perspektif gender. Terdapat tiga permasalahan pokok yang dibahas dalam kajian ini, meliputi; dinamika perceraian di Madura, hak cerai perempuan, dan kesetaraan gender. Studi ini merupakan kajian lapangan yang didasarkan pada jenis penelitian kualitatif empiris dengan pendekatan yurisprudensi Islam (fikih) dan sosiologi hukum Islam. Data yang digunakan berasal dari data primer dan data sekunder. Dengan melakukan analisa mendalam berdasarkan teori sosiologi gender, khususnya teori feminisme struktural Talcott Parson, penelitian ini menemukan sejumlah temuan; pertama, angka perceraian di Madura dalam lima tahun terakhir mengalami peningkatan, baik cerai talak maupun cerai gugat. sejumlah faktor perceraian adalah menurunnya etika seperti poligami tanpa izin istri pertama, faktor rendahnya penghasilan, faktor kehadiran pihak ketiga baik karena campur tangan orang tua maupun perselingkuhan dengan orang lain, serta ketidakharmonisan karena perselisihan dan perbedaan pandangan; kedua, Jumlah kasus perceraian di Madura dalam lima tahun terakhir lebih banyak didominasi jenis cerai gugat daripada cerai talak. Ketiga, fenomena meningkatnya cerai gugat di Madura mengindikasikan bahwa telah terjadi pergeseran persepsi di kalangan perempuan tentang makna perceraian, sebagai respon atas hadirnya perundangan yang memberi ruang legitimasi bagi perempuan menyampaikan gugatan cerai. Dalam perspektif feminisme kontemporer, ruang legitimasi tersebut memuat makna persamaan gender, dan mulai runtuhnya budaya patriarki yang telah lama melekat pada sistem sosial masyarakat Madura.*

Kata Kunci: *Hak cerai perempuan, kesetaraan gender, patriarki, dinamika sosial, Madura*

Introduction

One of life's most solemn occasions is marriage,¹ because marriage has its own significance and value that is distinct from religious rituals in general.² In Islam, for instance, marriage, which is done according to the true message of Islam, is an important step that all Muslims are required to fulfil

¹ Wahyu Wibisana, "Pernikahan dalam Islam," *Ta'lim: Jurnal Pendidikan Agama Islam* 14, no. 2 (2016), p. 185–91.

² Prasasti Dyah Nugraheni, "The Implementation of Marriage Different Religion and Their Due to the Law of The Religion of Marriage Status," *Law and Justice* 4, no. 2 (2019), p. 68–82, <https://doi.org/10.23917/laj.v4i2.8015>.

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as it is one of the Prophet's *Sunnah* or examples, marriage also helps Muslim become more pious.³

However, in recent decades the sacredness of marriage has been desacralized along with the high number of divorce cases.⁴ Economic problems are the dominant factor causing the high divorce cases.⁵ In addition, several sociological factors triggered by traditions or hierarchical systems, such as subordination and domestic violence, are also identified as no less dominant factors.⁶

In Indonesia itself, high divorce rate is clearly illustrated in the Religious Courts' databases. For example, in 2020 the divorce rates experienced a significant jump from the previous year. In 2020 there were no less than 444,358 divorce cases throughout Indonesia.⁷ Whereas in previous years, 2016 there were 365,654 cases, and in 2017 it increased to 374,516 cases, and then in 2018 there was an increase of 408,202 cases.⁸

Based on the aforementioned statistics, it is possible to formulate a hypothesis that explains the large number of divorce cases taking place in a variety of other regions, particularly those that share the same religion as

³ Amy Adamczyk and Brittany E. Hayes, "Religion and Sexual Behaviors: Understanding the Influence of Islamic Cultures and Religious Affiliation for Explaining Sex Outside of Marriage," *American Sociological Review* 77, no. 5 (2012), p. 723–46, <https://doi.org/10.1177/0003122412458672>; Nadya Hamdan, "Islamic Family Law Divorce," *SSRN Electronic Journal*, January 1, 2013, <https://doi.org/10.2139/ssrn.2276619>.

⁴ Noeranisa Adhadianty Gunawan and Nunung Nurwati, "Persepsi Masyarakat pada Perceraian," *Share: Social Work Journal* 9, no. 1 (2019), p. 20, <https://doi.org/10.24198/share.v9i1.19863>.

⁵ Maimun Maimun, et.al., "Fenomena Tingginya Angka Cerai-Gugat dan Faktor Penyebabnya: Analisis Reflektif atas Kasus-Kasus Perceraian di Madura," *Islamuna: Jurnal Studi Islam* 5, no. 2 (2019), p. 157, <https://doi.org/10.19105/islamuna.v5i2.2105>.

⁶ Alfitri Alfitri, "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia," *Studia Islamika* 27, (2020).

⁷ Intan Umbari Prihatin, "Kemenag Sebut Angka Perceraian Mencapai 306.688 Per Agustus 2020," merdeka.com, September 12, 2020, <https://www.merdeka.com/peristiwa/kemenag-sebut-angka-perceraian-mencapai-306688-per-agustus-2020.html>; Achmad Nasrudin Yahya, "Tekan Angka Perceraian, Kemenag Jalin Sinergitas Penguatan Ketahanan Keluarga Halaman All -," *Kompas.com*, September 13, 2020, <https://nasional.kompas.com/read/2020/09/13/10294341/tekan-angka-perceraian-kemenag-jalin-sinergitas-penguatan-ketahanan-keluarga?page=all>.

⁸ Databoks, "Ramai RUU Ketahanan Keluarga, Berapa Angka Perceraian di Indonesia?," <https://databoks.katadata.co.id/>, accessed February 7, 2021, <https://databoks.katadata.co.id/datapublish/2020/02/20/ramai-ruu-ketahanan-keluarga-berapa-angka-perceraian-di-indonesia>.

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Aceh, the region in the Madura Islands. Sociologically, the social systems and structures that support the religious dimension are where the two are identical.⁹ The Pamekasan Regency area is one of several places in the Madura archipelago that are rated as high in terms of contentious divorce.¹⁰ According to the most recent data, there were 2352 divorce cases filed in local Religious Courts in 2014–2015, of which 1575 (66.96%) were sued divorces and 777 (33.04%) were *talak* divorces.¹¹ This fact is also experienced by other regions of Madura, such as Sumenep, Sampang, and Bangkalan.¹²

Based on the aforesaid framework, this study has the specific purpose of doing an in-depth examination of women's rights in divorce and the rhetoric of gender equality in Madura. Methodologically, this study uses empirical qualitative research using an approach (Islamic jurisprudence) *fiqh* and

⁹ Ahmad Najib Burhani, "Lessons from Madura: NU, Conservatism and the 2019 Presidential Election," (2019), p. 9; Abd Hannan and Kudrat Abdillah, "Hegemoni Religio-Kekuasaan dan Transformasi Sosial," *Jurnal Sosial Budaya* 16, no. 1 (2019), p. 16; Zainuddin Syarif and Abd Hannan, "Kearifan Lokal Pesantren Sebagai Bangunan Ideal Moderasi Islam Masyarakat Madura," *Islamica: Jurnal Studi Keislaman* 14, no. 2 (2020), p. 220–40, <https://doi.org/10.15642/islamica.2020.14.2.220-240>; Abd - Hannan, "Agama, Kekerasan, dan Kontestasi Politik Elektoral: Penggunaan Simbol Keagamaan Kiai dan Kekuasaan Blater dalam Pertarungan Politik Lokal Madura," *Jurnal Sosiologi Agama* 12, no. 2 (2018), p. 187, <https://doi.org/10.14421/jsa.2018.122-02>.

¹⁰ Yeyen, "Angka Perceraian Di Pamekasan Tembus 984 Kasus Selama Pandemi Covid-19," *Harian Bangsa Online*, September 28, 2020, <https://bangsaonline.com/berita/80824/angka-perceraian-di-pamekasan-tembus-984-kasus-selama-pandemi-covid-19>; mediamadura.com, "Angka Perceraian Di Pamekasan Meningkat," <https://mediamadura.com/>, March 18, 2019, <https://mediamadura.com/2019/03/18/angka-perceraian-di-pamekasan-meningkat/>.

¹¹ Maimun, Toha, and Arifin, 'Fenomena Tingginya Angka Cerai-Gugat dan Faktor Penyebabnya'; *Kabar Madura*, 'Kasus Perceraian Terus Meningkat', *Kabar Madura*, 25 January 2019, <https://kabarMadura.id/kasus-perceraian-terus-meningkat/>; mediaMadura.com, 'Angka Perceraian Di Pamekasan Meningkat', <https://mediaMadura.com/>, 18 March 2019, <https://mediaMadura.com/2019/03/18/angka-perceraian-di-pamekasan-meningkat/>.

¹² K. Rahman, "Faktor Ekonomi, Angka Perceraian Di Bangkalan Meningkat Drastis," *Kanal Berita* (blog), August 19, 2020, <https://kanalberita.co/2020/08/19/dampak-pandemi-angka-perceraian-di-bangkalan-meningkat-drastis-mayoritas-faktor-ekonomi/>; Ali Hafidz Syahbana, "Angka Kasus Perceraian di Sumenep Terus Meningkat, Penyebab Utamanya Tak Melulu soal Perselingkuhan," *Tribun Madura*, January 27, 2020, <https://madura.tribunnews.com/2020/01/27/angka-kasus-perceraian-disumenep-terus-meningkat-penyebab-utamanya-tak-melulu-soal-perselingkuhan>; Editor: News Indonesia, "Angka Perceraian di Sumenep Terus Meningkat, Berikut Sederet Penyebabnya » News Indonesia," *News Indonesia*, January 22, 2020, <https://newsindonesia.co.id/read/berita-sumenep/angka-perceraian-di-sumenep-terus-meningkat-berikut-sederet-penyebabnya/>.

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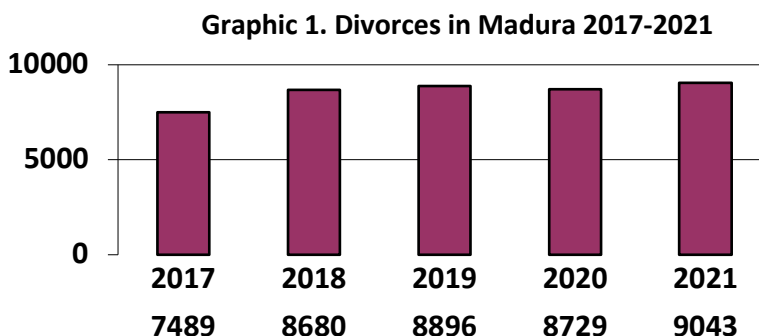
sociology of Islamic law. This is to answer the following objectives: first, to explain the research problem in depth, detailed, and comprehensive regarding the dynamics of divorce in Madura and the discourse of gender equality in the midst of the increasing phenomenon of divorce in Madura; second, to explain in depth the sociological factors that underlie the increasing number of divorce cases in Madura which are carried out by women.

Divorce in Madura: A Portrait and Its Dynamics

Divorce in Madura is relatively prevalent at the level of East Java. Because Pamekasan Regency and Sampang Regency are two districts in Madura that fall within the category of places having higher divorce rates than other places.¹³ Given that Madura is known to the general public as a region that is strong in holding religious principles that preserve the sacredness of marriage, the inclusion of these two regions is rather intriguing.¹⁴

Statistically, the magnitude of the divorce rate in Madura may be connected to the divorce rate in each region. According to the most recent information from the neighborhood Religious Courts, there are at least 9043 in total as of 2020, up 3.47 percent from the prior year when there were still 8729. Of the 9043 number of divorce cases, 2438 (26.96 percent) were divorced, whereas 6605 (73.04 percent) are resolved through litigation.

Table 1



Source: Religious Court in Madura.

¹³ Maimun, Toha, and Arifin, "Fenomena Tingginya Angka Cerai-Gugat Dan Faktor Penyebabnya."

¹⁴ Yanwar Pribadi, "Religious Networks in Madura: Pesantren, Nahdlatul Ulama, and Kiai as the Core of Santri Culture," *Al-Jami'ah: Journal of Islamic Studies* 51, no. 1 (2013), p. 1, <https://doi.org/10.14421/ajis.2013.511.1-32>.

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The graph does not only show high rate of divorce in Madura, the trends of divorce rates increase sharply from year to year. It is also interesting to note that, according to the data, all four of Madura's districts experienced this tendency. It is alarming that even the prosperous Pamekasan neighbourhood, face similar increase in the divorce rate. In Pamekasan, for example, the number of divorce cases increased from 2152 in 2018 to 2352 in 2020. Three other districts, Sumenep, Sampang, and Bangkalan, showed comparable trends. Based on the research findings, Sampang Regency in Madura has the largest trend of divorce cases, with 2272 cases between 2010 and 2012.

We also observe the similar pattern in the divorce data based on the type of divorce, specifically a lawsuit brought by the woman (wife) against the man (husband). The number of divorce lawsuits in 2019 increased to 6605 compared to only in 6504 in 2018. Bangkalan Regency had the biggest increasing trend of these cases with a total of 1714, Sumenep came in second with 1667 divorce cases, Pamekasan came in third with 1575 instances, and Sampang district came in last with 1449 cases. It is interesting to note that *talak* cases shows higher increase than the sued divorce. In Madura, there were 2438 divorce cases in 2021, a slight rise from the previous years.

Tabel. 1 Marriage trends in Madura bases on its type 2017-2021

Year	Sued Divorce	Divorce <i>Talak</i>	Total
2021	6605 (73.04%)	2438 (26.96%)	9043
2020	6504 (74.51%)	2225 (25.49%)	8729
2019	6008 (67.63%)	2878 (32.39%)	8886
2018	5575 (64.23%)	3105 (35.77%)	8680
2017	5031 (67.18%)	2458 (2.82%)	7489

Source: Religious Court in Madura

In light of these findings, it is evident that litigation has increasingly dominated the divorce dynamics in Madura in recent years, with the wife serving as the subject in these cases. This demonstrates that the Madurese community's divorce pattern and tradition have changed from what is often believed.¹⁵ In a way, the practice of divorce in Madura, which had previously been more dominating under the control of the males (husbands) who seem to enjoy highest authority within social structures in Madura, started to shift slowly and opened up spaces for women (wives) to legally file divorce cases.

¹⁵ Achmad Mulyadi, "Perempuan Madura Pesisir Meretas Budaya Mode Produksi Patriarkat," *KARSA: Journal of Social and Islamic Culture* 12, no. 2 (2011), p. 15.

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DOI: 10.22373/sjhk.v6i1.12804

The changes in this area are not accidental; rather, they have been driven by the society's social realities.

Driving Factors for Divorce in Madura

According to the aforementioned statistics, Madura's divorce rate has increased over the past five years for both sued and *talak* divorce. This social reality is driven by multiple factors, such as moral, economic, domestic violence, biological factors, and disharmony.

a) Moral Factor

All types of attitudes and self-behavior from one of the two parties that depart from moral principles constitute the moral element that leads to divorce. 236 (1.54 percent) of the 15189 divorce cases that took place in the previous three years were brought on by this circumstance. Included in this group is divorce brought on by unwholesome polygamy, in which the husband wed a second wife without the first wife's permission.¹⁶ It is interesting that the husband in this case of covert polygamy is a foreign worker or otherwise employed abroad.¹⁷ According to the statistics, 0.53 percent of Madura's divorce cases during the previous three years were brought on by the presence of a third party unrelated to the marriage. Other moral considerations include the husband's dependence on alcohol (0.20%), his penchant for gambling (0.50%), and his involvement in legal matters (0.22 percent).

b) Economic Factor

All topics pertaining to basic needs or social welfare, such as clothing, food, and other items, are referred to in this study as economic variables.¹⁸ Based on the divorce rate in Madura for the last three years, economic factor produced the highest divorce rate as much as 23.85 percent or equivalent to 3623 cases. These economic elements can be divided into two categories based on data, namely: first, there is the absence of a family income source as a result of unemployment and one party's low income. According to the researchers' observations, the majority of divorce cases in Madura,

¹⁶ Muhammad Taufiq, "Nikah Sirri Perspektif Maqashid Syariah," *Al-Manhaj: Journal of Indonesian Islamic Family Law*, 12, (2020). <http://ejournal.iainmadura.ac.id/index.php/almanhaj/article/view/3138>.

¹⁷ Maimun and Mohammad Thoha, *Perceraian Dalam Bingkai Relasi Suami-Istri* (Duta Media Publishing, 2017), p. 51–63.

¹⁸ Gagarin Akbar, "Tingkat Perceraian dan Pengaruh Faktor Ekonomi di Kabupaten Karawang," *Jurnal Ilmiah Hukum De'Jure* 3, no. 1 (2018), p. 15.

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DOI: 10.22373/sjhc.v6i1.12804

specifically the urban sub-district, occur in urban or urban regions. Secondly, the husband bears no obligation for providing for his family's necessities. Numerous instances demonstrate that this issue is more prevalent in families where one member decides to travel to work outside the area, particularly abroad.

c) Domestic Violence Factor (KDRT)

The term "domestic violence" refers to any behavior that threatens, harasses, or causes bodily, psychological, or sexual harm to two persons who are intimately connected to each other or to other family members.¹⁹ The data shows that in the context of the dynamics of divorce in Madura reveal that the practice of domestic violence developed as a continuation of the cultural issues of the patriarchal-heavy Madurese community. In particular, it elevates the male side (husband/father) to the position of the highest social class (superordinate), the lone person in charge of making all domestic decisions.²⁰ On the other side, the wife is in a lower socioeconomic status than she is (subordinate). The wife is more inclined to obey or follow her husband in this unequal hierarchical order. As a result of the distribution of power being centered on the male side, domestic violence acts or behaviors are practices of superordinate group dominance (men/husbands) over subordinate groups (women/wives) (husband). According to statistics, at least 555 (3.65 percent) divorces in Madura have been brought on by domestic violence, based on the number of incidents that have been reported over the past three years.

d) Biological Factor

In terminology, biology is related to the nature or condition inherent in humans naturally.²¹ This includes the divorce that occurs because of

¹⁹ G. S. Ake, "Domestic Violence and Families: Trauma-Focused Treatment Options," *North Carolina Medical Journal* 77, no. 6 (2016), p. 399–400, <https://doi.org/10.18043/ncm.77.6.399>; Alfitri Alfitri, "Protecting Women from Domestic Violence: Socio-Legal Approach to CEDAW Bill in Indonesia," *Studia Islamika* 27, no. 2 (2020), <https://doi.org/10.36712/sdi.v27i2.9408>.

²⁰ Nina Nurmila, "Pengaruh Budaya Patriarki terhadap Pemahaman Agama dan Pembentukan Budaya," *KARSA: Jurnal Sosial dan Budaya Keislaman* 23, no. 1 (2015), p. 1, <https://doi.org/10.19105/karsa.v23i1.606>; Mulyadi, "Perempuan Madura Pesisir Meretas Budaya Mode Produksi Patriarkat"; Alfitri, "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia."

²¹ "Arti Kata Biologis - Kamus Besar Bahasa Indonesia (KBBI) Online," accessed February 7, 2021, <https://kbbi.web.id/biologis>.

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physical problems. According to the number of divorces that took place over the previous three years, there were at least 43 cases, or 0.28 percent. The inability of the related party to carry out their responsibilities and/or discontent with one partner's sexual urge who has not and/or does not have children are additional biological reasons that can come into play. In a few other less serious instances, biological issues also develop as a result of improper sexual behavior and a family history of infectious diseases that are thought to be dangerous to offspring.

e) Disharmony

Discord is the final element contributing to Madura's high divorce rate. According to the data, there were 8304 divorce instances, or 54.67 percent, that were brought on by domestic strife. The causes varied, but the majority of them acknowledged that their frequent disagreements made one of them uncomfortable. The existence of a third party, whether it results from parental intervention or from other individuals, which subsequently results in misunderstandings and envy, according to some, prevents them from being harmonious. Finally, there are misconceptions regarding social roles in certain communities both in the private and public sectors.

Women's existence in the dynamic of divorce in Madura

Referring to the emerging divorce cases, there might arise some critical questions: how does the presence of women factor into the number of divorce cases? Does she tend to play more of an object, or vice versa as a subject?

Indirect evidence suggests that in many cases, women (wives) play larger roles as plaintiffs than husbands upon reflecting on trends and graphs from the past five years, where statistically, more lawsuit cases than *talak* cases have been filed. Given that the Madurese community's culture has thus far been heavily influenced by patriarchal beliefs, particularly in regards to relationships and family life, this fact surely raises a lot of questions.²² It is interesting to note that this reality is experienced across all four of Madura's

²² Nurmila, "Pengaruh Budaya Patriarki terhadap Pemahaman Agama dan Pembentukan Budaya"; Abd Hannan, "Gender Dan Fenomena Patriarki Dalam Sosial Pendidikan Pesantren Studi Tentang Hegemoni Kiai Pesantren Terhadap Sosial Pendidikan Bias Gender," in *Gender Dan Budaya Madura* (Madura dalam Perspektif Budaya, Gender, Politik, Industrialisasi, Kesehatan dan Pendidikan, Surabaya: Puslit Gender dan Budaya Madura LPPM UTM Bekerjasama dengan CV. Perwira Media Nusantara (PMN) Surabaya, 2016), p. 34–53.

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DOI: 10.22373/sjhc.v6i1.12804

districts: Bangkalan, Sampang, Pamekasan, and Sumenep Regency. According to the most recent information from the regional Religious Courts, for instance, as of 2020 there were 1575 divorce lawsuits filed in Pamekasan Regency, which is 34% more than the 777 *talak* divorce cases. The number of divorced cases in Pamekasan is similar to that of Bangkalan Regency. In the region known as the Pintu Shalawat, reached 1714, which is 40% more than 729 *talak* instances. Like Sumenep Regency, Keris City had a divorce rate of 1667, which was 46% greater than the 605 divorces caused by *talak*. Sampang Regency had the most *talak* divorce cases, with 1449 total, which was 64% more than the 327 total *talak* divorces.

Given that Madura has a socio-religious structure and tradition that are identical to religious values, Islam, the dominance of women (wives) in divorce cases over the last five years has emerged as a distinct phenomena.²³ This phenomenon was triggered by a variety of circumstances. Our finding suggests that the high dominance of women as plaintiffs in many divorce cases in Madura results from their higher level of knowledge and understanding of their rights in family life. This is the first of three dominant factors. Up to 53% of those who attempted to file for divorce acknowledged that doing so was within their constitutional rights as a wife who had endured unjust treatment from her husband in terms of duties and rights; second, the community's growing modern outlook is another aspect that contributes to the significant preponderance of women in divorce cases. This condition is a sign of a change in how society views marriage. In this way, the paradigm of thought in more contemporary society has diminished its understanding of the sacredness of marriage. Therefore, when the marriage as husband and wife is no longer compatible, divorce for them is seen as normal and the best solution.²⁴ Third, the economic factor, which also contributes to the rise in the number of divorces filed by women due to their independence in the financial aspect. Even if they have to be single parents, their financial independence allows them to stop worrying about the necessities of their children's lives.

In addition to the three main criteria mentioned above, the intervention of third parties, in this case their parents, cannot be separated

²³ Yanwar Pribadi, "Islam Madura: Sebuah Studi Konstruktivisme-Strukturalis Tentang Relasi Islam Pesantren Dan Islam Kampung Di Sumenep Madura, by Mohammad Hefni," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 176, no. 2–3 (2020): 429–31, <https://doi.org/10.1163/22134379-17602009>.

²⁴ Masthuriyah Sa'dan, "Tradisi Perkawinan Matrilokal Madura," *Ibda': Jurnal Kebudayaan Islam* 14, no. 1 (2016), p. 10.

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from the significant role that women play in divorce in modern Madura. Numerous small incidents in the area demonstrate that the divorce lawsuit brought by the women is often carried out by their parents rather than being solely based on the wishes of the parties involved.²⁵ Cases like these are rather prevalent in Madura's divorce dynamics, especially in rural communities, as a result of the Madurese culture's continued emphasis on patriarchal norms and customs.²⁶

Women's Rights in Divorce, Legal Review and *Munakahat* Law

According to Law Number 1 of 1974, the purpose of marriage is to create a joyful and eternal family (home) based on Allah the Almighty's rules.²⁷ Marriage entails an understanding as an inner and outer link between a man and a woman as a wife. Accordingly, relating to these two definitions, both legally and religiously, marriage actually contains numerous crucial phrases, namely the creation of connection links and the creation of a family that is not only joyful but also forever. Simply said, when a marriage ends in divorce, the lofty goal of the marriage frequently becomes reversed.²⁸ Legally and especially religiously, the two partners do not have the status of husband and wife when there is a practical divorce. As a result, both of them effectively lose all of the rights and obligations that were previously associated to them.²⁹

According to Fiqh *Munakahat*, Islam permits divorce since marriage itself can be viewed as a "contract" whose status may be cancelled at any party's or both parties' initiative. As a result, a wife also has the legal right to

²⁵ Fitria Rahmadani Nida and Ghina Farhany, "Proses Komunikasi Dalam Pernikahan Etnis Madura," *Jurnal Interaksi: Jurnal Ilmu Komunikasi* 3, no. 2 (2019), p. 157–68, <https://doi.org/10.30596/interaksi.v3i2.3353>.

²⁶ Iskandar Dzulkarnain, *Perempuan Madura, Gender, Dan Pembangunan: Telaah Kritis Eksistensi Kebudayaan Madura Dalam Era Pembangunan Berkelanjutan Berbasis Gender* (Yogyakarta: Pusat Kajian Sosiologi UTM bekerjasama dengan Anggota IKAPI, 2017), 34–56.

²⁷ Atun Wardatun and Bianca J. Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna* 24, no. 2 (2020): 266–95, <https://doi.org/10.20414/ujis.v24i2.416>.

²⁸ Hoko Horii, "Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce, and Desire," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 174, no. 2 (2018), p. 345–47, <https://doi.org/10.1163/22134379-17402017>.

²⁹ Nugraheni, "The Implementation of Marriage Different Religion and Their Due to the Law of The Religion of Marriage Status."

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file for divorce.³⁰ According to the Islamic law, a wife has the right to file for divorce if she feels that she cannot patiently live together with her husband for a variety of reasons (Qur'an 2:229).³¹ The term "*khulu*" (religious language) denote the wife's right to divorce (the ransom way).³² The wife can use the *khulu'* or this method of redemption by asking the husband for a divorce under the condition that she returns the dowry she obtained from him. The Qur'anic explanation that compares a husband and a wife to be the compliment for each other (Qur'an 2:187) is credited with giving the word *khulu'* its meaning of letting go.³³ According to the terminology, "*khulu*" refers to breaking the marriage contract, which gives the wife the right to pay the husband back (*iwadh*) (QS.2:187).³⁴ The dowry she received at the time of the marriage is the recompense being discussed; it may have been in the form of real estate, cash, or other goods depending on the consent of both parties.³⁵ In terms of fiqh, the Syafi'iah and Hanabilah scholars permit a woman to use her *khulu'* rights at any time (regardless of whether she is in a holy condition or not) if it is founded on sharia-justified grounds, such as when her husband mistreats her, disregards his duties, or breaks the law. A wife may stray from God's commandment due to possible religious responsibilities.³⁶ Given that it is for

³⁰ Lilik Andaryuni, "Pemahaman Gender dan Tingginya Angka Cerai Gugat di Pengadilan Agama Samarinda," *Fenomena* 9, no. 2 (2017): 155, <https://doi.org/10.21093/fj.v9i2.946>; Abdul Jamil, "Isu dan Realitas di Balik Tingginya Angka Cerai-Gugat di Indramayu" 14, no. 2 (2015): 22.

³¹ Imani Jaafar-Mohammad and Charlie Lehmann, "Women's Rights in Islam Regarding Marriage and Divorce," *Journal of Law and Practice* 4, no. 1 (2010), p. 15.

³² Hemnel Fitriawati and Zainuddin Zainuddin, "Talak dalam Perspektif Fikih, Gender, dan Perlindungan Perempuan," *Yinyang: Jurnal Studi Islam Gender dan Anak* 15, no. 1 (2020), p. 59–74, <https://doi.org/10.24090/yinyang.v15i1.3584>.

³³ Henderi Kusmidi, "Khulu' (Talak Tebus) Dan Implikasi Hukumnya Dalam Perspektif Hukum Islam," *EL-AFKAR: Jurnal Pemikiran Keislaman Dan Tafsir Hadis* 7 (2018), p. 37, <https://doi.org/10.29300/jpkth.v7i1.1586>.

³⁴ Yuliatin Yuliatin, "Implementasi Kompilasi Huukum Islam Dalam Hitungan Talak Terhadap Cerai Khulu'," *Al-Risalah* 12 (2018): 1, <https://doi.org/10.30631/al-risalah.v12i01.437>.

³⁵ Arif Marsal, "Infertilitas Sebagai Alasan Khulu' Perspektif Ulama," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 9, no. 2 (2018): 138, <https://doi.org/10.21043/yudisia.v9i1.3677>.

³⁶ Nora Hak et al., "Right of Women to Obtain Divorce under Shari'ah and Islamic Family Law of Malaysia: With Special Reference to Ta'liq and Khulu'" 6 (January 1, 2012): 286–93. Abu Ishaq Al-Syirazy, *Al-Muhadzdzab fi Fiqh al-Imam al-Syafi'i*, (Beirut: Dar el-Kotob), vol. 2, 72., Muhammad Ibn Qudamah, *Al-Mughni*, (Cairo: Maktab al-Qahirah), vol.

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a woman's advantage and preventative actions to avoid harming a woman, this is acceptable.³⁷

Law No. 1 of 1974 concerning Marriage and Government Regulation, No. 9 of 1975 concerning the Implementation of Law, and No. 1 of 1974 concerning marriage both regulate issues relating to divorce.³⁸ According to this article, a legal divorce can only take place once a court judge, in this case the Religious Court, has rendered a final judgment following a prior divorce lawsuit from one of the two parties, either the husband or the wife. Divorce as an indication of ending a married partnership, particularly in Islam take place for two reasons: *First of all*, talak and litigation, divorce occurs when the husband or his legal agent files a divorce petition with the Religious Courts. Due to his (husband's) dominant position in the divorce, the spouse is legally required to pay the *mut'ah* and *iddah*.³⁹

Second, a divorce that results from a lawsuit that the wife or her legal agent files in a religious court. The wife will be required to return any dowries she received from her husband as a result of the lawsuit's legal repercussions. However, according to Compilation of Islamic Law Article 73 (1), the husband is not required to pay the *iddah* and *mut'ah*.⁴⁰ In regard with the child custody, the woman has primary responsibility as long as the child is still immature (not-grown up). The grown-up children are however, given the option to select either to be with their mother or father. In matters concerning the financing and maintenance of children's education, all of which are the responsibility of the father. According to Compilation of Islamic Law Article 157, joint property is divided between husbands and wives when a marriage

7, 52. Manshur al-Buhuti al-Hanbali, *Kasyaffu al-Qanna'*, (Beirut: Dar al-Kotob al-Ilmiah) vol. 2, 213.

³⁷ Muhammad Taufiq, "A Critique against the Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text," *Millati: Journal of Islamic Studies and Humanities* 5, no. 2 (2020): 121–28; Abdul Jalil and Muhammad Taufiq, "Al-Âtsâr al-Mutarattibah 'Âla PERPPU (Lawâih al-Hukûmiyyah al-Badaliyyah) Min al-Munazhzhâmât al-Mujtama'Iyyah Raqm 2 Li 'Âm 2017 Dlidida Wujûd Hizb al-Tahrîr Indûnîsiyâ Min Manzhûr Saddi al-Dzari' Ah," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (2019): 146–77.

³⁸ Abu Rokhmad and Sulistiyono Susilo, "Conceptualizing Authority of the Legalization of Indonesian Women's Rights In Islamic Family Law," *Journal of Indonesian Islam* 11, no. 2 (2017): 489, <https://doi.org/10.15642/JIIS.2017.11.2.489-508>.

³⁹ Yuliatin, "Implementasi Kompilasi Hukum Islam Dalam Hitungan Talak Terhadap Cerai Khulu'."

⁴⁰ Yulkarnain Harahab, "Kompilasi Hukum Islam dalam Perspektif Hukum Perundang-Undangan," *Mimbar Hukum* 22, no. 3 (n.d.), p. 20.

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ends in divorce as long as there are no other components of agreement during their marriage.⁴¹

Following the logic of some aforementioned articles, it is obvious that the Compilation of Islamic Law's application to the regulation of husband-wife divorce, particularly in the form of contested divorce, essentially serves a unique function. Specifically, to provide women the credibility they need to stand up for their duties and rights, which then allows the existence and role of women (wives) in the law can be more accommodated, have reasonably balanced recognition, and have legal force that protect them from all sorts of treatment and actions that contain unfairness, irregularity, and violence in the family.⁴² Through the passage of this law, women's positions and roles as subjects, as well as men's positions and roles, can change. Previously, women functioned more like objects of divorce, which led to them having a tendency to be exploited and devalued by their rights (husbands).⁴³

The Phenomenon of Increasing Divorce Rates from a Gender Perspective

Studies on women's divorce rights from a gender perspective has reached its popularity in the recent times. It has been the subject of numerous investigations, including both field research and studies based on the literature. Many studies have been done exploring this particular issue, however gender issues regarding women's rights to divorce have not been completely addressed.⁴⁴ This is due to the fact that gender issues in the dynamics of divorce involve a number of highly complex variables, both at the normative level (such as the continued overlap of positive norms, religious norms, and social norms), as well as the practical level (such as the low level of awareness and knowledge among women about the law), which has an

⁴¹ Yuliatin, "Implementasi Kompilasi Huukum Islam Dalam Hitungan Talak Terhadap Cerai Khulu'."

⁴² Abduh Sulaeman, "Pembaruhan Hukum Islam dalam Kompilasi Hukum Islam sebagai Upaya Positivisasi Hukum," *Aktualita (Jurnal Hukum)* 1, no. 2 (2018). <https://doi.org/10.29313/aktualita.v1i2.3996>.

⁴³ Agus Hermanto, "Teori Gender dalam Mewujudkan Kesetaraan: Menggagas Fikih Baru," *Ahkam: Jurnal Hukum Islam* 5, no. 2 (2017), p. 209–32, <https://doi.org/10.21274/ahkam.2017.5.2.209-232>.

⁴⁴ Asghar Engineer, "Islam, Women and Gender Justice (Shari'ah Law)," *Journal of Dharma* 29, no. 2 (2004), p. 183–200.

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impact on the community's low utilization of the institutional facilities that are available.⁴⁵

Conceptually, gender refers to the roles, behaviors, attitudes, duties, and functions that men and women naturally possess as a result of the social systems and structures that have been built within the community.⁴⁶ Gender is a social construction with a dynamic nature, evolving over time and from place to place depending on the cultural systems and norms that are in existence at this current debate. Gender cannot be equated with the term sex due to its dynamic nature. Sex has a gender-specific connotation, is socially accepted and unavoidable, and cannot be altered. Sex terminology refers to gender, sometimes known as man and woman in popular culture. Social roles known as gender are created by learning outcomes and social interaction, which then construct two distinctive terms: feminine and masculine.⁴⁷ From a gender perspective, both masculine and feminine are equally entitled to all of their rights and obligations in the private and public spheres, including those that pertain to divorce. The main concern right now is how, from a gender standpoint, women fit into the divorce dynamics in Madura?

There are two theoretical methods to answer this question: the Woman and Development (WaD) approach and the Gender and Development (GaD) approach, according to George Ritzert's (2014) explanation.⁴⁸ The fundamental premise of the Woman and Development (WaD) theory is founded on their beliefs, which vigorously oppose and combat any sort of exploitations of women brought on by bias development plans, in the sense that they (plans) do not take into account their interests. They fight for egalitarian ideals in all respects, specifically the ability to secure women's rights and obligations, both in the public and home realms. In order for women to achieve the legitimacy to fulfil their tasks and responsibilities freely and fully, there needs to be a unique legitimacy space for them. There has been a

⁴⁵ Shadaab Rahemtulla, "Gender Justice as a Way of Life: Liberation Theology and Gender Justice in Islam," 2017, p. 96–160, <https://doi.org/10.1093/acprof:oso/9780198796480.003.0004>.

⁴⁶ Adis Duderija, Alina Alak, and Kristin Hissong, "Muslim Female Religious Agency and Gender Justice in Islam," 2020, p. 202–18, <https://doi.org/10.4324/9781003045182-12>.

⁴⁷ Venessa Garcia, "The Sociology of Gender," 2021, p. 1–25, <https://doi.org/10.4324/9781315117607-1>.

⁴⁸ Oliver Dimbath, "George Ritzer, Introduction to Sociology," *Soziologische Revue* 37 (2014). <https://doi.org/10.1515/srsr-2014-0060>.

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recent change in how Madurese women struggle for their rights and fulfil their duties as wives.

The number of divorces that have been predominated by sued divorces rather than *talak* divorces over the past five years is a striking illustration of the egalitarian attitude. Based on the data, the ratio of sued divorces that were filed and talak was 73.04 percent to 26.96 percent in 2020, 25.49 percent to 74.51 percent in 2019, 67.63 percent to 32.39 percent in 2018, 64.23 percent to 35.77 percent in 2017, and 67.18 percent to 2.82 percent in 2016. According to statistics, there is a significant difference between the percentage of divorced and lawsuits. This demonstrates a change in societal norms or perspectives on divorce, particularly for women. When their family rights as wives were not upheld or neglected, they started to understand their rights and responsibilities related divorce and no longer felt hesitant to file a case with the appropriate authorities.

According to George Ritzer (2012), the strongest indicator of gender equality in society is when men as masculine groups and women as feminists are both actively involved in the overall social process, including social processes involving domestic affairs, such as kinships as well as public affairs, such as employment and political rights.⁴⁹

While the Gender and Development (GaD) assumes that women are change agents; this theory also believes that women should not have their space and roles restricted but rather should be given the ability to access and participate in public areas.⁵⁰ They will be able to maximize their potencies if access to public spaces is made available for them. Therefore, legitimacy in the form of laws or regulations is required to realize this conception. The rules and regulations that allow them to be participative in social spheres will ensure that both their individual rights and existence as a whole are upheld.⁵¹

In the context of the dynamics of divorce in Madura, the space for legitimacy is in the form of a set of laws, in this case Law no. 1 of 1974 concerning Marriage, then Government Regulation No. 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, Laws and Government Regulations Number 9 of 1975 on the explanation of Divorce and

⁴⁹ Laura Bechtel, "Metatheorizing in Sociology by George Ritzer," *Mid-American Review of Sociology* 17 (1993), p. 51–53, <https://doi.org/10.2307/23252789>.

⁵⁰ David Cababaro Bueno, *Institutionalization of Gender and Development (GAD) at Columban College Inc. Olongapo City*, 2017, <https://doi.org/10.13140/RG.2.2.12379.11048>.

⁵¹ Romina Istratii, *Seeing Cross-Culturally: The Paradigm of Gender and Development (GAD) and Its Re-Conceptualisation*, 2015.

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Lawsuits. 1 of 1991, covering Article 73 (1), Article 157, Article 96, and 97, and finally the compilation of Islamic Law Article 132 paragraph (1) concerning Divorce Lawsuits.

In addition, Talcott Parson asserts that the society is fundamentally made up of a system, with education, religion, politics, and the family acting as its smallest unit, as seen from the standpoint of structural feminism theory.⁵² Each of these sub-systems has its own tasks and functions, and they are connected and contested in a way that constantly seek balance and harmony for the formation of integration and social stability. To achieve this, these sub-systems require agreement in the form of rules or regulations that serve to manage and regulate behavior in order to prevent future deviations or unrest.

The social structure will become better organized as a result of this consensus, and people will have more room to legitimately fulfill their duties and claim their collective rights. Rights in both the public and the private spheres as well as in family life. Therefore, every incompatibility between social norms is an aberration that needs to be made normal, according to this idea.⁵³ Other gender complexities at the family level, such as stereotypes, subordination, marginalization, and discrimination, as well as violence that takes place in family or household life, are included in this category of deviance.⁵⁴

Given how deeply ingrained the patriarchal-patrilineal social order is in people's everyday lives, the subject of gender equality in husband-wife relationships in Madura is extremely susceptible. The man (husband) has the top position in the family structure, dominating all affairs and exercising full power in the home. The woman (wife) is positioned one level below the man (husband). Women are only allowed to be given commands, picked as a partner or for marriage, assigned, and divorced without having the option to object, let alone divorce. Women's rights have been restricted by their parents since birth.⁵⁵ However, our data indicate that such a culture is beginning to

⁵² Myra Ferree, "Handbook of the Sociology of Gender by Janet Saltzman Chafetz: Handbook of the Sociology of Gender," *American Journal of Sociology - AMER J SOCIOL* 105 (2000), p. 1484-85, <https://doi.org/10.1086/210444>.

⁵³ Dewi Yunairi, "Konsep Feminisme Gayatri Chakrasvorty Spivak dan Upaya Membangun Keluarga Unggul (Kajian Feminisme Modern)," *Sanjiwani: Jurnal Filsafat* 11, no. 1 (2020), p. 103, <https://doi.org/10.25078/sjf.v11i1.1538>.

⁵⁴ Hamidah Hanim, "Peranan wanita dalam Islam dan feminisme barat" 12 (2020), p. 11.

⁵⁵ Anis Miswoni, "Stereotip Kesetaraan Gender terhadap Budaya Pernikahan Dini pada Masyarakat Madura," *Jurnal Pamator* 9, no. 1 (2016), p. 4.

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disintegrate; one and the foremost indicator is the rising number of divorce suits filed by wives. On the other hand, there are several indications that the Madurese population does not quite fit into the patriarchal society; many Madurese women take the lead in managing the household finances⁵⁶. This suggests that not all of the disparaging stereotypes of Madurese people are accurate.⁵⁷

Based on structural feminism theory discussed in this context, there have been legislations or laws that permit women (wife) to file for divorce from their husbands, it is actually a sort of consensus (legitimacy) for them to be more involved in family life. These laws have enabled women to establish themselves as objects instead of just subjects. The woman (wife) no longer experiences diverse treatment and negative attitudes, such as discriminations and stereotypes, in every divorce case that befell them because she has become an object. The aforementioned legislation actually has a gender-neutral spirit if viewed from a gender standpoint. Realizing egalitarian values and family justice is the spirit of the law. In many divorce situations, both men (husbands) and especially women (wives) suffer losses as parties because of the dichotomy and marginalization of rights in the name of gender.

Conclusion

In Madura, where women already have sufficient understanding of their rights and responsibilities as wives in family life, the high percentage of sued divorces rather than *talak* divorces demonstrates a change in mindset among women. Their thorough understanding of their rights as housewives has given them the opportunity to decide to address family disputes in formal institutions, in this case the Madura region's religious courts. Both divorces brought on by *talak* and sued divorces have increased in Madura over the past five years. Divorce cases in Madura are more likely to include litigation than *talak* as a percentage of total divorce cases. The high rate of divorce in Madura—among both the divorced and the non-divorced—is a result of a variety of circumstances, such as financial hardships, moral dilemmas like engaging in polygamy without the wife's consent, discord brought on by the presence of a third party, and arguments.

The sued divorces in Madura have outnumbered the *talak* divorces, this is indicative of changing attitudes on divorce among women (wives), as well as rising values for gender equality in the family and the decline of the

⁵⁶ Sa'dan, "Tradisi Perkawinan Matrilokal Madura."

⁵⁷ Pribadi, "Islam Madura."

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patriarchal structure. According to the viewpoint of modern feminism, the importance of gender equality in this context refers to a set of laws or guidelines that give a wife the right to file for divorce from her husband. A set of rules and government regulations that govern the divorce mechanism provide the space for validity from a constitutional standpoint. Women can position themselves as subjects rather than as objects thanks to this law. This enables them to refrain from engaging in any sort of gender-based misbehavior, both non-physical aberrations like stigma and preconceptions as well as physical deviations like violence, subordination, marginalization, and discrimination.

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