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Justice for Women in Divorce Cases before the Religious Courts of Southeast Sulawesi: Feminist and Legal Pluralist Perspectives

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Abstract: This study examines the legal construction of contested divorce within Indonesia's Religious Court system through the analytical lenses of feminist legal theory and legal pluralism. It argues that contested divorce represents the institutional adaptation of Islamic family law within the national legal system and has significant implications for women's legal rights and access to justice. Employing an empirical legal research approach, the study integrates the analysis of legal norms with the realities of judicial practice in the Religious Courts of Southeast Sulawesi. The research draws upon feminist legal theory and legal pluralism as its principal theoretical frameworks. Data were collected through document analysis and semi-structured interviews. Documentary sources included Religious Court divorce statistics, statutory regulations, judicial decisions, scholarly books, and peer-reviewed journal articles, while interviews were conducted with Religious Court judges and legal scholars from universities in Southeast Sulawesi. The findings demonstrate that the increasing prevalence of contested divorce reflects women's growing legal consciousness and their willingness to assert their rights through formal judicial mechanisms. Women increasingly utilize legal institutions to challenge unequal or harmful marriages, indicating that the Religious Court system has become a more accessible avenue for seeking justice. Contested divorce may be understood as a positive indicator of expanding access to justice. From the perspective of Islamic law, the institutionalization of contested divorce represents a process of normative adaptation through which the Religious Courts have reinterpreted classical Islamic legal principles in light of contemporary demands for justice, legal protection, and gender equality. Viewed through the framework of legal pluralism, the study further finds that contested divorce emerges from the interaction among state law, Islamic law, and customary (*adat*) law.

Keywords: Justice for women, contested divorce, feminism, legal pluralism, Islamic law, customary law

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Abstrak: *Studi ini menelaah konstruksi hukum perceraian yang dipersengketakan dalam sistem Pengadilan Agama Indonesia melalui lensa analitis teori hukum feminis dan pluralisme hukum. Argumen tersebut menyatakan bahwa perceraian yang dipersengketakan merupakan bentuk adaptasi kelembagaan hukum keluarga Islam dalam sistem hukum nasional dan memiliki implikasi yang signifikan terhadap hak-hak hukum perempuan serta akses mereka terhadap keadilan. Penelitian ini menggunakan pendekatan penelitian hukum empiris, Studi ini mengintegrasikan analisis norma hukum dengan realitas praktik peradilan di Pengadilan Agama Sulawesi Tenggara. Penelitian ini mengacu pada teori hukum feminis dan pluralisme hukum sebagai kerangka teoretis utamanya. Data dikumpulkan melalui analisis dokumen dan wawancara semi-terstruktur. Sumber dokumenter meliputi statistik perceraian Pengadilan Agama, peraturan perundang-undangan, keputusan yudisial, buku ilmiah, dan artikel jurnal yang ditinjau sejawat, sementara wawancara dilakukan dengan hakim Pengadilan Agama dan sarjana hukum dari universitas di Sulawesi Tenggara. Hasil temuan menunjukkan bahwa meningkatnya prevalensi perceraian yang dipersengketakan mencerminkan meningkatnya kesadaran hukum perempuan dan kesediaan mereka untuk menegaskan hak-hak mereka melalui mekanisme peradilan formal. Perempuan semakin banyak menggunakan institusi hukum untuk menantang pernikahan yang tidak setara atau merugikan, menunjukkan bahwa sistem Pengadilan Agama telah menjadi jalur yang lebih mudah diakses untuk mencari keadilan. Dalam hal ini, perceraian yang dipersengketakan dapat dipahami sebagai indikator positif untuk memperluas akses ke keadilan. Perceraian yang disengketakan dapat dipandang sebagai indikator positif dari perluasan akses terhadap keadilan. Dari sudut pandang hukum Islam, pelembagaan perceraian yang disengketakan merupakan proses adaptasi normatif yang melaluinya Pengadilan Agama telah menafsirkan kembali prinsip-prinsip hukum Islam klasik sejalan dengan tuntutan kontemporer akan keadilan, perlindungan hukum, dan kesetaraan gender. Jika dilihat melalui kerangka pluralisme hukum, studi ini juga menemukan bahwa perceraian yang dipersengketakan muncul dari interaksi antara hukum negara, hukum Islam, dan hukum adat (adat).*
Kata Kunci: *Keadilan untuk perempuan, perceraian sengketa, feminisme, pluralisme hukum, hukum Islam, hukum adat*

Introduction

The phenomenon of divorce in Indonesia, particularly within the jurisdiction of the Religious Courts, reflects evolving socio-legal dynamics shaped by broader transformations in society. Divorce is no longer viewed merely as the breakdown of the family institution; rather, it has emerged as a complex manifestation of changing power relations, shifting social norms, and unequal access to justice. Within this context, the law functions not only as a normative framework governing marital dissolution but also as a site where competing

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interests and gendered power relations are negotiated.[1] This conceptual shift positions divorce as a significant subject of contemporary socio-legal inquiry. Furthermore, increasing legal awareness and rights consciousness among women have substantially influenced patterns of divorce litigation, particularly the growing number of divorce petitions initiated by wives. This trend demonstrates that social transformation has direct implications for judicial practice and legal outcomes. Consequently, the study of divorce provides an important lens through which to examine the dynamic relationship between law, society, and gender.[2]

The rising incidence of divorce is closely associated with broader structural changes in Indonesian society. Processes of urbanization, expanded educational opportunities, and women's increasing participation in the labor market have fundamentally reshaped gender relations within the family. Greater economic independence has enabled many women to exercise greater autonomy in making decisions about marital dissolution, particularly when faced with unequal or abusive relationships. These developments underscore the significant influence of socio-economic factors on legal behavior and judicial processes. Accordingly, divorce should not be understood solely as an individual legal event but rather as a social phenomenon embedded within broader economic, cultural, and institutional transformations. A comprehensive understanding of this issue therefore requires an analytical framework capable of integrating legal, social, and gender perspectives.[3]

This broader pattern is also evident in Southeast Sulawesi Province. In 2025, the Religious Courts recorded 4,253 divorce cases, comprising 3,456 contested divorces (*cerai gugat*) and 797 divorce-by-*talak* (*cerai talak*) cases. The predominance of contested divorces indicates that women constitute the majority of petitioners seeking the dissolution of marriage through the courts. Geographically, the highest numbers of divorce cases were recorded in Kendari City (707 cases) and Kolaka Regency (427 cases), whereas the lowest figures were reported in Konawe Islands Regency (8 cases), followed by Buton and North

[1] Rafidah Abd Karim, et.al., "Feminism and Gender Equality among Orang Asli Women: Implications for Customs and Laws," *Hasanuddin Law Review* 11, No. 2 (2025). Mursyid Djawas, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi," *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021). Ahmad Yani, et.al., "Legal Construction of Cumulative Decisions on Marriage Annulment and Divorce Claims at the Jakarta Religious High Court." *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, No. 2 (2025), p. 655-670.

[2] Khansadhia Afifah Wardana, et.al., "Freedom of Religion and Gender Equality in Sustainable Development Agenda," *Sriwijaya Law Review* 6, No. 1 (2022). Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 15–27.

[3] Rosdalina Bukido, et.al., "Divorce Among Female Muslim Civil Servants: Legal Perspectives in Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 25, No. 1 (2025). Satjipto Rahardjo, *Hukum dan Masyarakat* (Bandung: Angkasa, 1980), p. 83–90.

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Buton Regencies (55 cases each).[4] These regional disparities suggest that more urbanized and economically developed areas tend to experience higher divorce rates than rural regions. Such a pattern may reflect the combined effects of social transformation, changing family structures, women's greater economic participation, and increased access to legal institutions in urban settings.[5]

The growing prevalence of contested divorces also raises important questions concerning the capacity of marriage as a social institution to provide security and justice, particularly for women. Does divorce represent the only viable avenue through which women can escape unequal or harmful marital relationships? Or does the increasing number of divorce petitions signal broader shortcomings in legal, social, and policy mechanisms designed to prevent and resolve domestic conflict before marital breakdown occurs? These questions demonstrate that divorce extends beyond the realm of private legal disputes to encompass broader issues of gender justice, family policy, and social welfare. Accordingly, a comprehensive analysis of divorce requires an interdisciplinary approach that integrates socio-legal theory with insights from gender studies, family sociology, and public policy in order to capture the complexity of this contemporary phenomenon.

From the perspective of feminist legal theory, the predominance of contested divorce may be interpreted as a form of resistance to the patriarchal structures that have historically shaped the institution of marriage. Feminist legal scholars argue that legal systems often reproduce and reinforce gender inequalities through both their substantive norms and institutional practices. Within this framework, the increasing number of divorce petitions initiated by women can be understood as an expression of agency and an effort to escape unequal, oppressive, or abusive marital relationships. At the same time, this trend warrants critical examination. It remains necessary to determine whether the growing prevalence of contested divorce genuinely reflects women's substantive empowerment or instead represents a response to the inadequacy of legal and social protection mechanisms available within marriage.[6]

From the perspective of Islamic law, which constitutes the normative foundation of Indonesia's Religious Courts, divorce is governed by a distinct legal framework rooted in *fiqh al-munākaḥāt* (Islamic family jurisprudence). Classical Islamic jurisprudence generally recognizes *ṭalāq* (repudiation) as a right exercised by the husband, while women may seek marital dissolution through specific legal

[4] BPS, Statistik Indonesia 2025 https://sultra.bps.go.id/en/statistics, diakses Tanggal 25/6/2026.

[5] M. Haikel Afandi, et.al., "An Examination of Islamic Family Law in Kampar Regency, Riau: Focusing on the Causes and Prevalence of Divorce in the Community," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 2 (2023).

[6] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), p. 161–170.

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mechanisms, such as *khulu'* or judicial divorce under prescribed conditions. However, the administration of Islamic family law in Indonesia has undergone significant transformation through the institutionalization of divorce within the Religious Court system. This development illustrates the dynamic adaptation of Islamic legal principles within the framework of a modern constitutional state, where judicial oversight has become central to the dissolution of marriage.[7]

Beyond Islamic law, customary (*adat*) law also plays a significant role in shaping divorce practices across Indonesia. In many indigenous communities, marital relations and divorce are regulated according to local customs that often reflect patriarchal social structures. Nevertheless, the relationship between customary law and women's rights is not uniform. In some communities, customary institutions provide women with greater flexibility and more accessible mechanisms for resolving marital disputes than those available under formal legal systems. This diversity illustrates the complexity of Indonesia's legal pluralism, where state law, Islamic law, and customary law coexist and interact in ways that are not always complementary or harmonious. These overlapping legal regimes create diverse pathways through which women negotiate marital dissolution and seek justice. Accordingly, an analysis informed by both legal pluralism and feminist legal theory is essential for understanding the multidimensional nature of contested divorce within Indonesia's plural legal landscape.[8]

The concept of access to justice provides another important analytical lens through which to examine the phenomenon of contested divorce. Access to justice extends beyond the formal ability to file a case before a court; it also encompasses the capacity to obtain fair, effective, and meaningful legal remedies. From this perspective, the increasing number of contested divorce cases may suggest that women are becoming more capable of utilizing formal legal institutions to protect their rights. Nevertheless, it remains necessary to distinguish between formal access and substantive justice. Although procedural access to the courts has expanded, women's ability to secure equitable outcomes may continue to be constrained by economic disadvantage, cultural expectations, social stigma, and unequal power relations. Consequently, contested divorce should be understood as a complex indicator of both the progress and the limitations of women's access to justice.[9] An intersectional perspective further demonstrates that women's experiences of divorce are far from homogeneous. Factors such as socioeconomic status, educational attainment, ethnicity, religion, age, and geographic location significantly shape women's opportunities to access legal institutions and

[7]Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu*, vol. 9 (Damascus: Dar al-Fikr, 1985), 685–690.

[8]John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism* 24 (1986), p. 3–8.

[9] Mauro Cappelletti and Bryant Garth, "Access to Justice," vol. 1 (Milan: Giuffrè, 1978), p. 8–10.

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influence how they experience the divorce process. Therefore, any comprehensive analysis of contested divorce must account for these multiple and overlapping identities rather than treating women as a uniform social category.

This study is driven by the central question of how the phenomenon of contested divorce (*cerai gugat*) can be understood as a manifestation of women's access to justice within Indonesia's Religious Court system. The predominance of contested divorce in empirical data suggests the existence of structural patterns that cannot be adequately explained through a purely doctrinal or normative legal approach. Rather, these patterns reflect broader interactions among legal institutions, gender relations, and social transformation. Accordingly, this study aims to examine the legal construction of contested divorce within Indonesia's plural legal system, with particular emphasis on the institutionalization of Islamic family law in the Religious Courts. Since contested divorce represents the outcome of the adaptation of Islamic legal principles into the national legal framework, it provides an important lens through which to assess the relationship between religious doctrine and contemporary judicial practice. While classical *fiqh al-munākaḥāt* generally afforded women limited avenues for initiating marital dissolution, Indonesia's modern legal framework has substantially expanded their procedural rights through judicial mechanisms. This transformation raises important questions regarding the extent to which these legal developments embody substantive gender justice rather than merely reflecting procedural or administrative reforms.

To address these questions, this study adopts the complementary perspectives of feminist legal theory and legal pluralism. Feminist legal theory provides a critical framework for examining how legal systems simultaneously reproduce and challenge gender inequalities through their substantive rules, institutional practices, and judicial processes. Within this perspective, contested divorce may be interpreted as an expression of women's legal agency in responding to unequal marital relationships and asserting their rights through formal legal institutions. Nevertheless, such agency should not be assumed to represent complete emancipation. Complementing this perspective, legal pluralism recognizes the coexistence and interaction of multiple legal systems within a single social context. In Indonesia, family law is shaped by the dynamic interplay of state law, Islamic law, and customary (*adat*) law, each of which contributes to the regulation of marriage and divorce. The state has established a formal legal framework through Law No. 1 of 1974 on Marriage (as amended by Law No. 16 of 2019), the Compilation of Islamic Law (*Kompilasi Hukum Islam*), and the Religious Court system.[10]

[10] Jumni Nelli, et.al., "Reconstructing the Ṣāliḥah Wife: Gendered Exchange, Religious Authority, and Divorce among Working Muslim Women in Indonesia." *JURIS (Jurnal Ilmiah Syariah),* 25, No. 1 (2026). p. 1–14. Judy Marria Saimima, et.al., "Layered Hybrid Model In

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This study employs an empirical legal research approach to integrate the analysis of legal norms with the realities of judicial practice. This approach is particularly appropriate because the phenomenon of contested divorce cannot be adequately understood through a purely doctrinal examination of statutory provisions. While legal texts establish the normative framework governing marital dissolution, they do not fully explain how these rules are interpreted, implemented, and experienced in the Religious Courts. Accordingly, this research investigates the interaction between legal norms and judicial practice, thereby bridging the gap between *law in the books* and *law in action*. An empirical legal approach also facilitates the identification of the social, cultural, and institutional factors that influence judicial decision-making and litigants' legal behavior. Consequently, this methodology provides a comprehensive framework for examining contested divorce as both a legal and a social phenomenon, while enabling a critical assessment of the effectiveness of the legal system in promoting access to justice.[11]

This study is theoretically grounded in feminist legal theory and legal pluralism. Feminist legal theory serves both as a critical analytical framework and as an intellectual movement committed to advancing gender equality and women's rights. It challenges the assumption that law is inherently neutral by demonstrating how legal norms and institutions may reproduce existing gender hierarchies and structural inequalities. From an epistemological perspective, feminist legal theory emphasizes women's lived experiences as an essential source of legal knowledge and questions whether legal rules adequately address women's needs and interests. Accordingly, this study examines whether the legal regulation and judicial practice of contested divorce contribute to substantive gender equality or, conversely, reinforce the historical subordination of women. A central methodological contribution of feminist legal theory is its insistence that legal analysis should be informed by the experiences of those most directly affected by the law. In the context of divorce, this perspective is particularly significant because ostensibly gender-neutral legal procedures may overlook the unequal social and economic conditions faced by women. Furthermore, feminist legal theory seeks not merely to expose discrimination but also to promote empowerment, justice, and meaningful legal reform. By incorporating these principles, the present study aims to provide a more comprehensive understanding of contested divorce, recognizing its multiple and sometimes contradictory dimensions within contemporary Indonesian society.[12]

Criminal Resolution: Integrating Epkeret and State Law Under Legal Pluralism in Indonesia," *al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 26, No. 1 (2026).

[11] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986), p. 51–57.

[12] Niken Savitri, *Feminist Legal Theory Dalam Teori Hukum. Perempuan Dan Hukum: Menuju Hukum Yang Berperspektif Kesetaraan Dan Keadilan.* Jakarta: Yayasan Obor Indonesia, 2008.

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Complementing this perspective, legal pluralism provides a framework for understanding the coexistence and interaction of multiple legal systems within the same social space. Rather than viewing law as a single, unified system created exclusively by the state, legal pluralism recognizes that legal authority may also derive from religious traditions, customary norms, and other normative orders. This perspective is particularly relevant to Indonesia, where ethnic, cultural, and religious diversity has produced a complex plural legal landscape. In the field of family law, three principal legal systems operate simultaneously. First, state law consists of statutory regulations enacted by the legislature and implemented through governmental institutions, including the Marriage Law, the Religious Courts Law, and related regulations. Second, Islamic law derives from the normative sources of the Qur'an, the Sunnah (Hadith), *ijmāʿ* (scholarly consensus), and *qiyās* (analogical reasoning), and is institutionalized through the Religious Courts and the Compilation of Islamic Law (*Kompilasi Hukum Islam*). Third, customary (*adat*) law comprises unwritten norms and practices that have developed and are maintained within particular indigenous communities, reflecting the cultural traditions and social values of Indonesia's diverse ethnic groups.[13]

Data were collected through document analysis and semi-structured, in-depth interviews. The documentary sources included statistical reports on contested divorce cases issued by the Religious Courts, relevant legislation, judicial regulations, scholarly books, peer-reviewed journal articles, and other authoritative academic publications. To complement the documentary analysis, in-depth interviews were conducted with judges serving in the Religious Courts and legal scholars from universities in Southeast Sulawesi. The combination of documentary and interview data enabled the study to examine both the normative legal framework and its practical implementation. By drawing on multiple sources of evidence, this research enhances the credibility and trustworthiness of its findings through methodological triangulation.[14]

The study utilized both primary and secondary data sources. Primary data consisted of official 2025 case statistics obtained from the Religious Courts, including records of divorce-by-*ṭalāq* (*cerai talak*) and contested divorce (*cerai gugat*) cases. These data provided the empirical basis for examining patterns of marital dissolution within the study area. Secondary data were derived from statutory regulations, legal literature, judicial decisions, scholarly books, and peer-reviewed academic journals relevant to Islamic family law, feminist legal

[13]Arskal Salim, *Contemporer Islamic Law in Indonesia: Sharia and Legal Pluralism*, Edinburgh UK: Edinburgh University Press, 2015. Mursyid Djawas, et.al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism." *Hasanuddin Law Review* 10, no. 1 (2024).

[14] Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2018), p. 186–190.

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theory, legal pluralism, and access to justice. The integration of primary and secondary data facilitated data triangulation, thereby strengthening the validity and rigor of the analysis. While the primary data provided empirical evidence of divorce trends, the secondary sources supplied the theoretical and legal foundations necessary for interpreting these findings within broader socio-legal debates.[15] Throughout the analytical process, particular attention was paid to minimizing interpretive bias by cross-checking findings across different sources and theoretical perspectives. This rigorous analytical procedure enabled the study to move beyond the mere presentation of statistical data toward a critical examination of its legal and socio-cultural implications.[16]

Legal Justice for Women: A Feminist and Legal Pluralism Perspective

This study is informed by three complementary theoretical perspectives: feminist legal theory, Islamic legal theory, and legal pluralism. Together, these frameworks provide a comprehensive analytical lens for examining contested divorce as a socio-legal phenomenon situated at the intersection of gender, religion, and state law.[17] The study also employs the concept of *maqāṣid al-sharīʿah* (the higher objectives of Islamic law) as a normative framework for evaluating contested divorce within the broader principles of Islamic jurisprudence. Rather than focusing exclusively on the literal application of legal rules, *maqāṣid al-sharīʿah* emphasizes the overarching objectives of Islamic law, including the protection of religion, life, intellect, lineage, and property, all of which are directed toward promoting human welfare (*maṣlaḥah*) and preventing harm (*mafsadah*). Within this framework, contested divorce may be understood as a legal mechanism that protects women from injustice, abuse, or irreparable marital conflict while safeguarding their dignity and fundamental rights. Nevertheless, this study critically examines whether the implementation of contested divorce in the Religious Courts genuinely reflects these higher objectives or merely satisfies procedural legal requirements.[18]

Legal pluralism provides an analytical framework for understanding the interaction between state law, Islamic law, and customary law in divorce practices. In the Indonesian context, these legal systems do not operate in isolation but coexist and continuously influence one another. Their interaction may foster both normative harmonization and legal tensions, shaping the adjudication of

[15]Sugiyono, Metode *Penelitian Kuantitatif, Kualitatif, dan R&D* (Bandung: Alfabeta, 2017), p. 137–140.

[16]Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2006), p. 302–305.

[17] Katharine T. Bartlett, "Feminist Legal Methods," Harvard Law Review 103, no. 4 (1990), p. 837–842.

[18] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), p. 98–105.

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divorce cases. Consequently, a legal pluralism perspective is essential for capturing the complexity of divorce litigation and the ways in which judges, litigants, and communities negotiate competing legal norms. This approach ultimately conceptualizes law as a dynamic and socially embedded phenomenon rather than a fixed set of formal rules.[19]

In addition, this study adopts an intersectionality perspective to better understand women's experiences of divorce. Intersectionality recognizes that women's experiences are not homogeneous but are shaped by the interplay of multiple social factors, including socioeconomic status, cultural norms, and educational background. Accordingly, the analysis of contested divorce must take these intersecting dimensions into account to capture the diverse realities faced by women. This perspective provides a more nuanced understanding of the complexity of divorce and its legal and social implications, while avoiding the oversimplification of women's lived experiences.[20]

The integration of these theoretical perspectives is intended to provide a comprehensive and multidimensional analysis of divorce litigation in the Indonesian Religious Courts. Legal feminism offers a critical lens for examining gender relations and the structural inequalities that shape women's access to justice. Legal pluralism explains the interaction between state law, Islamic law, and customary law, recognizing Islamic law as an integral component of Indonesia's legal system and providing a normative framework that is particularly relevant to the Religious Courts. Complementing these perspectives, intersectionality highlights how women's experiences are shaped by the interplay of multiple social factors, such as socioeconomic status, cultural norms, and educational background. Together, these complementary frameworks enable a more nuanced analysis of how legal, social, and cultural dimensions interact in shaping divorce litigation, thereby generating a deeper and more robust understanding of women's pursuit of justice within Indonesia's plural legal system.[21]

Empirical evidence from Southeast Sulawesi further demonstrates the significance of contested divorce as a contemporary socio-legal issue. In 2025, the Religious Courts recorded 3,456 contested divorce (*cerai gugat*) cases, substantially exceeding the number of divorce-by-*ṭalāq* cases. This predominance suggests that women increasingly rely on judicial mechanisms to dissolve marriages, highlighting the central role of the Religious Courts in resolving family disputes and protecting legal rights. More importantly, the data point to broader

[19] John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism* 24 (1986), p. 5–7.

[20] Kimberlé Crenshaw, "Mapping the Margins," Stanford Law Review 43, no. 6 (1991), p. 1248–1253.

[21] Werner Menski, *Comparative Law in a Global Context* (Cambridge: Cambridge University Press, 2006), p.112–118.

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structural changes in gender relations, family dynamics, and patterns of legal consciousness within Indonesian society. The growing proportion of contested divorce cases should therefore not be viewed merely as an increase in litigation but as evidence of shifting social and legal realities that have expanded women's engagement with formal justice institutions. Consequently, contested divorce serves as an important empirical indicator for assessing both the effectiveness of Indonesia's family law system and the extent to which legal institutions facilitate women's access to justice. These findings provide a critical foundation for examining contested divorce as a multidimensional socio-legal phenomenon situated at the intersection of gender, religion, and legal reform.[22]

The statistical predominance of contested divorce (*cerai gugat*) reflects a significant transformation in patterns of marital dissolution within Indonesia's Religious Court system. Traditionally, the dissolution of marriage in Islamic jurisprudence was primarily associated with *ṭalāq*, whereby the husband exercised the unilateral right to initiate divorce. However, the empirical evidence demonstrates a marked shift away from this conventional pattern, with contested divorce now constituting the majority of divorce cases. This transition should not be understood merely as a numerical trend but as an indication of broader social and legal transformations.

From the perspective of feminist legal theory, the increasing prevalence of contested divorce may be interpreted as an expression of women's legal agency in challenging unequal power relations within marriage. Rather than depending solely on their husbands' willingness to initiate *ṭalāq*, women increasingly invoke judicial procedures to protect their rights and seek legal remedies through the Religious Courts. This development suggests a growing capacity among women to engage with formal legal institutions and exercise their legal autonomy. Nevertheless, feminist legal analysis also cautions against interpreting this trend as unequivocal evidence of emancipation. Women's decisions to seek divorce may arise not only from enhanced legal empowerment but also from persistent structural inequalities, domestic violence, economic vulnerability, or other forms of social disadvantage.[23]

From the perspective of Islamic law, the predominance of contested divorce likewise reflects an important evolution in the interpretation and implementation of family law. Although classical Islamic jurisprudence generally recognizes *ṭalāq* as a prerogative exercised by the husband, contemporary judicial practice in Indonesia has significantly expanded women's access to marital

[22] Lawrence M. Friedman, *Law and Society: An Introduction* (Englewood Cliffs: Prentice Hall, 1977), p. 112–115.

[23] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), p. 184–190. Guswan Hakim, et.al., "Penemuan Hukum Terhadap Pembagian Warisan bagi Anak Laki-laki dan Perempuan di Indonesia Berdasarkan Yurisprudensi Sesuai dengan Asas Justice as Fairness," *Halu Oleo Legal Research* 5, No. 3 (2023).

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dissolution through court-based legal procedures. Viewed through the lens of *maqāṣid al-sharīʿah*, contested divorce may be regarded as a legal mechanism designed to protect human welfare (*maṣlaḥah*), prevent harm (*mafsadah*), and safeguard the dignity and rights of spouses, particularly in situations where marital relationships have become unjust or unsustainable. Nevertheless, it remains essential to examine whether the institutional practice of contested divorce genuinely fulfills these higher objectives of Islamic law or merely represents a procedural adaptation of classical legal doctrine.[24]

From the perspective of customary (*adat*) law, the predominance of contested divorce may also signal broader shifts in social values and community norms. In many indigenous communities, divorce initiated by women has traditionally been viewed as socially undesirable or even stigmatized, reflecting patriarchal conceptions of marriage and family. Consequently, changing divorce practices should be understood as the product of continuous interaction between formal legal institutions and the social norms that shape everyday life. This dynamic underscores the analytical value of legal pluralism, which conceptualizes law as the outcome of negotiations among multiple normative systems rather than as a body of state-enacted rules operating in isolation.[25]

At the same time, the statistical evidence has important analytical limitations. Although the high prevalence of contested divorce demonstrates a significant shift in patterns of marital dissolution, quantitative data alone cannot explain the motivations, lived experiences, or socio-cultural circumstances that underlie women's decisions to initiate divorce proceedings. Statistical trends reveal the magnitude of the phenomenon but provide only limited insight into the complex legal, economic, cultural, and interpersonal factors influencing individual cases. For this reason, qualitative analysis is essential to complement the quantitative findings. Through the analysis of documentary evidence and in-depth interviews, this study seeks to uncover the meanings, experiences, and institutional dynamics that cannot be captured through numerical data alone. The integration of quantitative and qualitative evidence therefore enables a more comprehensive and nuanced understanding of contested divorce within Indonesia's Religious Court system.[26]

Taken together, the preliminary findings indicate that contested divorce constitutes a significant and multidimensional socio-legal phenomenon. Its predominance reflects not only changes in judicial practice and women's

[24] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), p. 123–130.

[25] Sally Engle Merry, *Human Rights and Gender Violence* (Chicago: University of Chicago Press, 2006), p. 99–104. Roslina Roslina, et.al., "Reinterpreting Islamic Inheritance: Supreme Court Jurisprudence and Gender Justice in Indonesia," *Jurnal Ilmiah Peuradeun* 13, No. 3 (2025).

[26] John W. Creswell, *Research Design* (Los Angeles: Sage, 2014), p. 183–185.

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engagement with formal legal institutions but also broader transformations in gender relations, legal consciousness, and social structures within Indonesian society. These empirical findings provide the foundation for the subsequent analysis presented in this study. By integrating theories and data, this research seeks to develop a deeper and more contextual understanding of contested divorce as an evolving legal and social phenomenon.

A normative-critical analysis of the 2025 divorce data raises a fundamental question: does the growing prevalence of contested divorce represent an expression of women's emancipation, or does it instead reveal the inability of the legal system to protect women within the institution of marriage? From a normative perspective, contested divorce constitutes an important legal mechanism through which women may terminate marital relationships that no longer satisfy the principles of justice, dignity, and legal protection. However, a critical analysis requires a more nuanced assessment of whether the decision to seek divorce reflects genuine autonomy or is driven by the absence of viable alternatives within the family, social, and legal systems. In many cases, divorce may be better understood as a remedy of last resort, pursued only after other mechanisms for resolving domestic conflict have failed. Viewed in this light, the increasing prevalence of contested divorce highlights not only the availability of judicial remedies but also the limitations of existing legal and social institutions in preventing marital injustice before relationships deteriorate.[27]

From the perspective of feminist legal theory, this phenomenon illustrates the inherently ambivalent nature of law. On the one hand, the increasing number of contested divorce cases demonstrates that women are able to access formal legal institutions and exercise procedural rights that were historically constrained within classical family law. In this respect, the Religious Court system functions as an important avenue through which women can assert legal agency and seek protection against unequal or harmful marital relationships. On the other hand, the very need to rely on divorce as the principal means of obtaining justice may signal deeper structural deficiencies within the legal framework governing marriage and family life. This suggests that the legal system operates primarily as a corrective rather than a transformative institution.[28]

Within this context, the increasing number of divorce petitions initiated by women can be understood as an effort to challenge unequal power relations by utilizing the legal mechanisms available through the Religious Courts. Nevertheless, this form of resistance should not be romanticized as inherently transformative. While contested divorce may represent an important assertion of individual agency, it does not necessarily dismantle the structural conditions that

[27] Martha Albertson Fineman, *The Autonomy Myth* (New York: New Press, 2004), p. 28–35.

[28] Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989), p. 11–15.

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produce gender inequality in the first place. Rather, it highlights the limitations of legal institutions in generating broader social transformation.[29]

From the perspective of Islamic law, the growing prevalence of contested divorce has stimulated renewed discourse on the reinterpretation of divorce and women's rights within marriage dissolution. Classical Islamic jurisprudence generally regards divorce (*ṭalāq*) as the husband's prerogative, while women may seek the dissolution of marriage only through specific legal mechanisms, such as *khulʿ* or judicial divorce. However, the increasing number of contested divorce cases adjudicated by the Indonesian Religious Courts reflects a significant expansion of women's access to legal remedies and judicial protection. This development may be understood as a form of contemporary *ijtihād* that adapts Islamic legal principles to the realities of a modern constitutional state. Consequently, contested divorce can be understood not merely as a procedural legal mechanism but as a manifestation of the overarching objectives of Islamic law in safeguarding the rights and well-being of both spouses.

The reinterpretation of women's rights in relation to contested divorce has not been without controversy. In particular, more conservative interpretations of Islamic law regard the expansion of women's access to judicial divorce as a departure from the classical jurisprudential understanding of *ṭalāq* and the gendered distribution of rights within marriage. Such critiques reflect a broader tension between textual fidelity and contextual adaptation in contemporary Islamic legal thought. This debate raises an important analytical question concerning the basis upon which contested divorce has acquired legal legitimacy within Indonesia's Religious Court system. Addressing this question is essential because it highlights the dynamic nature of Islamic law as a legal tradition characterized by continuous interpretation and adaptation rather than by rigid adherence to a single, immutable body of doctrine.[30]

Viewed through the lens of legal pluralism, the predominance of contested divorce reflects the complex interaction among state law, Islamic law, and customary (*adat*) law in regulating marriage and family relations in Indonesia. These legal systems coexist within the same social and institutional space, yet they do not always operate harmoniously. In some communities, customary norms continue to reinforce patriarchal expectations that constrain women's autonomy, whereas state law and the Religious Court system increasingly provide formal legal mechanisms through which women may assert their rights and seek judicial protection. Islamic law occupies an intermediate position, functioning

[29] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), p. 237–240.

[30] Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), p. 167–172.

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both as a religious normative framework and as an institutionalized component of the national legal system.[31]

Several judicial decisions illustrate the challenges associated with the effective implementation of the Compilation of Islamic Law (*Kompilasi Hukum Islam*) in Indonesia. Under the Compilation and the jurisprudence of the Religious Courts and the Supreme Court, women who are divorced are entitled, under certain conditions, to claim unpaid post-marital maintenance (*nafkah maḍiyah*) and a share of jointly acquired marital property (*harta bersama*), provided they are not found to have committed *nusyuz* (marital disobedience). In practice, however, the realization of these rights remains inconsistent. Although the Religious Courts generally provide accessible legal procedures and issue decisions recognizing women's post-divorce entitlements, the implementation and enforcement of those decisions frequently encounter significant obstacles. Factors such as limited legal awareness, low levels of compliance with court judgments, and prevailing socio-cultural attitudes often prevent women from fully exercising or realizing their legal rights. In many cases, parties prefer informal settlements or seek expedient solutions outside the formal legal process, thereby reducing the practical effectiveness of judicial decisions.[32]

These findings further underscore that the operation of law cannot be understood independently of its social and cultural context. Women who initiate divorce proceedings must navigate not only formal legal procedures but also social expectations and cultural norms that may stigmatize divorce and discourage the pursuit of legal remedies. Consequently, the decision to file a contested divorce is rarely based solely on legal considerations; it is also shaped by family expectations, community perceptions, economic circumstances, and cultural values.[33]

Access to Justice for Women in Divorce Cases

As a constitutional state governed by the rule of law, Indonesia is committed to guaranteeing equality before the law and ensuring that all citizens enjoy equal protection of their rights without discrimination, including discrimination based on sex or gender. This constitutional commitment is reinforced by Indonesia's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which obliges the state to eliminate discrimination against women and to ensure their effective access to

[31] Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988), p. 880–885. Faisal, et.al., "Islamic compromise in the Marriage of the Papuan Muslim Marind Tribe," *International Journal of Islamic Thought,* Vol 26, No. 2 (2024), p. 55-65.

[32] Fadil, et.al., "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey," *De Jure: Jurnal Hukum dan Syariah* 16, No. 1 (2024).

[33] Pierre Bourdieu, *The Force of Law* (Cambridge: Harvard University Press, 1987), p. 838–840.

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justice. In fulfilling these obligations, Indonesia has introduced a range of legal and institutional measures aimed at protecting women's rights throughout judicial proceedings. These guarantees are reflected in statutory regulations governing both substantive and procedural law, which seek to ensure that women receive fair treatment and effective legal protection when interacting with the justice system.[34]

From the perspective of access to justice, the predominance of contested divorce may be interpreted as evidence that women increasingly utilize formal legal institutions to assert their rights and seek judicial remedies. The growing number of divorce petitions initiated by women suggests that procedural access to the Religious Courts has become more accessible and that women are increasingly aware of the legal avenues available to them. Nevertheless, procedural access alone should not be equated with substantive justice. Access to justice also requires that judicial decisions be fair, effectively implemented, and capable of producing meaningful improvements in the lives of those seeking legal protection.[35] Moreover, the high incidence of contested divorce may also reflect deeper structural problems within the institution of marriage itself. A growing number of women resorting to judicial divorce suggests that many marriages are characterized by conditions that have become unsustainable due to domestic violence, economic inequality, emotional neglect, or other forms of marital conflict. Under such circumstances, divorce functions as an "exit option" through which women seek legal protection from relationships that no longer provide security, dignity, or equality. Consequently, contested divorce should not be viewed solely as a legal event but also as a manifestation of broader social and structural conditions that shape women's experiences within marriage.[36]

Within the framework of access to justice, the predominance of contested divorce may be regarded as an indicator of women's increasing engagement with the formal justice system. The growing number of divorce petitions initiated by women suggests that they are increasingly able to invoke legal mechanisms to protect their rights and seek judicial remedies through the Religious Courts. Nevertheless, this development requires careful and critical evaluation. Greater procedural access does not automatically translate into substantive justice. A central question remains whether women obtain meaningful legal protection and equitable outcomes through the divorce process, or whether judicial proceedings

[34]Ani Triwati, "Akses Keadilan Sebagai Perlindungan Hukum Bagi Perempuan Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana," *Hukum dan Masyarakat Madani* 9, No. 1 (2019), p. 72-91.

[35] Mauro Cappelletti and Bryant Garth, *Access to Justice,* vol. 1 (Milan: Giuffrè, 1978), p. 44–48.

[36]Martha Fineman, *The Illusion of Equality* (Chicago: University of Chicago Press, 1991), p. 45–50.

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merely provide formal legal resolutions without addressing the underlying causes of marital inequality and injustice.[37]

Moreover, the prevalence of divorce cases may also reflect underlying inequalities in the economic relations within marriage. Women who lack financial independence often encounter significant barriers to accessing legal remedies and pursuing justice through the courts. In contrast, women with greater economic resources are generally better positioned to initiate divorce proceedings and navigate the legal process effectively. These disparities demonstrate that access to justice is shaped not only by legal rights but also by socioeconomic conditions.[38]

The increasing prevalence of contested divorce also reflects broader transformations in the concept of family within contemporary society. Marriage is no longer viewed as an institution that must be preserved under all circumstances, particularly in cases involving domestic violence, persistent marital conflict, or serious health-related challenges.[39] Instead, there is growing recognition that individuals have the right to end relationships that are unjust, harmful, or no longer conducive to their well-being. This shift signifies a broader transition from collectivist values, which emphasize preserving family unity, toward greater recognition of individual rights, autonomy, and personal dignity. Consequently, contested divorce should be understood not only as a legal process but also as part of a wider social transformation.

Nevertheless, greater legal awareness alone is insufficient to achieve substantive gender justice. Divorce has far-reaching consequences that extend beyond the spouses involved, affecting children, extended families, and society as a whole. Accordingly, the analysis of divorce litigation should not be confined to the rights and interests of the individual parties but should also consider its broader social implications. These consequences underscore the multifaceted nature of family law, which encompasses legal, social, psychological, and economic dimensions. Therefore, the formulation and implementation of family law policies should adopt a holistic approach that balances the protection of individual rights with the promotion of family welfare and broader social stability.[40]

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[37] Mauro Cappelletti and Bryant Garth, "Access to Justice," vol. 1 (Milan: Giuffrè, 1978), p. 52–55.

[38] Kimberlé Crenshaw, "Mapping the Margins," *Stanford Law Review* 43, no. 6 (1991), p. 1255–1258.

[39] Atika Fitri, et.al., "Divorce Lawsuit Due to Impotence Perspective Maslahat Theory: Case study of the Andoolo Religious Court Decision, Southeast Sulawesi," *El-Usrah: Jurnal Hukum Keluarga* 7, No. 1 (2024). Saidah, et.al., "From Mediation to Advocacy: Post-Divorce Women's Empowerment Through Religious Court Practices in South Sulawesi, Indonesia," *Jurnal al-Dustur* 9, No. 1 (2026).

[40] Judith S. Wallerstein, *The Unexpected Legacy of Divorce* (New York: Hyperion, 2000), p. 23–30.

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From a normative-critical perspective, the prevalence of contested divorce highlights the persistent gap between legal norms and social realities. Although the legal framework formally guarantees justice and equal access to legal remedies, various structural and socioeconomic inequalities continue to hinder the effective realization of these rights in practice. This disparity suggests that the law has not yet fully achieved its intended objectives, underscoring the need for legal reforms that are more responsive to the evolving needs of society and more capable of addressing existing barriers to justice. Moreover, the growing number of contested divorce cases may also be interpreted as an indicator of increasing legal awareness among women. Greater knowledge of their legal rights, coupled with a stronger willingness to assert those rights through formal judicial processes, reflects a significant shift in women's engagement with the legal system. This development underscores the importance of legal education and public legal literacy in expanding access to justice and empowering women to seek legal protection. Consequently, enhanced legal awareness should be viewed not only as a means of protecting individual rights but also as a catalyst for broader social and legal transformation.[41] However, increased legal awareness does not automatically translate into structural change. Although women may gain greater access to legal institutions and become more aware of their rights, they often continue to face significant social, economic, and cultural barriers in exercising those rights in their daily lives. This reality highlights that legal empowerment alone is insufficient to achieve substantive justice. Meaningful legal reform must therefore be accompanied by broader social transformation that addresses the structural inequalities underlying gender discrimination.[42]

In conclusion, a normative-critical analysis demonstrates that contested divorce cannot be understood through a single legal, social, or gender-based perspective. Rather, it is the product of a complex interaction among legal institutions, gender relations, religious norms, and broader processes of social transformation. The predominance of contested divorce should therefore not be interpreted merely as an increase in litigation or as evidence of changing marital behavior. Instead, it reflects the dynamic interplay between legal structures, evolving conceptions of women's rights, and shifting social values within Indonesia's plural legal system. Understanding this phenomenon requires an interdisciplinary socio-legal approach capable of capturing the multiple dimensions that shape women's experiences of marriage, divorce, and access to justice.[43]

[41] Lawrence M. Friedman, *American Law* (New York: Norton, 1984), p. 32–35.

[42] Roberto Mangabeira Unger, *Law in Modern Society* (New York: Free Press, 1976), p. 192–198.

[43] Mauro Cappelletti and Bryant Garth, "Access to Justice," vol. 1 (Milan: Giuffrè, 1978), p. 73–75.

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Justice and Legal Protection in Divorce Cases in Southeast Sulawesi

Divorce by petition may be understood as an expression of limited agency, as women who initiate divorce proceedings exercise the capacity to act and assert their legal rights. However, this agency is exercised within a broader structural context shaped by legal, economic, cultural, and social constraints that limit the range of choices available to them. Accordingly, women's agency in divorce litigation should be viewed not as absolute autonomy but as a form of constrained or relative agency that operates within existing power structures.[44] From the perspective of Islamic law, divorce by petition can also be interpreted as a manifestation of institutional *ijtihād* within the modern legal system. This institutional reinterpretation reflects the adaptive capacity of Islamic law to reconcile normative principles with changing societal needs. Consequently, divorce by petition should be understood not merely as a legal procedure but also as the product of an ongoing process of *ijtihād* that promotes justice, legal certainty, and public welfare. This perspective underscores the dynamic and flexible nature of Islamic law and its ability to evolve in response to contemporary social change.[45]

Viewed through the lens of legal pluralism, contested divorce also represents the outcome of continuous negotiation among multiple legal orders. Women seeking judicial divorce do not operate within a single legal framework; instead, they navigate the overlapping influence of many agencies. Decisions to initiate contested divorce therefore involve not only legal considerations but also social, cultural, and religious negotiations shaped by these interacting normative systems. This layered legal environment illustrates that law in Indonesia is plural rather than unitary, with different sources of legal authority simultaneously influencing individual legal choices and institutional practices. Consequently, any comprehensive analysis of contested divorce must account for the interaction among these legal systems and the ways in which women strategically engage with them to pursue justice.[46]

With respect to justice and legal protection for women in contested divorce proceedings before the Religious Courts of Southeast Sulawesi, interviews with judges indicate that women's access to justice has improved considerably in recent years. According to one judge, women now enjoy equal procedural rights to initiate divorce proceedings, present evidence, and advance

[44] Saba Mahmood, *Politics of Piety* (Princeton: Princeton University Press, 2005), p. 17–22.

[45] Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), p. 178–182. Abdillah, et.al., "Controversy Over Sunrang: Analyzing Post-Divorce Ownership in the Context of Makassar Custom and Islamic Law," *Mazahibuna: Jurnal Perbandingan Mazhab* 6, No. 2 (2024).

[46] Werner Menski, *Comparative Law in a Global Context* (Cambridge: Cambridge University Press, 2006), p. 221–225.

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legal arguments before a judicial panel without discrimination on the basis of gender. In addition, the Religious Courts have introduced a range of institutional services designed to improve access to justice for all court users, particularly women and other vulnerable groups. These developments demonstrate a growing commitment to ensuring that procedural justice is accessible and responsive to the needs of litigants. Women are increasingly acknowledged as rights-bearing individuals who possess the legal capacity to protect their dignity, personal security, and welfare through formal judicial mechanisms. This shift reflects a broader transformation in judicial attitudes toward gender equality and women's legal agency. Nevertheless, the existence of equal procedural opportunities does not necessarily guarantee substantive justice. Feminist legal analysis therefore requires an examination not only of women's ability to access the courts but also of whether judicial processes and outcomes effectively address the structural inequalities that frequently underlie marital disputes. From the perspective of Islamic law, a woman's right to petition for judicial divorce is consistent with the objectives of *maqāṣid al-sharīʿah*, particularly the protection of human welfare (*maṣlaḥah*) and the prevention of harm (*mafsadah*). At the same time, the customary norms that continue to influence family life in many parts of Southeast Sulawesi do not appear to constitute significant barriers to women's pursuit of justice through the Religious Courts. Instead, the empirical findings suggest that state law, Islamic law, and customary norms increasingly interact in ways that enable, rather than prevent, women from exercising their legal rights. This illustrates how Indonesia's plural legal system can, under appropriate institutional conditions, facilitate greater access to justice for women.[47]

Consistent with this finding, one judge emphasized that women are afforded equal opportunities to initiate divorce proceedings, present evidence, and advance their legal arguments before the panel of judges without discrimination on the basis of gender. To enhance access to justice, Religious Courts have introduced a range of institutional support services, particularly for women and other vulnerable groups. These include *Pos Bantuan Hukum* (Posbakum or Legal Aid Posts), which are operated through partnerships with accredited legal service providers to offer free legal assistance to eligible court users. In addition, court information officers provide guidance on procedural requirements for filing divorce petitions and inform litigants of their legal rights, including women's post-divorce entitlements.

To further improve accessibility, many Religious Courts have expanded the use of digital information services, enabling the public to obtain procedural information online without the need to travel to the courthouse. This innovation is particularly significant in Indonesia's geographically diverse regions, where

[47] Interview with Dayinta Sekar Wigati, Judge of the Kendari Religious Court, June 18, 2026.

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access to judicial institutions is often constrained by long travel distances, limited transportation infrastructure, and, in some areas, the need to cross islands by boat with irregular schedules. By reducing these logistical barriers, digital services contribute to more equitable access to justice for women seeking legal remedies. Religious Courts have also strengthened mechanisms to safeguard women's rights following divorce. One notable reform is the implementation of electronic divorce certificates. In cases where the court orders the former husband to fulfill post-divorce financial obligations, such as maintenance, *iddah* support, *mut'ah*, or other court-awarded entitlements, compliance with these obligations is increasingly linked to the issuance or accessibility of the electronic divorce certificate. This mechanism serves as an institutional safeguard to encourage compliance with judicial decisions and to strengthen the enforcement of women's post-divorce rights, thereby reinforcing substantive access to justice rather than merely procedural equality. [48]

The interview findings indicate that the Religious Courts, as state judicial institutions, have made significant efforts to strengthen justice and legal protection for women beyond the mere existence of statutory provisions. These efforts extend not only to the normative framework governing family law but also to the institutional and judicial dimensions of legal protection. According to the judges interviewed, the courts have increasingly adopted gender-sensitive approaches in adjudicating contested divorce cases, ensuring that judicial reasoning and court decisions reflect principles of fairness and equality. In several cases, judicial decisions have sought to safeguard women's rights not only through the allocation of economic entitlements, such as unpaid maintenance (*nafkah madiyah*), child support, and the equitable distribution of jointly acquired marital property (*harta bersama*), but also by addressing broader social and psychological concerns, including child custody arrangements that prioritize the best interests of the child.[49]

The Chair of the Rumbia Religious Court in Bombana Regency further emphasized that institutional efforts to strengthen women's access to justice continue to expand. According to the interview, women now enjoy equal procedural opportunities to initiate divorce proceedings, present documentary and testimonial evidence, and advance their legal arguments before a panel of judges without discrimination based on gender. The court has also introduced a range of services intended to improve access to justice, particularly for women and other vulnerable groups, thereby reducing procedural barriers to litigation. From the perspective of feminist legal theory, these developments represent an important shift in the recognition of women as autonomous legal subjects possessing

[48] Interview with Perlita Nathania, Judge of the Kendari Religious Court, June 18, 2026.
[49] Illy Yanti, et.al., "Negotiating Sharīʿah and Customary Law: Legal Pluralism in Familial Relationships among the Suku Anak Dalam in Jambi," *Journal of Islamic Law* 6, No. 2 (2025).

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independent legal rights and capacities. Rather than being viewed merely as parties whose legal status depends upon their husbands, women are increasingly recognized as individuals entitled to protect their dignity, personal security, and welfare through formal judicial processes. This institutional transformation reflects a broader movement toward gender-responsive adjudication within Indonesia's Religious Court system. Nevertheless, feminist legal analysis also requires continued examination of whether these procedural improvements are consistently translated into substantive justice and whether judicial outcomes effectively address the structural inequalities that continue to shape women's experiences within marriage.[50]

According to an academic from Halu Oleo University, from the perspectives of feminism and Islamic law, several progressive interpretations of Islamic legal principles can be employed to safeguard women's rights by interpreting religious norms in ways that promote women's welfare, economic maintenance, and child custody rights. Within this framework, *cerai gugat* (wife-initiated divorce) can be understood as a legal mechanism that enables women to leave harmful marital relationships when a husband neglects his obligations or breaches the marital contract. However, traditional interpretations shaped by customary practices and patriarchal values may limit the effective realization of these rights. In practice, religious norms are sometimes invoked to legitimize gender inequality, for example by emphasizing marital reconciliation without ensuring the fulfillment of women's economic rights. Therefore, strengthening a gender-responsive justice system requires expanding access to legal aid and comprehensive assistance for women throughout the entire litigation process, from pre-trial consultation to the enforcement of court decisions. Such measures would help overcome procedural barriers and evidentiary challenges that often hinder women from fully exercising their legal rights

Improving legal literacy and public awareness regarding women's post-divorce rights, as provided under the Compilation of Islamic Law, Supreme Court Regulations, and other relevant legal instruments, is essential to strengthening access to justice. In this regard, a gender-responsive interpretation of Islamic law that prioritizes rights, welfare, and substantive justice is needed. Such an approach can be promoted through continuous judicial training and legal education programs for religious counselors and court personnel, enabling legal actors to apply Islamic legal principles in ways that better protect women's rights. Empirical evidence indicates that many divorce petitions are initiated by women due to their husbands' failure to fulfill their maintenance obligations. Nevertheless, although the legal framework recognizes women's entitlement to post-divorce financial support, the enforcement of alimony orders remains weak.

[50] Interview with Sumar'um, Head of the Rumbia Religious Court, Southeast Sulawesi, June 18, 2026.

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In many cases, maintenance awards are not effectively implemented because of limited legal assistance, procedural barriers, and the absence of effective enforcement mechanisms. From a feminist perspective, *cerai gugat* (wife-initiated divorce) constitutes an important legal instrument that empowers women to escape unequal or harmful marital relationships and to assert their legal rights. Likewise, from the perspective of Islamic law, a wife-initiated divorce may represent a legitimate means of achieving justice when the continuation of the marriage results in hardship, neglect, or harm, thereby undermining the fundamental objectives of marriage, including mutual welfare, tranquility, and human dignity.[51]

Drawing on the interview findings that substantiate the arguments of this study, this article proposes a conceptual framework referred to as the Three-Dimensional Model of Wife-Initiated Divorce. The model comprises three interrelated dimensions: the structural, agency, and normative dimensions. The structural dimension encompasses the social, economic, and cultural conditions that shape women's decisions to seek divorce. The agency dimension highlights women's capacity to exercise autonomy, make informed legal decisions, and pursue their rights through the judicial process. The normative dimension refers to the legal and religious frameworks governing divorce, including statutory regulations, Islamic legal principles, and judicial practices that influence access to justice. Rather than operating independently, these three dimensions interact dynamically to shape the phenomenon of *cerai gugat* (wife-initiated divorce) in Indonesia. Accordingly, the proposed model offers a comprehensive analytical framework for understanding divorce as the product of the intersection between structural constraints, individual agency, and normative legal systems, while also explaining how these interactions affect women's access to justice and the realization of their rights.

The structural dimension of the proposed model demonstrates that wife-initiated divorce cannot be understood independently of the broader social context in which it occurs. Social, economic, educational, and cultural factors significantly shape women's decisions to seek divorce and influence their ability to access legal remedies. Consequently, *cerai gugat* (wife-initiated divorce) should be viewed not merely as a legal phenomenon but also as a social process embedded within broader structural conditions. This finding underscores the importance of adopting an interdisciplinary approach to legal research, one that integrates socio-legal perspectives with doctrinal legal analysis.[52]

[51]Interview with Zahrowati, Lecturer at the Faculty of Law, Halu Oleo University, Kendari, 20 June 2026. Interview with Ruliah, Lecturer at the Faculty of Law, Halu Oleo University, Kendari, 20 June 2026.

[52] Anthony Giddens, *The Constitution of Society* (Berkeley: University of California Press, 1984), p. 25–30.

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The agency dimension of the proposed model emphasizes women's position as active legal subjects who possess the capacity to make informed decisions and exercise their legal rights. Rather than being viewed as passive objects within legal relationships, women are recognized as autonomous actors capable of initiating legal action to protect their interests and those of their children. However, this agency is neither absolute nor exercised in isolation; it is shaped and constrained by the social, economic, cultural, and institutional structures within which women live. Consequently, any analysis of women's agency must be situated within its broader structural context rather than treated as an expression of individual choice alone. By adopting this relational understanding of agency, the study avoids an overly individualistic interpretation of women's legal actions and instead offers a more balanced and nuanced explanation of how women negotiate structural constraints while exercising their legal rights through *cerai gugat* (wife-initiated divorce).[53]

The normative dimension of the proposed model encompasses the multiple legal frameworks governing wife-initiated divorce within Indonesia's plural legal system, namely Islamic law, state law, and customary law (*adat*). Together, these legal systems constitute the normative foundation through which divorce disputes are regulated, interpreted, and adjudicated. However, these normative orders do not always operate harmoniously; they may complement, overlap, or even conflict with one another in shaping legal outcomes and women's access to justice. Consequently, the analysis of wife-initiated divorce requires a legal pluralism perspective that recognizes the interaction among these coexisting legal systems rather than privileging a single normative framework.[54]

The integration of the structural, agency, and normative dimensions provides a more comprehensive understanding of wife-initiated divorce as a complex socio-legal phenomenon. By examining the dynamic interaction among these dimensions, the proposed model moves beyond a purely descriptive account and offers a critical analytical framework for explaining how social structures, individual agency, and plural legal systems collectively shape women's decisions to seek divorce and their access to justice. Its multidimensional perspective therefore enhances both the analytical depth and broader relevance of the present study.[55]

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[53] Emirbayer, Mustafa, and Ann Mische, "What Is Agency?" *American Journal of Sociology* 103, no. 4 (1998), p. 970–975. Muhamad Hasan Sebyar, et.al., "Divorce Mediation at Panyabungan Religious Court: Transforming the Desire for Divorce into Reconciliation through Cultural Values in Contemporary Islamic Jurisprudence," *al-Manahij* 19, No. 1 (2025).

[54] John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism* 24 (1986), p. 12–15. Syarif, et.al., "Negotiating Sacred Law: Qurânic Hermeneutics, Legal Pluralism, and Interfaith Marriage in Muslim-Majority Countries," *Syariah: Jurnal Hukum dan Pemikiran* 25, No. 2 (2025).

[55] Mark Van Hoecke, *Methodologies of Legal Research* (Oxford: Hart Publishing, 2011), p. 160–165.

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Beyond the proposed analytical model, this study introduces the concept of divorce as an indicator of family law transformation. This concept posits that changes in the patterns and practices of wife-initiated divorce reflect broader transformations in family law, legal institutions, and societal understandings of gender justice. From this perspective, *cerai gugat* (wife-initiated divorce) serves not only as a legal mechanism for resolving marital disputes but also as an analytical indicator of the extent to which family law has evolved in response to changing social realities and women's increasing access to legal remedies. Consequently, the concept offers a novel perspective for examining the relationship between legal change, social transformation, and the realization of women's rights within plural legal systems.[56] The findings also carry important implications for legal policy. The increasing prevalence of wife-initiated divorce suggests the need for reforms that are more responsive to women's lived experiences and legal needs. Such reforms should extend beyond procedural improvements to encompass substantive legal protections and more effective mechanisms for enforcing women's post-divorce rights. Strengthening judicial institutions, legal aid services, and the implementation of court decisions is essential to ensuring that legal protections are translated into meaningful access to justice.[57] In this regard, the principles of feminist legal theory and legal pluralism should inform future family law policies by promoting legal frameworks that recognize gender equality while accommodating Indonesia's plural legal traditions.

Nevertheless, the proposed analytical model has certain limitations. Although it provides a comprehensive framework for understanding the interaction among structural, agency, and normative dimensions, it does not fully capture the diversity of women's experiences across different socio-economic, cultural, and regional contexts. Future research should therefore refine and empirically test the model in a wider range of settings to examine its broader applicability and explanatory power. Rather than presenting a definitive account of wife-initiated divorce, this study seeks to provide a foundation for continued theoretical development and empirical inquiry, underscoring the dynamic and evolving nature of family law and socio-legal scholarship.[58]

Conclusion

The findings suggest that wife-initiated divorce may be understood as a manifestation of women's growing legal awareness and their willingness to assert their rights through formal legal mechanisms. Rather than remaining passive

[56] Brian Z. Tamanaha, *Law as a Means to an End* (Cambridge: Cambridge University Press, 2006), p. 220–225.

[57] Neil MacCormick, *Legal Reasoning and Legal Theory* (Oxford: Oxford University Press, 1978), p. 275–280.

[58] Karl Popper, *The Logic of Scientific Discovery* (London: Routledge, 2002), p. 16–20.

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participants in marital relationships, women increasingly exercise their legal agency by utilizing judicial processes to leave relationships characterized by neglect, injustice, or other forms of harm. This trend indicates that the legal system has, to some extent, expanded opportunities for women to access justice and seek legal protection. Accordingly, the increasing prevalence of *cerai gugat* (wife-initiated divorce) can be viewed as a positive indicator of improved access to justice, reflecting women's enhanced capacity to claim their legal rights within Indonesia's family law system. At the same time, the effectiveness of such access ultimately depends on whether court decisions are implemented and women's post-divorce rights are fully protected in practice. The high incidence of wife-initiated divorce reflects broader shortcomings within both the legal and social systems in sustaining equitable and rights-based marital relationships. While divorce provides an important legal remedy for women experiencing neglect, injustice, or other forms of harm, its increasing prevalence also suggests that existing mechanisms designed to protect spouses and promote marital well-being are not always effective. In this sense, wife-initiated divorce represents not only a legal solution to marital conflict but also a symptom of deeper structural inequalities embedded within family, social, and legal institutions. This dual character reveals an important paradox: the legal system simultaneously provides women with a pathway to justice while also exposing the limitations of existing legal and social protections that make such litigation necessary. The findings indicate that women increasingly utilize the law as a mechanism for protecting their rights and escaping unjust marital relationships. In this sense, *cerai gugat* (wife-initiated divorce) represents an expression of women's legal agency. However, this agency should not be understood as absolute or unconstrained, as women's decisions continue to be shaped by social, cultural, economic, and institutional structures. Accordingly, wife-initiated divorce is best understood as an example of agency within constraints, whereby women exercise autonomy while simultaneously negotiating the structural conditions that influence their choices. From the perspective of Islamic law, this study suggests that wife-initiated divorce reflects a process of normative adaptation in response to the evolving needs of contemporary society. Religious Courts have increasingly adopted contextual and rights-oriented interpretations of Islamic legal principles, thereby expanding legal protection and access to justice for women. At the same time, from the perspective of legal pluralism, the study finds that the practice of wife-initiated divorce often exists in tension with customary (*adat*) norms that prioritize the preservation of marriage and family cohesion. Nevertheless, women are increasingly negotiating these customary expectations by pursuing formal legal remedies through the Religious Courts. This development illustrates an ongoing transformation in the relationship between customary law, Islamic law, and state law, demonstrating that normative orders within Indonesia's plural legal system are dynamic rather than static. Taken together, these findings suggest that

wife-initiated divorce constitutes an important indicator of the transformation of Indonesian family law. The growing number of divorce petitions filed by women highlights the need for legal reforms that are more responsive to women's rights and lived experiences. Such reforms should address both substantive and procedural aspects of family law, including stronger protection of women's post-divorce rights, more effective enforcement of judicial decisions, and broader access to legal assistance. By integrating the perspectives of feminist legal theory and legal pluralism, this study contributes a multidimensional framework for understanding wife-initiated divorce while offering both theoretical insights and practical recommendations for the progressive development of family law and the advancement of gender-responsive justice in Indonesia.

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