



Philosophical Perspectives on Divorce Litigation and Women's Rights in Islamic Family Law: A Study of Indonesian Context

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Abstract

The growing tension between Islamic legal formalism and gender-responsive justice has emerged as one of the most contested issues within contemporary Muslim family law, particularly in relation to divorce litigation and women's post-divorce rights. In Indonesia, the increasing prevalence of wife-initiated divorce cases reflects not only changing marital dynamics, but also deeper transformations in women's legal consciousness, institutional expectations, and demands for substantive justice. Nevertheless, existing scholarship has largely concentrated on procedural legal analysis and normative doctrinal interpretation, while insufficiently examining the structural contradiction between formal legal recognition and the lived realities experienced by divorced women. This study aims to critically investigate divorce litigation and women's rights within Indonesian Religious Courts through the integration of substantive justice theory, maqasid al-shari'ah, and sociology of law perspectives. Employing a qualitative socio-legal research design, the study analyzed Religious Court decisions, institutional practices, and semi-structured interviews involving judges, legal advocates, Islamic family law experts, and women's rights activists. The findings reveal that *cerai gugat* increasingly functions as a socio-legal mechanism through which women negotiate dignity, protection, and economic survival after prolonged experiences of structural injustice, including domestic violence, financial neglect, and unequal marital power relations. The study further demonstrates that although some judges have adopted progressive and gender-responsive interpretations emphasizing welfare and fairness, the realization of women's post-divorce rights remains constrained by patriarchal legal assumptions, inconsistent judicial discretion, and weak enforcement systems. Consequently, legal recognition frequently operates only at the symbolic level without producing substantive protection in women's everyday lives. This study advances contemporary Islamic legal reform discourse by offering a critical socio-legal reconstruction that bridges normative Islamic principles with institutional realities and women's lived experiences. Ultimately, the research argues that the future legitimacy of Islamic family law depends on its capacity to transform symbolic legality into substantively just, dignity-oriented, and human-centered legal protection.

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INTRODUCTION

The discourse surrounding women's rights within Islamic family law has become one of the most contested socio-legal issues in contemporary Muslim societies. Across many Muslim-majority countries, debates concerning divorce, marital authority, financial protection, and gender equality increasingly intersect with broader discussions on human rights, legal reform, and the reinterpretation of religious norms. Indonesia, as the world's largest Muslim-majority country, presents a particularly significant context because Islamic family law operates simultaneously within religious doctrine, national legislation, and diverse socio-cultural traditions. Within this dynamic landscape, the rapid increase in wife-initiated divorce cases, commonly referred to as *cerai gugat*, reflects a profound transformation in women's legal consciousness and social agency (Yuspitasari,

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2026). Divorce is no longer perceived merely as a private domestic matter but as a legal and philosophical arena where questions of justice, dignity, and equality are continuously negotiated. The increasing willingness of women to pursue divorce through Religious Courts demonstrates not only changing marital expectations but also the emergence of stronger demands for protection against economic neglect, domestic violence, and unequal gender relations (Hanan Rizq, 2025; Ismail et al., 2024). At the same time, this phenomenon exposes persistent tensions between normative ideals of justice in Islamic law and the realities experienced by women within legal institutions and post-divorce life.

Empirical conditions within Indonesian Religious Courts reveal that the growth of *ceraai gugat* cases has not automatically been accompanied by the effective protection of women's rights after divorce. Although many women successfully obtain judicial decisions terminating their marriages, a substantial number continue to encounter serious obstacles in accessing post-divorce entitlements such as *nafkah iddah*, *mut'ah*, child support, and custody enforcement (Harun, 2025; Izzati, 2025). In practice, court decisions frequently remain symbolic because weak execution mechanisms prevent women from receiving the rights formally granted to them. Former husbands often avoid financial obligations, while procedural enforcement remains bureaucratic, costly, and institutionally ineffective. Consequently, legal victory in court does not necessarily translate into substantive justice in everyday life. This contradiction demonstrates that the crisis surrounding women's rights in Islamic divorce litigation is not merely procedural but deeply structural and philosophical. Furthermore, patriarchal assumptions embedded within social and legal practices continue to influence judicial reasoning, mediation processes, and public perceptions regarding women who initiate divorce (Almog & Herbst-Debby, 2025; Aziza & Nugroho, 2025). These realities indicate that the issue extends far beyond family disputes and reflects broader problems concerning legal authority, gender hierarchy, and institutional accountability within the implementation of Islamic family law.

The urgency of this study becomes increasingly apparent when considering the growing interaction between Islamic legal traditions and international human rights discourse. Global legal frameworks, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), emphasize equality before the law, protection from discrimination, and fair treatment in marriage and divorce proceedings (Abimbola et al., 2023; Orta, 2025). In many Muslim societies, including Indonesia, these principles have generated complex debates regarding the compatibility between Islamic jurisprudence and contemporary gender justice frameworks. On one side, Islamic family law is frequently portrayed as inherently protective toward women through concepts such as *maqasid al-shari'ah*, *mu'asyarah bil ma'ruf*, and the obligation of maintenance. On the other side, critics argue that patriarchal interpretations of religious texts often produce unequal legal consequences for women, especially in divorce litigation and post-divorce economic protection (Turmudi, 2025). This tension creates an important intellectual challenge because the issue is no longer limited to whether women possess legal rights normatively, but whether those rights can genuinely function within institutional practice. As a result, examining divorce litigation solely through doctrinal legal analysis is insufficient. A more critical socio-philosophical perspective is required to uncover how justice is interpreted, negotiated, and implemented within contemporary Islamic legal systems.

Philosophically, Islamic family law is fundamentally rooted in principles of justice, dignity, compassion, and mutual responsibility between husband and wife. The Qur'anic conception of marriage emphasizes *sakinah*, *mawaddah*, and *rahmah* as ethical foundations intended to foster balance and human welfare within family relations. In this framework, *maqasid al-shari'ah* positions the protection of human dignity, economic welfare, and social stability as central objectives of Islamic law (Nst, 2025). Nevertheless, the implementation of these ideals often encounters significant challenges arising from rigid textual interpretations and patriarchal legal traditions. Concepts such as *qawamah* and *nusyuz* are frequently interpreted hierarchically, reinforcing unequal power relations that place women in structurally vulnerable positions during marital disputes and divorce proceedings (Aziz & Faishal, 2025). Such interpretations may transform Islamic legal principles from instruments of protection into mechanisms that unintentionally perpetuate inequality. In many cases, women are expected to maintain marital harmony regardless of violence, abandonment, or economic injustice, while their attempts to seek divorce are socially stigmatized and legally

complicated. This contradiction between philosophical ideals and legal realities illustrates the existence of a deeper epistemological problem within the application of Islamic family law. Therefore, reconstructing women's rights discourse through a substantive justice perspective becomes increasingly necessary in order to realign legal practice with the ethical objectives of Islamic law itself.

Recent scholarship has extensively examined the relationship between Islamic family law, gender justice, and divorce litigation in Indonesia. Doan & Tran, (2026) explored woman-initiated divorce through the lens of *maqasid al-shari'ah* and emphasized the growing legal awareness of women within Religious Court litigation. Azhari & Asmuni, (2023) discussed progressive reform in Indonesian Islamic family law and highlighted the increasing influence of gender studies in legal reinterpretation. Ramadhita et al., (2023) investigated judicial discretion in Muslim divorce cases and demonstrated how legal outcomes remain influenced by unequal gender relations and institutional subjectivity. Similarly, Sanusi et al., (2023) analyzed judges' *ijtihad* regarding women's post-divorce rights and argued that judicial activism contributes significantly to family law reform in Indonesia. Other studies have focused on the implementation of financial rights after divorce, including *nafkah iddah*, *mut'ah*, and child support obligations within Religious Courts (Ridmajayanti et al., 2025). Research by Fardindaputri & Hasanudin, (2025) further revealed that post-divorce legal protection for women and children continues to face substantial social and institutional barriers. Collectively, these studies provide important insights into the transformation of Islamic family law and the increasing prominence of gender justice discourse in contemporary Indonesia.

Despite the growing volume of scholarship, several important limitations remain visible within previous studies. Most existing research concentrates primarily on procedural legal analysis, statutory reform, or descriptive discussions of women's legal rights without critically examining the philosophical contradictions between normative justice and institutional reality. Studies discussing Religious Court decisions often focus on doctrinal interpretation while paying limited attention to the structural failure of post-divorce rights enforcement. Likewise, scholarship on gender equality in Islamic law frequently emphasizes abstract normative ideals without sufficiently exploring how judicial institutions operationalize or restrict those ideals in practice. Another limitation lies in the fragmentation of analytical perspectives. Previous studies generally examine *maqasid al-shari'ah*, gender justice, sociology of law, or human rights frameworks separately rather than integrating them into a comprehensive analytical approach capable of explaining the multidimensional experiences of divorced women. Moreover, limited attention has been given to the philosophical implications of weak execution systems, judicial discretion, and institutional power relations within divorce litigation processes. Consequently, the tension between procedural legality and substantive justice remains underexplored within Indonesian Islamic family law scholarship. This gap is significant because the effectiveness of legal protection cannot be assessed solely through normative regulations, but must also be evaluated through the practical realization of justice experienced by women after divorce.

Based on these considerations, this study aims to critically analyze the philosophical perspectives underlying divorce litigation and women's rights within Indonesian Islamic family law. Specifically, this research examines the gap between normative legal guarantees and the practical implementation of post-divorce rights in Religious Courts through the integration of substantive justice theory, *maqasid al-shari'ah*, and sociology of law approaches. Unlike previous studies that focus predominantly on procedural or doctrinal dimensions, this study positions divorce litigation as a site of philosophical contestation where legal norms, gender relations, institutional practices, and human dignity intersect simultaneously. The study also investigates how judicial reasoning, execution mechanisms, and socio-cultural structures influence women's access to justice after divorce. Theoretically, this research contributes to contemporary debates on Islamic legal reform by offering a critical reconstruction of justice-oriented family law perspectives within Muslim societies. Practically, the findings are expected to provide strategic recommendations for strengthening gender-sensitive judicial interpretation, improving enforcement mechanisms, and promoting more substantive protection of women's rights within Religious Courts. Ultimately, this study seeks to enrich broader international discussions concerning Islamic law, gender justice, and the realization of substantive equality in contemporary legal systems.

METHOD

This study employed a qualitative socio-legal research design integrating normative-philosophical inquiry, case study analysis, and sociology of law perspectives to critically examine divorce litigation and women's rights within Indonesian Islamic family law. The qualitative approach was selected because the study aimed to explore legal meanings, judicial reasoning, institutional practices, and philosophical tensions surrounding the implementation of women's post-divorce rights rather than to measure statistical relationships or test causal hypotheses. A socio-legal framework was considered particularly appropriate because the research positioned law not merely as a formal normative system, but as a socially embedded institution shaped by cultural values, institutional power relations, legal interpretation, and gender dynamics (Adongo & Kanwetuu, 2024; Bermúdez Figueroa et al., 2023). The normative-philosophical dimension was utilized to analyze legal principles contained in Law No. 1 of 1974 concerning Marriage, Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI), and related judicial regulations governing divorce litigation, financial rights, and child custody. Simultaneously, the philosophical analysis focused on substantive justice, *maqasid al-shari'ah*, gender equality, and the ethical objectives underlying Islamic family law. This design enabled the study to investigate the tension between normative legal ideals and empirical realities within Religious Court practices. The integration of socio-legal and philosophical approaches was intended to generate a comprehensive understanding of how legal protection for women is interpreted, implemented, negotiated, and sometimes weakened within institutional processes and post-divorce enforcement mechanisms.

The research was conducted within the institutional environment of Indonesian Religious Courts, which possess formal jurisdiction over Islamic family law disputes involving Muslim citizens. Several Religious Courts located in regions with consistently high rates of *ceraai gugat* cases were selected purposively as research sites because they reflected active judicial engagement with women-initiated divorce litigation and post-divorce rights disputes. The selection of these courts was also based on the accessibility of judicial decisions, institutional diversity, and the availability of participants directly involved in litigation processes. Data collection was carried out between January and September 2025 to ensure that the research captured recent developments in judicial practices, legal interpretation, and the implementation of gender-responsive policies within Religious Courts. The study focused specifically on contested divorce cases involving disputes concerning *nafkah iddah*, *mut'ah*, child support, *hadhonah*, and the enforcement of post-divorce financial obligations. Indonesia was selected as the research context because it represents one of the most dynamic Muslim-majority legal systems where Islamic family law continuously interacts with state law, local socio-cultural traditions, and contemporary human rights discourse (Wahidah et al., 2024; Wahyudi & Umar, 2026). This context provided a rich analytical setting for examining how substantive justice is operationalized within contemporary Islamic legal institutions.

The primary research population consisted of Religious Court decisions, judicial actors, legal practitioners, and women's rights advocates directly engaged in divorce litigation processes. Documentary data included Religious Court decisions related to *ceraai gugat* cases issued between 2021 and 2025. From this population, a purposive sample of legally and philosophically significant cases was selected based on several inclusion criteria, namely: cases involving disputes over women's post-divorce financial rights, decisions containing extensive judicial reasoning, judgments referencing gender justice or *maqasid al-shari'ah* considerations, and cases demonstrating execution-related challenges after divorce. Cases lacking substantive legal reasoning or unrelated to women's rights disputes were excluded from the analysis. In addition to documentary sources, participants included Religious Court judges, legal aid advocates, Islamic family law experts, and women's rights activists possessing direct experience in handling divorce litigation and post-divorce enforcement issues. Criterion-based purposive sampling was employed to ensure that each participant had substantial professional involvement with Islamic family law disputes and institutional legal practices (Alelign et al., 2024; Alshammari et al., 2025). This sampling strategy was considered appropriate because the study prioritized analytical depth and interpretative richness rather than statistical representation. The combination of judicial documents and expert participants enabled the research to capture institutional perspectives, practical experiences, and philosophical interpretations simultaneously.

The study utilized multiple qualitative research instruments consisting of document analysis protocols, semi-structured interview guidelines, and field observation sheets. The document analysis protocol was developed to systematically identify judicial reasoning patterns, interpretations of Islamic legal principles, references to substantive justice, applications of *maqasid al-shari'ah*, and judicial considerations regarding women's post-divorce rights. Particular attention was given to the legal logic underlying decisions related to *nafkah iddah*, *mut'ah*, *hadhonah*, and execution procedures. Semi-structured interview guidelines were designed to explore participants' perspectives concerning legal enforcement challenges, judicial discretion, institutional limitations, mediation practices, gender-sensitive adjudication, and the philosophical foundations of Islamic family law. Open-ended questioning techniques were intentionally adopted to encourage analytical reflection and allow participants to articulate nuanced experiences and professional judgments. Observation sheets were additionally employed to document litigation procedures, mediation interactions, courtroom dynamics, and institutional practices relevant to women's legal protection within Religious Courts. The development of these instruments was informed by previous socio-legal and Islamic family law studies discussing judicial discretion, gender justice, and post-divorce legal protection (Dahash, 2025; Desra et al., 2025). The instruments were structured to ensure coherence between research objectives, theoretical frameworks, and empirical data collection processes.

To ensure methodological rigor and analytical trustworthiness, the study implemented several validity and reliability strategies throughout the research process. Content validity was established through expert review involving scholars specializing in Islamic family law, gender studies, and socio-legal research. These experts evaluated the relevance, clarity, conceptual consistency, and analytical adequacy of the interview protocols and document analysis indicators before field implementation. Revisions were conducted based on expert recommendations to strengthen instrument precision and theoretical alignment. Construct validity was reinforced through the integration of multiple theoretical frameworks, including substantive justice theory, *maqasid al-shari'ah*, sociology of law, and gender justice perspectives. Data credibility was strengthened through methodological triangulation involving the comparison of judicial decisions, interview findings, legal observations, and scholarly literature. Source triangulation was further conducted by comparing perspectives among judges, advocates, and women's rights activists to identify convergent and divergent interpretations regarding women's post-divorce rights. Reliability was addressed through coding consistency procedures, repeated document examination, and analytical memo writing during the thematic interpretation process. Member checking was additionally conducted with selected participants to confirm the accuracy of interview interpretations and thematic conclusions. These procedures were implemented to minimize interpretative bias, strengthen analytical consistency, and enhance the dependability and confirmability of the research findings.

The data collection process was conducted through several interconnected stages to ensure systematic and comprehensive data acquisition. The initial stage involved preliminary legal mapping and extensive literature exploration concerning Islamic family law reform, divorce litigation, substantive justice, and gender equality discourse in Muslim societies. During this phase, legal documents, judicial regulations, and scholarly literature were identified and classified according to their relevance to the research objectives. The second stage involved collecting and documenting Religious Court decisions through the Supreme Court's online decision directory and institutional legal databases. Selected cases were subsequently categorized based on the nature of disputes, legal reasoning patterns, financial rights claims, and execution outcomes. The third stage involved conducting semi-structured interviews with judges, legal advocates, and women's rights activists. Interviews were carried out either face-to-face or through secure online communication platforms depending on institutional access and participant availability. Each interview lasted approximately 45–90 minutes and was audio-recorded with participant consent to ensure data accuracy and analytical completeness. The fourth stage involved non-participant observations of litigation procedures and mediation practices within selected Religious Courts. Observational data were documented through detailed field notes focusing on institutional interactions, gender-sensitive procedures, and courtroom dynamics. Following data collection, all interview recordings and observational notes were transcribed verbatim and systematically organized to facilitate thematic coding and interpretative analysis.

Data analysis was conducted using qualitative thematic analysis integrated with normative legal interpretation and philosophical reflection. The analytical process began with data reduction through repeated reading of judicial decisions, interview transcripts, field notes, and legal documents to identify significant patterns and recurring concepts. Open coding techniques were subsequently applied to classify data segments related to substantive justice, judicial discretion, gender inequality, legal enforcement barriers, *maqasid al-shari'ah*, and institutional practices. Similar codes were then grouped into broader analytical categories through axial coding to facilitate conceptual organization and relational interpretation. Thematic synthesis was employed to construct overarching themes explaining the philosophical and structural dimensions of women's post-divorce rights within Religious Court practices. Normative legal analysis was simultaneously conducted to evaluate the consistency between legal implementation and the ethical objectives underlying Islamic family law. Throughout the analysis process, empirical findings were continuously interpreted through substantive justice theory, sociology of law perspectives, and *maqasid al-shari'ah* principles to ensure conceptual depth and analytical coherence. Analytical memos were also utilized to document interpretative reflections, emerging patterns, and theoretical connections during coding and thematic development. The analytical process emphasized interpretative rigor, conceptual integration, and critical engagement with the socio-legal realities surrounding divorce litigation in Indonesia.

Research ethics constituted a fundamental consideration throughout all stages of the study because the research addressed sensitive issues involving divorce, gender relations, legal vulnerability, and institutional practices. Prior to participation, all informants received detailed explanations regarding the objectives, procedures, and voluntary nature of the research. Written and verbal informed consent was obtained before interviews and observations were conducted. Participant anonymity was maintained through the use of coded identifiers to protect personal and institutional confidentiality. All interview recordings, transcripts, and legal documents were securely stored and utilized exclusively for academic purposes. Participants retained the right to withdraw from the study at any stage without consequence. The study also ensured that no participant experienced coercion, intimidation, or psychological discomfort during data collection activities. Furthermore, all legal materials, scholarly references, and empirical findings were cited and presented in accordance with international academic integrity standards to maintain intellectual honesty and avoid plagiarism. Ethical sensitivity was regarded as particularly important because the study involved discussions concerning women's legal experiences, judicial practices, and institutional accountability within Religious Courts.

To strengthen methodological transparency and improve analytical readability, this study incorporated a research procedure figure illustrating the sequential stages of data collection and analysis. The figure visually presents the integration of normative legal analysis, case study selection, interview procedures, triangulation strategies, thematic coding, and philosophical interpretation within the socio-legal research framework. The inclusion of this figure was intended not merely as a visual complement, but as an analytical instrument clarifying the interconnected structure of the research design. In qualitative socio-legal studies published in internationally reputable journals, methodological figures contribute significantly to transparency, replicability, and conceptual coherence. Therefore, the figure was positioned as an integral component of the methodological architecture of the study rather than as a decorative element.

RESULT AND DISCUSSION

Result

The findings of this study reveal that divorce litigation within Indonesian Religious Courts reflects complex interactions between legal norms, gender relations, judicial interpretation, and socio-cultural realities. Analysis of court decisions, interview data, and institutional practices demonstrates that women's post-divorce rights remain deeply influenced by substantive justice concerns, patriarchal legal interpretations, and structural limitations within enforcement mechanisms. The results further indicate that the implementation of Islamic family law in contemporary Indonesia is continuously negotiated between normative religious ideals and the practical realities experienced by women after divorce. Therefore, the findings presented in this

section are organized into several interconnected themes illustrating the philosophical, institutional, and socio-legal dimensions of divorce litigation and women's rights protection within Religious Courts.

Women's Divorce Litigation as a Response to Structural Marital Injustice

The findings indicate that wife-initiated divorce cases within Indonesian Religious Courts are predominantly associated with prolonged experiences of structural injustice in marital relationships. Analysis of court decisions and interview data revealed that women generally pursued *ceraai gugat* after repeated exposure to economic neglect, domestic violence, emotional abuse, and unequal household responsibilities. In many cases, divorce was positioned by women not as an immediate reaction to isolated conflict, but as the final legal response to long-term suffering and the absence of meaningful marital protection. Several judicial documents examined in this study explicitly acknowledged continuous disputes, abandonment, and financial irresponsibility as major reasons underlying divorce litigation. One judge interviewed during the research explained that "many women who come to court have endured years of unequal treatment before finally deciding to seek legal protection." This finding demonstrates that *ceraai gugat* increasingly reflects women's efforts to restore personal dignity and social security rather than merely terminate marital status. The data also show that women's growing legal awareness has contributed significantly to the increasing utilization of Religious Courts as formal institutions for resolving marital injustice.

The study further found that women initiating divorce frequently experienced multiple forms of vulnerability simultaneously. Economic dependence, social stigma, childcare responsibilities, and psychological pressure often intersected during litigation processes. Several women represented by legal aid institutions faced difficulties maintaining financial stability while simultaneously navigating legal procedures and social expectations surrounding divorce. Interviews with advocates revealed that many women were initially reluctant to file for divorce because of fear of public judgment and uncertainty regarding post-divorce survival. However, prolonged exposure to violence and neglect eventually encouraged them to seek legal separation despite institutional and cultural barriers. These findings indicate that divorce litigation within Religious Courts increasingly functions as a mechanism through which women negotiate survival, protection, and social recognition in situations where marital relations no longer provide security or fairness.

Judicial Interpretation of Justice in Religious Court Decisions

The findings reveal that judges within Religious Courts increasingly incorporate substantive justice considerations into their legal reasoning when adjudicating divorce disputes. Analysis of judicial decisions demonstrated that judges did not rely exclusively on procedural legal requirements, but also considered broader ethical dimensions such as fairness, dignity, and economic welfare. Several court decisions referred explicitly to the importance of *mu'asyarah bil ma'ruf* and the preservation of women's welfare in determining the legitimacy of wife-initiated divorce claims. This indicates the emergence of judicial reasoning that attempts to align legal interpretation with broader *maqasid al-shari'ah* principles emphasizing protection and social justice. Some judges also demonstrated progressive legal interpretation through *ex officio* rulings granting women post-divorce financial rights even when those rights were not fully requested during litigation. Such practices illustrate attempts by judges to strengthen women's protection beyond rigid procedural formalism. Nevertheless, the study found substantial variation in how judges interpreted fairness and financial responsibility across different cases and courts.

Interviews conducted with judges further revealed differing philosophical orientations regarding gender relations and marital authority. Judges exposed to gender-sensitive legal training tended to interpret Islamic family law through partnership-oriented perspectives emphasizing reciprocity and mutual responsibility between spouses. Conversely, some judges continued to apply more hierarchical interpretations influenced by conservative understandings of *qawamah* and marital obedience. These differences significantly affected decisions concerning *nafkah iddah*, *mut'ah*, and child support obligations. One judge explained that "justice in divorce cases cannot only follow legal text literally because every family conflict contains unique social realities." Such findings demonstrate that judicial discretion occupies a highly influential role in determining women's access to substantive legal protection. Consequently, legal outcomes often depended not only on statutory

provisions, but also on the philosophical orientation and interpretative approach of individual judges.

Persistence of Patriarchal Legal Perspectives

The research found that patriarchal legal perspectives remain embedded within several aspects of Religious Court litigation despite increasing institutional awareness regarding gender justice. Analysis of court decisions demonstrated that concepts such as *nusyuz* and *qawamah* were frequently used as central considerations in evaluating women's behavior and entitlement to post-divorce financial rights. In several cases, allegations of *nusyuz* were strategically employed by former husbands to weaken women's legal claims regarding *nafkah iddah* and *mut'ah*. Some judicial decisions adopted restrictive interpretations positioning wives primarily through obedience-based frameworks, while husbands' failures to fulfill economic and emotional responsibilities received comparatively less scrutiny. Women's rights activists interviewed during the study argued that such interpretations frequently reproduce unequal power relations within litigation processes. One activist stated that "women are often assessed based on obedience, while men are rarely evaluated based on responsibility." These findings suggest that patriarchal assumptions continue to influence legal reasoning within certain Religious Court practices.

At the same time, the findings also reveal the emergence of more contextual judicial interpretations challenging traditional patriarchal assumptions. Several judges rejected unilateral interpretations of *nusyuz* by considering broader relational dynamics, including domestic violence, economic abandonment, and psychological abuse committed by husbands during marriage. Such interpretations reflect attempts to reposition marital obligations within more balanced and reciprocal legal frameworks. Judges adopting this perspective generally viewed *qawamah* as an ethical responsibility associated with protection and welfare rather than absolute authority over women. These findings demonstrate that judicial interpretation within Religious Courts remains dynamic and contested, shaped by legal education, institutional discourse, and broader social transformation concerning gender equality and women's rights.

Humanistic and Gender-Responsive Litigation Practices

Another important finding concerns the increasing incorporation of humanistic and gender-sensitive approaches within Religious Court procedures. Observational findings revealed that several courts attempted to create more supportive litigation environments for women involved in divorce disputes, particularly victims of domestic violence and economic neglect. Institutional efforts included providing separate waiting spaces for vulnerable litigants, encouraging respectful communication practices, and reducing intimidating courtroom interactions. Judges and court staff acknowledged that many women entering divorce litigation already experienced significant psychological stress due to social stigma and prolonged marital conflict. One participant explained that "many women entering court are emotionally exhausted before the trial even begins." This finding demonstrates growing institutional recognition that legal procedures involve not only legal formalities but also psychosocial dimensions affecting vulnerable litigants.

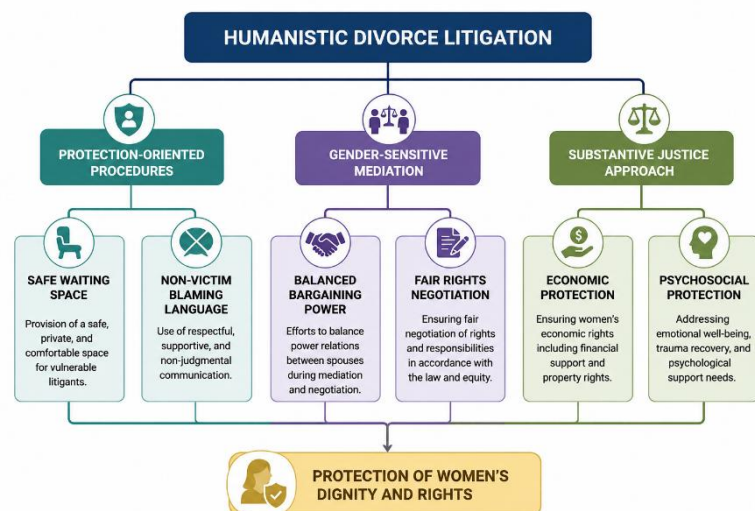


Figure 2. Humanistic and Gender-Responsive Divorce Litigation Framework

Figure 2 illustrates the integration of humanistic and gender-responsive principles within divorce litigation procedures in Religious Courts. The findings indicate that legal protection for women increasingly depends on institutional sensitivity toward dignity, psychosocial vulnerability, and economic security rather than solely on procedural legality. Protection-oriented procedures aim to reduce intimidation and secondary victimization, while gender-sensitive mediation seeks to balance bargaining power between spouses during negotiation processes. The substantive justice dimension emphasizes that judicial decisions should ensure women's welfare after divorce rather than merely terminate marital relationships formally. Collectively, these dimensions demonstrate that Religious Courts are gradually incorporating more humane and protection-oriented approaches into divorce litigation processes.

Despite these developments, the findings reveal that the implementation of gender-sensitive litigation practices remains inconsistent across courts. Several women's rights advocates reported that patriarchal assumptions and conservative socio-cultural expectations continued to influence mediation sessions and courtroom interactions. In some cases, mediation was perceived as encouraging women to preserve problematic marriages for the sake of family harmony rather than prioritizing women's safety and dignity. Some participants also reported pressure to compromise their financial rights in exchange for faster settlement procedures. These findings indicate that institutional reform remains incomplete and continues to encounter resistance from broader patriarchal legal culture.

Structural Weaknesses in the Enforcement of Post-Divorce Rights

One of the most significant findings concerns the persistent difficulties women face in enforcing post-divorce financial rights after court decisions have been issued. Across numerous examined cases, women experienced serious obstacles in obtaining *nafkah iddah*, *mut'ah*, and child support despite formal judicial recognition of those rights. Interviews with legal aid advocates revealed that many former husbands delayed or refused compliance with court orders, while Religious Courts possessed limited institutional capacity to enforce execution effectively. Several participants described judicial decisions as "paper victories" because legal recognition frequently failed to produce actual economic protection. One advocate stated that "women often succeed in court symbolically, but continue suffering economically after litigation ends." These findings demonstrate that the primary weakness of women's legal protection lies not only in legal interpretation, but also in institutional enforcement failure.

The findings additionally indicate that execution procedures were frequently perceived as bureaucratic, expensive, and emotionally exhausting for economically vulnerable women. Many participants lacked the financial resources necessary to pursue prolonged enforcement procedures, particularly when former husbands intentionally avoided payment obligations. Religious Courts generally lacked specialized enforcement mechanisms capable of monitoring compliance or imposing effective sanctions against non-compliant parties. Consequently, many women abandoned execution efforts due to economic limitations, psychological fatigue, or social pressure discouraging prolonged legal conflict. These findings reveal a substantial gap between formal legal rights and practical institutional protection within Indonesian Islamic family law.

Reconstruction of Islamic Family Law Toward Inclusive Justice

The final findings of this study emphasize the growing demand for reconstructing Indonesian Islamic family law toward a more inclusive and substantively just legal framework. Participants consistently argued that contemporary family relations should no longer be interpreted through rigid hierarchical assumptions emphasizing unilateral authority and obedience. Instead, marriage was increasingly viewed as a partnership-based institution requiring reciprocity, shared responsibility, and equal protection for both spouses. Several judges and legal advocates emphasized that women's rights protection cannot depend solely on formal legal provisions without broader transformation in judicial interpretation, institutional culture, and enforcement mechanisms. These findings indicate that substantive justice requires integrated reform encompassing legal philosophy, judicial practice, and institutional accountability simultaneously.

Table 1. Reconstructing Family Law Towards a More Inclusive System

Reconstruction Aspect	Current Conceptual Status (Hierarchical/Biased)	Proposed Conceptual Reconstruction	Conceptual Foundation
Paradigm Shift	Marriage is positioned within a hierarchical structure emphasizing rigid gender roles and unequal authority relations.	Marriage is reconstructed as a partnership-based relationship grounded in equality, reciprocity, and mutual responsibility.	Reconstruction begins by shifting the understanding of marriage from domination toward partnership and mutual respect.
Legislative Reform	Several legal provisions remain ambiguous and potentially reinforce unequal interpretations regarding women's rights.	Legal provisions are reformulated to strengthen gender equality, legal certainty, and balanced rights and obligations.	Reform is directed toward establishing clearer and more equitable legal protection mechanisms.
Institutional Capacity Building	Judicial practices frequently prioritize procedural legality over substantive justice and gender-sensitive adjudication.	Religious Courts strengthen institutional competence through continuous training on gender justice, human rights, and psychosocial impacts of divorce.	Institutional reform is necessary to ensure that judicial actors internalize substantive justice principles in legal practice.
Execution System Reform	Court decisions regarding financial rights often lack effective enforcement and coercive implementation mechanisms.	Development of systematic enforcement mechanisms ensuring real execution power for post-divorce financial obligations.	Effective legal protection requires judicial decisions that can be practically implemented and enforced.

Table 1 presents the conceptual reconstruction proposed by this study for strengthening women's legal protection within Indonesian Islamic family law. The reconstruction emphasizes four interconnected dimensions, namely paradigm transformation, legislative reform, institutional capacity strengthening, and execution system reform. Collectively, these dimensions illustrate that meaningful legal reform requires not only textual revision of Islamic family law provisions, but also broader transformation in judicial interpretation, institutional practice, and enforcement mechanisms. The findings therefore indicate that the future effectiveness and legitimacy of Islamic family law in Indonesia depend significantly on its ability to realize substantive justice within the lived realities of women after divorce.

Discussion

The findings of this study demonstrate that wife-initiated divorce litigation in Indonesia cannot be interpreted merely as a procedural increase in marital dissolution, but rather reflects a profound transformation in the legal consciousness of Muslim women confronting structural injustice within family relations. The growing prevalence of *ceraai gugat* indicates that divorce litigation increasingly functions as a mechanism through which women seek dignity, security, and substantive protection after prolonged exposure to economic neglect, emotional violence, and unequal marital power relations. This finding strongly supports substantive justice theory, which argues that legal action emerges not solely from normative rights awareness, but from lived experiences of institutional and relational inequality. Within the perspective of *maqasid al-shari'ah*, the pursuit of divorce under oppressive marital conditions may be understood as an effort to preserve human dignity, psychological integrity, and social welfare rather than a rejection of Islamic ethical values. Similar patterns have been identified by Doan and Tran (2026), Ramadhita et al. (2023), and Harun (2025), who observed the growing role of women's agency within Islamic family litigation. However, this study extends previous scholarship by demonstrating that women's legal mobilization is not simply an expression of empowerment, but also a response to the structural failure of marriage as a protective social institution. The evidence therefore challenges conventional assumptions that interpret rising divorce rates solely as indicators of moral decline or family

instability. Instead, the findings reveal that wife-initiated litigation reflects deeper transformations in gender consciousness, legal subjectivity, and expectations of justice within contemporary Muslim societies.

A central finding of this study concerns the increasingly influential role of judicial interpretation in shaping women's access to substantive justice after divorce. The analysis reveals that judges who adopted contextual and welfare-oriented reasoning tended to interpret Islamic family law more progressively by emphasizing fairness, reciprocity, and protection rather than rigid procedural formalism. This interpretative orientation demonstrates an important epistemological shift within Religious Courts, where legal reasoning increasingly incorporates ethical objectives associated with *maqasid al-shari'ah*. In several cases, judges employed *ex officio* authority to grant women post-divorce financial rights even when such claims were not explicitly requested during litigation, illustrating an emerging judicial awareness of women's structural vulnerability after divorce. These findings align with Sanusi et al. (2023) and Azhari and Asmuni (2023), who argued that judicial activism has become an important catalyst for Islamic legal reform in Indonesia. Nevertheless, this study goes further by demonstrating that judicial discretion simultaneously functions as both a mechanism of legal protection and a source of institutional inequality. Variations in philosophical orientation among judges produced inconsistent legal outcomes across similar cases, particularly concerning *nafkah iddah*, *mut'ah*, and child support enforcement. Such inconsistency reveals that substantive justice within Religious Courts remains highly dependent upon individual interpretative capacity rather than uniformly institutionalized legal standards. Consequently, the study problematizes the assumption that formal legal reform alone is sufficient to guarantee gender-responsive justice, because the realization of justice ultimately depends on how legal actors negotiate ethical values within concrete socio-legal realities.

The persistence of patriarchal legal perspectives within divorce litigation further reveals a deeper structural contradiction between normative Islamic ideals of justice and institutional legal practice. Although Islamic family law normatively emphasizes compassion, reciprocity, and mutual responsibility, the findings indicate that several judicial practices continue to position women primarily through obedience-centered frameworks. Concepts such as *qawamah* and *nusyuz* were frequently interpreted hierarchically, allowing women's entitlement to post-divorce rights to be evaluated according to assumptions of marital obedience rather than relational justice. This finding supports critiques advanced by Aziz and Faishal (2025), Almog and Herbst-Debby (2025), and Turmudi (2025), who argued that patriarchal interpretations frequently survive within modernized Islamic legal systems despite the adoption of gender equality discourse. However, the present study contributes a more critical perspective by showing that patriarchal legal culture is reproduced not only through explicit doctrinal interpretation, but also through subtle institutional assumptions embedded within mediation processes, evidentiary standards, and courtroom interaction. Women were often required to demonstrate moral obedience and emotional restraint, whereas husbands' failures regarding economic responsibility and psychological neglect received comparatively weaker scrutiny. Such asymmetrical legal evaluation reveals that procedural neutrality within Religious Courts does not necessarily eliminate structural gender bias. At the same time, the study identified emerging judicial counter-discourses challenging hierarchical interpretations by redefining *qawamah* as ethical responsibility rather than absolute authority. This interpretative transformation demonstrates that Islamic legal concepts remain dynamic and contestable, thereby opening important possibilities for reconstructing family law through more egalitarian and justice-oriented frameworks.

Another significant finding concerns the gradual institutionalization of humanistic and gender-responsive litigation practices within Religious Courts. Several courts demonstrated increasing sensitivity toward women's psychosocial vulnerability by providing safer litigation environments, respectful communication procedures, and protection-oriented mediation practices. These developments indicate that Religious Courts are beginning to recognize divorce litigation not merely as a legal dispute, but also as a deeply emotional and socially vulnerable experience for women confronting marital breakdown. From the perspective of therapeutic jurisprudence, such institutional sensitivity represents an important evolution because legal procedures can either intensify or reduce secondary victimization during conflict resolution. Similar observations were identified by Ridmajayanti et al. (2025) and Fardindaputri and Hasanudin (2025), who emphasized

the importance of procedural dignity and victim-centered adjudication in women's legal protection. Nevertheless, this study critically demonstrates that the implementation of gender-responsive litigation remains fragmented and ideologically contested. In several cases, mediation procedures continued to prioritize family preservation over women's safety and autonomy, particularly when judges and mediators operated within conservative socio-cultural expectations concerning women's marital roles. Women were occasionally encouraged to compromise their financial rights in exchange for procedural efficiency or social reconciliation. These findings reveal that institutional reform within Religious Courts remains constrained by broader patriarchal cultural structures shaping societal expectations regarding marriage, divorce, and women's morality. Therefore, humanistic litigation practices cannot be reduced to procedural accommodation alone, but require deeper transformation in institutional ethics, judicial training, and legal culture itself.

One of the most critical contributions of this study lies in its analysis of the structural failure surrounding the enforcement of women's post-divorce rights. The findings reveal that formal judicial recognition frequently failed to translate into substantive protection because many women remained unable to obtain *nafkah iddah*, *mut'ah*, and child support after court decisions had been issued. This contradiction exposes what may be conceptualized as the paradox of symbolic legality, namely a condition in which legal systems formally recognize rights while simultaneously failing to ensure their practical realization. Such findings strongly reinforce substantive justice theory, which argues that justice cannot be measured solely through procedural recognition, but must also be evaluated according to the material consequences experienced by vulnerable individuals. Previous studies by Izzati (2025), Harun (2025), and Ridmajayanti et al. (2025) similarly reported weak execution mechanisms within Religious Courts. However, this study extends those discussions by framing enforcement failure as a broader epistemological and institutional crisis within Islamic family law implementation. Legal decisions often functioned merely as symbolic victories because economically vulnerable women lacked the financial capacity, emotional endurance, and institutional support necessary to pursue prolonged execution procedures. Former husbands frequently exploited bureaucratic inefficiency and weak coercive mechanisms to avoid compliance with judicial obligations. This structural gap between normative entitlement and institutional realization demonstrates that the legitimacy of Islamic family law depends not only on doctrinal justice, but also on the state's capacity to operationalize protection effectively within everyday social reality.

The findings additionally reveal that contemporary demands for reconstructing Islamic family law increasingly center upon the transformation of marriage from a hierarchical institution into a partnership-based relationship grounded in reciprocity, equality, and shared responsibility. Participants consistently argued that women's legal protection cannot rely exclusively on textual legal provisions without simultaneous reform of judicial interpretation, institutional culture, and execution mechanisms. This finding aligns with broader global discussions concerning Islamic legal reform in Muslim-majority societies, particularly those emphasizing *maqasid al-shari'ah*, human dignity, and gender-responsive jurisprudence. Studies conducted by Orta (2025), Abimbola et al. (2023), and Wahyudi and Umar (2026) similarly argued that contemporary Islamic legal systems must address the practical realities of women's vulnerability within family institutions. Nevertheless, this study contributes a distinctive conceptual advancement by integrating substantive justice theory, sociology of law, and *maqasid al-shari'ah* into a unified analytical framework capable of explaining the multidimensional nature of divorce litigation in Indonesia. Unlike previous scholarship that frequently separated doctrinal analysis from institutional critique, this research demonstrates that substantive equality depends upon the interaction between legal philosophy, judicial practice, institutional accountability, and socio-cultural transformation simultaneously. The proposed reconstruction therefore extends beyond legislative amendment and includes the necessity of gender-sensitive judicial education, enforceable execution systems, and institutional accountability mechanisms capable of guaranteeing women's post-divorce welfare in practice. Such reconstruction represents an important theoretical contribution because it reframes Islamic family law not merely as a system of normative regulation, but as a living ethical institution whose legitimacy depends upon its capacity to realize justice within concrete human experience.

From a broader theoretical perspective, this study positions Indonesian divorce litigation within global scholarly debates concerning Islamic law, gender justice, and the modernization of Muslim legal systems. The findings challenge reductionist narratives portraying Islamic family law

as either inherently oppressive or automatically protective toward women. Instead, the study demonstrates that legal outcomes emerge through continuous negotiation among religious interpretation, judicial discretion, institutional structures, socio-cultural norms, and women's agency. This perspective significantly expands contemporary socio-legal scholarship by illustrating that substantive justice within Islamic legal systems cannot be achieved through doctrinal reform alone without corresponding institutional transformation. Furthermore, the study modifies existing understandings of *maqasid al-shari'ah* by emphasizing that the ethical objectives of Islamic law must be evaluated through women's lived experiences after divorce rather than solely through abstract normative ideals. In this context, justice becomes meaningful only when legal recognition is accompanied by effective economic protection, psychosocial dignity, and enforceable institutional accountability. The study therefore contributes a critical reconstruction of Islamic family law discourse by demonstrating that the future legitimacy of Religious Courts increasingly depends on their ability to reconcile procedural legality with substantive human-centered justice. Ultimately, this research situates Indonesian Islamic family law within a wider global movement toward inclusive, dignity-oriented, and gender-responsive legal reform in contemporary Muslim societies.

CONCLUSION

This study concludes that divorce litigation within Indonesian Religious Courts represents a profound transformation in the meaning and practice of Islamic family law in contemporary Muslim society. Wife-initiated divorce is no longer merely a procedural mechanism for terminating marriage, but has increasingly become a socio-legal strategy through which women seek dignity, security, equality, and substantive protection after experiencing structural injustice within marital relationships. The findings reveal that economic neglect, domestic violence, emotional suffering, unequal gender relations, and institutional limitations collectively shape women's decisions to pursue *cerai gugat*. At the same time, the study identifies a critical contradiction between the normative ideals of Islamic justice and the practical realities experienced by women after divorce. Although Religious Courts increasingly demonstrate progressive judicial interpretation through substantive justice reasoning and *maqasid al-shari'ah* perspectives, the realization of women's post-divorce rights remains weakened by patriarchal legal assumptions, inconsistent judicial discretion, weak execution systems, and limited institutional accountability. As a result, legal recognition frequently operates only at the symbolic level, while many women continue to experience economic vulnerability and inadequate protection in everyday life after litigation formally ends. These findings demonstrate that the crisis surrounding women's rights in Islamic family law is not merely procedural or administrative, but reflects a deeper epistemological tension between textual legality and lived justice within contemporary legal institutions.

Theoretically, this research offers a significant conceptual contribution by reconstructing the discourse of Islamic family law through the integration of substantive justice theory, sociology of law, and *maqasid al-shari'ah* within a single analytical framework. Unlike previous studies that predominantly separated doctrinal interpretation from institutional realities, this study demonstrates that the legitimacy of Islamic family law cannot be evaluated solely through normative legal provisions, but must also be assessed through the actual realization of dignity, welfare, and protection within women's lived experiences after divorce. The findings therefore challenge reductionist perspectives portraying Islamic family law as either inherently oppressive or automatically protective toward women. Instead, the study shows that legal outcomes are continuously negotiated through the interaction of judicial interpretation, institutional culture, socio-cultural norms, gender power relations, and women's legal agency. In this context, substantive justice emerges not simply as a legal principle, but as an ethical and institutional obligation requiring Religious Courts to move beyond procedural formalism toward genuinely human-centered legal protection. Practically, the study highlights the urgent need for comprehensive reform through gender-sensitive judicial training, stronger execution and enforcement mechanisms, institutional accountability systems, and humanistic litigation procedures capable of protecting vulnerable litigants effectively. Beyond the Indonesian context, this research contributes to broader global debates concerning the future of Islamic legal reform in Muslim societies confronting tensions between religious tradition, gender equality, and contemporary human rights discourse. Ultimately,

the future legitimacy and moral authority of Religious Courts will depend not on their ability to preserve symbolic legality alone, but on their capacity to transform Islamic legal principles into substantively just, dignity-oriented, and socially meaningful protection within the realities of human life.

AUTHOR CONTRIBUTION STATEMENT

Wahidullah contributed to the conceptualization of the study, research design, data collection, socio-legal analysis, interpretation of findings, and preparation of the original manuscript draft. Wahidullah also played a primary role in developing the theoretical framework integrating substantive justice theory, maqasid al-shari'ah, and sociology of law perspectives within the analysis of divorce litigation and women's rights in Islamic family law.

Rizqul Kamali Maulal Wahid contributed to data validation, critical review of legal and philosophical arguments, literature analysis, methodological refinement, and manuscript editing. Rizqul Kamali Maulal Wahid also participated in strengthening the analytical interpretation, ensuring conceptual coherence, and revising the manuscript to meet international academic publication standards.

Both authors discussed the results collaboratively, approved the final version of the manuscript, and agreed to be accountable for all aspects of the work related to the accuracy, integrity, and academic quality of the study.

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