



## Islamic Family Law and the Right to Divorce: A Critical Analysis of Women's Legal Empowerment in Pekanbaru

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### ABSTRACT

This study aims to critically examine the extent to which Islamic family law in Pekanbaru conducted from January to March 2025 empowers women in exercising their right to divorce. Grounded in a socio-legal and gender justice framework, the research explores both formal legal provisions and the lived experiences of Muslim women navigating divorce processes through the Religious Courts. Using a qualitative method, data were collected through in-depth interviews with divorced women, judges, and legal practitioners, and content analysis of relevant legal documents and court decisions. The findings reveal a complex interplay between religious norms, legal structures, and cultural expectations. While Islamic family law formally recognizes women's rights to divorce through mechanisms such as *khul'* and *fasakh*, bureaucratic hurdles, patriarchal interpretations, and social stigma often limit women's access to these rights in practice. Women who successfully obtained a divorce demonstrated strong legal awareness and support networks, suggesting that empowerment is highly dependent on socio-economic and educational factors. The study discusses the gap between normative Islamic principles that uphold justice and the structural barriers that hinder their realization in practice. It concludes that enhancing women's legal empowerment requires reforming procedural aspects of family law and promoting community-level awareness and gender-sensitive interpretations of Islamic jurisprudence.

**Key Words:** divorce, Islamic law, legal empowerment, women's rights

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### **Introduction**

Divorce remains a critical issue within the discourse on Islamic family law, particularly regarding women's rights and access to justice. In many Muslim-majority countries, including Indonesia, the right to divorce for women has often been circumscribed by legal, cultural, and religious barriers (Nasir, 2009). Although Islamic jurisprudence acknowledges women's right to initiate divorce through mechanisms such as *khul'* and *fasakh*, these rights are not always fully accessible in practice. Women often face complex legal procedures, stigma, and a lack of institutional support when attempting to end a marriage, especially in conservative communities (Ali, 2016).

In Indonesia, Islamic family law is implemented through the Religious Courts (*Peradilan Agama*), and women can file for divorce under certain conditions. The Compilation of Islamic Law (*Kompilasi Hukum Islam, KHI*), which guides judges in these courts, provides several pathways for women to obtain divorce, such as *fasakh* (judicial annulment) and *khulu'* (divorce initiated by the wife with compensation) (Cammack et al., 2007). However, access to these mechanisms often depends on subjective interpretations by judges, the strength of evidence provided, and the socio-economic position of the woman involved (Hooker & Anshor, 2003).

The practical gap between the legal text and its implementation creates a significant challenge for women's legal empowerment. Women are frequently unaware of their rights or are discouraged by families, religious leaders, or the court system from pursuing divorce, even in cases involving domestic violence or neglect (Blackburn, 2004). The concept of legal empowerment—the process by which individuals understand and use the law to advance their rights—is therefore crucial in assessing how Islamic family law operates in the lives of women in practice (Golub, 2003).

In recent years, several studies have explored women's access to divorce in various regions of Indonesia, yet specific, localized research remains limited. For example, Nurlaelawati (2010) examined legal reform and women's rights in Yogyakarta, while Buehler (2016) studied how judges in West Java interpret gender roles in family law cases. However, little research has been conducted in smaller urban contexts such as Pekanbaru, where cultural conservatism and a lack of legal resources may further complicate women's access to justice.

As the capital city of Riau Province, Pekanbaru presents a unique context for exploring how Islamic law is interpreted and applied at the grassroots level. While it is administratively urban, many of its communities retain traditional values that may reinforce patriarchal norms. This socio-cultural landscape can affect how judges perceive women's divorce requests and how women perceive their rights. There is a pressing need to understand how Islamic legal mechanisms for divorce are navigated by women in such regional settings (Van Doorn-Harder, 2006).

Most legal and religious discourses in Indonesia still frame divorce as a last resort and emphasize marital harmony over individual well-being. This narrative is often reinforced by Islamic scholars and government policies prioritizing family preservation (Salim, 2008). Consequently, women who initiate divorce may be stigmatized or blamed for disrupting social order, even when they are victims of neglect or abuse. This moral framing can act as an invisible barrier to legal empowerment.

The Religious Courts in Indonesia have shown both progressive and conservative tendencies in handling women's divorce cases. Judges have broad discretionary power in interpreting the KHI and often rely on personal beliefs or cultural norms in decision-making (Cammack et al., 2007). For example, some judges may require evidence of extreme hardship or prolonged abuse before granting a *fasakh* divorce, while others may be more sympathetic. Understanding how this discretion operates in Pekanbaru is essential to identifying the structural and procedural gaps that affect women's rights.

The legal empowerment approach highlights formal legal access and women's awareness, agency, and capacity to claim their rights. According to Golub (2003), legal empowerment involves improving the legal literacy of marginalized populations and ensuring they can use the legal system to seek justice. In Islamic family law, this means helping women understand their religious and legal entitlements and building support systems that enable them to pursue divorce without fear or hardship (Lindsey & Pausacker, 2016).

This study seeks to fill the research gap by critically analyzing how Islamic family law is implemented in divorce cases involving women in Pekanbaru and how these processes impact their

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legal empowerment. This research will explore the tensions between normative Islamic legal principles and their real-world application using qualitative methods such as interviews with divorced women, judges, and legal aid workers, as well as document analysis of court decisions. By focusing on the intersection of law, gender, and local context, the study contributes to broader debates on justice, reform, and women's rights in Muslim societies.

### **Research Method**

This study employs a qualitative research design to explore how women in Pekanbaru experience and exercise their right to divorce under Islamic family law, focusing on legal empowerment. A qualitative approach is appropriate for understanding the subjective experiences, perceptions, and challenges women face navigating the divorce process, as it allows for in-depth exploration of social, cultural, and legal dynamics (Creswell & Poth, 2018).

### **Research Setting and Participants**

This study was conducted in Pekanbaru, the capital city of Riau Province, Indonesia, which serves as a regional center for applying Islamic family law through the Religious Courts (Pengadilan Agama). Although Pekanbaru is administratively urban, many of its communities maintain conservative cultural values, particularly regarding gender roles and family structures. This makes it a strategic location for exploring how women navigate their right to divorce within the framework of Islamic family law. The research focused on individuals directly involved in divorce proceedings to gain a comprehensive understanding of both legal structures and lived experiences. Participants were selected through purposive sampling to include three main groups: (1) women who had undergone divorce proceedings in the Pekanbaru Religious Court within the past three years, (2) judges who preside over family law cases at the Religious Court, and (3) legal aid providers, including lawyers and paralegals, who support women during divorce processes. In total, 15 in-depth interviews were conducted: 8 with divorced women, 4 with judges, and 3 with legal aid officers. Female participants were selected based on their willingness to share their experiences and their ability to reflect critically on the legal and emotional processes of divorce. This composition allowed for a triangulated perspective on the institutional, procedural, and personal dimensions of women's access to divorce and legal empowerment in the context of Islamic family law in Pekanbaru.

### **Data Collection**

Data were collected through semi-structured interviews, court document analysis, and observations of courtroom practices. Interviews lasted between 45 and 60 minutes and were conducted in Bahasa Indonesia. An interview guide was developed based on legal knowledge, court experience, barriers to accessing rights, and post-divorce support systems. In addition, the researcher reviewed 15 anonymized court decisions (putusan pengadilan agama) to identify patterns in legal reasoning, references to the Kompilasi Hukum Islam (KHI), and judges' consideration of women's testimonies and claims. Field notes from courtroom observations further contextualized the judicial environment and interaction patterns between litigants and judges.

### **Data Analysis**

All interviews were transcribed and analyzed using thematic analysis, following Braun and Clarke's (2006) six-phase framework: familiarization with the data, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and producing the report. This approach allowed the researcher to identify recurring issues and unique individual narratives about legal empowerment and divorce. Key themes included: (1) legal literacy and understanding of Islamic divorce rights, (2) institutional and procedural challenges, (3) the role of judges and legal aid, and (4) post-divorce empowerment. NVivo software was used to assist in the coding and organizing of data, ensuring systematic analysis and traceability of themes.

### **Ethical Considerations**

Ethical approval was obtained from the Faculty Islamic Family Law Institute of Islamic Religion Lukman Edy Research Ethics Committee. All participants provided informed consent, and their identities were anonymized using pseudonyms. Sensitive topics such as domestic violence and

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social stigma were approached with care, and participants were offered the option to withdraw at any time without penalty. Interviews were conducted in safe, private locations.

### *Trustworthiness and Reflexivity*

To ensure the trustworthiness of the study, strategies such as member checking, triangulation, and reflexive journaling were applied (Lincoln & Guba, 1985). Member checking was conducted by returning preliminary findings to selected participants to confirm accuracy. The researcher maintained a reflexive journal throughout the study to critically examine personal biases, particularly as a researcher familiar with Islamic legal traditions.

**Table 1. Summary of Themes**

| No | Theme                                   | Description  |
|----|---|--|
| 1  | Legal Literacy and Awareness            | The extent to which women understand their rights under Islamic family law and the divorce procedures.   |
| 2  | Institutional and Procedural Barriers   | Challenges faced by women during court proceedings include bureaucracy, evidentiary demands, and delays. |
| 3  | Role of Judges and Legal Interpretation | Gendered perspectives often shape judicial discretion in interpreting the Kompilasi Hukum Islam (KHI).   |
| 4  | Post-Divorce Empowerment and Stigma     | Women's experiences of economic, emotional, and social empowerment or marginalization after divorce.     |

### **Result and Discussion**

The findings of this study revealed that women's legal literacy significantly influences their ability to access divorce through the Religious Courts in Pekanbaru. Most female participants were unaware of the legal options available to them under Islamic family law, particularly regarding *khulu'* (divorce by compensation) and *fasakh* (judicial annulment). Several women shared that they initially believed only men could initiate divorce, and only came to understand their rights after consulting legal aid institutions or women's community networks. This limited legal literacy delayed their decision to seek divorce and increased their vulnerability to prolonged psychological or financial abuse within marriage.

In terms of the divorce process itself, participants described numerous procedural and institutional barriers. Women faced long waiting times for hearings, inconsistent guidance from court officers, and burdensome evidentiary requirements, especially when attempting to prove emotional neglect, financial abandonment, or domestic violence. In several cases, the women were required to present witnesses or written documentation that they could not provide. These obstacles not only delayed the legal process but also discouraged some women from pursuing divorce altogether, reinforcing dependency and legal disempowerment.

The role of judges was found to be a critical factor influencing the outcome of divorce cases. Interview data showed a wide variation in how judges interpreted the Kompilasi Hukum Islam (KHI). Some judges adopted a more empathetic, gender-sensitive approach, accepting a woman's emotional testimony as sufficient grounds for *fasakh*. Others insisted on strict evidentiary standards, often requiring the woman to demonstrate prolonged hardship or abusive behavior by the husband. Legal aid officers confirmed that judicial discretion was often influenced by personal values and cultural perceptions of gender roles, which created an inconsistent legal landscape for female litigants.

Despite the challenges faced during the legal process, many women reported positive changes in their lives after the divorce was granted. Several participants stated that they felt more emotionally stable and regained a sense of control over their lives. Some began to pursue education

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or employment opportunities they had previously been denied. These cases demonstrate that, while the path to divorce may be difficult, successful access to legal recourse can open the door to increased autonomy and empowerment. However, the post-divorce experience was not uniformly positive; many women also reported facing social stigma, particularly from extended family or religious communities, who viewed them as having failed to uphold traditional family values.

The final theme that emerged from this study was the importance of legal aid and support networks in enhancing women's legal empowerment. Participants who had access to legal assistance—through formal legal aid offices or informal women's support groups—navigated the court system more confidently and successfully. These women were more likely to understand the necessary procedures, prepare supporting evidence, and assert their rights before the judge. Conversely, women without legal support often became discouraged, confused, or vulnerable to manipulation. This finding highlights the pivotal role of community-based legal empowerment efforts in bridging the gap between Islamic legal ideals and women's lived realities in the judicial system.

**Table 2. The interviews with nine informants in Pekanbaru**

| Code | Role             | Age | Key Insights   | Narrative Quote  |
|------|------------------|-----|--|--|
| W01  | Divorced Woman   | 35  | I lacked legal knowledge; I was unaware of <i>the Fasakh</i> option; I depended on paralegal help.       | "I think only a husband can divorce. I just found out that I could go to court."                   |
| W04  | Divorced Woman   | 29  | Faced emotional abuse, a judge dismissed evidence, and long delays in court proceedings.                 | "Proof of my feelings is not considered enough. The judge asks for witnesses or written evidence." |
| W06  | Divorced Woman   | 41  | Gained empowerment post-divorce; started home business; socially isolated by family.                     | "After the divorce, I felt relieved, but my family said I was selfish."                            |
| J02  | Judge            | 50  | Uses <i>maslahah</i> (public interest) in interpreting KHI; considers women's well-being a valid reason. | "If the wife is unhappy, it can be a legitimate reason for divorce, in my opinion."                |
| J04  | Judge            | 48  | Requires strong evidence; hesitant to grant divorce without concrete proof of abuse or neglect.          | "We need strong evidence, not just emotional claims."  |
| L01  | Legal Aid Worker | 36  | Supports women with limited literacy; helps prepare court documents; highlights gender bias.             | "Many mothers do not know how to get a divorce. We help write and assist you."                     |
| L03  | Legal Aid Worker | 42  | Judges vary widely in sensitivity; a lack of standard procedures disadvantages women.                    | "It depends on the judge. Some listen, some are very rigid."                                       |

The interview findings illustrate a multifaceted picture of women's legal empowerment in divorce under Islamic family law in Pekanbaru. These insights demonstrate the complexity of navigating the Religious Court system, influenced by legal knowledge, judicial discretion, procedural obstacles, and social stigma.

Firstly, interviews with divorced women (W01, W04, W06) reveal limited legal literacy as a recurring challenge. Participant W01 admitted that before seeking legal assistance, she believed only her husband could initiate a divorce. Her discovery of *Fasakh* and other legal channels was only possible after interacting with a local paralegal. This suggests that many women in Pekanbaru are not fully informed of their rights under the *Kompilasi Hukum Islam* (KHI), limiting their ability to make autonomous decisions (Golub, 2003). Similarly, W04 faced difficulty presenting emotional abuse as valid grounds for divorce, as the judge required written evidence or witnesses. This indicates that

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women's lived experiences—particularly in cases of psychological or financial neglect—are often undervalued in the legal system.

In contrast, W06 shared a more empowering post-divorce narrative. After gaining legal freedom, she started a small home-based business and experienced emotional relief. However, she also noted a social backlash from family members who perceived her divorce negatively. Her experience highlights that empowerment can be achieved, but is often tempered by cultural stigma attached to divorced women, a theme echoed in prior studies on Indonesian gender roles and religious norms (Blackburn, 2004).

Judges provided varied responses, revealing the subjectivity of legal interpretation in religious courts. J02 emphasized the importance of *maslahah* (public interest) and argued that a woman's lack of happiness could be a legitimate reason for divorce. His interpretation aligns with a more gender-sensitive application of Islamic principles. However, J04 represented a more conservative stance, asserting that only "strong evidence" (such as documentation or witnesses) could justify divorce. This inconsistency reflects the broad discretionary power judges possess under the KHI, as noted by Cammack et al. (2007), and underscores how a woman's access to justice can depend heavily on the individual judge she encounters.

Legal aid workers (L01, L03) offered a critical bridge between women and the legal system. L01 detailed how many women cannot file petitions and depend entirely on legal facilitators for documentation and court navigation. L03 pointed out that judicial attitudes and procedures vary significantly, creating inequality in legal outcomes. Both confirmed that without legal assistance, many women would likely abandon their claims, particularly those from economically disadvantaged or rural backgrounds. This reinforces the idea that legal empowerment is not merely about rights on paper, but access, support, and practical navigation of the legal system (Golub, 2003; Nurlaelawati, 2010).

Overall, the interviews reveal that while Islamic family law provides a framework for women to seek divorce, its implementation remains uneven and often inaccessible. Women's empowerment is contingent on formal legal rights and their ability to access knowledge, resources, and supportive institutions. The disparities in judicial interpretation and the presence or absence of legal aid are significant determinants of whether women can meaningfully assert their rights.

The findings of this study highlight the complex and uneven experiences of women seeking divorce through the Religious Court in Pekanbaru. While Islamic family law formally provides mechanisms for women to initiate divorce—such as *fasakh* and *khulu'*—many participants lacked awareness of these rights, leading to delays or hesitation in pursuing legal action. This supports Golub's (2003) argument that legal empowerment begins with legal literacy; when women are unaware of their rights, formal legal provisions remain largely inaccessible. The limited understanding expressed by participants like W01 demonstrates the urgent need for community-based legal education efforts in Muslim-majority settings.

Beyond awareness, the procedural and institutional challenges women face in Pekanbaru further constrain their ability to exercise their legal rights. As described by W04, court procedures often required burdensome documentation or witness testimony, particularly when the grounds for divorce involved psychological or financial abuse—forms of harm that are difficult to prove in traditional legal settings. These procedural demands echo Cammack et al.'s (2007) findings, emphasizing how evidentiary burdens in Indonesia's Religious Courts often disadvantage women. The inconsistency in court practices and lack of support structures discourage women from pursuing divorce, thus reinforcing their dependence on marital relationships regardless of well-being or safety.

The role of judges emerged as a decisive variable in women's access to divorce and legal empowerment. While some judges, like J02, interpreted the *Kompilasi Hukum Islam* with a concern for women's welfare and invoked principles such as *maslahah* (public interest), others, like J04, adhered rigidly to proof-based evaluations, discounting women's narratives. This variability demonstrates the subjectivity of legal interpretation and supports Buehler's (2016) conclusion that the personal orientation of the judiciary heavily influences gender justice in Indonesia's Religious Courts. Consequently, women's ability to obtain a divorce becomes dependent not only on the law itself, but on who interprets it and how.

Moreover, the interviews confirm that social and cultural stigma continues to shape the experiences of divorced women in Pekanbaru. While legal freedom provided some women, like W06,

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with emotional relief and renewed autonomy, it also exposed them to negative judgment from families and communities. This reflects broader cultural narratives in Indonesia that associate womanhood with marital status and domestic harmony (Blackburn, 2004). Such stigma acts as an informal mechanism of control, limiting the extent to which women can fully experience empowerment post-divorce.

In contrast, access to legal aid and community support was critical in enhancing women's capacity to navigate the court system. Participants who received assistance from legal aid workers (such as L01 and L03) demonstrated greater confidence and success in their cases. These findings reinforce the importance of legal intermediaries in bridging the gap between formal legal systems and marginalized populations. As Golub (2003) argued, legal empowerment is about rights awareness and building mechanisms that help people use the law effectively. Many women lack the means, language, or social capital to challenge injustice without such support.

The disparity between formal Islamic legal ideals and lived realities indicates the necessity for structural reforms and interpretive flexibility within Indonesia's legal system. The existing framework allows for progressive readings of the KHI, as demonstrated by empathetic judges like J02, yet this discretion is not uniformly applied. Introducing gender-sensitive judicial training, establishing standardized evidentiary guidelines, and strengthening legal aid institutions could promote more equitable and consistent access to divorce. Reform efforts must address legal texts and the institutional and cultural ecosystems in which those texts operate.

Finally, this study underscores that women's legal empowerment is a relational and contextual process. Empowerment cannot be reduced to legal rights alone, but must be measured by women's ability to access and benefit from those rights in real-world settings. In Pekanbaru, as in many other Muslim-majority regions, the interplay of legal knowledge, institutional behavior, judicial interpretation, and cultural expectations ultimately determines whether Islamic family law is a tool of liberation or limitation for women.

### **Conclusion**

The study reveals that while Islamic family law in Indonesia—through mechanisms such as *fasakh* and *khulu'*—formally provides women with the right to seek divorce, significant barriers still undermine the realization of these rights in practice. In the context of Pekanbaru, women's legal empowerment is constrained by a lack of legal literacy, procedural complexities, and varied judicial interpretations of the *Kompilasi Hukum Islam* (KHI). Many women enter the court system unaware of their legal options, face evidentiary hurdles that are difficult to meet, and encounter judges whose personal perspectives heavily influence outcomes. As a result, access to divorce is not experienced equally but is shaped by women's socio-economic background, level of support, and the discretion of the legal actors involved.

Despite these challenges, the findings also point to meaningful moments of empowerment, especially among women who accessed legal aid and post-divorce independence. However, this empowerment is often accompanied by social stigma, highlighting that legal success does not always translate into full social acceptance or well-being. Therefore, true legal empowerment for women in Islamic family law requires more than legal rights—it necessitates a responsive legal system, accessible support structures, and a cultural shift toward recognizing women's autonomy and agency. Addressing both institutional reforms and community awareness is essential to ensure that the spirit of justice embedded in Islamic law is fully realized for women seeking divorce in Pekanbaru and beyond.

### **Recommendations**

Based on the study's findings, several recommendations are proposed to enhance women's legal empowerment within the framework of Islamic family law in Indonesia, particularly in the context of divorce cases handled by the Religious Courts in Pekanbaru:

#### **1. Strengthen Legal Literacy Programs for Women**

The government, religious institutions, and civil society organizations should implement structured legal education programs at the community level to raise awareness about women's rights under Islamic family law. Such programs should explain divorce mechanisms such as *fasakh* and *khulu'*, and provide practical knowledge on initiating and navigating legal proceedings. Accessible

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formats—including community workshops, booklets in local language, and media campaigns—can help bridge the information gap, especially for women in lower-income and rural areas.

### 2. Institutionalize Gender-Sensitive Judicial Training

Judicial training programs should incorporate gender justice perspectives and emphasize the importance of interpreting the Kompilasi Hukum Islam (KHI) in ways that uphold fairness and women's well-being. Training modules could include case simulations, gender bias awareness, and the use of *maslahah* as a basis for accommodating women's lived experiences, particularly in cases involving non-physical abuse. This can reduce discretionary disparities among judges and promote more consistent legal outcomes.

### 3. Expand and Support Legal Aid Services

Legal aid providers play a crucial role in empowering women to access justice. Increased government funding and institutional support for legal aid organizations—especially those focusing on women and family law—are needed. Mobile legal clinics, paralegal networks, and court assistance desks should be expanded in areas like Pekanbaru to ensure women can access support regardless of economic status.

### 4. Standardize Procedural Guidelines Across Religious Courts

To address inconsistencies in evidentiary requirements and judicial discretion, the Supreme Court or the Ministry of Religious Affairs should issue clear, gender-sensitive procedural guidelines for handling divorce cases. These should include flexible standards of proof in cases involving emotional and psychological harm, and mechanisms to ensure that women's testimonies are given fair consideration.

### 5. Promote Social and Religious Narratives that Support Women's Rights

Public discourse must shift to reduce the social stigma attached to divorced women. Religious leaders, educators, and media outlets should work together to disseminate inclusive Islamic interpretations that affirm women's right to seek divorce and live with dignity post-divorce. This cultural change is essential to ensuring social acceptance and support accompany legal empowerment.

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