

## Reforming Divorce Rules in the Compilation of Islamic Law (KHI): Bridging Real Life and Legal Norms in Indonesia

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### ABSTRACT

*This study examines the gap between divorce regulations in the Compilation of Islamic Law (KHI) and classical Islamic legal doctrine (fiqh) in Indonesia. This discrepancy can create legal uncertainty and social conflict, particularly between religious institutions such as the Indonesian Ulema Council (MUI) and the Religious Courts. Using a normative-empirical legal approach, the research compares the philosophical foundations of divorce law in KHI and classical fiqh, analyzes conflicts arising in society, and proposes a practical reform of KHI divorce provisions. The findings indicate that KHI classifies divorce as part of gairu mahdah (non-devotional) matters, allowing state regulation through judicial procedures. In contrast, classical fiqh generally regards divorce as an individual right with limited state intervention, although contemporary fiqh increasingly recognizes the need for state oversight. Despite the requirement of Article 115 KHI that divorce be conducted before the court, many divorces continue to occur informally outside judicial procedures. This inconsistency contributes significantly to ongoing legal uncertainty and social tension. The study proposes a reformulation of Article 115 KHI by introducing a mechanism for recognizing divorces conducted according to Islamic law outside the court through a Religious Court confirmation process (isbat talak). The proposed provision states: "Divorces that have occurred according to Islamic law outside of court may be submitted for divorce*

*confirmation (isbat talak) to the Religious Court for legal recognition." This reform would better accommodate social realities while maintaining legal certainty and reducing the potential for future social conflict.*

**Keywords:** Divorce, Legal Reformulation, Isbat Talak.

## I. INTRODUCTION

Divorce regulation in Indonesia reveals a real gap between formal state rules and how many Muslims actually practice divorce in everyday life, particularly in relation to the Compilation of Islamic Law (KHI) (Wardatun, 2020). Under Article 115 of the KHI, divorce should be carried out through the Religious Court. However, in many communities, divorce is still considered valid as long as the husband pronounces *ṭalāq*, without going to court (Nasution, 2024). One reason this happens is that the classical *fiqh* and long-standing religious traditions hold strong authority in society (Latupono, 2024). Meanwhile, the KHI was designed as a national legal instrument to provide legal certainty and to protect the rights of women and children after divorce (Maimun, 2022). The problem is that some groups do not fully accept parts of the KHI, because they feel those rules may restrict or depart from teachings they understand from classical *fiqh* (Musarrofa, 2023). As a result, divorce law becomes less predictable in practice, and this makes reform more urgent, so KHI can better reflect social reality and the goals of Indonesia's national legal system (Pakasi, 2024).

Social conflicts linked to legal disagreements are increasingly concerning (Abdullah, 2024a). For example, in Lombok, a husband and wife were reported to local authorities after they reconciled—despite having previously been legally divorced through a triple *talaq* process under Islamic jurisprudence (Rachmadhani, 2024a). According to the couple, they were allowed to live together because, after filing for divorce in the Religious Court, the judge ruled that mediation was successful, so the divorce was not granted, meaning they were still legally married (Nahar et al., 2026). A similar situation occurred when Hukmi pronounced triple divorce and brought his wife to her parents' house (Fikri, 2023). This case was discussed with an official from the Religious Affairs Office (KUA), who explained that a single divorce would be finalized only if the matter was taken to court. Based on that statement, Hukmi brought his wife back home. But when Hukmi's father-in-law learned that his son-in-law had taken her home, he became furious and came with a machete saying, "Don't mess around. Don't violate God's law with artificial law. I'm ready to die if you insist on keeping my daughter with you again," while taking his daughter home (Rasheed, 2023). These examples show how differences between formal legal procedures and living religious practice can escalate quickly—turning legal rules into real social conflict.

The conflict described above is clear example of how legal disagreement can quickly turn into a broader social conflict, even at its most visible and intense level. In Indonesia, the Compilation of Islamic Law (KHI) is one of the main reference used to handle Islamic family disputes (Suharsono, 2024). A key part of the KHI concerns divorce. In general, divorce is considered legally valid only if it is clarified through a hearing at the Religious Court hearing. This requirement appears in Article 115 of the KHI and is also aligned with Law No. 1 of 1974 concerning Marriage. However, in real life, especially in regions that still strongly follow classical Islamic jurisprudence, divorce is sometimes practiced informally. In places like Lombok, many divorces are treated as religiously valid even when they are not registered in court. This difference between “religious validity” and “state legal validity” leads to confusion. One visible impact is social stigma, including accusations of adultery toward couples who reconcile after an out-of-court divorce (Wirastri, 2024).

This research evaluates and critically examines the KHI provisions on divorce procedures (Gunawan, 2023). More specifically, it tries to explore whether there are alternative models or modifications to divorce rules that could be more responsive to the needs of Indonesian Muslims. It also hopes to support bottom-up reform in Islamic family law, reform that grows from social practice and community relative and community realities (fiqh development), so that the resulting rules are more contextual, participatory, and more connected to people’s real situations (Lukianov, 2020).

Previous studies have already shown tension between classical Islamic jurisprudence (fiqh) and positive state law in Indonesia, especially in marriage and divorce regulation through the KHI. For instance: Research on Aceh shows that religious leaders often resist KHI rules requiring marriage registration, particularly in polygamy cases, suggesting that some state norms are still seen as inconsistent with classical fiqh (Jailani, 2024; Jauhari, 2023a); Another study criticized the no-fault divorce approach in Religious Courts as being incompatible with fiqh doctrine (Mukdin, 2022); and Studies by Bani Syarif Maula, Muhammad Arsyad Nasution, and Ita Musarrofa also discuss how Islamic legal doctrine and state law can clash in real family law practice (Syarif, 2022; Nasution, 2024; Musarrofa, 2024a; Siregar, 2023).

However, many of these studies mainly identified where the rules clash—the normative inconsistencies between classical fiqh and state law—without proposing a clear, practical model for reform that can genuinely connect fiqh legitimacy with the formal procedures required by Indonesian national law (Arifin, 2025). In addition, earlier approaches often treated fiqh and positive law as if they were simply opposites. As a result, they did not fully answer the real-life legal problems caused by divorce carried out outside court, such as uncertainty about marital status, the protection of women's rights, and

safeguards for children (Abdullah, 2024a). Because of that, the existing literature still leaves an important question: How can Indonesia build an integrated legal mechanism that reflects social practice while still providing legal certainty inside the national legal system? This study addresses that gap by offering a judicial recognition mechanism called "isbat talak"—a way to validate an extrajudicial divorce through the Religious Court within the KHI framework (Muhammad Syafi'i, 2025). The novelty of this study is not only in the use of a new term, but in proposing a conceptual bridge between classical fiqh recognition of ṭalāq and the formal procedural requirements of positive law. This creates value both academically—for Islamic family law reform—and practically, by providing a solution for the legal consequences of divorce that were not registered through court (Suharsono, 2024).

This study is important because it helps close the gap between Islamic jurisprudence and state law, especially in divorce cases. If the positive law only recognizes divorce after a court process, it does not match the social reality of communities that often divorce according to Islamic law in the first place (Nasution, 2024). This mismatch can trigger social conflict, ranging from exclusion to accusations of adultery against couples who reconcile without going through a court process. Therefore, the legal system needs a new formulation that can both accommodate social realities and ensure legal certainty (Djawas, 2022)

## II. RESEARCH METHODS

This research uses a socio-legal approach by combining normative and empirical legal methods to examine the gap between Islamic jurisprudence (fiqh) and positive law in divorce practices in Indonesia (Pangaribuan, 2023). The normative part analyzes key legal sources, particularly the Compilation of Islamic Law (KHI), relevant legislation, court decisions, and classical as well as contemporary fiqh literature on divorce (Azni, 2023). This analysis is guided by conceptual, juridical, and maqāṣid al-syarī'ah perspectives to clarify the underlying philosophical principles, legal paradigms, and points of disagreement between fiqh doctrines and state law regarding divorce procedures (Dewan, 2024). In parallel, the empirical part explores how these normative differences actually play in society, particularly in divorce cases conducted outside the Religious Courts, and it identifies the resulting social and legal consequences (Sumarna, 2023).

Empirical data were gathered through semi-structured interviews with Religious Court judges, Islamic scholars, religious leaders, and community members who have direct experience with divorces carried out outside court (Mariana, 2024). Participants were selected purposively based on their knowledge, roles in their institutions or communities, and involvement in

divorce-related practices (Nurjaman, 2024). To maintain data validity, the study applied source triangulation, comparing interview findings with legal documents, court practices, and relevant scholarly works (Home, 2025). The data were then analyzed qualitatively through stages of data reduction, categorization, and interpretative analysis (Herlindah, 2022). Finally, the normative conclusions were compared with empirical realities to assess how effective and socially accepted the existing KHI divorce regulations are (Fahmi et al., 2020). Importantly, the concept of *isbat talak* was not treated as a predetermined outcome; it emerged from the analysis as a possible legal alternative to address the tension between *fiqh* legitimacy, social practice, and the procedural requirements of Indonesia's national legal system (Pangaribuan, 2023).

### III. RESEARCH RESULTS AND ANALYSIS

#### A. Philosophical Basis for Divorce Law in the KHI and Classical *Fiqh*

The Compilation of Islamic Law (KHI) and classical *fiqh* are both derived from Islamic sources such as the Qur'an, Hadith, *Ijma'*, and *Qiyas*. Even so, they differ on several issues, including how divorce should be treated, especially regarding divorce outside court (Hamdoun, 2022). In KHI, the core difference is clear: divorces conducted outside the Religious Court are not legally valid. In contrast, classical *fiqh* generally holds that divorce can be carried out anywhere, at any time, and under any circumstances, as long as the conditions for *ṭalāq* are met (Polfus, 2020). Below, the study explains the reasoning behind both views.

##### 1. *The Right to Divorce in the Compilation of Islamic Law (Divorce may only be obtained before a judge in a court hearing)*

From the perspective of KHI, the requirement that divorce be pronounced before a judge is regulated in Article 115 of the KHI. Under this rule, a divorce issued outside court is not considered valid. The underlying logic is that state involvement is meant to protect the public interest, because out-of-court divorces often cause social disruption (Syahriana, 2022). In practice, many women may lose rights simply because they do not fully understand the divorce's legal consequences; children can also face uncertainty regarding legal status; and some husbands use divorce as a form of emotional pressure or threat (Mu'in, 2023). For that reason, the state is not seen as taking away the husband's authority to divorce, but rather as ensuring that divorce is implemented through the positive legal system so that fairness and legal order are maintained for everyone (Davis, 2024).

It is also important to understand the KHI's philosophical foundation: divorce falls under *ghairu mahdhah*, meaning it is not a devotional act of worship with fixed procedures. Instead, divorce is part of family transactions

whose form, place, and process are not explicitly dictated in a way that is fixed and unchangeable. Therefore, regulations about divorce can be adjusted according to changing times and social needs (Harisudin, 2021; Asa, 2021). From this standpoint, state regulation, such as requiring divorce to be pronounced before a judge, can be considered consistent with sharia principles. It fits within the broader goals of *usul fiqh* and *maqāṣid al-shari'ah*, which aim to realize justice and protect people's interests. As a result, divorce should be treated only as a private statement, but as a legal act that has public consequences and can be verified through the court process (Kholidah, 2023).

The *fiqh* principle "*Tasharruf al-imām' ala al-ra'iyah manūṭun bi al-maṣlahah*" explains that government policy must be grounded in the public interest (Amnesti et al., 2025). Since the state holds public authority, it is allowed, and even required, to regulate areas of social transactions (*muamalah*), including divorce, in order to prevent social harm (Mansur, 2024). This idea is not new. For example, during the reign of Caliph 'Umar ibn al-Khattab, a policy was introduced regarding divorce: divorces pronounced three times at once were treated as final, even though the Prophet's practice counted them as one divorce (Ahmad, 2021). When 'Umar saw people treating divorce too carelessly, he stated, "People are hasty in matters for which they were given a grace period. So, I decreed that upon them" (Narrated by Muslim). This shows that Islamic governance has authority to shape the form and legal consequences of divorce for the sake of community welfare (Sumanto, 2021).

This regulation also reflects the principle "*Dar'u al-mafāsid muqaddam 'ala jalb al-maṣāliḥ*," meaning that preventing harm should come before pursuing benefit. A husband's right to pronounce divorce may look like a personal benefit, but the potential harm is often much bigger if divorce is left completely unchecked (Nasyiah, 2024). By channeling divorce through a court process, mediation can be carried out, women's rights receive protection, and the divorce's legal status is formally recorded (Ismayawati, 2024). In that sense, the normative, historical, and contextual basis for requiring divorce to be handled openly and through a legally verifiable court process is consistent with how Islamic rulers managed divorce authority throughout history (Agha, 2024).

## **2. *The Presence of Witnesses in the Compilation of Islamic Law***

In classical Islamic jurisprudence, most Sunni scholars generally consider a divorce legally valid once the husband pronounces *ṭalāq*, even if no witnesses are present. This is because the verse in Surah At-Ṭalāq (66:2)—"And bring to witness two just persons among you"—is understood as a recommendation (*nadb*), not a strict legal requirement. Under this majority view (held across the Hanafi, Maliki, Shafi'i, and Hanbali schools), witnesses mainly serve to prevent future disputes and strengthen evidence, meaning their absence does not automatically invalidate the divorce itself (Dupret, 2019). This interpretation

has strongly influenced divorce practices in many Muslim societies, including Indonesia, where out-of-court divorces can still be socially recognized within some communities (Jauhari, 2023b).

However, Islamic juristic views are not uniform. A minority of scholars interpret the same verse as requiring witnesses as an essential condition for divorce. For example, Ibn Hazm (Zahiri school) argued that a divorce pronounced without witnesses violates Allah's prescribed limits and therefore lacks legal legitimacy. Similar reasoning appears in Imami Shi'a jurisprudence, which holds that just witnesses are necessary for the validity of divorce. Some contemporary scholars, such as Ibn 'Ashur, Ahmad Syakir, and Abu Zahrah, also emphasized the importance of witnesses, not only to prevent arbitrary talaq practices but also to protect women from legal uncertainty (Aslati, 2024). These different positions show that discussions about divorce in Islamic law involve varied interpretations, especially regarding procedural safeguards in family matters (Musarrofa, 2024b).

Still, the fact that some jurists require witnesses does not automatically mean divorce must be handled only through state courts. In classical fiqh, witnesses function as a substantive requirement for proof and legal clarity within society. Meanwhile, modern "judicial divorce" procedures involve wider administrative and institutional elements. Therefore, the KHI requirement in Indonesia that divorce be pronounced before a Religious Court should not be read simply as copying a minority fiqh view. Instead, it should be understood as part of the state's legal policy for regulating family law within a modern legal system (Fikri, 2023).

Within the framework of the Compilation of Islamic Law (KHI), divorce must be carried out through a Religious Court in order to receive legal recognition and be formally registered. This requirement shows how Islamic family law in Indonesia has shifted from being treated purely as a private religious matter into a legal process connected to the state's administration and public legal order. By going through court, the state aims to create legal certainty about important issues that follow divorce, such as marital status, maintenance obligations, child custody, inheritance rights, and other legal consequences. In this sense, the court does more than simply "confirm" the divorce; it also becomes a tool to protect parties who are often most vulnerable, especially women and children (Djawas, 2022).

This approach can be understood as a kind of legal *ijtihad*, an effort to align values with the practical realities of contemporary life in Indonesia. As family relationships become more complex and as population administration and legal disputes become more institutionalized, divorce needs clear procedures that can ensure accountability and protection (Zainuddin, 2024). Through this lens, the KHI can be seen as adopting a broader interpretation of

maqāṣid al-sharī'ah, emphasizing the protection of rights, the prevention of harm, and the realization of legal certainty in family law (Aslati, 2024). Therefore, the court requirement should not be viewed only as a bureaucratic limitation on religious practice, but also as an attempt to contextualize Islamic law within the legal framework of a modern nation-state (Nurdin, 2023).

At the same time, the fact that out-of-court divorces still happen shows that the gap between classical fiqh traditions and state legal norms has not been fully unresolved in Indonesian society (Meidina et al., 2026). Many communities still regard verbal ṭalāq as religiously valid even without formal judicial recognition, which creates a dual system where something can be legitimate in religion but not recognized by the state (Aji, 2021). This often results in real legal difficulties, such as uncertainty of marital status, denial of women's rights after divorce, and complications in determining children's legal status. For that reason, reform in contemporary Indonesian Islamic family law needs more than just new rules on paper; it also requires integrative legal mechanisms that can bridge social practice, fiqh legitimacy, and the state's demand for legal certainty (Wahidin, 2024).

### **3. *The Right of Divorce in Islamic Jurisprudence***

In classical Islamic jurisprudence, divorce (ṭalāq) is generally understood as the husband's right (ḥaqq al-zawj), meaning it can be carried out directly without requiring the intervention of a court. Most classical jurists held that a divorce is valid as long as it is pronounced consciously and clearly, and not under coercion. Because of this view, divorce was traditionally treated as a private matter between husband and wife, rather than something that needed permission or authorization from the state (Huis, 2024). This understanding also grew in early Muslim historical context when legal administration, especially state involvement in family affairs, was not as extensive as it is today. As a result, classical fiqh tended to focus more on whether the divorce itself is substantive valid, not on procedural formalities or official registration (Nizar, 2020).

With the major Sunni schools—Hanafi, Maliki, Shafi'i, and Hanbali—most scholars agreed that witnesses are recommended but not strictly required for a divorce (Hanapi, 2024). They read the instruction about witnesses in Surah At-Ṭalāq (66:2) as guidance meant to prevent disputes, not as a mandatory condition that determines validity. Classical jurists such as Imam al-Nawawi, Imam Malik, and Imam Ahmad even acknowledged that verbal divorces without witnesses were common in Arab society and were still considered legally valid (Nur, 2023). However, scholars did not always agree on procedural details. Some minority jurists, such as Ibn Hazm from the Zahiri school and Imami Shi'a scholars, argued that witnesses were necessary for divorce to be

valid (Ridhwan, 2021). These differences show that classical fiqh itself was not completely uniform in how it viewed the procedure of divorce.

The reasoning commonly used by many scholars is based on Qur'an 2:229, which states: "Divorce is twice. Then, either retain [her] in an acceptable manner or release [her] with good treatment." This verse addresses the husband directly and does not clearly require judicial procedures or state authorization. In addition, several hadiths show the Prophet Muhammad (peace be upon him) encountering divorces carried out directly by husbands without formal institutional steps (Fakhruddin et al., 2024). For instance, the Prophet criticized Ibn Umar's divorce during menstruation not because it was invalid, but because it violated the proper ethical manner of divorce according to the Sunnah. Overall, these scriptural foundations contributed to the dominant fiqh view that the validity of divorce mainly depends on intention, clear wording, and legal capacity, rather than institutional formalities (Rachmadhani, 2024b).

However, the classical fiqh approach to divorce is quite different from the way many contemporary Muslim states handle it. In recent reforms, divorce is increasingly placed under judicial supervision to provide a clearer legal status and to protect people who are often most vulnerable, especially women and children. Countries such as Egypt, Tunisia, Morocco, and Indonesia have introduced rules that require divorce to go through a court process or be officially registered (Agha, 2024). These changes are usually not meant to reject fiqh entirely, but rather to reinterpret *maqāṣid al-sharī'ah* in light of today's social needs, focusing on justice, legal protection, and preventing harm. As a result, the state's role in regulating divorce can be seen as part of the broader shift of Islamic family law from a purely private religious matter into a public legal institution tied to citizenship, administration, and human rights concerns (Widjaja, 2023).

In Indonesia specifically, the Compilation of Islamic Law (KHI) treats divorce as legally valid only if it is pronounced before the Religious Court (Nizar, 2020). This reflects Indonesia's effort to harmonize Islamic legal traditions with the requirements of a modern legal system. The court process is not just a paperwork; it helps ensure that marital status is clear, that obligations such as maintenance are properly addressed, that child custody arrangements are settled, that inheritance consequences are documented, and that the outcome is legally recorded. Because of this, Indonesia's rule requiring judicial divorce should not be understood simply as limiting the husband's religious authority, but as a legal policy meant to balance religious legitimacy with fairness and legal certainty (Ghuri, 2023).

Still, in practice, out-of-court divorce (extrajudicial divorce) continues in parts of Indonesian Muslim society, which suggests that the tensions between classical fiqh norms and state legal requirements have not been fully

unresolved. Many communities still see verbal *ṭalāq* as religiously valid even without court recognition, while the state requires court procedures for the divorce to be enforceable (Begum, 2024). This creates a dual system that can lead to real problems, including uncertain marital status, difficulties protecting women's rights after divorce, and complications regarding children's legal status. For that reason, reform in Islamic family law in Indonesia needs more than normative rules; it also calls for an integrative approach that can connect *fiqh* legitimacy with social practice and the procedural demands of modern state law (Rachmadhani, 2024b).

## **B. Social Impact of Differences in KHI and Fiqh Provisions on Divorce**

Based on observations and interviews, the social impacts of differences between the KHI and classical *fiqh* provisions on divorce can be grouped into several types as follows.

### **1. *Institutional Social Conflict: The Indonesian Ulema Council (MUI) vs. the Religious Court***

In everyday religious life in Indonesia, divorce remains a sensitive topic where classical Islamic jurisprudence (*fiqh*), religious authority, and positive state law intersect. A clear example is how triple divorce (*ṭalāq thalāth*) pronounced in one sitting is treated. In classical *fiqh*, many jurists consider three divorces spoken at once as legally valid and irrevocable (*ba'in kubrā*), meaning the marriage cannot be restored unless the wife marries another man and that marriage ends lawfully (Efrinaldi, 2022). This view was also reflected in an 1981 fatwa issued by the North Sumatra branch of the MUI, which has influenced some Muslim communities that still follow classical *fiqh* reasoning in their religious practices (Jubba, 2024; Muthoifin et al., 2026).

At the same time, it is important not to assume that MUI views are fully uniform or that they represent all Indonesian religious authorities. Islamic legal thought in Indonesia is diverse, shaped by different organizations, scholars, and schools of thought, each of which may hold different interpretations about divorce and its legal consequences (Dutta, 2021). Because of this, the tension raised here should be understood not as a simple "religious authority versus state law" clash, but as part of an ongoing and shifting negotiation between Islamic jurisprudence, institutional authority, and national legal policy (Huis, 2024).

Within Indonesia's legal system, Religious Courts derive their authority from statutory regulations, especially Law Number 1 of 1974 on Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law (KHI). Under this framework, a divorce is not legally recognized unless it is processed through the Religious Court. In practice, the Religious Courts also generally treat triple divorce pronounced in one sitting as a single divorce,

reflecting an emphasis on maintaining legal order, procedural fairness, and protecting women's rights (Abdullah, 2024a). So, what is happening is not only a contest between fiqh and state law, but also the state's broader effort to ensure legal certainty and protect vulnerable parties in marital disputes (Aditya, 2023).

The gap between some fiqh interpretations and the state's divorce procedures creates real practical problems in society. In several Muslim communities, a divorce pronounced according to religious understanding is treated as immediately valid even if it is spoken outside the court system. However, the state does not attach legal effects to divorces that are not processed through judicial institutions and officially registered. As noted by TGH Sanusi, M.Pd., this often leads to confusion, especially for women, because they may be seen as divorced according to certain religious views, while state law may still recognize them as wives (Sanusi, 2025).

Similarly, TGH Sapri, M.H., the head of the Religious Affairs Office (KUA) in Kediri District, West Lombok, explains that women are often put in vulnerable positions when divorce is carried out outside the court system (Sapri, 2025). Practically, they may struggle to claim rights such as maintenance, housing, inheritance, and child custody, since the marriage is still considered legally valid under state law (Harry et al., 2024). At the same time, some husbands may assume their responsibilities have ended after pronouncing a religious divorce (El-Hamidi & Wahba, 2022). This mismatch between religious perceptions and legal recognition can leave uncertainty and weaken the protection they receive (Sapri, 2025).

On a broader socio-institutional level, the problem reflects different approaches between religious fatwa institutions and state legal institutions in regulating family matters. According to TGH Ishak, these differences do not only generate academic legal debate, but also produce legal uncertainty for people in everyday life (Ishak, 2025). This highlights the continuing need for harmonization between Islamic jurisprudence and national law through open dialogue, inclusive interpretation, and legal reform that can accommodate religious values while still upholding justice (Fathurrahman, 2024). Ultimately, harmonization efforts are necessary to ensure legal certainty, social stability, and meaningful protection of women's rights within both sharia and Indonesia's legal framework (Mustofa, Juliansyahzen & Hefni, 2023).

## **2. *Open Conflict***

In the last two years (2023–2025), at least three major social disputes connected to differences between the KHI and classical fiqh about divorce have surfaced in Lombok (Abdullah et al., 2024). These cases can be considered open social conflicts because they spilled beyond private family problems into the public sphere. They involved direct confrontation between individuals and families, public disagreements, threats of social sanctions, and intervention

from community authorities such as hamlet heads, village officials, and religious figures (Coser, 1957). As a result, the disputes began to affect broader social relationships and community order rather than staying confined to domestic spaces (Abdullah, 2024b).

The first conflict happened within Khaliq's family. After Khaliq pronounced triple divorce to his wife, hamlet and village authorities escorted her back to her parents' house, because the community believed the divorce was valid according to fiqh. A few days later, Khaliq consulted the head of the Religious Affairs Office (KUA), who explained that there was an opinion treating triple divorce spoken in one sitting as counting as only one divorce (Abdullah, 2024b). Khaliq then tried to reconcile and brought his wife home, but when her parents found out, they immediately took her back again and threatened Khaliq, insisting that reconciliation was religiously forbidden (Coser, 1957). In the end, what began as a marital dispute turned into an open confrontation involving family members and local authorities, with clear threats and social tension (Abdullah, 2024b).

A second conflict involved Sanawati and Ridwan. After a serious argument, Ridwan pronounced triple divorce at once. The next day, after talking to religious figures at the KUA, Ridwan told his wife's family that there was a legal opinion allowing reconciliation, because triple divorce pronounced simultaneously could be treated as a single divorce. He wanted to resume the marriage, but his wife's brother rejected the plan and expelled Ridwan from the house. This case shows how different interpretations between fiqh and more formal legal reasoning can quickly escalate into personal conflict, especially within extended family structures (Hamidah, 2024).

The third, and most serious, conflict was between Person A and Person B. According to the hamlet leader and local religious understanding, the couple had already been divorced under fiqh through triple talaq (Mustofa, 2023). However, for administrative and legal reasons, the case was brought to the Religious Court. During the court process, mediation succeeded, and the judge ruled that no valid divorce had legally occurred (Any Ismayawati, 2024). After the decision, the couple lived together again, but this sparked resistance from community leaders and villagers, who saw the relationship as religiously invalid. Hostility intensified to the point where community members tried to force the couple out of from the village, clearly meeting the indicators of open social conflict through public rejection, community mobilization, and attempts at social exclusion directed at the couple (Osman, 2022).

These cases can be understood more clearly through Lewis Coser's conflict theory, which explains that social conflict tends to arise when different groups in society follow competing value systems and try to defend what they see as the correct normative orders. In Coser's view, conflict is not just a harmful

disruption; it also signals that deep divisions over “what is right” exist within society. In Lombok, the disputes emerged because two different systems, both religious and legal, seemed to claim authority over the same issue of divorce at the same time. On one side, many community members relied on classical fiqh, seeing it as sacred, religiously authoritative, and closely tied to divine law (Fakhruddin et al., 2024). On the other side, state institutions such as the Religious Courts and the KUA applied the KHI and national legal procedures, which prioritize legal certainty, mediation, and the protection of legal rights (Nasyiah, 2024).

Coser's theory fits these situations well because the disputes were not limited to private arguments between spouses; they became collective, value-based conflicts involving shared identities and loyalties to particular institutions. Villagers, religious figures, and family members were not only defending personal interests, but also protecting what they considered the legitimate religious order (Abdullah et al., 2024). This helps explain why the conflicts escalated into public confrontation, social pressure, threats, and even attempts to exclude certain individuals from the community. Coser also notes that conflict grows stronger when groups feel emotionally attached to their norms and see compromise as a danger to group identity. Here, many residents perceived the state's legal interpretation of triple divorce as contradicting divine law, while state institutions viewed procedural legal mechanisms as necessary to maintain justice and social order (Fitriyati, 2025).

At the heart of the problem, then, is not simply “legal disagreement,” but a separation between authority rooted in religious norms and authority held by the state. Many people in rural Lombok do not automatically see the state as the final religious authority in Islamic family law. So, when state institutions reach decisions that differ from local religious understandings, some community members interpret those decisions as lacking spiritual validity. This produces legal dualism, where religious legitimacy and formal state legitimacy exist side by side but are not always compatible (Musarrofa, 2023).

Psychologically and culturally, the conflict is also reinforced by the perception that fiqh represents something fixed and immutable, while state law is seen as human-made, political, and therefore open to negotiation. As a result, when state institutions say that triple divorce counts as only one divorce, some communities treat it not merely as a legal classification, but as a challenge to religious doctrine itself. That perception fuels resistance to official decisions and gradually weakens public trust in state institutions handling Islamic family matters (Baris, 2025).

Overall, these cases show that the triple-divorce conflict in Lombok is an open socio-legal conflict grounded in competing systems of authority, different legal interpretations, and different sources of legitimacy. It also highlights the

ongoing tension between religious legal consciousness and formal state law in contemporary Indonesian Muslim society (Taman, 2025). To reduce similar conflicts in the future, an integrative and participatory approach is needed—bringing religious scholars, community leaders, and state institutions into continuous dialogue. Legal education that explains how fiqh and positive law relate within cultural context is especially important, so communities can better understand both religious values and official legal procedures. With that kind of approach, harmonization between Islamic jurisprudence and national law is more likely to feel socially acceptable and reduce community tensions (Rachmadhani, 2024a).

### **C. Reformulation of the Compilation of Islamic Law (KHI) as an Effort to Harmonize Law in Indonesia**

The Compilation of Islamic Law (KHI) is meant to be a positive legal framework that organizes Islamic family law while strengthening the protection of women's and children's rights. In divorce matters, the KHI sets fairly firm procedures, including the requirement that every divorce must be conducted before a Religious Court (Article 115) (Kompilasi Hukum Islam, Pasal 115). The intention is clear: to prevent misuse of talaq, to open room for mediation, and to ensure legal protection for the weaker party, especially wives and children. In principle, the goal aligns with the spirit of maqāṣid al-syarī'ah, so it looks morally and normatively sound. However, in social reality, particularly in regions such as Lombok, these same KHI provisions can unintentionally produce open conflict and social tension. As a result, many couples experience confusion about their legal status: the state may still see them as husband and wife, while the community may understand the marriage as already ended. The mismatch can have serious consequences for women's dignity, their social rights, and even children's status. In many cases, the state's aim to protect women through the KHI is not fully achieved because the procedures are experienced as too formal and not sufficiently connected to community realities (Rouf, 2023).

Because of that, reform does not necessarily abandoning KHI's objectives; it can mean making the law more practical and socially responsive. One important fiqh principle that can guide reform is:

ذَرِّءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَنْبِ الْمَصَالِحِ

*"Preventing harm must take precedence over achieving benefit."* (Hawari, 2024)

This suggests that even if the KHI is designed to provide benefit, such as legal protection, if its implementation ends up causing harm (for example, family breakdown, social exclusion, or legal ambiguity), then the policy

direction must be reassessed. In such situations, avoiding negative social and legal impacts should come before insisting on normative ideals that do not work effectively in daily life (al-Zuhayli, 2007).

Substantively, the KHI has indeed played an important role in regulating marriage issues, including divorce, through religious courts (Ibnudin et al., 2025). But the ongoing open conflicts—such as the one seen in Lombok—show a gap between the legal norms in the KHI and the community's lived understanding of law (living law). This gap creates the urgency to reform the KHI so it becomes more contextual, more responsive to real conditions, and able to reduce friction between state law and community law. Using the responsive theory of Philippe Nonet and Philip Selznick, "good law" is law that can dynamically respond to society. In that framework, the KHI may still be leaning toward an "autonomous law" model, tending to be overly legalistic and less attentive to community aspirations and moral beliefs (Hariyanto et al., 2025). Therefore, reform should move it closer to "responsive law," meaning law that adapts to social needs, prioritizes substantive justice, and takes local values seriously (Ferrer, 2023).

Furthermore, from the standpoint of progressive legal theory law is not supposed to stop at written rules—it should aim at creating social justice and maintaining social order (Pane, 2020). In divorce cases, a rigid or overly formal approach in the KHI can end up harming the very people it is meant to protect, especially women and children. For instance, when a divorce is carried out verbally according to Islamic practice but is not recognized as valid by the state, the woman can be left in a "legal limbo," she is no longer a wife in the eyes of religious law, yet she is still treated as a wife under state law. On the other hand, the reverse can also happen—if the state recognizes reconciliation based on formal procedures while society still believes the marriage has ended, women may face social exclusion or moral pressure from their surroundings (Maimun, 2022).

Because of this, reform of the KHI should not only adjust the wording of the law, but also strengthen the integration between state legal institutions and the Islamic jurisprudence that actually lives in the community. One possible direction is to clarify the legal status of divorces conducted outside the court, introduce a dual validation mechanism (both state and religious validation), and give more room for local religious leaders to be involved in mediation before the case reaches court. This approach fits Eugen Ehrlich's integrative theory of normative and sociological law, which emphasizes that law that develops and operates in society is often more effective than state law alone—and should be treated as a reference when shaping positive norms. In the long run, a more inclusive and responsive KHI can help the state build greater public legitimacy while also creating stronger substantive justice and reducing social

conflict. Without such reform, the KHI risks continuing to create tension between religion and the state, and leaving people who want legal certainty in a difficult position (Kadir, 2025).

In Islamic jurisprudential terms, this reformulation can be grounded in on principle *dar'ul mafasid muqaddam 'ala jalbil mashalih* (preventing harm takes precedence over achieving benefit). If a rule is intended to protect, but in practice produces social harm such as eviction, neglect of rights, and ongoing marital conflict, then the rule needs to be reassessed. This principle also aligns with Nonet and Selznick's responsive legal theory, which views "good law" as law that responds to community values and real social needs. For that reason, the KHI should open limited and carefully structured room to recognize divorce outside the court (Makinara, 2023).

The specific provisions that researchers consider problematic is Article 115, which states: "Divorce can only be carried out before a Religious Court hearing after the Religious Court has tried and failed to reconcile the two parties" (Kompilasi Hukum Islam, Pasal 115). Interpreted this way, divorce outside the court is treated as invalid and can easily trigger conflict. Researchers argue that Article 115 needs to be amended by adding a clause that accommodates religious divorces carried out outside the court, so they can still receive legal recognition (Hartini, 2024). The proposed reformulation is: "Divorce that has occurred according to Sharia outside the court can be submitted for divorce confirmation to the Religious Court to obtain legal recognition." As a result, the reform proposal for Article 115 is:

Article 115

- (1) "Divorce is carried out before a Religious Court after the Religious Court has attempted and failed to reconcile the two parties."
- (2) "Divorces concluded according to Islamic law outside of a court can be submitted for *isbat talak* (divorce confirmation) to the Religious Court to obtain legal recognition."

Article 115 of the Compilation of Islamic Law (KHI) originally states that divorce may only be carried out before the Religious Court (Kompilasi Hukum Islam, Pasal 115). The intention is protective: it aims to stop divorce from happening impulsively, create space for reconciliation and mediation, and ensure legal protection for women and children affected by the end of a marriage. Going through a court process also allows the state to formally handle the legal consequences of divorce, such as maintenance, child custody, inheritance, and the division of joint property. In terms of legal policy, this reflects the broader principle of legal certainty in Indonesia's marriage law system, particularly as governed by Law Number 1 of 1974 and Government Regulation Number 9 of 1975, which recognize the Religious Court as the

institution authorized to declare the legal termination of marriage (Muslimin, 2020).

However, in real life, especially in rural areas and traditional religious environments in Indonesia, divorce is often pronounced outside the Religious Court through direct talaq declared by the husband. Many community members immediately consider such divorce religiously valid because it is understood through classical fiqh, which generally recognizes talaq once the required conditions are met. This creates a gap between sociological reality and formal legal status: socially, the couple may already be seen as divorced, but legally, the state still treat them as husband and wife. This legal dualism then produces uncertainty over matters like marital status, remarriage, inheritance, maintenance obligations, child custody, and access to legal protection, particularly for women (Abdullah, 2022).

The reformulation proposed in this study tries to bridge the gap between positive law (state law) and living law (rules as practiced and believed in the community) by introducing an isbat talak mechanism. Under this approach, an extra-judicial divorce would not automatically take effect merely because it was pronounced, it could later be submitted to the Religious Court for judicial verification and validation (Nizar, 2020). Importantly, this does not remove the court's authority or "approve" uncontrolled informal divorce. Rather, it shifts the court's role—from being only the place where divorce must occur—to being an institution that can verify and give legal recognition to divorces that were religiously pronounced outside the court under limited, regulated conditions (Wirastri, 2024).

To prevent new legal uncertainty, the proposed isbat talak mechanism must come with a clear procedures (Idris, 2024). First, the application should be submitted only by the husband, the wife, or both together, within a certain period after the extra-judicial talaq occurs. Second, the application must be supported by evidence showing that the divorce pronouncement truly too place—such as witness statements from those who heard the talaq, written statements from local religious leaders, audio or digital evidence when available, or acknowledgments from both parties (Shesa, 2024). Third, the court should assess whether the talaq was made voluntarily and consciously (without coercion) and whether reconciliation had already occurred after the pronouncement. The court should also ensure that the rights of the wife and children are properly addressed before validating the divorce (Azhari, 2024).

Finally, isbat talak should be granted only under specific conditions to reduce the risk of abuse. For example, it should be accepted when the parties can show good faith, when the divorce genuinely occurred according to religious procedures, and when there is no sign that the husband intentionally bypassed the court process to escape legal responsibility (Uddin, 2020).

Applications should be rejected if the extra-judicial divorce causes harm to women or children, involves coercion or domestic violence, or if the husband refuses to fulfill post-divorce duties such as maintenance and child support. With these limitations, the mechanism would not legitimize informal divorce as a norm; instead, it would function as a corrective legal tool to deal with real practices that already exist in society (Yangto, 2025).

This procedural model matters because one of the biggest concerns about extra-judicial divorce is the possibility of abuse, especially when talaq is pronounced unilaterally and irresponsibly. Without clear regulation, some husbands may use informal divorce as a way to avoid judicial supervision and to dodge their responsibilities toward their wives and children. For that reason, the proposed reformulation makes it clear that legal recognition through isbat talak should only happen after the Religious Court examines the case, particularly the legal consequences of the divorce (Sarfitri, 2024). In other words, even if talaq may be recognized in daily religious practice, its legal effect in the state system still depends on judicial verification and on whether the rights of women's and children are properly ensured (Harry et al., 2024). This preserves the court's role as the institution that can secure substantive justice and help prevent arbitrary or careless divorce practices (Yilmaz, 2021).

At the same time, the proposal is intended to keep the system consistent with Indonesia's national marriage law framework. It does not deny the principle that divorce becomes legally enforceable only through a court decision (Rismana et al., 2024). Instead, it offers an alternative procedure; the court can verify and confirm a talaq that was already pronounced, but only after judicial examination. That means the legal consequences of divorce still flow from the court ruling, not simply from the verbal pronouncement itself (Supriyadi, 2023). This distinction is important to maintain harmony with Law Number 1 of 1974 and the legal idea that marital status must be determined through judicial authority. So, the mechanism should be understood not as replacing judicial divorce procedures, but as expanding the court's jurisdiction to respond to realities that exist in society in a more practical and fair way (Rachmadhani, 2024a).

From an Islamic legal theory perspective, the reformulation also draws support from maqāṣid al-syarī'ah and maslahah (public benefit) (Dewan et al., 2024). A central aim of Islamic law is the protection of family welfare, dignity, and social order (Suryana, 2025). When divorces that occur in the community are not recognized by state law, the result is often legal uncertainty and social harm, especially for women who end up caught between religious recognition and administrative invalidity. In that context, the principle of dar' al-mafsadah (preventing harm) becomes especially relevant. The isbat talak mechanism can

function as a more contextual legal tool that reduces social damage while still maintaining legal protection and judicial oversight (Nurjanah, 2025).

Finally, involving local religious leaders in mediation and verification may strengthen the mechanism's social legitimacy. Since religious leaders often have strong influence locally, they can act as bridges between religious understandings and state legal procedures. Their involvement may help communities see the Religious Court not as an institution that contradicts Islam, but as a forum that facilitates justice in line with both religious values and national legal principles. This integration is particularly important in places where religious legitimacy heavily shapes whether people accept law.

Overall, the proposed reformulation of Article 115 of the KHI should not be viewed merely as a way to "accommodate" informal divorce as such. It is meant to build a more responsive, context-sensitive legal framework—one that addresses sociological realities without sacrificing legal certainty or the protection of rights, especially for women and children (Yuni, 2024). With a clearly regulated *isbat talak* process, the state continues to hold authority over the legal consequences of divorce, while also recognizing that community practices are driven by living religious norms. In this way, Islamic law and state law can coexist more constructively, making divorce law in Indonesia both legally sound and socially acceptable, as well as substantively just for all parties (Daniela, 2024).

#### **D. Conceptual Distinction between *Isbat Talak* and *Isbat Nikah* and Its Implications for the Indonesian Islamic Family Law System**

To strengthen the originality of this proposal, it is important to explain clearly how the *isbat talak* we suggest is different from the already established mechanism of *isbat nikah* in Indonesia's positive law. *Isbat nikah*, regulated in Article 7 of the KHI and Government Regulation No. 9 of 1975, is designed to legalize a marriage that was conducted according to Islamic norms but was never formally recorded with the state. Its other words, it gives *ex post facto* legal status to a marriage that is religiously valid yet administratively incomplete, so that the rights of the husband, wife, and any children from that marriage can be protected (Oktaber, 2023).

In contrast, the *isbat talak* proposed here is not meant to validate something "invalid" in a religious sense. Instead, it is a court process to verify a divorce that has already happened and is considered valid by the community in both religious and social terms, but that was not processed through the Religious Court. If *isbat nikah* answers the question "How do we register a marriage that was missed?", then *isbat talak* answers "How do we give state legal recognition to a divorce that has already been completed religiously and

socially?" Put simply, *isbat talak* does not create a new marital status—it provides legal certainty for a status that already exists in community life.

The key difference is also found in the object of the case and the legal consequences that follow. *Isbat nikah* is future-oriented (*ex nunc*): after the court's decision, the marriage is treated administratively valid, and rights arising from that marriage are protected from that point onward. Meanwhile, *isbat talak* is declarative but conditionally constitutive: it confirms that a divorce occurred in the past according to religious practice, but the state's legal consequences—such as obligations related to 'iddah maintenance, *mut'ah* (consolatory gift), child custody, and the distribution of joint property—only become binding once the court decision is finalized. This distinction is meant to prevent legal loopholes where husbands might avoid their post-divorce responsibilities.

Taken systemically, this reform could significantly change how Religious Court functions in Indonesia's Islamic family law system. First, the court shifts from being seen as the only "mandatory place where divorce must occur" to being the "institution that grants legal legitimacy to divorce." The court would not necessarily need to be the *ex ante* forum for divorce to happen; it would function *ex post* to verify what has already occurred and to determine the legal consequences that the state must enforce. This approach supports *maslahah mursalah* (public interest) because it helps preserve the objectives of Islamic law (*maqāṣid*) by preventing social harm caused by unclear legal status.

Second, the mechanism may strengthen women's position. When divorce occurs outside court, women often remain in a legal gray area: they may be unable to remarry under state law, struggle to claim maintenance, and their children can face uncertainty about legal status. With *isbat talak*, women gain a legal route to require their former husbands to appear before the court and resolve the full consequences of the divorce. Even if the husband refuses to file, the wife could submit the petition herself with evidence, the court could summon the husband or issue a ruling by default.

Third, this proposal can better connect living community practice with formal state law by encouraging the role of local religious leaders as semi-formal mediators. Before filing *isbat talak*, the court could require a certificate or statement from the district office of religious affairs or a local religious leader confirming that the divorce was pronounced and reconciliation efforts have failed. This helps ensure that court decisions do not feel alien to the community's religious reality.

Fourth, from a comparative law perspective, the concept resembles divorce confirmation system found in several Muslim-majority countries, such as Morocco and Tunisia, where out-of-court divorce can be recognized if registered within a certain period. The difference is that Indonesia would retain

its own protective requirements—especially mandatory mediation and child protection—as strict prerequisites. So the proposal is not simply importing foreign models; it adapts the idea to local needs, particularly in regions like Lombok and Aceh where divorce practices are often oral and community-based.

Fifth, regarding legal certainty, *isbat talak* can also reduce the chance of “forum shopping” or manipulation. Previously, a husband who was dissatisfied with court procedures might opt for informal divorce and then declare himself divorced in the community, while the state may still view him as married. *Isbat talak* closes this gap because every divorce—regardless of how it was pronounced—must ultimately be verified by the court to obtain state recognition. This strengthens rule-of-law without completely removing community autonomy.

Finally, theoretically, *isbat talak* enriches the harmonization discussion between Islamic norms and national law. It moves beyond the strict either-or position—“divorce must occur before the court” versus “out-of-court divorce has no legal effect at all”—by offering a limited and carefully controlled space for recognition after the fact. That is the essence of the reformulation: not loosening divorce rules, but reconciling fiqh norms, social reality, and the demands of substantive justice for women and children (Wardatun, 2020).

#### IV. CONCLUSIONS

This study finds that the tension between the Compilation of Islamic Law (KHI) and society’s living legal consciousness is a real socio-legal problem, not just a theoretical disagreement. In particular, Article 115 KHI, which requires divorce to be carried out only before the Religious Court, often clashes with reality of extra-judicial *talaq* practices that many communities—such as in Lombok—still regard as religiously and socially valid. This creates legal dualism, where marital status becomes unclear, women and children face risks to their rights, and divorce disputes can escalate into broader social conflict, including resistance toward judicial institutions. Academically, the key contribution of this research is the proposed reformulation of Article 115 KHI through the introduction of an *isbat talak* mechanism. Instead of relying on a rigid positivist approach or fully accepting classical fiqh interpretations without qualification, the study offers an integrative “middle path.” The *isbat talak* mechanism provides limited and carefully measured legal recognition for divorces that were already completed religiously outside the court, while still requiring judicial verification and ensuring that wives’ and children’s rights are properly addressed.

Legally, this proposal would also reshape the position of the Religious Court. The court would move from being seen as the only place where divorce

must occur to becoming the only institution that grants legal legitimacy to divorce. As a result, the court would remain responsible for the legal consequences of divorce—such as maintenance, *mut'ah*, child custody, and the division of joint property. Importantly, this does not remove the principle that divorce must be confirmed by a court decision; rather, it expands the procedural framework so that the court can verify divorces that, according to community and religious practice, have already happened. At the same time, the study recognizes potential risks. Limited recognition of extra-judicial divorce could reinforce legal dualism or be exploited by husbands who act irresponsibly—especially if safeguards are weak. For that reason, *isbat talak* can only work safely if it is supported by strict evidentiary standards, mandatory judicial examination, and clear guarantees for protecting women's and children before any legal recognition is granted.

In summary, reformulating Article 115 KHI through *isbat talak* is an effort to build a more responsive and substantive just Islamic family law system in Indonesia. The aim is not to subordinate state law to classical fiqh, nor to ignore society's religious legal consciousness. Instead, the proposal seeks balance between legal certainty, religious legitimacy, and social acceptance. With careful procedural regulation and better integration between religious and judicial institutions, this reform is expected to reduce socio-legal tension, strengthen protection for women and children, and increase public trust in Islamic family law institutions within Indonesia's legal system.

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