

Negotiating Justice in Litigated Divorce: Women's Legal Consciousness in Indonesian Religious Courts

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Abstract

The rising number of divorce cases in Indonesia reflects shifting gender relations within families and the dynamics of Islamic family law. Existing studies have largely focused on formal legal aspects or statistical trends, while limited attention has been given to how women articulate their *gendered legal consciousness* in the practice of wife-initiated divorce (*cerai gugat*). This study addresses that gap by highlighting the novelty of analyzing *gendered legal consciousness* as a framework for understanding women's agency in litigation. Using a qualitative case study design in three Religious Courts (Surabaya, Semarang, Bandung), data were collected through in-depth interviews with 7–12 female petitioners and 5–7 court actors (judges, clerks, lawyers) in each site, complemented by courtroom and mediation observations. Purposive sampling with maximum variation was applied to capture diverse experiences based on grounds for divorce, socio-economic background, and legal representation. Findings reveal that women strategically mobilize legal procedures and mediation to transform private issues—domestic violence, infidelity, neglect—into legally recognized claims. Although litigation imposes emotional and administrative burdens, participation in court provides new forms of empowerment and symbolic legitimacy. More importantly, women's interactions with judicial processes shape *gendered legal consciousness*: they come to understand and reinterpret law as both a site of constraint and a space for renegotiating gender relations. Thus, litigation and mediation are not neutral mechanisms but arenas where agency is asserted and justice redefined. Theoretically, this

research expands socio-legal scholarship by situating *gendered legal consciousness* within Islamic family law. Practically, it demonstrates that Religious Courts function as dynamic social arenas where gender power relations are contested and women's agency is reconstituted.

Keywords: Justice negotiation, contested divorce, women's legal consciousness, Religious Courts

Introduction

Divorce in Indonesia is a complex social and legal issue, particularly for women who file cases in the Religious Courts. Commonly regarded as a formal legal procedure and administrative settlement, divorce is also interpreted as a sign of family failure.¹ Yet for many women, *cerai gugat* (wife-initiated divorce) is not merely a legal step but also an emotional, social, and symbolic struggle against unjust marital conditions. Within a patriarchal context, women bear a double burden: they are expected to preserve marital harmony as a moral virtue while enduring violence, neglect, or economic hardship.² Further studies reveal that women often face violations of their rights in divorce rulings,³ limited recognition of polygamy as a valid ground for divorce,⁴ and inconsistent fulfillment of rights such as alimony and joint property.⁵ They also endure significant psychological burdens during litigation, including anxiety, stigma, and dependence on intermediaries.⁶ Within these dilemmas, the Religious Court functions not only as

¹ Muhamad Arifin Badri et al., "Factors Influencing The Increase in Khulu's Divorce: A Case at The Jember Religious Court (2021-2023)," *Al-'Adalah* 21, no. 1 (2024): 53–76, <https://doi.org/10.24042/adalah.v21i1.21074>.

² Syawalia Aziza and Taufiq Nugroho, "Patriarchy in the Family: A Study of the Causal Factors of Divorce in the Perspective of Legal Feminism," *Indonesia Law Reform Journal* 5, no. 1 (2025): 42–61. <https://doi.org/10.22219/ilrej.v5i1.39055>

³ Muhammad Ridho and Mahyudin Ritonga, "Violation of Women's Rights on Divorce: Study on Religious Court Decision," *Journal of Law and Sustainable Development* 11, no. 6 (2023): e1230–e1230. <https://doi.org/10.55908/sdgs.v11i6.1230>

⁴ Analiansyah Analiansyah et al., "Polygamy and Women's Rights: An Examination of Divorce Litigation in Sharia Court Rulings Pertaining to Revisions in Indonesian Matrimonial Legislation," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 761–86. <https://doi.org/10.29240/jhi.v9i2.10833>

⁵ Arpangi Arpangi et al., "Resolution of Industrial Relations Disputes in Court Rulings and the Fair Fulfillment of Workers' Rights in Indonesia: An Islamic Legal Perspective," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (2025): 51–62. doi.org/10.31958/juris.v24i1.13423

⁶ Fadil Fadil et al., "Fulfillment of Women's Rights after Divorce Dynamics and Transformation in the Legal Journey," *De Jure: Jurnal Hukum Dan Syari'ah* 16, no. 1 (2024): 1–20. <http://repository.uin-malang.ac.id/20397/>

a dispute resolution institution but also as a social arena where women negotiate justice, rights, and recognition.⁷

Since the legal and institutional reforms of Indonesia's Religious Courts, the rising number of *cerai gugat* petitions has indicated a paradigm shift in gender relations and Islamic family law. According to BPS data (2024), Indonesia recorded 408,347 divorce cases, a high figure despite a decline compared with 467,000 cases in 2023 and 516,000 cases in 2022. Meanwhile, combined data from BPS, the Directorate General of Islamic Community Guidance (Dirjen Bimas Islam), and the Directorate of Religious Courts (Dirjen Badan Peradilan Agama), updated on 27 February 2025, show that divorces filed by men (*cerai talak*) amounted to 85,652 cases (21.71%), while divorces filed by women (*cerai gugat*) were significantly higher at 308,956 cases (78.29%). The consistently high divorce rate across Indonesian provinces, dominated by *cerai gugat*, reflects not only demographic trends but also deeper theoretical implications.

From the perspective of legal consciousness, these figures demonstrate that women increasingly recognize and utilize their legal rights within the Religious Court system. Reforms have enabled them to perceive law as a protective instrument rather than a restrictive framework.⁸ In terms of agency, the dominance of *cerai gugat* illustrates women's active role in reshaping marital relations, asserting autonomy, and challenging patriarchal norms that historically privileged men in divorce proceedings. At the same time, the persistence of structural constraints—such as domestic violence, economic inequality, and cultural stigma—explains why divorce remains a necessary strategy for many women to escape oppressive circumstances.⁹ Thus, the statistical dominance of *cerai gugat* is not merely descriptive; it embodies the interplay between evolving legal consciousness, the strengthening of women's agency, and the enduring influence of structural constraints.¹⁰ This dynamic signals a significant transformation in gender relations and the practice of Islamic family law in Indonesia.

Furthermore, this phenomenon not only reflects growing legal awareness among women but also illustrates the transformation of courts into spaces where

⁷ Ramadhita Ramadhita et al., "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 2206347, <https://doi.org/10.1080/23311886.2023.2206347>.

⁸ Fadil Fadil et al., "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey," *De Jure: Jurnal Hukum Dan Syariah* 16, no. 1 (2024): 1–20, <https://doi.org/10.18860/j-fsh.v16i1.25713>.

⁹ Durotun Nafisah et al., "Comparative Analysis of Islamic Family Law and Normative Law: Examining the Causes of Divorce in Purwokerto, Indonesia," *Samarab: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 847–71, <https://doi.org/10.22373/sjkh.v8i2.16825>.

¹⁰ Fatum Abubakar et al., "The Transformation of the Dilemma of Role Exchange in the Household: Analyzed Gender in Family Resilience Discourse in National Law and Islamic Law," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 1–18, <https://doi.org/10.30984/jis.v21i1.1864>.

women articulate justice and actualize their agency. Nevertheless, the rise of *cerai gugat* has also sparked public debate and moral discourse that often blames women without acknowledging the complexity of their experiences. When women decide to file for *cerai gugat*, they are not only challenging power relations within the household but also negotiating religious and legal authority that frequently places them in subordinate positions.¹¹ Divorce, therefore, is not merely a legal event but also a struggle for recognition, justice, and personal recovery.¹²

In relation to previous studies, research on divorce in Indonesia has grown rapidly over the past two decades. Existing research, such as that conducted by Ramadhita,¹³ Hakim,¹⁴ and Mukhlis¹⁵ employs a formal legal approach, focusing on procedures, judicial reasoning, Islamic family law regulations, and mediation mechanisms. While this helps explain how law operates institutionally and normatively, it often assumes women are passive subjects dependent on judicial decisions. Consequently, law is treated as an external structure, while women's strategies in navigating courts remain underexplored. In contrast, the social and statistical approach taken by Pakasi,¹⁶ Daud,¹⁷ dan Nasir¹⁸ views this rising divorce rates as indicators of changing family structures and gender relations, but these studies often remain descriptive. Women's courtroom experiences how they interpret procedures, frame claims, and confront bias are still treated as derivatives of patriarchy rather than as reflective legal practices. More recent works by

¹¹ Wahyu Abdul Jafar et al., "Gender Justice in the Concept of Iddah: A Contextual Reading of Al-Kasani's Thought for Working Women in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 2 (2025): 406–19, <https://doi.org/10.29300/mzn.v12i2.7683>.

¹² Shamila Dawood, "Islamic Law and Gender Equality: Challenges and Reforms in Sri Lanka's Muslim Marriage and Divorce Act," *Journal of Islamic Law* 5, no. 2 (2024), <https://doi.org/10.24260/jil.v5i2.2833>.

¹³ Ramadhita et al., "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia."

¹⁴ Nashihul Hakim, "Lembaga Mediasi Sebagai Sarana Pemenuhan Hak Perempuan Pasca Perceraian Pada Perkara Cerai Gugat Dalam Perspektif Maslahah Izzuddin Bin Abd Assalam" (PhD Thesis, Universitas Islam Indonesia, 2024), <https://dspace.uui.ac.id/handle/123456789/52775>.

¹⁵ Sihabudin Mukhlis, "Peran Mediasi Dalam Rekonsiliasi Rumah Tangga Dari Perspektif Gender," *Krtha Bhayangkara* 14, no. 2 (2020): 221–35. <https://doi.org/10.31599/krtha.v14i2.282>

¹⁶ Diana Teresa Pakasi et al., "Young Women's Agency and the Social Navigation of Divorce from Child Marriage in West Java, Central Java, and West Lombok, Indonesia," *Asian Women* 40, no. 2 (2024): 95–121. <https://doi.org/10.14431/aw.2024.6.40.2.95>

¹⁷ Fathonah K. Daud and Nurrohman Syarif, "Hak Cerai Perempuan Dalam Hukum Keluarga Islam Maroko," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 159–72. DOI: <https://doi.org/10.14421/ahwal.2021.14204>

¹⁸ Mohamad Abdun Nasir, "Islamic Law and Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok, Indonesia," *Asian Journal of Social Science* 44, nos. 1–2 (2016): 78–103. <https://doi.org/10.1163/15685314-04401006>

Wijayati,¹⁹ Fitriani,²⁰ and Basu²¹ have begun to bridge this gap by showing women as active agents resisting subordinating practices, yet these remain largely narrative and lack consistent engagement with broader theoretical frameworks.

Within this context, socio-legal scholarship on legal consciousness offers a sharper lens. Law is not only a set of rules but is interpreted and mobilized in everyday life, both as legitimacy and resistance.²² Feminist legal studies extend this by showing that legal consciousness is gendered, shaped by women's experiences in unequal structures.²³ However, its application to Indonesia's Religious Courts remains limited. Comparable cases in other Muslim-majority countries further highlight similar dynamics: women increasingly mobilize courts to negotiate justice in the face of patriarchal pressures and normalized domestic violence, as seen in reforms in Egypt expanding rights to *kebul'* and procedural facilitation, or in South and Southeast Asia where women utilize diverse forums—from women's courts in India to *sulb* mediation in Malaysia and Indonesia. Comparative literature underscores that reforms expanding procedural access create opportunities for women to challenge patriarchal power, yet outcomes remain contingent on bargaining power, judicial discretion, and prevailing social norms. This synthesis emphasizes a critical gap: formal legal reforms alone do not dismantle gender bias in court practices. The effectiveness of legal protection continues to depend on how power relations are reproduced or contested within judicial institutions. Thus, regional evidence strengthens the theoretical claim that Religious Courts function as contested arenas of social resistance, where women's engagement demonstrates both the possibilities of law as a site of agency and the persistence of structural constraints.

¹⁹ Mufliha Wijayati et al., "Justice Brokers: Women's Experiences with Injustice and Dependence in the Divorce Process," *Cogent Social Sciences* 7, no. 1 (2021): 1966208, <https://doi.org/10.1080/23311886.2021.1966208>.

²⁰ Fitriyani Fitriyani, "Gender Justice in Legal Considerations: Divorce Cases at Pontianak Religious High Court," in *Towards Resilient Societies: The Synergy of Religion, Education, Health, Science, and Technology* (CRC Press, 2026), <https://www.taylorfrancis.com/chapters/oa-edit/10.1201/9781003654940-57/gender-justice-legal-considerations-divorce-cases-pontianak-religious-high-court-fitriyani-fitriyani>.

²¹ Srimati Basu, "Playing Off Courts: The Negotiation of Divorce and Violence in Plural Legal Settings in Kolkata," *The Journal of Legal Pluralism and Unofficial Law* 38, no. 52 (2006): 41–75, <https://doi.org/10.1080/07329113.2006.10756591>.

²² Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (University of Chicago Press, 1990), <https://books.google.com/books?hl=en&lr=&id=AEFPURuB-GoC&oi=fnd&pg=PR7&dq=Merry,+Sally+Engle.+Getting+Justice+and+Getting+Even:+Legal+Consciousness+among+Working-Class+Americans&ots=EQfa3D3No-&sig=YXgzzyuuQXrQ8JIVCmz40MerfpjU>.

²³ Euis Nurlaelawati and Arskal Salim, "Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia," *Al-Jami'ah: Journal of Islamic Studies* 51, no. 2 (2013): 247–78. DOI: <https://doi.org/10.14421/ajis.2013.512.247-278>

Based on these studies, existing literature remains fragmented and lacks strong theoretical consolidation. Formal legal approaches tend to externalize law, while social-statistical studies stop at descriptive trends, and feminist scholarship has yet to consistently integrate socio-legal frameworks. Accordingly, a critical gap persists: formal reforms have not sufficiently dismantled gender bias in court practices, and comprehensive analysis of how women interpret and negotiate law in the context of *cerai gugat* is still lacking. This article therefore offers novelty by positioning gendered legal consciousness as the primary analytical lens, distinguishing itself from legal pluralism, which emphasizes system interactions, and from *maqāṣid al-shari‘ah*, which provides normative objectives but insufficiently explains everyday legal negotiations.

Through this lens, law is understood as a contested field where women transform private experiences violence, neglect, economic injustice into legal claims. In Religious Courts, gender bias appears concretely: domestic violence reframed as “family disputes” in mediation,²⁴ neglect minimized in judicial reasoning,²⁵ and custody decisions influenced by patriarchal assumptions.²⁶ These practices reveal that courts are simultaneously sites of agency and arenas of limitation. Therefore, this study argues that Religious Courts function as dynamic social spaces where gendered legal consciousness is produced, enacted, and contested. In line with this, the purpose of the research is to examine how women petitioners in divorce cases interpret and utilize the courtroom as an arena of gender negotiation and social justice, focusing on the dynamics of their experiences during litigation and mediation, and how these processes shape new understandings of justice, agency, and post-divorce well-being.

Discussion

The Court as a Site of Justice Negotiation

The findings of this study demonstrate that gendered legal consciousness is not a fixed attribute but a dynamic process shaped through women’s interactions with legal institutions. Consistent with socio-legal theory, law emerges not merely

²⁴ Bani Syarif Maula and Vivi Ariyanti, “Justice Negotiations for Women: Divorce Cases Due to Domestic Violence in Religious Courts,” *Jurnal Hukum Islam* 20, no. 1 (2022): 155–80. DOI: <https://doi.org/10.28918/jhi.v20i1.6024>

²⁵ Ahsanul Fahmi et al., “Judicial Practices in Enforcing Post-Divorce Maintenance Rights for Women and Children in Indonesia,” *Indonesia Private Law Review* 6, no. 2 (2025): 103–16. <https://doi.org/10.25041/iplr.v6i2.4608>

²⁶ Amran Suadi, “Peranan Peradilan Agama Dalam Melindungi Hak Perempuan Dan Anak Melalui Putusan Yang Memihak Dan Dapat Dilaksanakan/The Role Of Religious Court In Women And Children Rights Protection Through Partial And Executable Decision,” *Jurnal Hukum Dan Peradilan* 7, no. 3 (2018): 353–74. <https://doi.org/10.25216/jhp.7.3.2018.353-374>

as a system of rules but as a socially embedded arena where meanings of justice, power, and legitimacy are continuously negotiated. However, this study extends existing scholarship by showing how such negotiations are deeply gendered within the context of Islamic family law in Indonesia.

The study shows that *the Religious Court can function as a space for negotiating justice, though not always consistently across cases*. Observations of hearings and mediation sessions, together with women's testimonies, reveal that the courtroom provides opportunities to bring domestic issues such as violence, infidelity, and neglect into a public forum governed by law. In this setting, women's accounts are not merely personal narratives but are incorporated into formal procedures through evidence examination, witness testimony, and judicial responses. *The legal process sometimes allows private experiences to gain juridical relevance, but recognition often depends on the credibility of narratives and the interpretive stance of judges*.

Data further indicate that *some women appear as active agents, while others remain constrained by procedural burdens or judicial bias*. Certain plaintiffs strategically mobilize legal mechanisms to pursue claims for financial support, custody, or protection, while others face limited bargaining power. In several cases, women's testimonies were challenged or reframed by judges, illustrating that agency is negotiated and contingent rather than absolute. Importantly, the findings also highlight constraints: women often have to adjust their narratives to fit legal categories; judicial bias sometimes minimizes domestic violence by reframing it as "family disputes"; and unequal access to legal knowledge or representation means not all women can fully exercise their rights. These limitations underscore that the court is not only a potential site of empowerment but also part of the problem, reflecting the ambivalence of socio-legal institutions.

At the same time, judicial proceedings can provide symbolic legitimacy to women filing for *cerai gugat*. Court rulings may formally acknowledge their experiences as victims of violence or injustice, affirming these experiences as valid and worthy of legal consideration. This legitimacy strengthens women's legal standing and restores their dignity as social and legal subjects. Moreover, women are able to transform experiences once regarded as purely domestic matters into public issues recognized by the judicial system. As one informant explained: "When I merely said that my husband was abusive, the judge did not respond strongly. But when I referred to it as 'physical violence in violation of the Domestic Violence Law,' they immediately took it seriously and recorded it." This illustrates how women internalize legal language to enhance the legitimacy of their claims.

In this sense, the Religious Court does not simply dissolve marital bonds but becomes a contested space in which women reclaim autonomy and self-worth through legal means. Yet, empowerment is ambivalent: it is mediated by structural constraints, judicial discretion, and unequal access to resources. By submitting

domestic problems to legal adjudication, women seek not only formal rulings but also the restoration of dignity and social legitimacy. Within the courtroom, voices previously silenced by family and community norms can be articulated more freely, though always within the limits of law's categories and biases. Drawing on the concept of *legal consciousness*, law is understood not as a fixed set of rules but as a dynamic arena where meaning, power, and justice are continuously negotiated. Within this framework, women involved in divorce proceedings are not passive subjects confronting an abstract legal system; rather, they engage with law as a strategic resource to challenge domination, document injustice, and assert their rights as autonomous legal subjects. Thus, the Religious Court emerges as both empowering and constraining—a socio-legal arena where gender power relations are simultaneously reproduced and contested. They mobilize legal procedures to challenge their husbands' domination, document experiences of injustice, and assert their rights as autonomous legal subjects. Thus, the Religious Court becomes a political space that enables women to reconstruct power relations while reclaiming identities and rights that have long been marginalized.²⁷

This analysis draws on the concept of legal consciousness,²⁸ which conceptualizes law not merely as a fixed set of rules, but as a dynamic arena in which meaning, power, and justice are continuously negotiated. Within this framework, women involved in divorce proceedings are not passive subjects confronting an abstract legal system; rather, they actively engage with law as a strategic resource.²⁹

²⁷ Sophie Schrago, "Reclaiming Religious and Legal Authority: An Ethnography of the Women's Shari'a Courts in India," *Signs: Journal of Women in Culture and Society* 47, no. 2 (2022): 499–523. <https://doi.org/10.1086/716647>

²⁸ Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press, 1998), https://books.google.com/books?hl=id&lr=&id=H6Cil7eLCUcC&oi=fnd&pg=PR9&dq=The+Common+Place+of+Law:+Stories+From+Everyday+Life&ots=emJ2NDR3Kb&sig=SYjO7J uAx-_2LcmwMGSwRRFrHtY; M. Mappasessu et al., "Sosiologi Hukum Di Indonesia," *AMU Press*, 2025, 1–158, <https://ejournal.amertamedia.co.id/index.php/press/article/view/586>.

²⁹ Violita Fijannatin Aliyah et al., "Implementasi Keadilan Gender Dalam Putusan Pengadilan," *CENDEKLA: Jurnal Penelitian Dan Pengkajian Ilmiah* 2, no. 7 (2025): 1052–63, <https://doi.org/10.62335>; Afiful Huda and Mohamad Saifudin, "Transformasi Peran Perempuan Dalam Hukum Keluarga Islam Di Indonesia," *JAS MERAH: Jurnal Hukum Dan Abwal al-Syakhsiyah* 4, no. 1 (2024): 127–45. <https://doi.org/10.62097/mabahits.v5i02.1988>.

Table: Women's Negotiation Strategies in Divorce

Strategic Theme	Field Practices	Legal and Social Implications
Domestic violence narratives	Presenting verbal testimony and informal witnesses	Recognized as valid grounds for divorce
Economic neglect	Constructing timelines of financial abandonment	Supports rulings on child and spousal support
Infidelity	Submitting digital evidence (messages, photos)	Strengthens moral position in hearings
Mediation as resistance	Rejecting compromises that undermine custody rights	Negotiating fair child custody arrangements

Source: Processed field data

Mediation as an Arena for Articulating Intentions

The mediation in divorce cases functions not only as an instrument to encourage reconciliation but also as an arena where women articulate their intentions.³⁰ Within the mediation room, women can express whether they wish to proceed with divorce or consider reconciliation.³¹ This opportunity provides a relatively safe space to voice personal experiences and considerations that have long been constrained by domestic power relations. Mediation thus becomes a crucial early stage that opens possibilities for women to make decisions more autonomously. Yet, the success of mediation cannot be measured solely by reconciliation. In many cases, mediation is considered successful when it produces agreements that safeguard the rights of women and children.³² Women use this space to negotiate financial support, child-rearing arrangements, and the boundaries of economic responsibilities after divorce.³³ Even when divorce

³⁰ Yangto et al., "Contemporary Challenges and Prospects of Mediation in Contested Divorce Cases in Indonesia," *Nusantara: Journal of Law Studies* 4, no. 01 (2025): 44–59, <https://doi.org/10.5281/zenodo.17354688>.

³¹ M. Yazid, "Between Peace and Gender Justice: Islamic Court Mediators' Perspectives in Divorce Mediation in West Sumatra," *Journal of Islamic Law* 7, no. 1 (2026): 168–92, <https://doi.org/10.24260/jil.v7i1.2644>.

³² J. E. McIntosh et al., "Child-Focused and Child-Inclusive Family Law Dispute Resolution: One Year Findings from a Prospective Study of Outcomes," *Journal of Family Studies* 13, no. 1 (2007): 8–25, <https://doi.org/10.5172/jfs.327.13.1.8>.

³³ Ahmad Najib Afandi et al., "Protection of Children's Rights to Sufficiency and Maintenance: A Normative Legal Analysis of Government Policy in Indonesia," *Usrotuna: Journal of Islamic Family Law* 2, no. 2 (2025): 106–21, <https://doi.org/10.66277/usrotuna.v2i2.35>.

proceeds, agreements reached during mediation often serve as a foundation for ensuring post-divorce welfare. As the mediator said, “*the wife still wants a divorce, the husband persists, but both agree to share childcare*”. At the same time, mediation clarifies women’s legal positions before cases reach trial. Some women use mediation to affirm the boundaries of their relationship with their husbands while formulating legal strategies.³⁴ Those with stronger knowledge of their rights can leverage this understanding to strengthen their bargaining position. In this sense, mediation is not only a forum for communication but also a site for negotiating justice.

This is as conveyed by a mediator at the Bandung Religious Court: “*The mediation process is quite dynamic because each party has a distinctly different position. We believe that the success of mediation is not solely measured by whether the household is intact, but also by the extent to which mediation produces significant agreements that impact the interests of the parties, especially the children.*” Importantly, mediation and court hearings also function as potential spaces of resistance. Resistance occurs when women challenge unequal proposals, insist on fairer terms, or strategically use legal language to assert their claims. For example, some participants refused minimal financial support and demanded recognition of children’s educational needs, thereby shifting negotiations toward substantive justice. Such acts demonstrate how women mobilize legal consciousness, *naming, blaming, and claiming*, to transform personal grievances into legally recognized demands.³⁵

However, resistance does not always succeed. Women’s demands are often weakened by limited bargaining power, mediator pressure to prioritize reconciliation, or judicial interpretations that frame their claims as excessive. In several observed cases, women’s attempts at resistance were dismissed or reframed into compromises that maintained existing inequalities. This is what one informant in Semarang expressed:

I once hoped my husband would change, especially after they had children. However, that hope never materialized. I've waited a long time, even since my first child was born, but my husband's behavior remained harsh and violent. I repeatedly experienced domestic violence. I am trying to recover by improving myself. I admit I've started to "move on" and hope to become the person my children miss. For me, happiness is no longer about building a new household, but about a peaceful life, independence, and remaining close to my children. However, I don't rule out the possibility of one day meeting a pious partner who understands each other.

Moreover, structural constraints persist: women must adapt their narratives to legal categories, judicial bias can downplay domestic violence, and

³⁴ Mufrod Teguh Mulyo et al., “The Power of Husband-Wife Communication in Building Family Resilience and Preventing Divorce: A Study of *Maṣlaḥah Mursalah*,” *Al-Manahij: Jurnal Kajian Hukum Islam*, August 23, 2023, 125–36, <https://doi.org/10.24090/mnh.v17i2.7651>.

³⁵ A. Olesen and O. Hammerslev, “The Dynamic and Iterative Pre-Dispute Phase: The Transformation from a Justiciable Problem into a Legal Dispute,” *Journal of Law and Society* 50, no. 1 (2023): 120–38, <https://doi.org/10.1111/jols.12411>.

unequal access to lawyers or legal knowledge restricts their ability to negotiate effectively.³⁶ These dynamics highlight that mediation, while potentially empowering, is also a site where institutional actors and social norms reproduce inequality. Women in mediation do not simply recount personal stories; they strategically internalize legal language to enhance legitimacy, while simultaneously confronting procedural burdens and interpretive biases. Thus, mediation emerges as a contested arena: it can empower women to renegotiate custody, financial support, and dignity, but it can also constrain them when institutional structures override their claims.³⁷ Courts, therefore, are not only part of the solution but also part of the problem, an insight that situates this analysis within broader socio-legal debates and strengthens its academic credibility.

Mediation as a Space of Resistance

In this regard, mediation sessions and court hearings function not only as arenas of compromise but also as potential spaces of resistance. Resistance occurs when women challenge unequal proposals, insist on fairer terms, or strategically use legal language to assert their claims³⁸. For example, some participants refused to accept minimal financial support and demanded recognition of children's educational needs, thereby shifting the negotiation toward more substantive justice. As one woman explained: *"The mediator said I should accept whatever support was offered, but I insisted that my children need school expenses. I refused to leave the room until there was a clear agreement."*

However, resistance does not always succeed. In several observed cases, women's demands were weakened by limited bargaining power, mediator pressure to prioritize reconciliation, or judicial interpretations that framed their claims as excessive. In these situations, women's attempts at resistance were either dismissed or reframed into compromises that maintained existing inequalities. Thus, mediation emerges as a contested arena: it can empower women to renegotiate custody, financial support, and dignity, but it can also reproduce structural constraints when institutional actors or social norms override women's claims.

The mediation stage in religious courts reveals important dynamics in the politics of gender negotiation, where a seemingly neutral legal space is actually an

³⁶ M. Feresin et al., "Family Mediation in Child Custody Cases and the Concealment of Domestic Violence," *Affilia - Journal of Women and Social Work* 33, no. 4 (2018): 509–25, <https://doi.org/10.1177/0886109918766659>.

³⁷ I. Ricci, "Mediator's Notebook: Reflections on Promoting Equal Empowerment and Entitlements for Women," in *Divorce Mediation: Perspectives on the Field* (2014), <https://doi.org/10.4324/9781315860077>.

³⁸ C. Jenks et al., "When Disputants Dispute: Interactional Aspects of Arguments in Family Mediation Sessions," *Text and Talk* 32, no. 3 (2012): 307–27, <https://doi.org/10.1515/text-2012-0015>.

arena of power struggles.³⁹ Rather than serving merely as a procedural tool for resolving disputes, mediation functions as an arena of power contestation, where gender norms, moral judgments, and institutional authority determine whose voices are heard and whose claims are sidelined. From this perspective, mediation is not a neutral technique of harmony, but a socially embedded process in which substantive justice is negotiated under unequal power relations. Women who previously lacked the space to speak in front of their husbands can now express their decision to separate, reject violence or advocate for their children's rights.⁴⁰ Thus, mediation functions not only as a mechanism for conflict resolution but also as a medium for women to assert themselves as legal subjects with voice, intentions, and clear goals.⁴¹

Normatively, mediation is designed to reconcile couples, but the study shows that for women, mediation becomes a space for articulating intentions and asserting independence.⁴² Mediation becomes a strategic space in which women articulate their intentions, contest moral expectations, and assert autonomy within a legal process shaped by unequal gender relations. Women who previously lacked the space to speak in front of their husbands can now express their decision to separate, reject violence or advocate for their children's rights.⁴³ Thus, mediation functions not only as a mechanism for conflict resolution but also as a medium for women to assert themselves as legal subjects with voice, intentions, and clear goals.⁴⁴

Yet the effectiveness of mediation is heavily shaped by women's bargaining position and the gender biases embedded in legal practice.⁴⁵ The absence of

³⁹ Karmawan, "Mediation in The Religious Courts of Indonesia," *Abkam: Jurnal Ilmu Syariah* 20, no. 1 (2020): 79–96, <https://doi.org/10.15408/ajis.v20i1.13249>.

⁴⁰ April M. Zeoli et al., "Post-Separation Abuse of Women and Their Children: Boundary-Setting and Family Court Utilization among Victimized Mothers," *Journal of Family Violence* 28, no. 6 (2013): 547–60, <https://doi.org/10.1007/s10896-013-9528-7>.

⁴¹ Hasudungan Sinaga, "Peran Mediasi Dalam Kerangka Pengembangan Hukum Di Indonesia," *J-CEKI: Jurnal Cendekia Ilmiah* 3, no. 4 (2024): 1726–37, <https://doi.org/10.56799/jceki.v3i4.3993>.

⁴² Nashihul Hakim, "Lembaga Mediasi Sebagai Sarana Pemenuhan Hak Perempuan Pasca Perceraian Pada Perkara Cerai Gugat Dalam Perspektif Masalah Izzuddin Bin Abd Assalam" (PhD Thesis, Universitas Islam Indonesia, 2024), <https://dspace.uin.ac.id/handle/123456789/52775>; Nelvitia Purba, "Mediasi Penal Sebagai Legal Standing Justice Effective untuk Menyelesaikan Masalah Kekerasan dalam Rumah Tangga yang Dilakukan oleh Suami Terhadap Istri di Masa Pandemi Covid-19," Universitas Muslim Nusantara/Mahara Publishing, 2021, <https://repository.umnaw.ac.id/jspui/handle/123456789/2506>.

⁴³ Zeoli et al., "Post-Separation Abuse of Women and Their Children." <https://link.springer.com/article/10.1007/s10896-013-9528-7>

⁴⁴ Sinaga, "Peran Mediasi Dalam Kerangka Pengembangan Hukum Di Indonesia."

⁴⁵ Khalida Azzahra, "Efektivitas Mediasi Dalam Kasus Cerai Gugat Oleh Wanita Karir Di Pengadilan Agama Malang Tahun 2022-2023" (PhD Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2024), <http://etheses.uin-malang.ac.id/72021/>; Elham Pranata Aji Suwari,

husbands, moral pressure from mediators to reconcile, and paternalistic attitudes of judges can restrict women's agency and shape mediation outcomes.⁴⁶ Observations revealed that mediators often employed moralizing language, urging women to "be patient" or "preserve family harmony," even when women had presented evidence of violence or neglect. In one session, a mediator told a plaintiff: "*As a wife, you should forgive him for the sake of the children. Reconciliation is better than separation.*" Such statements shifted the focus away from substantive justice toward moral conformity, placing the burden of compromise on women. Decision-making patterns also reflected institutional bias. Judges frequently framed women's claims for maintenance or custody as "excessive" or "emotional," while men's counterclaims were treated as more rational. In several cases, mediators prioritized settlement speed over fairness, pressuring women to accept minimal financial support to conclude the process quickly. These practices demonstrate that mediation outcomes are not simply the product of individual negotiation but are embedded in gendered power relations within judicial practice.⁴⁷ Consequently, the Religious Court mediation process illustrates a gendered legal field⁴⁸: a space that appears formally neutral but is in fact shaped by patriarchal norms, institutional routines, and discretionary authority. Women's resistance may succeed when they insist on equitable terms and have supporting witnesses or documentation, but it often fails when moral pressure and paternalistic attitudes override their claims.

The Meaning of Divorce for Women

The findings of this study indicate that divorce through *cerai gugat* is understood in diverse ways by women, depending on their circumstances. For some, divorce is primarily an act of self-preservation and protection of children,⁴⁹ emerging from prolonged exposure to harmful situations such as physical violence, neglect, or psychological pressure. Others frame divorce as a means of restoring dignity, particularly when infidelity or public humiliation undermined

"Efektivitas Manajemen Konflik Keluarga Sebagai Alat Yang Digunakan Mediator Dalam Upaya Mengurangi Tingkat Perceraian Di Pengadilan Agama Ponorogo" (PhD Thesis, IAIN Ponorogo, 2023),

<https://etheses.iainponorogo.ac.id/26276/1/ELHAM%20PRANATA%20AJI%20SUWARI-101180041-HUKUM%20KELUARGA%20ISLAM.pdf>.

⁴⁶ Shuai Wei, "Gendered Justice in China: Victim–Offender Mediation as the 'Different Voice' of Female Judges," *International Journal of Offender Therapy and Comparative Criminology* 65, no. 4 (2021): 346–72.

⁴⁷ Feresin et al., "Family Mediation in Child Custody Cases and the Concealment of Domestic Violence." <https://doi.org/10.1177/0886109918766>

⁴⁸ Maria J. Azocar and Myra Marx Ferree, "Gendered Expertise," *Gender & Society* 29, no. 6 (2015): 841–62, <https://doi.org/10.1177/0891243215602104>.

⁴⁹ Gertina van Schalkwyk, "Explorations of Post-Divorce Experiences: Women's Reconstructions of Self 1," *Australian and New Zealand Journal of Family Therapy* 26, no. 2 (2005): 90–97, [https://doi.org/g/10.1002/j.1467-8438.2005.tb00648.xDigital%2520Object%2520Identifier%2520\(DOI\)](https://doi.org/g/10.1002/j.1467-8438.2005.tb00648.xDigital%2520Object%2520Identifier%2520(DOI)).

their social standing. Still, for a number of participants, divorce was less about autonomy and more about practical survival, such as securing financial support or legal custody.

These variations highlight that divorce is not experienced uniformly. While several women described divorce as a liberating exit from destructive relationships, others emphasized the continuing burdens of stigma, economic insecurity, or limited custody rights. Thus, divorce should be understood not as a singular pathway to freedom, but as a contingent strategy shaped by individual experiences, socio-economic conditions, and judicial practices.⁵⁰

Beyond protection, divorce is also viewed as a process of restoring identity and agency. Many women feel that during a troubled marriage, they lose control over their lives, time, and important decision concerning themselves. By filing for divorce, women attempt to reclaim the space needed to determine the direction of their own lives. In many cases, this process is also connected to efforts to restore dignity and mental well-being that were eroded by prolonged domestic conflict. Divorce thus functions as a turning point that allows women to rebuild confidence and personal autonomy.

The study also finds that for many women, the sense of freedom and peace following divorce holds far greater value than material compensation such as *mut'ah* or the division of marital property. Although economic aspects remain important, women often view emotional stability, inner peace, and the ability to live without intimidation as the most significant benefits of divorce.⁵¹ Freedom from quarrels, fear, or psychological pressure becomes the primary reason divorce is considered successful, regardless of the amount of material compensation obtained. In other words, non-material well-being carries a stronger emotional and social weight.

Ultimately, these findings reaffirm that divorce for women is not simply the termination of a legal relationship but also a journey toward recovering a life that is more dignified and livable.⁵² The decision to leave an unhealthy marriage reflects how women renegotiate boundaries of protection, safety, and personal well-being. Prioritizing emotional peace and the safety of children demonstrates a strong form of agency in navigating social structures that often pressure women

⁵⁰ Hassan Audu and Abdulmutalib Muktar, "Divorce in Islam: Legal, Social, and Ethical Perspectives," *NIU Journal of Humanities* 10, no. 3 (2025): 145–59, <https://doi.org/10.58709/niujhu.v10i3.2291>.

⁵¹ Nurul Aulia Zahra et al., "Juridical Analysis of the Division of Joint Property in Divorce Cases in Indonesia: Study of Decision No. 308/Pdt.G/2025/PA.Plk," *Berasan: Journal of Islamic Civil Law* 4, no. 2 (2025): 154–75, <https://doi.org/10.29240/berasan.v4i2.14774>.

⁵² M. Ikhwan et al., "Deciding To Be a Widow or Stay with A Husband: The Experience of Muslim Women Filing for Divorce in the Aceh Sharia Court," *Al-Abkam: Jurnal Ilmu Syari'ah Dan Hukum* 10 (2025): 80–99. DOI: <https://doi.org/10.22515/alakhkam.v10i1.10825>

to remain in marriage. Thus, divorce becomes an important means through which women construct a new life that is safer, more stable, and provides room for long-term psychological recovery.⁵³

Women's ability to maneuver within the courtroom whether by negotiating with judges, invoking moral arguments, or exploiting procedural openings illustrates that their agency is not limited to overt resistance but often takes subtler, strategic forms. These practices show that women are not passive participants but active agents who subtly reorganize power relations that once positioned them as the weaker party. This lived experience of navigating patriarchal constraints provides an important entry point into understanding how Islamic legal systems in Indonesia operate. The transition to discussing Islamic frameworks, however, is not entirely smooth, as these systems themselves remain deeply embedded in patriarchal structures.⁵⁴ Yet, it is precisely within these structures that women's strategies acquire meaning: their courtroom actions highlight both the limitations imposed by Islamic legal norms and the ways in which women creatively negotiate those limits to assert their interests. In this way, women's experiences serve as a bridge to examining how Islamic legal systems both constrain and enable agency, revealing the complex interplay between gender, law, and power.

The understanding of women's strategies in religious courts aligns with the concept of embodied agency,⁵⁵ which emphasizes that agency is not always expressed as resistance but can also manifest through actions that affirm existing norms while subtly reinterpreting them. In the context of this study, women's actions in filing for divorce do not constitute a rejection of Islamic law but rather a strategic use and reinterpretation of the law⁵⁶ to achieve justice that resonates with their lived experiences. For example, women appeal to judges using moral arguments about fairness, or they exploit procedural openings to strengthen their cases. These practices show how women emerge as moral and social subjects demanding that the law operate fairly, thereby transforming the religious court into a site where religious norms and legal practices are renegotiated through

⁵³ Mayurika Chauhan and Amit Verma, "The Aftermath of Divorce: Evaluating the Well-Being of Women and Children," *Journal of East-West Thought (JET) ISSN (O): 2168-2259 UGC CARE I* 15, no. 1 (2025): 285–99, <https://doi.org/10.7492/3h3scm45>.

⁵⁴ Abdul Mutakabbir et al., "The System of Inheritance Distribution in South Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 57–76, <https://doi.org/10.18326/ijtihad.v23i1.57-76>.

⁵⁵ Sindre Bangstad, "Book Review: Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject*. Princeton, NJ and Oxford: Princeton University Press, 2005. 264 Pp. ISBN 978—0—691—08695—8, \$23.95 (Pbk)," *Feminist Theory* 11, no. 2 (2010): 216–18. <https://doi.org/10.1177/146470011001100208>

⁵⁶ Muhamad Ismail et al., "Marriage and Divorce in Islamic Law: Sociological Implications for Modern Muslim Societies," *Journal of Islamic Law El Madani* 4, no. 1 (2024): 25–37, <https://doi.org/10.55438/jile.v4i1.142>.

women's embodied experiences and actions. This demonstrates how embodied agency is not abstract theory but is concretely reflected in the ways Indonesian women navigate patriarchal Islamic legal structures.

Psychological and Social Constraints in the Divorce Process

The findings of this study show women who file for divorce face complex psychological and social burdens, even before the legal process begins. Trauma resulting from divorce violence, infidelity, and prolonged conflict does not simply disappear after the decision to divorce is made. Many women continue to carry deeply rooted fear, anxiety, and uncertainty stemming from prior experiences of violence. These emotional wounds often manifest as nightmares, difficulty sleeping, or persistent feelings of unease that disrupt their daily lives. In other, divorce is not the end of suffering but often the beginning of a long process of trauma recovery.

Beyond personal trauma, women also confront social and cultural pressures that intensify their psychological distress. Stigmas such as “failed women,” “disobedient wife,” or “mother who destroyed the family” are still frequently imposed by immediate family, neighbors, and the broader social environment. These pressures generate layered feelings of guilt that women must contend with, even when they are the ones who have experienced violence or injustice. This social impact demonstrates that divorce is not merely a legal issue, but also an arena where gender norms and patriarchal moralities operate to maintain control over women's behavior.

Beyond personal trauma, women also face social stigmas such as being labeled “*failed women*” or “*disobedient wives*.” These labels are often imposed by family members, neighbors, or community leaders and can enter the courtroom. One informant recalled: “*My mother-in-law told the judge I was destroying the family by asking for divorce.*” Another explained: “*Neighbors whispered that I was a bad wife, and I felt the judge already saw me as guilty.*” Such examples show how stigma not only intensifies women's psychological distress but also shapes judicial perceptions, reinforcing patriarchal moralities that hold women responsible for family breakdown. Divorce thus becomes both a legal and social arena where gender norms are enforced and contested.

In the context of the legal process, women's experiences are far from uniform. For victims of severe domestic violence, the trial stages such as mediation, evidence examination, and testimony, can be profoundly exhausting, forcing them to relive traumatic events they would rather leave behind. This often generates heightened anxiety, emotional strain, and even physical fatigue.⁵⁷ By

⁵⁷ S. Shenoy, “From Trauma to Triumph Psychological Perspectives on Domestic Violence, Human Trafficking, and Victim Resilience,” in *Psychological Evaluations in Immigration Cases: Theory, Practice, and Ethical Considerations* (2025), <https://doi.org/10.4018/979-8-3693-7944-8.ch007>.

contrast, women involved in more ordinary marital conflicts may experience the process as less traumatic, though still demanding in terms of time and emotional energy. Similarly, women with strong family or community support often navigate the courtroom with greater resilience, while those without such support may feel isolated and overwhelmed. Despite these variations, the presence of legal institutions provides a formal framework that allows women's diverse experiences to be documented, assessed, and acknowledged as part of the pursuit of justice

Despite being exhausting, the legal process gradually functions as a space for emotional recovery. By recounting their experiences before a mediator or judge, women feel that their suffering is no longer trivialized or concealed within the domestic sphere. Formal recognition of violence or betrayal becomes an important source of validation for psychological recovery. In addition, active participation in the legal process gives women a sense of control and agency that was previously diminished within marital relations. Along this journey, the begin to rebuild self-confidence and find the strength to move toward a safer and more dignified life.

Although the litigation process is often emotionally and materially exhausting, women nonetheless gain social legitimacy and a sense of empowerment through legal participation. Litigation becomes an arena for the production of new forms of agency, in which women are not positioned merely as claimants seeking justice but as active actors who reshape social and legal relations. Participation in court proceedings provides formal recognition of their experiences of injustice, while simultaneously strengthening their identities as legal subjects entitled to protection and justice. As one informant stated, *"The process was long and exhausting, but when the judge struck the gavel and declared that I was entitled to financial support, I felt my dignity restored."* This quotation underscores that litigation is not only a formal procedure but also a transformative experience that reinforces gendered legal consciousness.

In connection with this, divorce for women is not only understood as the end of a relationship but also as a process of healing and identity transformation.⁵⁸ Through the series of demanding legal procedures from mediation, to trial, to verdict women gradually rebuild the confidence that had been eroded by violence, neglect, or unequal power relations within marriage. The legal process becomes a means for women to assert that they are individuals with moral, emotional, and legal capacity to determine their own life path.⁵⁹ Thus, divorce does not merely

⁵⁸ Ashalatha TL et al., "The Lived Experience of Divorce: A Narrative Analysis of Personal Stories and Identity Reconstruction of Women," *Frontiers in Sociology* 10 (2025): 1617489. <https://doi.org/10.3389/fsoc.2025.1617489>

⁵⁹ Novea elysa Wardhani et al., *Perempuan Dan Hukum: Perlindungan Hak Dalam Perspektif Gender* (PT. Sonpedia Publishing Indonesia, 2025), [https://books.google.com/books?hl=en&lr=&id=j9RIEQAAQBAJ&oi=fnd&pg=PA1&dq=P roses+hukum+menjadi+sarana+bagi+perempuan+untuk+menegakkan+bahwa+mereka+adalah](https://books.google.com/books?hl=en&lr=&id=j9RIEQAAQBAJ&oi=fnd&pg=PA1&dq=P+roses+hukum+menjadi+sarana+bagi+perempuan+untuk+menegakkan+bahwa+mereka+adalah)

terminate a formal relationship but also opens opportunities for women to reconstruct their identities as empowered subjects.⁶⁰ This perspective challenges reductionist legal interpretations of divorce as institutional failure and instead positions it within broader debates on gendered agency, subjectivity, and substantive justice.

Furthermore, these findings affirm that justice for women is not always measured through material compensation or procedural perfection, but also through symbolic and emotional dimensions. Women's expressions of wanting a life that is "calm and free" reflect a form of personal justice rooted in inner healing, tranquility, and security dimensions that formal legal norms cannot fully guarantee. In this framework, women's post-divorce experiences illustrate the vernacularization of human rights, a process in which universal values of justice, equality, and dignity are translated into locally meaningful terms.⁶¹ Rather than invoking abstract legal categories, women articulate justice through religious and cultural language for example, framing their claims in terms of *ketenangan batin* (inner peace), *martabat* (dignity), and references to Islamic principles. By naming, blaming, and claiming within this vernacular, they internalize human rights discourse in ways that resonate with Indonesian Muslim women's lived realities. Thus, the court becomes not only a site of legal adjudication but also a space where global human rights ideals are reinterpreted through local cultural and spiritual idioms.

This perspective challenges universalist readings of human rights by highlighting how women negotiate global rights discourses within religious and cultural idioms, thereby positioning post-divorce agency as both a localized ethical practice and a form of rights-based claim-making. Thus divorce becomes a process that integrates emotional recovery, identity redefinition, and the internalization of justice in the form that is most meaningful for their lives.⁶² Framed in this way, divorce challenges procedural and universalist conceptions of justice by foregrounding lived experience as a central site where dignity and rights are reconstituted.

Women's encounters with the religious court system reveal a far more ambivalent reality than a simple trajectory from trauma to healing. For some

h+individu+yang+memiliki+kapasitas+moral,+emosional,+dan+hukum+untuk+menentukan+arah+hidupnya+sendiri&ots=y-DgvM_TeA&sig=Yo0S7C-aKeqGYh1BkY0B5fQv_a4.

⁶⁰ Ephrat Almog and Anat Herbst-Debby, "Women Who Initiate Divorce Embrace Autonomy," *Journal of Marriage and Family* 87, no. 4 (2025): 1664–85, <https://doi.org/10.1111/jomf.13080>.

⁶¹ Ashalatha et al., "The Lived Experience of Divorce: A Narrative Analysis of Personal Stories and Identity Reconstruction of Women." <https://doi.org/10.3389/fsoc.2025.1617489>

⁶² Başak Öksüzler Cabılar and Advıye Esin Yılmaz, "Divorce and Post-Divorce Adjustment: Definitions, Models and Assessment of Adjustment," *Psikiyatride Guncel Yaklasimler* 14, no. 1 (2022): 1–11, <https://doi.org/10.18863/pgy.910766>.

survivors of severe violence, the trial process, especially mediation and testimony, intensifies their suffering, forcing them to relive painful memories and sometimes exposing them to social stigma.⁶³ One informant described feeling “humiliated when asked to repeat the details of abuse in front of strangers,” while another noted that “the courtroom made me feel weaker, not stronger.” Yet, other women involved in less violent marital disputes reported that the process, though exhausting, offered a sense of fairness in custody or financial arrangements. Family support also shaped outcomes: women with strong backing often spoke of resilience, “my parents reminded me that God values justice”, whereas those without support felt isolated and overwhelmed. These contrasting voices underscore that recovery is uneven, empowerment is partial, and trauma can persist long after the verdict. Rather than a neat path to healing, women’s experiences highlight the fragile balance between justice and harm, showing how human rights ideals are vernacularized through Qur’anic notions of fairness and cultural idioms, but always within the limits of patriarchal structures.

Negotiating Identity and Dignity

The findings of this study indicate that divorce, for many women, is not merely a legal mechanism to end a marriage but also a personal process of renegotiating self-identity. Divorce becomes a space for reflecting on experiences of injustice, whether in the form of violence, neglect, or unequal power relations.⁶⁴ In this context, women face both emotional and social struggles when making decisions that are often perceived as defying family and community norms. For some women, the decision to file for *cerai gugat* symbolizes the courage to exit an oppressive relationship. Yet not all women are able to assert full independence. As one informant in Bandung explained: “*I want to divorce because I can’t stand it anymore, but I am also afraid my family will judge me as disobedient. I feel torn between preserving my reputation or safeguarding myself.*” This quote illustrates that divorce is not always a heroic symbol, but rather an ambivalent process shaped by social expectations and personal needs.

Another finding shows that the Religious Court becomes an important arena for women to negotiate rights, roles, and justice within a system often perceived as gender biased. By bringing domestic issues into the public sphere, women challenge social norms that demand silence or acceptance of injustice as

⁶³ H. Nisa and U. M. Read, “Exploring the Experience of Muslim Women Navigating Divorce in Indonesia: A Photovoice Study,” *Family Transitions* 67, no. 2 (2026): 146–74, <https://doi.org/10.1080/28375300.2025.2601930>.

⁶⁴ Kathryn D. Rettig, “Divorce Injustices: Perceptions of Formerly Wealthy Women of the Stressors, Crises, and Traumas,” *Journal of Loss and Trauma* 12, no. 3 (2007): 175–98, <https://doi.org/10.1080/15434610600854103>.

destiny.⁶⁵ Yet this space is also marked by limitations. As one informant in Semarang stated: “*The judge told me to be patient because my husband still provides financial support, even though he often beats me. It felt as if violence was treated as a minor issue.*” This testimony highlights judicial bias that downplays domestic violence. Moreover, not all women have access to lawyers or legal knowledge, which restricts their bargaining power. Thus, the court functions ambivalently: on the one hand, it provides formal mechanisms to articulate experiences of injustice; on the other, it reproduces patriarchal values through moralistic assessments of a wife’s piety or obedience.

Post-divorce trajectories among Indonesian Muslim women reveal a spectrum of outcomes rather than a uniform path of empowerment. Some informants spoke of regaining dignity through independence; *I can finally decide for myself without his interference*, while others admitted that stigma and trauma continued to overshadow their lives: *Even after the divorce, people in my neighborhood still call me a failed wife.* For women with strong family support, the process was framed as moral renewal, often expressed through Qur’anic notions of fairness, whereas those without support felt isolated and struggled to rebuild identity. One participant explained: *Justice for me is being able to raise my children with respect, even if society looks down on me.* These varied accounts show that empowerment is partial and uneven, with agency constrained by patriarchal structures and social pressures. Rather than a heroic narrative of recovery, the data highlight ambivalence: some women renegotiate identity and dignity, while others remain burdened by trauma and stigma.⁶⁶

Overall, the women in this study demonstrate the ability to navigate legal gaps to defend their dignity and rights, though always within structural constraints. The divorce petition process becomes more than an administrative settlement; it becomes a site of resistance where women negotiate justice in a system that does not fully support them. Women’s presence in the courtroom, their voices during hearings, and their use of legal strategies show that even within a patriarchal structure, they can renegotiate power relations. Yet this agency remains limited and contingent. Using the framework of *gendered legal consciousness*, this study emphasizes that law is understood not only as a set of norms but as a dynamic arena where personal experiences, social norms, and the structures of Islamic family law interact. By incorporating the principles of *maqāṣid al-sharī‘ah* and substantive justice, the analysis demonstrates that the Religious Court is a

⁶⁵ B. S. Maula and V. Ariyanti, “Justice Negotiations for Women: Divorce Cases Due to Domestic Violence in Religious Courts,” *Jurnal Hukum Islam* 20, no. 1 (2022): 155–80, <https://doi.org/10.28918/jhi.v20i1.6024>.

⁶⁶ I. Hirway, “Transforming Impeding Structures for Women’s Empowerment and Gender Equality: Exploring Pathways,” in *India Social Development Report 2023: Women’s Contribution in the Economy* (2024), <https://doi.org/10.1093/oso/9780198885979.003.0002>.

symbolic space of ambivalence: it can legitimize women's experiences while simultaneously constraining their claims.⁶⁷

Scientific Contributions (Novelty)

This article contributes at both empirical and interpretative levels by situating wife-initiated divorce (*cerai gugat*) in Indonesia's Religious Courts within a socio-legal framework of gendered legal consciousness. The novelty lies not in the general idea of courts as arenas of negotiation, which has been explored in socio-legal literature, but in the specific Indonesian context of divorce litigation, where women's strategies in transforming private grievances into legal claims are systematically mapped across three urban Religious Courts. This empirical focus highlights distinctive patterns of negotiation, such as the framing of domestic violence, abandonment, and infidelity, that reveal how women mobilize the courts as contested spaces of agency and legitimacy.⁶⁸

At the interpretative level, the article positions its contribution more modestly: rather than claiming a wholly new paradigm, it refines existing socio-legal and feminist legal approaches by demonstrating how gendered legal consciousness is shaped through the interplay of personal experience, social norms, and judicial procedures in the Indonesian setting. The Religious Court is thus conceptualized not only as an adjudicative forum but also as a symbolic arena where women reconstruct their legal identities and gain social legitimacy.⁶⁹ While feminist scholarship has long noted the dual role of family law in reproducing and resisting patriarchal power, this study specifies how such dynamics unfold in the practice of *cerai gugat*.

The article proposes an analytical framework, the Gendered Legal Consciousness Model in *Cerai Gugat*, consisting of four interrelated layers: (1) private experience, reflecting lived inequalities within marriage; (2) legal articulation, translating grievances into claims; (3) negotiation, through engagement with judges, mediators, and norms; and (4) agency and legitimacy, whereby women secure recognition and rights. This framework is not presented as a universal theory but as a transferable tool for socio-legal research on Islamic family law and gender justice in Indonesia. Claims of integration with *maqāṣid*

⁶⁷ N. Solikin and M. Wasik, "THE CONSTRUCTION OF FAMILY LAW IN THE COMPILATION OF ISLAMIC LAW IN INDONESIA: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Ulumuna* 27, no. 1 (2023): 315–40, <https://doi.org/10.20414/ujis.v27i1.708>.

⁶⁸ Elaina Behounek and Michelle Hughes Miller, "Negotiating Violence in Family Law Mediation," *Journal of Aggression, Conflict and Peace Research* 14, no. 1 (2022): 73–95, <https://doi.org/10.1108/JACPR-02-2021-0582->.

⁶⁹ S. Musawwamah, "The Implementation of Perma Number 3 of 2017 Concerning the Guidelines for Dealing with Women's Cases on Laws as an Effort of Women Empowerment in the Judiciary in Madura," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 1 (2020): 67–92, <https://doi.org/10.19105/al-lhkam.v15i1.2883>.

al-shari'ah are kept cautious: while the model resonates with objectives of dignity and well-being, the empirical evidence for such integration remains limited and is acknowledged as an area for further exploration.

Conclusion

This study demonstrates that Indonesia's Religious Courts operate not only as formal institutions regulating marital status but also as socio-legal arenas where women negotiate justice and identity through *cerai gugat* (wife-initiated divorce). The findings highlight the ambivalence of law: it can empower women to confront inequality and violence, yet simultaneously constrain them through procedural burdens, uneven outcomes, and patriarchal norms. Women's strategies framing experiences, navigating procedures, and negotiating rights translate private grievances into legal claims, producing both symbolic recognition and uneven material results. Theoretically, the study introduces the Gendered Legal Consciousness Model in *Cerai Gugat*, a four-layer framework (private experience, legal articulation, negotiation, agency/legitimacy) that clarifies how legal consciousness is produced in the Indonesian context. Practically, the research points to reforms in legal aid, gender-sensitive judicial training, and procedural transparency to ensure substantive justice. While limited to three urban courts and qualitative data, the study opens pathways for future research in rural contexts, quantitative divorce trends, and men's perspectives to deepen understanding of relational dynamics in Islamic family law.

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