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Women's Agency in Islamic Family Law Reform: Judicial Evidence from Women-Initiated Divorce Cases in Indonesian Religious Court

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Abstract:
The phenomenon of increasing divorces initiated by women (divorce lawsuits) from year to year has become a concern in the study of contemporary Islamic family law in Indonesia. Existing research often highlights related to the causative factors, one of which is socio-economic factors such as education, employment, domestic violence, and changes in gender relations. This article is different from discussing divorce initiated by Women as an expression of Women's legal agency that reflects the development of Islamic law from the bottom up. Using a socio-legal approach, this study analyzed longitudinally from the judicial decisions of the Bekasi Religious Court from 2011 to 2020. Using the framework of Judicial women's legal agency (JWLA), consisting of women's legal claims, judicial recognition, and legal development, the study found that women-initiated divorces consistently dominated women's litigation during the study period. The reasons for divorce filed by women are mainly related to economic neglect, domestic violence, infidelity, and other forms of injustice in marriage. This study shows that repeated litigation gradually strengthens the court's recognition of the rights, dignity, and protection of the wife when the goals of marriage cannot be achieved. These findings suggest that repeated legal actions taken by women can contribute to the practical development of Islamic family law. The framework of judicial women' s legal agency offers a socio-legal perspective to understand women's litigation as a driver of legal development from the bottom up.
Keywords: Women's Legal Agency; Women-Initiated Divorce; Islamic Family Law; Religious Courts; Judicial Decisions; Indonesia.

Introduction

The role of women in legal development has shifted from passive beneficiaries to active legal actors negotiating and reshaping institutions through daily practice over the past three decades. This can be seen in various Muslim-majority countries such as Indonesia, where there is an increase in divorces initiated

by women (divorce lawsuits). This phenomenon shows that women are increasingly using the courts to convey injustices in marriage and their legally recognized rights. This phenomenon also shows the increase in women's legal awareness where personal grievances become legal claims, which when repeated in thousands of cases, contribute to the practical evolution of Islamic family law.

Previous studies can be grouped into three themes. First, studies that discuss socioeconomic factors as determinants of the causes of divorce, such as domestic violence, economic hardship, and changes in gender norms.[1] Second, studies related to Islamic family law reform from a feminist fiqh perspective and the reinterpretation of classical doctrines such as disobedience to husbands (*nushuz*) as a justification for women's agency in filing for divorce.[2] Third, studies related to judicial activism and the role of Supreme Court policies (e.g., SEMA No. 3/2018) in filling the "legal void" related to women's financial rights in divorce cases.[3] From the three previous research groups, there is still an interesting thing that needs to be researched, namely how women's litigation practices themselves function as a mechanism from the bottom up

[1] Rahmat Fadillah and Syahruji Syahruji, "Hak Cerai Bagi Perempuan Dan Faktor Penyebabnya," *Mitsaqan Ghalizan: Jurnal Hukum Keluarga Dan Pemikiran Hukum Islam* 3, no. 1 (2023): 1–15; Haiyun Nisa and Koentjoro Koentjoro, "Some Issues About Women Who File for Divorce in Aceh," *Gender Equality: International Journal of Child and Gender Studies* 8, no. 1 (2022), https://doi.org/https://doi.org/10.22373/equality.v8i1.12237.; Fitri Auliani and Haiyun Nisa, "Mengapa Perempuan Menggugat Cerai? Studi Deskriptif Analisis Putusan Pengadilan," *JPFI* 3, no. 2 (2024): 10–25, https://doi.org/https://doi.org/10.71088/jpfi.v3i2.40.

[2] Atun Wardatun and Bianca J. Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna: Journal of Islamic Studies* 24, no. 2 (2020): 266–95, https://doi.org/https://doi.org/10.20414/ujis.v24i2.416; Nurhasnah Nurhasnah, "Peluang Dan Tantangan Pemenuhan Hak Perempuan Pasca Cerai Gugat Di Pengadilan Agama," Articles, *USRATY : Journal of Islamic Family Law* 2, no. 1 (October 2024): 78–88, https://doi.org/10.30983/usraty.v2i1.7646.

[3] Wawan Irwansyah et al., "Analisis Hukum Islam Terhadap Ketentuan Nafkah Mut'ah Pada Perkara Cerai Gugat Dalam Hukum Positif Di Indonesia," Articles, *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 15, no. 2 (July 2025): 471–86, https://doi.org/10.47200/ulumuddin.v15i2.2915; Shabrian Hammam Fanesti, Wawan Juandi, and Nahe'i Nahe'i, "Analisis Kekosongan KHI Tentang Hak Finansial Perempuan Pasca Cerai Gugat Perspektif Maqasid Al-Shari'ah Jasser Auda," *Wasathiyyah: Jurnal Pemikiran Fikih Dan Usul Fikih* 7, no. 1 (2025): 43–67, https://doi.org/https://doi.org/10.58470/wasathiyyah.v7i1.108; Dewi Muniarti and Siti Maryam Qurotul Aini, "Analisis Surat Edaran Mahkamah Agung No. 3 Tahun 2018 Tentang Hak Nafkah Iddah Bagi Istri Cerai Gugat," Articles, *USRATUNA: Jurnal Hukum Keluarga Islam* 8, no. 1 (December 2024): 72–90, https://doi.org/10.65356/usratuna.v8i1.706.

for legal development.[4] By proposing a framework of judicial women' s legal agency (JWLA), this study emphasizes that legal change does not only arise from top-down legislation, but also can be done from cumulative interactions between litigants and courts. This framework integrates legal mobilization theory and legal awareness which argues that legal change often stems from interactions between ordinary citizens and legal institutions.[5] The JWLA consists of three main dimensions: (1) Women's Legal Claims, when experiences of personal injustice such as domestic violence or economic neglect are translated into formal legal claims in Religious Courts.[6] Through the litigation process, women's personal experiences are reconstructed into legal narratives supported by evidence and arguments based on legal provisions. This dimension departs from the theory of legal consciousness which explains that society actively interprets legal norms and strategically utilizes legal institutions to obtain justice.[7] Thus, filing a divorce lawsuit is not solely understood as a personal decision, but also as a manifestation of women's legal consciousness and agency. (2) Judicial recognition, which is when a judge recognizes a claim through legal considerations that give legitimacy to women's rights.[8] From this perspective, court decisions have two functions

[4] Rifdah Nur Amalina, Hamzah Hasan, and Achmad Musyahid Idrus, "Perlindungan Hukum Terhadap Hak-Hak Perempuan Dalam Perkara Cerai Gugat Di Pengadilan Agama Makassar Kelas 1A," *Jurnal Diskursus Islam* 13, no. 2 (August 2025): 212–28, https://doi.org/10.24252/jdi.v13i2.61238; Fauzan Arrasyid, Pagar Pagar, and Dhiaudin Tanjung, "Islamic Family Law Reform in Indonesia Through Supreme Court Circulars: A Maqasid Sharia Perspective," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 2 (2023): 208–25, https://doi.org/https://doi.org/10.30659/jua.v6i2.29236; Euis Nurlaelawati, "Gender Equality and Islamic Family Law Reform in Indonesia," *Islamic Law and Society* 27, no. 3 (2020): 279–307, https://doi.org/https://doi.org/10.1163/15685195-02703002; Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce," *Islamic Law and Society* 20, no. 3 (2013): 242–71; R. Michael Feener and Mark E. Cammack, *Islamic Law in Contemporary Indonesia: Ideas and Institutions* (Cambridge: Harvard University Press, 2007).

[5] Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998); Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: University of Chicago Press, 1994).

[6] Euis Nurlaelawati, *The 'Judicialization' of Islamic Family Law in Religious Courts: The Case of Post-Divorce Matters in Indonesia*, 30, no. 3 (2019): 275–97; Ziba Mir-Hosseini, *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition* (I.B. Tauris, 2013); Mark Cammack, Adriaan Bedner, and Stijn Van Huis, "Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia," *Southwestern Law School Research Paper* 6 (2015): 1–32.

[7] Ewick and Silbey, *The Common Place of Law: Stories from Everyday Life*.

[8] Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989).

at once: resolving individual disputes and at the same time institutionalizing a certain understanding of justice in the family. Repeated judicial recognition of similar claims gradually shapes patterns of judicial interpretation and contributes to the evolution of legal practice. (3) Legal Developments, the accumulation of thousands of judgments recognizing similar claims over a long period of time contributes to gradual changes in legal practice and institutional norms. The concept of legal development in this study is not only limited to formal regulatory changes. Legal developments can also occur gradually through interaction between the litigant and the court.[9] Lawsuits filed repeatedly can affect the way family law is applied in practice, although it is not always accompanied by changes in laws and regulations.

This study aims to discuss women's legal agency realized through divorce litigation at the Bekasi Religious Court, the pattern of legal claims arising from judicial decisions in lawsuit divorce cases between 2011 and 2020, and judicial decisions providing empirical evidence for the development of Islamic family law from the bottom up in Indonesia. This research method uses a qualitative socio-legal research design using longitudinal qualitative content analysis. The main data consists of judicial decisions regarding divorce lawsuits issued by the Bekasi Religious Court during a ten-year period (2011-2020). By treating judicial decisions as a corpus of empirical legal data, this study identified a recurring pattern in women's legal claims and their judicial responses. This longitudinal approach allows for the observation of gradual institutional adaptation and transformation of the recognition of women's rights in the Indonesian Islamic justice system.

Increasing Use of Divorce Litigation by Women

From the data of Bekasi religious court decisions for ten years (2011-2020) was obtained on the dominance of divorce lawsuits compared to talaq divorces. Over the past ten years, women have consistently been the party to file about two-thirds to three-quarters of divorce cases in the Bekasi Religious Court. The percentage of women-initiated divorce increased from 66% in 2011 to 74% in 2019, and remained high at 73% in 2020. In contrast, men-

[9] Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: University of Chicago Press, 1990).

initiated divorces decreased from 34% to around 26-27%. This pattern shows that women-initiated divorce has become the dominant route through which the dissolution of marriage is carried out before the Religious Court. The data shows a steady and sustained trend in which women are increasingly utilizing judicial institutions to resolve marital disputes. The gradual increase from about two-thirds of divorce cases at the beginning of the decade to nearly three-quarters by the end of the decade indicates women's growing dependence on formal legal mechanisms.

From the perspective of women's legal agencies, this data is not only interpreted as evidence of the increasing number of divorces initiated by women, but it also reflects a significant transformation in the relationship between women and legal institutions. Religious courts are increasingly in demand by women to seek legal protection for the injustice of their marriages. Data shows that women are increasingly active in fighting for their legal rights to the Religious Court. The longitudinal consistency of this trend also suggests that women's involvement with the Religious Courts has become institutional. The increasing number of women-initiated divorces for ten consecutive years provides empirical evidence that litigation has become a legal strategy for dealing with marital conflict. This litigation created an important foundation for understanding women's contributions to the practical development of Islamic family law. These findings show that the Bekasi Religious Court is a place for urban women to seek legal protection against domestic injustice. This is in line with Sa'adah's research which notes that the shift in the causes of divorce in Bekasi's urban communities often reflects an increasing awareness of gender rights among wives.[10]

[10] Mazro'atus Sa'adah, *Pergeseran Penyebab Perceraian Dalam Masyarakat Urban* (Lamongan: Academia Publication, 2022); Mazro'atus Sa'adah et al., "From Financial to Moral-Ethical Concerns: Changing Pattern of Divorce Reasons at the Religious Court of Bekasi, Indonesia," *Al-Hukama' The Indonesian Journal of Islamic Family Law* 14, no. 2 (2024), https://doi.org/https://doi.org/10.15642/alhukama.2024.14.2.142-170; Mazro'atus. Sa'adah, "Perempuan Dan Perceraian: Kajian Tentang Cerai Gugat Di Pengadilan Agama Bekasi," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 2 (2018): 116–32.

Women's Legal Claim Patterns

From the judges' decisions for 10 years, it was found that women's legal claims centered on forms of injustice in marriage. This claim was found to be repeated in the verdict. Among all the categories identified, economic negligence emerged as the most frequently filed legal claim, with 585 cases filed by wives and only 97 by husbands. Furthermore, legal claims related to infidelity, there were 165 cases filed by wives, while only 53 cases were filed by husbands. Next, legal claims related to domestic violence, there were 137 cases filed by wives and only 12 cases by husbands. The next legal law related to moral-ethical violations, there were 111 cases filed by the wife and only 78 by the husband. Lastly, legal claims related to polygamy or marriage were not registered; there were 64 cases filed by wives and only 6 cases by husbands. In contrast, neglect or failure to fulfill marital responsibilities appeared much more often in male-initiated divorces than female-initiated cases at 16 versus 1 case.

The dominance of economic neglect shows that women's legal mobilization is closely related to claims related to the failure of husbands to fulfill legally recognized marital obligations. Economic neglect in a judge's ruling encompasses a wide range of situations, including failure to provide for a living, unstable employment, inadequate household income, financial irresponsibility, concealment of financial resources, excessive debt, and transferring the family's economic burden to the wife. The next legal claim relates to infidelity and domestic violence. These claims show that women are increasingly using the judiciary not only to resolve financial disputes but also to seek protection from violations of dignity, security, and personal integrity in marriage. Likewise, claims related to unhealthy polygamy and bad moral behavior. This claim shows that women are opposed to behavior that is not in accordance with the purpose of marriage according to Islamic family law.

Variable	Cerai Gugat	Cerai Talak
Economic Neglect	585	97
Infidelity	165	53
Violence	137	12
Poligamy	64	6
Krisis moral	111	78
Abandonment	1	16
others	106	138

Table 1. The Factors of Causing Divorce
Source: Judicial Decision of Bekasi Religious Court from 2011 to 2020

Overall, these findings show that women-initiated divorce are not just expressions of dissatisfaction with marriage. They are based on real experiences related to violations of rights and problems in the household. Various reasons repeated in hundreds of rulings show that women consistently convey their marital problems in a legally recognized form. Thus, problems that were initially personal in the family turned into legal disputes that were then decided by the Religious Courts.

Women's Socio-economic Profile

The socio-economic characteristics of women who file for divorce show that they come from diverse educational, occupational, and family backgrounds. They increasingly use the Religious Court as an official channel to resolve marital problems. In terms of education, most of the women who file lawsuits have at least completed secondary education. Women with upper secondary education are the largest group with 292 cases, followed by those with an undergraduate or postgraduate degree with 153 cases and a diploma qualification with 79 cases. Meanwhile, women with primary or junior secondary education have a relatively small percentage. These findings show that women's involvement with the judiciary comes from various walks of life and is not limited to the highly educated elite, although the level of education can

facilitate understanding of legal rights and foster trust in accessing formal justice mechanisms.

	Category	Cerai Gugat	Cerai Tolak
Education	SD	27	1
	SMP	57	10
	SMA	292	106
	D1, D2, D3	79	25
	S1, S2, S3	153	75
Employment	Housewives	266	112
	Workers	420	138

Table 2. Women’s Education and Employment
Source: Judicial Decisions of Bekasi Religious Court from 2011 to 2020

Based on their employment status, divorced women are more likely to work, with 420 cases, while another 266 cases are housewives. These findings indicate that many women have their own sources of income and are not financially dependent on their husbands. This suggests that involvement in the labor market can strengthen women's ability to pursue legal paths when their marriages cannot be maintained. Economic participation appears to not only increase financial independence, but also expand women's ability to utilize legal institutions to defend their rights.

Table 3. The distribution of the marriage age of divorced perpetrators

Marriage age	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total	%
< 18	0	8	1	7	8	7	3	5	10	6	55	5,5
18-40	5	88	29	64	140	116	119	114	108	86	869	86,9
40-60	0	0	0	3	2	2	6	7	8	3	31	3,1
> 60	0	0	0	0	0	0	0	0	0	2	2	0,2

Blank data	0	0	25	11	1	0	0	1	2	3	43	4,3
Total	**5**	**96**	**55**	**85**	**151**	**125**	**128**	**127**	**128**	**100**	**1000**	**100**

Source: Processed from the data of the divorce decision of the Bekasi Religious Court in 2011-2020

In terms of age groups, the data shows that divorces filed by women are concentrated at the most productive age. About 86.9% of litigants are married between the ages of 18 and 40, while only a small minority marry under the age of 18 (5.5%) or over the age of 40 (3.3%). These findings suggest that women who initiate litigation are mostly productive individuals actively involved in work, childcare, and household responsibilities, rather than elderly women who are nearing the end of the family life cycle.

Duration of Marriage Age	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**Total**	**%**
< 1	1	5	1	0	4	1	1	3	5	5	26	2,6
1-5	1	26	18	22	44	34	34	32	31	16	258	25,8
6-10	2	22	19	19	35	40	35	36	27	28	263	26,3
11-15	1	15	6	14	29	21	19	20	24	21	170	17
16-20	0	16	7	10	23	17	21	20	22	14	150	15
21-25	0	6	2	5	9	7	8	9	13	8	67	6,7
26-30	0	3	1	3	4	5	4	3	4	4	31	3,1
> 30	0	3	1	0	3	0	6	4	0	3	20	2
Blank data	0	0	0	12	0	0	0	0	2	1	15	1,5
Total	**5**	**96**	**55**	**85**	**151**	**125**	**128**	**127**	**128**	**100**	**1000**	**100**

Table 4. The Duration of Marriage Age
Source: Processed from the data of the divorce decision of the Bekasi Religious Court in 2011-2020

The duration of a marriage also provides important insights into women's legal decision-making. More than half of all divorce decisions are filed after marriage lasts between one and ten years (52.1%), with the largest proportion occurring between six to ten

years (26.3%) and one to last more than twenty years. These findings suggest that women in general do not file lawsuits immediately after marriage, nor do they always remain in dysfunctional marital relationships indefinitely. Women file for divorce in court after several years of marriage. This suggests that litigation often follows lengthy attempts to maintain the relationship before formal legal action is finally carried out.

Jumlah Anak	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**T**
0	2	15	12	18	30	27	28	36	53	19	24
1	1	34	23	30	48	43	47	44	30	30	33
2	2	23	16	23	42	36	39	34	28	34	27
3	0	20	4	11	23	12	11	10	11	14	11
4	0	3	0	2	7	6	2	2	4	2	28
5	0	1	0	1	1	1	1	0	1	0	6
> 5	0	0	0	0	0	0	0	1	1	1	3
Total	**5**	**96**	**55**	**85**	**151**	**125**	**128**	**127**	**128**	**100**	**10**

Table 5. Distribution of the Number of Children Owned by Divorce Actors in 2011-2020
Source: Processed from the data of the divorce decision of the Bekasi Religious Court in 2011-2020

The presence of children also illustrates the social context in which women exercised legal agency. Only 24% of litigants do not have children, while about three-quarters have at least one child at the time of divorce. The largest categories consist of women with one child (33%) and two children (27.7%). This pattern indicates that the decision to file for divorce is often taken by women who already have family responsibilities, not by newly married couples who do not have dependents. Therefore, divorce litigation should not be interpreted simply as an individual choice, but rather as a legal strategy taken despite having to face the great parenting responsibilities and social consequences of household fractures.

Overall, these socio-economic characteristic data illustrate that women who access Religious Courts are not passive victims of domestic conflict, but individuals with diverse levels of education, economic participation, family responsibilities, and legal awareness. This diversity of backgrounds suggests that women's legal capacity goes beyond certain social classes or demographic categories. On the contrary, Religious Courts are now increasingly functioning as legal institutions accessible to women from all walks of life to seek protection from economic neglect, domestic violence, infidelity, injustice, and other forms of marital injustice.

Judicial Decisions as Evidence of Women's Legal Agency

Taken as a whole, judicial decisions provide strong empirical evidence of women's legal agency. The consistently high proportion of divorces filed by women, coupled with a pattern of repeated lawsuits, suggests that women are increasingly using litigation as a deliberate legal strategy, rather than just a last resort. These findings show that thousands of women choose to pursue judicial proceedings because Religious Courts offer legitimate institutional mechanisms. Through these mechanisms, economic neglect, domestic violence, infidelity, polygamy, neglect, and other forms of marital injustice can be translated into legally recognized claims. By bringing these issues to court, women transform their personal experiences into public legal matters, so that they can use state authority to protect the rights guaranteed by Islamic family law in Indonesia.

From this point of view, the Religious Court functions not only as an institution that breaks the marriage bond, but also as a space where women's legal agency is exercised and institutionalized. Each divorce lawsuit represents a form of legal mobilization that women use to assert their rights, present evidence, and seek judicial recognition of their experiences. The accumulation of thousands of similar cases over a decade shows that women's participation in litigation is not an extraordinary or incidental thing, but rather a form of sustained engagement with the judiciary.

Therefore, court decisions should be understood not merely as a divorce registration document, but as long-term empirical evidence of women's involvement in the practical development of Islamic family law. Through repeated litigation, women participate in shaping the issues brought to court, the legally recognized categories of marital injustice, and the dynamics of family justice practice that continue to develop in Indonesia.

Discussion

Women's Legal Consciousness and the Increasing Use of Religious Courts

One of the most significant findings of this study is the continued increase in the number of divorces filed by women during the observation period of 2011-2020. This trend is not only seen as evidence of increasing divorce rates or weakening of family harmony, but also as an indication of a broader transformation in women's legal consciousness. The increasing dominance of women in filing divorce lawsuits shows that more and more women view the Religious Court not just as a formal institution to handle divorce, but as a legitimate legal forum to report injustice in the household while protecting their legal rights.

This interpretation is closely aligned with the concept of legal awareness, which describes how ordinary citizens understand, experience, and use the law in their daily lives. Ewick and Silbey argue that legal awareness is reflected in the way individuals view law as an institution and decide whether it should be avoided, resisted, or strategically mobilized to achieve a particular goal.[11] They distinguish three dominant orientations toward law: before the law, with the law, and against the law, which describes how people interact with legal institutions in different social contexts. The empirical findings of the study suggest that female plaintiffs are increasingly demonstrating what Ewick and Silbey describe as "with the law."[12] Women no longer view the law as an elusive authority, as for them legal institutions such as the

[11] Ewick and Silbey, *The Common Place of Law: Stories from Everyday Life*.
[12] Ewick and Silbey, *The Common Place of Law: Stories from Everyday Life*.

Religious Courts can protect them from economic neglect, domestic violence, infidelity, unhealthy polygamy, and other forms of marital injustice. This ten-year dominance of women-initiated divorce reflects a transformation in the way women view the role of law in family life. Litigation is no longer seen as a social failure, but rather as a legitimate legal strategy to resolve conflicts that can no longer be addressed within the household.

This transformation also reflects the gradual development of legal consciousness that Merry explains that access to the law depends not only on the existence of legal rights but also on the individual's awareness that those rights can be enforced through formal legal institutions.[13] Legal consciousness arises when personal experience of injustice is translated into legally recognized grievances and when individuals believe that legal institutions have the authority to provide meaningful legal remedies. Thus, the decision to initiate litigation is a conscious legal choice, not simply an emotional reaction to marital conflict.

The socio-economic characteristics identified in this study further strengthen this interpretation. The women who appear in court have a diverse educational and employment background, with the majority having secondary or higher education and working in both formal and informal sectors. In addition, most of them have been married for several years and have childcare responsibilities before finally starting legal proceedings. This characteristic suggests that litigation is generally pursued after sustained efforts to maintain the marriage, rather than as an impulsive response to momentary disputes.

These findings also support McCann's theory of legal mobilization, which emphasizes that laws will only have transformative capacity when people actively exercise their legal rights, rather than simply waiting for passive institutional intervention.[14] These rights become socially meaningful because they are mobilized through legal action, giving birth to new

[13] Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*.
[14] McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*.

expectations regarding justice, equity, and institutional accountability. From this point of view, women-initiated divorce is an important form of legal mobilization in which women actively use legal procedures to oppose unequal power relations in marriage. Therefore, litigation is not just the final stage of the collapse of marriage, but also an institutional process in which women assert legally protected rights and demand state recognition of those rights.

Marc Galanter's classic analysis of repeat players also provides a useful lens for understanding the cumulative implications of women's litigation.[15] Although divorce cases appear to concern private family disputes, the repeated filing of thousands of women-initiated divorce judgments has gradually changed institutional expectations regarding the types of disputes filed in Religious Courts. Courts are increasingly discerning from the pattern of repeated claims filed related to economic neglect, violence, infidelity, and marital responsibility, thus facilitating greater consistency in judicial responses. As a result, women's litigation results in institutional learning that goes beyond individual case resolution.

Viewed through the Judicial Women's Legal Agency (JWLA) Framework proposed in this study, these findings represent the first stage of women's contribution to the development of the law. Women's legal agencies began with the decision to transform the personal experience of marital injustice into formal legal claims. The growing use of Religious Courts reflects a profound change in the relationship between Muslim women and Islamic family law. Women increasingly view law not as an external authority that governs only family life, but rather as a practical resource through which justice can be upheld when the normative goals of marriage can no longer be achieved.

Therefore, the increasing prevalence of divorce filed by women should not be interpreted simply as evidence of changes in

[15] Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law & Society Review* 9, no. 1 (1974): 95–160.

family behavior or increasing domestic instability. Rather, it reflects a broader transformation in legal consciousness, where women increasingly view themselves as legal subjects who have rights and are able to utilize the judiciary to protect dignity, security, and equality in marriage. This transformation is the first dimension of women's *legal agency* capacity in the judiciary, which is also an important foundation for the birth of judicial recognition and broader legal development.

Women-Initiated Divorce as Legal Agency in Judiciary

The findings of this study show that divorce filed by women is not only understood as an administrative mechanism to end a marriage, but as a form of women's legal agency before the courts. In this case, they consciously move the judiciary to transform personal experiences of domestic injustice into legally recognized demands. This interpretation differs from previous studies that tend to judge that divorce on women's initiative occurs solely due to socio-economic factors, such as education, employment, domestic violence, or changes in gender roles. While these factors remain important, they do not fully explain why women are increasingly choosing litigation as the preferred mechanism for resolving marital disputes.

Empirical evidence suggests that women's lawsuits are largely due to economic neglect, domestic violence, infidelity, unhealthy polygamy, moral transgressions, and the husband's failure to fulfill marital responsibilities. These factors are not presented simply as expressions of emotional dissatisfaction, but rather are formulated as legal claims supported by factual narratives and submitted for judicial judgment. The transformation of personal experience into formal legal claims describes what Felstiner, Abel, and Sarat describe as a process of "naming, blaming, and claiming."[16] Individuals first identify the experience as injury (naming), attribute responsibility to the other party (blame), and

[16] William L. F. Felstiner, Richard L. Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," *Law & Society Review* 15, no. 4 (1981): 631–54.

finally make formal claims in search of institutional solutions (claims). Recent socio-legal studies continue to recognize this framework as a basis for understanding how personal grievances evolve into legal mobilization.

Viewed from this perspective, divorce filed by women is much more than just the legal dissolution of the marital bond. Women who experience prolonged economic neglect, violence, or other forms of marital injustice do not simply withdraw from the relationship. Instead, they actively translate the experience into legally recognized demands by filing a ground for divorce with the Religious Court. Therefore, litigation becomes an institutional mechanism through which women demand their legal rights, rather than simply venting dissatisfaction with marriage. This interpretation is in line with legal mobilization theory, which states that rights become socially meaningful when individuals actively exercise them through the judiciary. Rights cannot stand alone; their transformative capacity depends on the willingness of citizens to utilize legal procedures for the attainment of justice. According to McCann, litigation often triggers social change not only because the courts favor the plaintiff, but because the legal action itself is able to reshape awareness of rights, public expectations, and institutional practices.[17]

Current findings also suggest that women increasingly view the Religious Court as an institution capable of recognizing and protecting their legal rights. Their decision to pursue litigation reflects not only a belief in judicial procedures, but also an understanding that family law provides a valid legal standard for assessing the course of a marital relationship. Therefore, women-initiated divorce is an important form of legal mobilization in which women are actively involved in the judicial system to gain recognition of their rights under Islamic family law. These findings also reinforce the feminist legal critique developed by Carol Smart, that women are not only conceptualized as passive subjects governed by legal institutions, but rather as actors who are able to

[17] McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*, 67.

strategically interact with the law to negotiate power relations and challenge structural inequalities.[18] Although legal institutions can reproduce existing power structures, they simultaneously provide opportunities for women to articulate rights and oppose unequal relationships. In this regard, the Religious Court serves not only as an institution that applies family law but also as a legal arena in which women negotiate justice within the framework of Islamic family law.

The Judicial Women's Legal Agency (JWLA) framework proposed in this study expands on that theoretical perspective by emphasizing that legal agencies are institutionalized through judicial litigation. Agency does not arise because women experience injustice, or because they decide to leave marriage. Agency arises when women consciously turn personal grievances into legal claims, submit those claims to judicial oversight, and seek authoritative recognition from the courts. Therefore, litigation is an important institutional bridge between individual experience and legal development. This conceptualization also distinguishes women-initiated divorce from conventional understandings of individual autonomy. Legal agency in this study is not only interpreted as personal freedom to dissolve a marital bond. More than that, the term refers to women's ability to use the judiciary strategically to fight for rights protected by the law. Economic neglect, domestic violence, infidelity, and various other repeated lawsuits identified in this study must be understood as a manifestation of legal agency. This shows women's ability to define marital injustice using legal categories recognized by the Religious Court.

In addition, the socio-economic profile of the parties to the proceedings further strengthens this interpretation. Most of the women who file for divorce have a secondary or higher education background, many of whom work and have their own income, and the majority have been married for many years while raising children before finally starting the legal process. The decision to

[18] Smart, *Feminism and the Power of Law*, 2–12.

file a divorce lawsuit reflects the legal strategy of women who feel injustice in the household and realize that the common goals of justice, dignity, and family welfare that should be realized in marriage can no longer be achieved. Therefore, this study argues that divorce on the initiative of women needs to be reconceptualized as an institutional manifestation of women's legal agency, not merely evidence of changing patterns of divorce. The repeated use of litigation by women suggests that Religious Courts have transformed into spaces for them to not only resolve domestic disputes, but also actively participate in formulating the practical meanings of rights, responsibilities, and justice in contemporary Islamic family law. Thus, divorce on the initiative of women is the second dimension of the *Judicial Women's Legal Agency Framework*. This dimension connects women's legal consciousness with judicial recognition, while also laying the institutional foundation for the broader development of Islamic family law.

The Development of Islamic Family Law from the Bottom Up through Women's Litigation

The findings of this study show that the significance of divorce on women's initiative goes beyond the boundaries of individual dispute resolution. The accumulation of thousands of divorce applications filed by women over a decade shows that litigation has become an important mechanism that has driven the evolution of Islamic family law enforcement practices. The study not only views court decisions as an instrument for the application of existing legal rules, but also sees that repetitive litigation can contribute to a gradual transformation in judicial practice. This is evident from the issues most often brought to court, the forms of marital injustice that receive legal attention, and the standards used by judges in assessing family disputes.

Conventional studies of Islamic family law reform generally explain legal developments through legislative amendments, constitutional interpretations, or judicial policies formulated by the highest courts. Such a perspective remains important because legislative reform and judicial guidelines have largely shaped

contemporary Muslim family law in various jurisdictions.[19] In the Indonesian context, a number of recent studies have shown that significant reforms are increasingly being born through Supreme Court circulars, chamber formulations, and progressive judicial interpretations, rather than through changes to the Marriage Law itself.

The results of this study complement previous research by identifying other paths of legal development that often go unnoticed. Legal transformation does not occur exclusively through institutional initiatives that come from the legislature or the highest court, but can emerge gradually from the bottom through cumulative interaction between the parties involved and the judiciary. Every divorce decision filed by a woman requires the judge to assess the legal facts, interpret the legal basis for divorce, evaluate the evidence, and formulate legal considerations related to economic neglect, domestic violence, infidelity, unhealthy polygamy, neglect, and other forms of marital injustice. When similar claims are repeated in hundreds or even thousands of cases, they become a prevalent component of judicial practice. This cumulative process illustrates what is conceptualized in the *Judicial Women's Legal Agency* Framework as the third dimension of women's legal agency, namely legal development through repeated judicial engagement. Divorce judgments may seem insignificant when viewed in isolation. But collectively, these decisions give rise to ongoing legal issues that demand institutional responses. Courts then develop greater consistency in identifying legally relevant facts, interpreting legal obligations, and recognizing situations when marital goals can no longer be met. Judicial practice is evolving not because judges independently initiated reforms, but because repeated litigation constantly confronts the judiciary with the dynamic social realities within the Muslim family. This interpretation is in line with Marc Galanter's argument that repeated involvement in litigation has the capacity

[19] Ziba Mir-Hosseini, *Muslim Family Law in Comparative Context* (London: Routledge, 2009), 12–18; Cammack, Bedner, and Huis, "Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia," 57–61.

to shape legal institutions over time. Although Galanter's theory specifically distinguishes between litigants and litigants, it still recognizes that repeated legal involvement results in institutional learning and gradually influences the course of the legal system.[20] Subsequent socio-legal studies have also emphasized that litigation contributes to institutional change by creating new expectations, organizational routines, and interpretive practices, rather than simply resolving individual disputes.

Empirical findings show this process in the context of Religious Courts in Indonesia. Throughout the observation period, the dominance of divorce on the initiative of women made judges repeatedly confronted with claims related to alimony, economic responsibility, domestic violence, infidelity, psychological loss, and the collapse of mutual respect in marriage. As a result, the focus of the verdict is increasingly centered not only on efforts to maintain the marital bond, but also on assessing whether the continuation of the marriage is still in line with the legal goals of justice, welfare, and human dignity enshrined in Islamic family law. This argument does not imply that the Religious Courts have ignored the principle of marriage preservation. Islamic family law in Indonesia still views peace as an important goal, which is reflected in mediation procedures and judicial efforts to encourage a peaceful settlement before divorce is granted. However, these findings indicate a gradual balance of judicial priorities. When peace proves impossible to achieve and the substantive goal of marriage can no longer be realized, judicial practice increasingly recognizes that the protection of a wife's rights, safety, and dignity is an equally important form of justice. In this case, the preservation of marriage is no longer treated as an absolute goal independent of the quality of the conjugal relationship itself.

This interpretation is generally consistent with contemporary developments in the study of Islamic family law, which increasingly emphasize that the basic goals (*maqāṣid*) of

[20] Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 97–103, 149–51.

family law include justice, human dignity, protection from harm, and the well-being of family members, not simply the continuation of marriage regardless of the situation.[21] Recent analyses of family law in Indonesia also show that judicial reforms have gradually strengthened legal protections for women and children through targeted interpretation of family law norms as well as procedural innovations. Therefore, this study argues that litigation conducted by women contributes to what can be termed the development of Islamic family law from the *bottom-up*. In contrast to *top-down* reforms driven by legislative institutions or judicial policy-making bodies, developments from below come from cumulative legal actions carried out by ordinary people. The repeated mobilization of women in the Religious Courts constantly presents new empirical realities in the judicial decision-making process, thus influencing the practice of applying family law without always having to wait for a legal amendment.

Thus, the contribution of this research lies in the understanding that court decisions must be understood not only as a product of legal authority, but also as long-term empirical evidence of legal developments. The evolution of Islamic family law was shaped not only by legislators, supreme courts, or constitutional courts, but also by thousands of women who consistently used the judiciary to seek protection from marital injustice. Through these repeated lawsuits, women became active participants in reconstructing the practical meaning of justice, rights, and responsibilities in marriage under the auspices of Islamic family law in Indonesia.

Conclusion

This study concludes that the increase in divorce lawsuits in Indonesian Religious Courts is not just a change in divorce patterns, but is an important manifestation of women's legal agencies. Women are increasingly using the courts to change the experience of economic neglect, domestic violence, infidelity, problematic

[21] Mir-Hosseini, *Muslim Family Law in Comparative Context,* 39–47.

polygamy, and failure to carry out family responsibilities into legally recognized claims. Through the *framework of the Judicial Women's Legal Agency* (JWLA), this study shows that women's agencies work through the process of filing legal claims, recognition by courts, and the cumulative development of legal practice. The accumulation of women's lawsuits does not necessarily change the law through regulatory changes, but gradually encourages judicial practices to pay greater attention to rights, safety, dignity, economic responsibility, and justice in marriage. Thus, the development of Islamic family law does not only take place *top-down* through legal makers and judicial institutions, but also *bottom-up* through women's legal actions. Women, therefore, are not only objects of family law, but active subjects that contribute to shaping the development of Islamic family law practice.

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