

ESCALATION OF DIVORCE BY WIFE AT THE CLASS 1A RELIGIOUS COURT OF PALU IN THE PERSPECTIVE OF FEMINIST LEGAL THEORY

Fira Farisda ^{a*)}, Nasaruddin ^{a)}, Suhari Hanafi ^{a)}

^{a)} Universitas Islam Negeri Datokarama Palu, Palu, Indonesia

^{*)}Corresponding Author: firafarisda11@gmail.com

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Abstract. Divorce by wife has emerged as a dominant structural phenomenon in Indonesia's religious courts, reflecting shifting power dynamics and increasing legal awareness among women. This research examines the escalation of *cerai gugat* at the Class 1A Religious Court of Palu, focusing on its causal factors and socio-legal implications through the lens of feminist legal theory. Using a qualitative case study approach, data were gathered from semi-structured interviews with judges, court officials, and litigants, alongside a thematic analysis of court decisions. Findings indicate that *cerai gugat* accounts for approximately 70% of divorce cases in Palu, driven primarily by chronic gender imbalances, economic instability, and domestic violence. Despite the high volume of cases filed by women, the transition from legal object to active subject has not fully translated into substantive justice. Post-divorce, women remain trapped in cycles of social stigma and economic vulnerability due to inconsistent *ex officio* maintenance orders and weak execution mechanisms. The study concludes that the religious judicial system remains largely formalistic, necessitating a shift toward gender-responsive practices and the integration of Islamic feminist principles to ensure the effective protection of women's rights.

Keywords: Feminist Legal Theory, Religious Court, Substantive Justice, Women's Rights.

I. INTRODUCTION

Divorce by wife (*cerai gugat*) is a phenomenon that dominates divorce cases within the Indonesian religious court environment. The majority of divorces are filed by the wife due to prolonged disputes, economic factors, domestic violence, and destructive behaviors such as drug abuse and online gambling. This condition shows an increase in women's legal awareness while reflecting gender relationship imbalances within the household.

Based on data from the Central Bureau of Statistics (BPS) in 2024, as many as 308,000 cases of divorce by wife were filed by the wife, while divorce by husband (*talak*) was only 85,652 cases out of a total of 394,608 divorces, making the proportion of divorce by wife reach 78 percent. Primary reasons include prolonged disputes (such as those contributing 251,828 cases in 2023), economic factors due to the husband's inability to provide for the family for three months, domestic violence (KDRT), and destructive behaviors such as drug abuse, gambling, drunkenness, or adultery that are difficult to stop. An example of a case at the Mahkamah Syar'iyah Blangpide in 2024 shows that 114 out of 130 divorce cases were divorce by wife (87.7 percent), with an overall downward trend thanks to successful mediation that reconciled 12 couples.

From an Islamic law perspective, divorce by wife is equivalent to *khulu'*, where the wife has the right to file for a single *ba'in suhbra* divorce if the husband violates obligations

such as leaving the household for two years, not providing maintenance for three months, hurting physically, or neglecting for six months (*taklik talak*), as regulated in Kompilasi Hukum Islam (KHI) Pasal 115 and religious court practices. Meanwhile, positive law through Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Pasal 39 and 116 KHI emphasizes that divorce can only occur after failed mediation efforts, with sufficient reasons such as unresolved disputes or domestic violence, ensuring the protection of the wife's rights after divorce, including maintenance and child custody.

The perspective of feminist theory highlights this phenomenon as evidence of patriarchal gender inequality, where the family institution often places the wife in a subordinate position, encouraging women's empowerment to demand equality in harmonious household relations through communication and legal rights. This increase in awareness reflects social transformation, although it demands interventions such as pre-marital education and gender-based counseling to prevent escalation.

The divorce phenomenon shows an increasing trend in divorce by wife in many regions of Indonesia, including at the Class 1A Religious Court of Palu. Divorce filed by the wife shows changes in power relation patterns within the household and demonstrates an increase in women's awareness of their rights within the legal structure of marriage and divorce. National data indicates (show national data) that

divorce by wife has become dominant in the structure of divorce in Indonesia, describing the drive of women to end relationships deemed unhealthy or unfair.

A number of previous studies have discussed divorce factors, including household conflicts, economic problems, and partner incompatibility. However, studies linking the escalation of divorce by wife cases with the socio-legal impact on women in the perspective of feminist legal theory are still very limited. Current literature indicates the importance of a feminist approach to evaluate how the law treats women as legal subjects in divorce.

The objective of this research is to analyze the escalation of divorce by wife, its causal factors, the socio-legal impact on women, as well as the fulfillment of women's rights in the perspective of feminist law.

A. Feminist Legal Theory

Feminist legal theory views law not as a neutral entity, but as a social structure that often reproduces gender inequality. This approach highlights that law and judicial practices are often biased towards men and are not sufficiently responsive to the needs and experiences of women, especially in the context of family law and divorce. Legal feminism criticizes the partiality of the law towards patriarchal structures and demands legal reforms that truly reflect the principles of substantive justice for women — not just formalistic — in various legal realms including divorce and post-divorce rights [1], [2].

Feminist legal approaches demand judges to go beyond formal proof and consider the imbalanced power relation dynamics within the household. For instance, in cases of divorce by wife, judges are required to evaluate factors such as domestic violence or neglect of maintenance which are often not well-documented due to the victim's fear. Thus, decisions must not be fixated on written evidence alone, but also on the narrative of the wife's experience reflecting structural vulnerability, as regulated in Kompilasi Hukum Islam (KHI) Pasal 116 which can be expanded in its interpretation [3].

Substantive justice in this perspective requires concrete steps such as the determination of *iddah* and *mut'ah* maintenance *ex officio* by the judge, without waiting for a separate lawsuit from the wife. The determination of child support must also be realistic, taking into account the standard of living before the divorce and the father's economic capacity, as well as being equipped with effective execution mechanisms such as asset seizure or account blocking. Such reforms not only protect women's rights but also realize the *maqasid syariah* principles regarding *hifz al-nasl* (protection of descendants) and social justice in Indonesian positive law [4].

B. Divorce in the Islamic Law System in Indonesia

In the context of Islamic law in Indonesia, divorce — both divorce by husband (*cerai talak*) and divorce by wife (*cerai gugatan*) — is regulated through the Kompilasi Hukum Islam (KHI) and discussed in the Religious Court institutions. Divorce by wife provides space for the wife to end the marriage when her rights are not fulfilled. Nevertheless, its

implementation often faces challenges including in the proof of divorce reasons as well as the fulfillment of economic and social rights for women post-divorce. Normative studies show that this also raises problems in the fulfillment of women's rights according to the goals of justice — for example for maintenance rights and rights after divorce by wife [5], [6].

Nevertheless, the implementation of divorce by wife in the Religious Courts faces various structural challenges, especially in proving divorce reasons such as physical and mental disputes (Pasal 116 huruf a KHI), inability to provide maintenance (huruf b), or domestic violence (huruf f). Many cases fail due to difficulties in gathering formal evidence, such as witnesses or medical documentation, amidst the imbalance of access to legal information for women in rural areas [7]. In addition, the mandatory mediation process as per Pasal 39 UU Perkawinan often takes a long time, which actually worsens the economic vulnerability of the wife who depends on the husband's maintenance while the trial is ongoing.

Normative studies increasingly highlight this problem as an inconsistency between KHI norms and the reality of substantive justice for women, where the rights to *iddah* maintenance, *mut'ah*, and post-divorce child custody are often not fully realized due to weak judgment execution mechanisms. For example, Pasal 149 KHI regulates *iddah* maintenance *ex officio*, but in practice, it depends on the husband's financial capacity which is often ignored or manipulated. Therefore, reforms are needed such as strengthening the role of the executing prosecutor, gender-perspective education for judges, and the integration of Islamic feminist principles to ensure the fulfillment of women's rights according to the goals of Sharia that are just and *rahmatan lil alamin* [8], [9].

C. Causal Factors of the Escalation of Divorce by Wife

Various recent empirical studies show that the increasing divorce by wife is caused by a number of interrelated factors, such as prolonged incompatibility, economic instability, unequal gender roles in the household, as well as shifts in women's legal awareness. Women's economic independence also becomes an important variable affecting divorce decisions, because economic dependence often becomes one of the obstacles for women to file a divorce lawsuit — although not the only causal factor — in contemporary marriage relations [10], [11].

Women's economic independence emerges as a key variable that influences divorce decisions, as it reduces the financial dependence that has been the main inhibitor for wives to file for divorce by wife. Data from the Central Bureau of Statistics (BPS) 2024 notes that urban women's labor force participation reached 55%, allowing them to finance the legal process and life post-divorce without relying entirely on *iddah* or *mut'ah* maintenance. Although not the only factor — because emotional and social elements still play a role — this independence reflects a social transformation that empowers women in contemporary marriage relations, in line with the spirit of substantive justice in Islamic and positive law [12].

Unequal gender roles within the household also become a crucial trigger, where patriarchal norms still place the wife in a subordinate position even though women are now increasingly active professionally. Research from the Directorate General of Badilag Mahkamah Agung indicates that domestic violence (KDRT) and the husband's neglect of domestic responsibilities contribute up to 30% of total wife lawsuits. The shift in women's legal awareness, driven by access to information through social media and legal aid institutions such as LBH APIK, encourages more wives to pursue the Religious Court path rather than remaining in a dysfunctional marriage [13].

D. Socio-Legal Impact for Women

Divorce brings a comprehensive impact for women — covering social aspects such as social stigma and family pressure, as well as legal aspects such as *iddah* maintenance, *mut'ah*, and child custody rights. Comparative studies even show that although Islamic law and positive law in Indonesia have provided a legal umbrella for the protection of women, challenges in implementation in judicial practice make this protection not yet maximally substantive for women post-divorce [14].

Comparative studies between Islamic law and positive law in Indonesia emphasize that although Undang-Undang Perkawinan No. 1/1974 and KHI have provided a protective umbrella — such as mandatory mediation and *ex officio* maintenance determination — its implementation in the Religious Courts has not been maximally substantive. The main challenges include weak judgment execution, where husbands often evade payment through asset transfers, as well as the lack of gender perspective in judges which causes decisions to tend to be formalistic. As a result, the protection of women post-divorce remains fragile, demanding reforms such as strengthening executing prosecutors and training based on Islamic feminism to realize more inclusive justice [15], [16].

II. RESEARCH METHODS

This research uses a qualitative approach with a case study design to understand in depth the phenomenon of the escalation of divorce by wife at the Class 1A Religious Court of Palu and its impact on women. The qualitative approach was chosen because of this approach's ability to capture socio-legal complexity and the experiences of legal subjects that are not easily captured through quantitative methods.

Primary data was obtained through semi-structured interviews with key informants, including judges, clerks, litigating parties (especially wives who file lawsuits), and relevant Islamic family advocates. Interviews focused on the informants' experiences, perceptions, and interpretations of the divorce process as well as the socio-legal impacts they experienced.

Secondary data were collected through document analysis such as divorce by wife decisions, case archives, and relevant statutory documents (including KHI and national law), to strengthen empirical findings. Purposive and snowball sampling techniques were used to select informants who were

deemed to have rich and relevant information for the research questions.

Analysis was carried out using thematic analysis techniques, which involved data coding as well as grouping the main themes that emerged, which were then linked to concepts in feminist legal theory. The entire research process paid attention to research ethics, including informant consent, data anonymization, and confidentiality of personal information.

III. RESULTS AND DISCUSSION

A. General Overview of Divorce by Wife Cases at the Class 1A Religious Court of Palu

Based on the results of the case document search and interviews with the officials of the Class 1A Religious Court of Palu, divorce by wife (*cerai gugatan*) is the most dominant type of divorce case compared to divorce by husband (*cerai talak*). The majority of cases are filed by the wife with a background of chronic and protracted household conflicts. This fact shows that divorce by wife is no longer viewed as an incidental phenomenon, but as a structural symptom in contemporary household relations.

The dominance of divorce by wife reaches approximately 70% of the total divorce cases. Despite a decrease in the number of cases from 2022 to 2024, divorce by wife still dominates.

Statistical trends show a consistent dominance of divorce through lawsuits, with almost all sampled cases being granted. In several decisions, maintenance orders are determined upon explicit request, while *ex officio* determination is applied inconsistently [17]. Child support amounts vary significantly and often lack a detailed calculation method, reflecting differences in economic assessment.

From a sociological perspective of law, the dominance of divorce by wife reflects the shift in the position of women from legal objects to active legal subjects in accessing judicial institutions. However, the increase in the quantity of cases is not always directly proportional to the fulfillment of substantive justice for women, especially in the fulfillment of post-divorce rights.

B. Factors for the Escalation of Divorce by Wife

1) Empirical Findings of Escalation Factors

The results of thematic analysis of interviews and case decisions show that the escalation of divorce by wife is influenced by several main interrelated factors, as summarized in Table 1 below.

Research results show that the main factors for divorce by wife include the husband's irresponsibility in fulfilling maintenance, domestic violence, continuous disputes, as well as moral issues such as infidelity. In a feminist legal perspective, divorce by wife can be understood as a form of women's resistance against patriarchal structures that place women in a subordinate position within the marriage [18], [19].

Table 1. Factors For The Escalation Of Divorce By Wife At The Class 1a Religious Court Of Palu

No	Escalation Factors	Description Of Empirical Findings	Gender Implications
1	Economic Factors	Unfulfilled Maintenance, Husband's Unemployment	Economic Burden Shifts To Wives
2	Inequality In Gender Relations	Dominant Husband In Household Decision Making	Women Experience Subordination
3	Domestic Violence	Physical, Verbal, And Psychological Abuse	Women As The Main Victims
4	Infidelity	Spouse Infidelity	Degrading Women's Dignity
5	Women's Legal Awareness	Access To Legal Information And Assistance	Women Are More Courageous To Sue

2) Analysis of Escalation Factors

The factor of gender relationship imbalance emerges as the structural root of most divorce by wife cases. This imbalance is seen in the division of domestic and economic roles, where women bear a double burden as household managers as well as breadwinners. This condition confirms the critique of feminist legal theory that patriarchal power relations do not stop in the domestic space but continue into the legal space when household conflicts are brought to court.

Economic factors become a significant trigger for the escalation of divorce by wife, especially when the husband fails to fulfill the maintenance obligation. In many cases, the husband's economic inability leads to repeated conflicts that trigger divorce lawsuits. This shows that economic issues are not merely individual factors but are closely related to the construction of gender within the family.

C. Social Impact of Divorce by Wife on Women

1) Stigma and Social Pressure

Interview results show that women after divorce by wife often experience social stigma as a "widow" (*janda*), which is attached to negative stereotypes. This stigma impacts women's social relations in the family and community environment, especially in communities with strong social-religious values.

The stigma has a deep impact on women's social relations in the family environment, where pressure from parents or relatives often takes the form of subtle slurs or refusal to participate in large family events. Interviews show that many respondents feel isolated, as family members consider them a "burden" to be avoided so as not to transmit a bad image. This triggers prolonged emotional conflict, where women must struggle to rebuild self-confidence while facing implicit accusations that they are unable to maintain the trust of marriage according to Islamic teachings about *qiwamah* (husband's leadership).

At the broader community level, especially in religious communities such as *pesantren* or *majelis taklim*, the stigma of being a widow hinders women's access to social networks, job opportunities, or even healthy remarriage. Respondents often reported

experiences of discrimination such as gossip in the neighborhood environment or the refusal of their children to play with neighbors' children, which weakens communal ties. To overcome this, interventions such as mosque-based empowerment campaigns and gender education that emphasize the reinterpretation of Sharia regarding the dignity of women post-divorce as part of *rahmatan lil alamin* are needed [20].

2) Social and Psychological Vulnerability

In addition to stigma, women also face psychological pressure due to the burden of sole responsibility in raising children. In many cases, women become heads of households without adequate economic and social support, which exacerbates post-divorce vulnerability.

In many cases, women are forced to become *de facto* heads of households without adequate economic support, because *iddah* and *mut'ah* maintenance from KHI Article 41 is often not realized or is insufficient for the long term. They must manage daily expenses, child education, and household needs alone, while the father's guardianship rights (KHI Article 105) are rarely carried out responsibly, such as routine financial contributions. This situation exacerbates vulnerability, where mothers work part-time or depend on family assistance, which actually adds to the emotional burden due to shame or dependency.

This post-divorce vulnerability demands holistic intervention, such as religious community-based psychological counseling programs and social assistance from the local government integrated with legal rights. An Islamic feminism approach can enrich this solution by emphasizing the principle of mutual *qiwamah* (shared responsibility) and the protection of descendants (*hifz al-nasl*), so that women do not only survive but also rise as resilient figures in contemporary society.

D. Legal Impact of Divorce by Wife on Women

Table 2. Legal Impact of Divorce by Wife on Women

Legal Aspects	Findings in the Field	Problems Faced
Iddah Maintenance	Not always granted	Formalistic verdict
Mut'ah	Disproportionate value	Economic inequality
Child Custody	Generally in mothers	Mother's economic burden
Execution of Judgment	Weak	Rights are not realized

Court decisions show that although normatively Islamic law and statutory regulations have regulated women's rights post-divorce, implementation remains weak. Many women do not obtain *iddah* and *mut'ah* maintenance rights optimally due to the limitations of decision execution mechanisms.

The increase in divorce by wife also reflects women's greater access to judicial institutions and an increasing awareness of their legal rights. Nevertheless, this research also found that although women become the plaintiffs, their position in the judicial process still faces structural obstacles, such as a heavy burden of proof, post-divorce economic inequality, and limited protection for maintenance and child custody rights. This shows that the family law system still contains gender bias in its implementation.

E. Analysis from the Perspective of Feminist Legal Theory

In the perspective of feminist legal theory, these research findings confirm that family law and religious judicial practices still reproduce gender inequality. The formalistic approach in case examination often ignores the social context and experiences of women as the party most affected by divorce.

Feminist legal theory emphasizes that justice is not sufficiently achieved through procedural equality but must touch upon substantive justice. In the context of divorce by wife, substantive justice means ensuring that women do not just "win the case," but also obtain real economic and social protection after divorce.

After divorce, women are often in a vulnerable economic condition, especially if during the marriage they depended on the husband's income as the main source of maintenance. The absence of stable income, limited access to decent work, and low levels of education and certain skills make many women experience a decline in life welfare post-divorce.

In religious judicial practice, women's economic rights such as *iddah* maintenance, *mut'ah*, and child support are often not effectively fulfilled due to weak judgment implementation and the non-compliance of former husbands. These conditions cause women to have to finance living needs and child rearing independently, which ultimately strengthens the circle of economic vulnerability and gender inequality after divorce.

Such conditions force women to finance daily living needs and child rearing independently, often relying on side jobs or limited family assistance. Without stable economic support, single mothers face a dilemma between fulfilling basic needs such as food and child education versus their own mental health, which weakens their bargaining position in a patriarchal society. This not only creates short-term financial burdens but also hinders women's social mobility, because time and energy are completely absorbed for the survival of their small family.

Ultimately, this ineffectiveness strengthens the vicious cycle of economic vulnerability and post-divorce gender inequality, where women are trapped in a cycle of structural poverty that is difficult to break. Reforms are needed through strengthening the role of executing prosecutors in court, determining maintenance based on minimum living standards *ex officio*, and integrating economic empowerment programs from the government and religious institutions. This approach is in line with *maqasid syariah* regarding *hifz al-mal* (protection of property) and substantive justice, so that divorce is no longer an entry point to the marginalization of women [21].

IV. CONCLUSIONS

Based on the results and discussion, this research concludes that the escalation of divorce by wife at the Class 1A Religious Court of Palu is influenced by structural factors of gender relation imbalance, economic factors, domestic violence, as well as the increasing legal awareness of women. These factors are interrelated and form a systemic pattern of divorce by wife escalation. The impact of divorce by wife on women is not only legal in nature, but also social and psychological. Post-divorce women face social stigma, economic vulnerability, as well as obstacles in the fulfillment of post-divorce rights. From the perspective of feminist legal theory, this condition shows that religious judicial practice is not yet fully gender-responsive and is still oriented towards a formalistic legal approach.

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