

The Possibility of Talaq Performers Criminalization in Indonesia: An Essential Lesson from India



Irma Suryani ^{a*}, Arifki Budia Warman ^a, Roni Efendi ^a, Dian Furqani Tenrilawa ^b

^aFaculty of Sharia, Universitas Islam Negeri Mahmud Yunus Batusangkar, Indonesia

^bFaculty of Law, Aligarh Muslim University, India

*Corresponding Author: irmasuryani@uinmybatusangkar.ac.id

ARTICLE INFO

Article history

Received: June 04, 2024

Revised: October 28, 2024

Accepted: November 02, 2024

Keywords

Criminal;

Family Law;

Sanction;

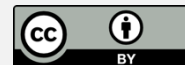
Talaq;

ABSTRACT

The absence of sanctions against instant triple talaq and out-of-court divorce in Indonesia presents significant challenges for justice on gender equality and women's rights in today's modern society. This study has the primary objective of analyzing the issues surrounding talaq divorce regulations in Indonesia by reflecting on the regulations in India. The study employs a combination of normative legal research methods, a legislative approach, and a comparative approach, focusing primarily on the marriage laws of Indonesia and India. The findings indicate that the practice of 'triple talaq' or instant divorce in India has been banned, with criminal sanctions imposed, including a three-year imprisonment for violators. In contrast, the regulations on talaq in Indonesia remain administrative in nature, requiring individuals to perform talaq in court, with no sanctions established for those who violate the regulations. The lack of criminal sanctions for talaq in Indonesia stems from its dual legal system and the absence of comprehensive guidelines on the procedural aspects of talaq, compounded by the limited resources of religious courts. In addition, the social stigma attached to divorce further complicates the issue. In India, the imposition of criminal sanctions for triple talaq aims to challenge the rigidity of the law and prioritize the rights of women and children. The reconstruction of regulations on divorce can be achieved through three components of criminal sanctions, comprising legal substance, legal structure, and legal culture. Also, it is essential to take humanitarian considerations and local wisdom in Indonesia into account when implementing such criminal sanctions.



This is an open-access article under the [CC-BY 4.0](https://creativecommons.org/licenses/by/4.0/) license.



1. Introduction

Family law reform has been performed in several Muslim countries.¹ One of the rules that is still debatable is divorce. Indonesia has made several reforms related to the regulations on divorce, such as triple talaq being considered one talaq², as well

¹ Kristen Stilt, Salma Waheedi, and Swathi Gandhavadi Griffin, 'The Ambitions of Muslim Family Law Reform', *Harvard Journal of Law and Gender*, 41 (2018), 302–42 https://hrp.law.harvard.edu/wp-content/uploads/2018/10/The-Ambitions-of-Muslim-Family-Law-Reform_Waheedi_2018.pdf

² Nur Rofiq and others, 'Judges Perspective on the Third Talak Imposed Outside of Court Session', *Diponegoro Law Review*, 08.01 (2023), 76–92 <https://doi.org/10.14710/dilrev.8.1.2023.76-92>

as the non-recognition of divorce outside the court. A person is not recognized as divorced by the state even though he has uttered a divorce for his wife before taking it to court.³ This provision is outlined in Articles 39 paragraph (1) and 40 paragraph (1) of Law Number 1 of 1974 concerning Marriage.⁴ In addition, Law Number 7 of 1989 concerning Religious Courts Articles 65 and 66 paragraph (1) also emphasizes that divorce can only be performed in a court session. The regulations on divorce in the Marriage Law are further elucidated in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 on Marriage.⁵

The law on divorce in Indonesia only stipulates that divorce must be performed in a court. In other words, divorce is recognized if there is a hearing and is determined by the court.⁶ However, the regulation does not govern what happens if the divorce is not performed in court. There are no strict sanctions for violators of these rules.⁷ This is one of the reasons why there are still many out-of-court divorce practices⁸, the imposition of three divorces at once, and other divorce practices. The high number of out-of-court divorces is also due to the complicated process of obtaining a divorce in court.⁹ This practice also exists since Islamic law legitimizes it.¹⁰

The practice of divorce tends to place women and children in disadvantageous positions since there is no legal certainty of their divorce status.¹¹ Therefore, the protection of the rights of wives and children is not implemented, and the best interests of children are not realized when there is no criminal regulation for

³ Nursaidah Nursaidah, Adi Nur Rohman, and Panti Rahayu, 'The Out of Court Divorce Model and Its Legal Implications: A Juridical Study in Babelan District Bekasi', *Syariah: Jurnal Hukum Dan Pemikiran*, 20.2 (2020), 159 <https://doi.org/10.18592/sjhp.v20i2.3945>

⁴ *Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*.

⁵ *Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*.

⁶ Deni Setiyawan, Hadi Tuasikal, and Hafidz Adhi Karana, 'The Phenomenon of Divorce during the Election Period in the Perspective of Islamic Law', *Jurnal Media Hukum*, 31.1 (2024), 150–66 <https://doi.org/10.18196/jmh.v31i1.21868>

⁷ Muhammad Yalis Shokhib, 'Sanksi Hukum Terhadap Pelaku Talak Di Luar Pengadilan Agama', *Al-'Adalah: Jurnal Syariah Dan Hukum Islam*, 3.1 (2018), 58–88 <https://doi.org/10.31538/adlh.v3i1.406>

⁸ Azwir Azwir, Pagar Pagar, and Muhammad Syukri Albani Nasution, 'The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts', *Al-Manahij: Jurnal Kajian Hukum Islam*, 16.2 (2022), 165–80 <https://doi.org/10.24090/mnh.v16i2.6389>

⁹ Arifki Budia Warman, Elimartati, and others, 'From Communal to Individual: Shifting Authorities of Family Dispute Resolution in Minangkabau Society', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.2 (2023), 161–84 <https://doi.org/10.18326/ijtihad.v23i2.161-184>

¹⁰ Nofiard and Fahmil Samiran, 'Living Under the Same Roof Before the Date of Separation: The Relevance of Maqāsid Al-Sharī'ah and Minangkabaunese Custom in A New Direction for Families', *Juris: Jurnal Ilmiah Syariah*, 22.2 (2023), 305–16 <https://doi.org/10.31958/juris.v22i2.9014>

¹¹ Nelmawarni Nelmawarni and others, 'Bakabuang Phenomenon in Minangkabau Society: A Covert Human Trafficking Action', *Kafa'ah: Journal of Gender Studies*, 11.2 (2021), 121–36 <https://doi.org/10.15548/jk.v11i2.476>

divorce.¹² In other words, a decent life for those involved cannot be achieved without the affirmation of divorce regulations. Although *isbat talaq* is offered as a solution to these illegal divorces¹³, the issue of divorce that places women and children in disadvantageous positions remains unresolved in Indonesia.¹⁴ Indeed, the reform of the marriage law has the objective of protecting women and children.¹⁵

Some Muslim countries have implemented sanctions for violators of the rules of divorce issued by the government, such as Malaysia¹⁶, Pakistan¹⁷, Iran, Egypt, and several other Muslim countries. The Hindu-majority country of India applies punishment for violators of the divorce law. The Indian government passed The Muslim Women (Protection of Rights on Marriage) Act 2019, which specifically stipulates the rules for triple/instant divorce. Perpetrators of triple divorce are sentenced to 3 years imprisonment.¹⁸ Although this law has been argued by some as criminalizing Muslims,¹⁹ as it is a special punishment for Muslims who divorce three at once, it cannot be denied that the sanction of triple divorce has provided a guarantee of justice for women. In addition, India has one of the lowest divorce rates in the world.²⁰ The divorce rate in India is only around 1%.²¹ In contrast, Indonesia, which is predominantly Muslim, has not yet issued criminal sanctions

¹² Shinta Ayu Purnamawati and others, 'Child-Friendly Justice and Children's Rights from Criminal Cases; Islamic Law Notes', *Legality: Jurnal Ilmiah Hukum*, 32.1 (2024), 141–54 <https://doi.org/10.22219/ljih.v32i1.31681>

¹³ Firman Wahyudi, 'Ithbāt Ṭalāq: An Offer of Legal Solutions to Illegal Divorce in Indonesia', *Al-Ahkam*, 32.2 (2022), 211–32 <https://doi.org/10.21580/ahkam.2022.32.2.11720>

¹⁴ Jumni Nelli and others, 'The Immorality of a Husband as the Cause of a Working Wife to File for Divorce Lawsuit in Indonesia', *JURIS (Jurnal Ilmiah Syariah)*, 22.1 (2023), 119–32 <https://doi.org/10.31958/juris.v22i1.7392>

¹⁵ Arifki Budia Warman, Wahyu Abdul Jafar, and others, 'Reforming Marriage Registration Policies in Malaysia and Indonesia', *Bestuur*, 11.1 (2023), 61–74 <https://doi.org/10.20961/bestuur.v11i1.66320>

¹⁶ Rukiah Muhammad Ali and Siti Maimunah Binti Mohd Rijal, 'Efektivitas Pelaksanaan Sanksi Talak Di Luar Mahkamah Rendah Syariah', *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 3.1 (2020), 75–95 <https://doi.org/10.22373/petita.v3i1.41>

¹⁷ Sabarudin Ahmad, 'Menelisik Ketegasan Hukum Keluarga Islam Di Pakistan', *Al-Mashlahah*, 15.1 (2019), 87–97 <https://doi.org/10.24260/al-maslahah.v15i1.1386>

¹⁸ *The Muslim Women (Protection of Rights on Marriage) Act 2019*.

¹⁹ Anindita Chakrabarti, K. C. Mujeebu Rahman, and Suchandra Ghosh, 'Of Marriage, Divorce and Criminalisation Reflection on the Triple Talaq Judgement in India', *Journal of Legal Anthropology*, 6.1 (2022), 24–48 <https://doi.org/10.3167/jla.2022.060103>

²⁰ Azza Bimantara, 'Structural and Cultural Violence Behind Triple Talaq In Indian Muslim Community', in *International Conference and Workshop on Gender*, 2018, pp. 276–87 https://www.researchgate.net/publication/331860444_Structural_and_Cultural_Violence_behind_Triple_Talaq_in_Indian_Muslim_Community

²¹ Jannik Lindner, 'Indias Divorce Rate In India: Shocking Statistics Revealed and Analyzed', *Gitnux Report 2024*, 2024 <https://gitnux.org/divorce-rate-in-india-statistics/> [accessed 22 September 2024].

for violators of family law, especially divorce, although several studies have attempted to offer them.²²

This study attempts to highlight the sanctioned rule of triple talaq in India and compare it with the problematic divorce in Indonesia. Re-examining the rules of divorce in Indonesia is essential as they are not working well. This argument is uttered following the fact that many illegal divorce practices still exist in Indonesia.²³ This is like what happened in the Babelan area and other areas, where there was a practice of divorce outside the court with two models, comprising divorce through *amil* and family manner.²⁴

In addition, divorce practices in Indonesia have continued to increase in recent years. Based on data from the Indonesian Central Statistics Agency (BPS), there were 291,677 divorces in 2020, and it increased to 408,347 in 2023. A person who violates the rules of divorce in Indonesia will not be able to marry his new spouse at the Office of Religious Affairs since his divorce has not been recognized by the state. Should he or she elect to pursue further marital unions, he or she may do so under a *sirri* marriage, thereby violating another marriage regulation regarding marriage registration.²⁵ This even leads to more consequences, especially for women and children. On the other hand, the law on divorce in Indonesia still complies with a dual legal system. Legal provisions on divorce are also often ambiguous, giving rise to various interpretations since there is no clear procedure. Also, there are no sanctions for violators of the divorce rules. Therefore, it is necessary to confirm the rules on divorce in Indonesia. In addition, the practice of divorce that does not comply with Indonesian law also discriminates against women and children. Divorce conducted in court may cause disadvantages to women when the ex-husband does not fulfill his obligations, let alone when the divorce is done verbally outside the court. If this continues, one of the objectives of Islamic family law reform, namely to protect women and children, will not be fulfilled.

The rule of divorce sanctions in India has been observed from various perspectives, such as from the judicial perspective²⁶, the fulfillment of women's

²² Ahmad Rajafi, 'Sanksi Pidana Pada Hukum Keluarga Di Indonesia', *Al-Manahij: Jurnal Kajian Hukum Islam*, 13.2 (2019), 295–305 <https://doi.org/10.24090/mnh.v13i2.3029>

²³ Wardah Nuronyah, 'Cerai Lebe Sebagai Inisiatif Lokal Dalam Upaya Meminimalisir Praktek Perceraian Liar (Studi Kasus Di Desa Cangkring Kabupaten Indramayu)', *Al-Manahij: Jurnal Kajian Hukum Islam*, 14.1 (2020), 113–30 <https://doi.org/10.24090/mnh.v14i1.3739>

²⁴ Nursaidah, Rohman, and Rahayu.

²⁵ Anwar Hafidzi and others, 'Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan', *Al-Ahkam: Jurnal Pemikiran Hukum Islam*, 32.2 (2022), 153–68 <https://doi.org/10.21580/ahkam.2022.32.2.12789>

²⁶ Hemant Singh and others, 'Triple Talaq: The Practice In Conflict With Indian Constitutional Mandates Analysed Through Judicial Lens', *Res Militaris*, 12.5 (2022), 1376–86 <https://resmilitaris.net/issue-content/triple-talaq-the-practice-in-conflict-with-indian-constitutional-mandates-analysed-through-judicial-lens-2928>

rights²⁷, the criminalization of Muslims²⁸, gendered geolegality²⁹, religious freedom and equality³⁰, state power³¹, and the political context of Islamic law³². The study of triple divorce, in general, only examines the law on triple talaq³³, compatibility with human rights³⁴, and critical assessment in Islam³⁵. Likewise, the study of criminal sanctions in family law is only limited to general studies³⁶ and related to marriage registration.³⁷ Meanwhile, research articles that primarily discuss divorce sanctions are limited to vertical and diagonal comparisons between Indonesia and Pakistan.³⁸

The divorce sanctions in Malaysia have also only been observed in terms of their effectiveness.³⁹ Meanwhile, research articles that examine divorce sanctions in Indonesia are limited to academic views.⁴⁰ There has been no study that specifically highlights the criminal sanctions for violators of the rules of divorce in Indonesia by reflecting on the sanction of triple divorce in India by far. Therefore, this study attempts to complement previous studies by focusing on the study of criminal

²⁷ Saptarshi Mandal, 'Out of Shah Bano's Shadow: Muslim Women's Rights and the Supreme Court's Triple Talaq Verdict', *Indian Law Review*, 2.1 (2018), 89–107 <https://doi.org/10.1080/24730580.2018.1510162>

²⁸ Shraddha Chaudhary, 'Criminalisation Without an Object: Critical Reflections on the Muslim Women (Protection of Rights on Marriage) Act, 2019', *Socio-Legal Review*, 17.2 (2021), 105–35 <https://doi.org/10.55496/DCJG7858>

²⁹ Pallavi Gupta, Banu Gökarıksel, and Sara Smith, 'The Politics of Saving Muslim Women in India: Gendered Geolegality, Security, and Territorialization', *Political Geography*, 83.July (2020), 102257 <https://doi.org/10.1016/j.polgeo.2020.102257>

³⁰ Radhika Saxena and Rajarshi Sen, 'The Instant Triple Talaq Judgment — Its Contents and Discontents', *Journal of Law and Social Change*, 25.1 (2021), 53–79 <https://scholarship.law.upenn.edu/jlasc/vol25/iss1/4>

³¹ Eesha Shrotriya and Shivani Chauhan, 'Instant Triple Talaq and the Muslim Women (Protection of Rights on Marriage) Act, 2019: Perspectives and Counter- Perspectives', *ILI Law Review*, Summer Issue, 2019, 163–76 <https://ili.ac.in/pdf/essc.pdf>

³² Sohaira Z Siddiqui, 'Triple Divorce and the Political Context of Islamic Law in India', *Journal of Islamic Law*, 2.1 (2021), 5–32 <https://doi.org/10.53484/jil.v2.siddiqui>

³³ Yuhasnibar and Risna Wati, 'The Law on the Tripple Talaq at Once in the View of Yusuf Al Qaradawi's in Contemporary Context: Analysis of Sadd Al-Žarī'ah Theory Yuhasnibar', *El-Ussrah: Jurnal Hukum Keluarga*, 6.2 (2023), 381–98 https://doi.org/10.34354/ohpfjrn.46.3_77

³⁴ Javaid Rehman, 'The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq', *International Journal of Law, Policy and the Family*, 21.1 (2007), 108–27 <https://doi.org/10.1093/lawfam/eb1023>

³⁵ Nehaluddin Ahmad, 'A Critical Appraisal of "triple Divorce" in Islamic Law', *International Journal of Law, Policy and the Family*, 23.1 (2009), 53–61 <https://doi.org/10.1093/lawfam/ebn019>

³⁶ Rajafi.

³⁷ Adi Syahputra Sirait and others, 'Assessing Criminal Penalties in Marriage Law: A Comparative Study of Policy Frameworks within Indonesian and Malaysian Legislation', *Al-Manahij: Jurnal Kajian Hukum Islam*, 18.2 (2024), 255–70 <https://doi.org/10.24090/mnh.v18i2.11208>

³⁸ Restu Novriandi, 'Akibat Dan Sanksi Hukum Talak Di Luar Pengadilan (Studi Komparatif Undang-Undang Hukum Keluarga Indonesia Dan Pakistan)' (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2022) <https://repository.uinjkt.ac.id/dspace/handle/123456789/61195>

³⁹ Ali and Mohd Rijal.

⁴⁰ Shokhib.

sanctions for violators of divorce rules in Indonesia by reflecting on the rules of triple divorce sanctions in India. This study has the primary objective of answering some notable questions, such as how problematic divorce in Indonesia is, both in terms of practice and regulation, and how the provision of sanctions for triple divorce in India is performed. Finally, it analyzes if Indonesia can apply sanctions for violators of the rules of divorce by reflecting on the rules in India.

2. Research Method

This study is a normative legal research using a statutory approach⁴¹ and a comparative approach.⁴² The statutory approach employs legislation on marriage and divorce in Indonesia and India. The comparative approach was conducted by formulating the provisions of the sanction of triple talaq in India as a comparative material for this study. The comparison was performed with that of India, considering that it is the country with the lowest divorce rate in the world, reaching around 1%. In addition, India is the most courageous country to apply the sanctions of divorce against Muslims in the midst of the majority Hindu population. Meanwhile, Indonesia, which is predominantly Muslim, has not issued sanctions against violators of the divorce rules. The primary legal materials used in this study are composed of the Indonesian marriage law and The Muslim Women (Protection of Rights on Marriage) Act 2019. The secondary materials comprise several fatwas from scholars on divorce in Indonesia, as well as various concepts and practices of divorce found in journals, books, and other secondary materials. Data on the rules of divorce or practices of divorce in Indonesia were collected and then analyzed. The data were then compared with the rules of divorce sanctions in India to reconstruct sanctions for divorce violators in Indonesia.

3. Results and Discussion

The Problem of Talaq in Indonesia: Rules and Practices

In Indonesia, the Talaq (divorce initiated by the husband), represents a significant issue within the realm of family law, particularly under Islamic jurisprudence. Despite a legal framework that theoretically provides for equitable divorce practices, numerous challenges undermine its effectiveness in practice. The issue of divorce in Indonesia can be examined from three interrelated perspectives: the legal structure, the legal substance, and the legal culture. The regulations on divorce in Indonesia have shifted from *fiqh*, or Islamic jurisprudence, to statutory law. While *fiqh* allows divorce to exist at any place and any time, Indonesian law mandates that divorce proceedings must be conducted in a court. This regulation

⁴¹ Nur Putri Hidayah and others, 'Artificial Intelligence and Quality of Composition Verdicts in Indonesia: Lessons from New Zealand', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 101–20 <https://doi.org/10.53955/jhcls.v4i1.175>

⁴² Mursyid Djawas and others, 'The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law', *Juris: Jurnal Ilmiah Syariah*, 21.2 (2022), 207–19 <https://doi.org/10.31958/juris.v21i2.7495>

fundamentally protects women from arbitrary practices of talaq by men. With the stipulation that talaq must be declared in court, the unilateral issuance of talaq by husbands against their wives is no longer possible. Furthermore, the grounds for divorce in the law do not inherently distinguish between the roles of the husband and wife. A talaq declared by the husband in court is regarded as the initial talaq, effectively preventing a husband from issuing a triple talaq simultaneously. Thus, a simultaneous triple talaq is not legally acknowledged.

Despite the reforms in divorce law in Indonesia, issues persist concerning both the regulations and practices involved. From a regulatory standpoint, Indonesian law on divorce primarily emphasizes administrative issues without providing detailed provisions. Although it mandates the judicial process for divorces and delineates permissible grounds for divorce, it does not specify penalties for violations of these regulations. As a result, the Indonesian law on divorce lacks firmness. This also generates a duality of law in Indonesia. On the one hand, Islamic law permits divorce to take place in any situation, as it is regarded as a right of the husband. On the other hand, Indonesian law on marriage stipulates that divorce can only occur in the Religious Court following the decision of a court proceeding.⁴³

This dualism is particularly evident when religious organizations in Indonesia respond by issuing fatwas. At its 28th Congress in Yogyakarta in 1989 at Pondok Pesantren Al-Munawwir Krapyak, Nahdlatul Ulama issued Legal Decision Number 03/MNU-28/1989, stating that divorce is the husband's prerogative, which can be revoked at any time and in any place, even without justification. A divorce pronounced by the husband outside of a Religious Court is considered valid. In the event that the husband has not uttered talaq outside the religious court, the talaq declared in front of the judge falls under the first talaq, and the iddah period begins from that point. Conversely, if the husband has uttered talaq outside the religious court, the talaq declared in front of the judge falls under the second talaq if it takes place during the *raj'i iddah* period.⁴⁴

Unlike the Nahdlatul Ulama, Muhammadiyah adheres to Indonesian law on marriage. The Muhammadiyah Tarjih Council issued a fatwa in 2007, stating that divorce must be performed through court proceedings, and any divorce conducted outside of the court is deemed invalid.⁴⁵ The Indonesian Ulema Council (MUI) took

⁴³ Asrul Hamid and others, 'Sociological Analysis of the Concept of Divorce In Marriage Law in Indonesia Asrul', *JRSC: Journal of Religious, Social and Cultural*, 1.1 (2022), 42–51 <https://jurnal.stain-madina.ac.id/index.php/religi/article/view/1124>

⁴⁴ Ilham Hidayat, Yaswirman Yaswirman, and Mardenis Mardenis, 'Problems Arising from Talak Divorce Outside the Court', *International Journal of Multicultural and Multireligious Understanding*, 6.10 (2019), 138–48 <https://doi.org/10.18415/ijmmu.v6i10.919>

⁴⁵ Mohammad Hasan Bisryi, 'PERJUANGAN IDEOLOGI DALAM FATWA (Studi Terhadap Fatwa Tarjih Muhammadiyah)', *Jurnal Hukum Islam*, 14.2 (2016), 153–73 <https://doi.org/10.28918/jhi.v0i0.732>

a middle-ground approach in response to these differences. The Ijtima' Ulama Fatwa from MUI in 2012 clarified that divorce outside the court is valid as long as there are valid Shariah reasons that can be proven in court. In other words, the talaq conducted outside the court is deemed valid, but it must be substantiated in the Religious Court.⁴⁶ The Aceh Council of Scholars (MPU) also responded to the regulations concerning talaq conducted outside the court by issuing Fatwa Number 2 of 2015 on Talaq.⁴⁷ The MPU holds that a talaq conducted outside the court and/or talaq without witnesses is valid. Additionally, the MPU issued a fatwa stating that a triple talaq pronounced simultaneously counts as triple talaq. This stance directly contradicts Indonesian law on family, which does not recognize instant triple talaq.⁴⁸ The MPU's fatwa tends to legitimize divorce as regulated in *fiqh* texts.⁴⁹

The legal framework governing divorce in Indonesia is characterized by a dual legal system that incorporates both Islamic law and state regulations.⁵⁰ The Marriage Law of 1974 and subsequent regulations outlined the legal parameters for divorce, including talaq. However, the framework lacks comprehensive guidelines on the procedural aspects of talaq, leading to inconsistencies in implementation across different regions and courts. Furthermore, religious courts, which play a crucial role in adjudicating talaq cases, often operate with limited resources and training, compromising their capacity to deliver consistent and fair judgments. The decentralized nature of the Indonesian judicial system further complicates this issue, as local interpretations of Islamic law can result in varied outcomes. Moreover, structural barriers hinder access to religious courts, particularly for women, who may face financial constraints, geographic distance, or social stigma. These obstacles contribute to the underreporting of talaq cases and a reliance on informal practices.

Legal provisions regarding talaq are often ambiguous, leading to diverse interpretations by judges and clerics. This ambiguity can result in unfair outcomes, particularly for women, who may not fully understand their rights within the legal framework. Such circumstances can give rise to gender bias. The substance of Islamic family law in Indonesia reflects patriarchal norms that prioritize male authority in divorce proceedings. This bias is evident in the ease with which men can initiate talaq, while women often face stricter requirements for filing for divorce, such as proving abuse or neglect. Furthermore, the lack of standardized

⁴⁶ *Ijma' Ulama Indonesia 2012 Himpunan Keputusan Ijtima Ulama Komisi Fatwa Se-Indonesia IV*, 2012.

⁴⁷ *Fatwa Majelis Permusyawaratan Ulama Aceh Nomor 2 Tahun 2015 Tentang Talak*.

⁴⁸ Muhazir, 'Dualisme Peraturan Perceraian Di Aceh: Kontestasi Fatwa Dan Hukum Negara', *Al-Aḥwāl*, 13.2 (2020), 198–208 <https://doi.org/10.14421/ahwal.2020.13208>

⁴⁹ Muhazir, 'Islam, Fatwa Dan Negara: Meretas Pluralisme Hukum Perceraian Di Aceh', *Al-Manahij: Jurnal Kajian Hukum Islam*, 15.2 (2021), 233–48 <https://doi.org/10.24090/mnh.v15i2.5150>

⁵⁰ Agustin Hanapi, Sarina Aini, and Cut Endang Puspa Sari, 'Bridging Fiqh and Positive Law: A New Paradigm for Child Legality and the Best Interest of the Child in Indonesia', *Juris: Jurnal Ilmiah Syariah*, 23.2 (2024), 293–308 <https://doi.org/10.31958/juris.v23i2.10712>

legal guidelines for the execution of talaq contributes to discrepancies in judicial decisions. Different interpretations of religious texts by the local clerics can lead to varied practices, undermining the principle of 'just' before the law.

Culturally, divorce, particularly talaq, often carries a stigma in Indonesian society. Cultural norms are in line with the preservation of marriage, which may deter individuals from pursuing formal divorce processes, regardless of their legal rights. Local religious leaders play a significant role in shaping perceptions of talaq. Their interpretations of Islamic values can either reinforce or challenge the existing legal framework, affecting how individuals approach divorce and their understanding of their rights. Conversely, cultural resistance to reforming talaq laws may reflect greater societal attitudes toward gender roles and family integrity. Efforts to promote gender equality in divorce practices may face opposition from conservative groups, complicating the pursuit of legal advancement.

This issue has resulted in numerous instances of out-of-court divorces and instances of triple divorces in the community. This practice, which violates state regulations, is observed in nearly all regions. For example, it is reported to exist in Langsa, Aceh⁵¹; Central Lombok⁵²; Central Hulu Sungai⁵³; Babalan⁵⁴; and other areas. In addition to the dualism of the legal system, the ongoing practice of divorce that is not under state regulations is also influenced by several factors. These factors include: First, economic factors must be considered. The economic conditions of individuals affect their selection of individuals with limited financial resources, the prospect of pursuing divorce in a religious court is often perceived as financially onerous, requiring them to find alternative, more expedient avenues for divorce by choosing underhanded divorce. Second, there is a lack of legal awareness. Many couples lack an understanding of the legal procedures and consequences associated with a valid divorce, leading them to choose an informal-marriage divorce. Third, tradition and culture exert a significant influence. In certain cultures, oral or informal divorce is perceived as a more expedient and socially acceptable alternative despite not necessarily aligning with the law. Fourthly, a lack of information dissemination and limited knowledge about divorce

⁵¹ Muhammad Nur, Imam Jauhari, and Azhari Yahya, 'Perlindungan Hukum Terhadap Korban Perceraian Di Luar Pengadilan (Suatu Penelitian Di Kota Langsa Provinsi Aceh) (Legal Protection towards the Victim of Extrajudicial Divorce (A Study in Langsa City, Aceh Province))', *Jurnal Penelitian Hukum De Jure*, 19.4 (2019), 563–72 <https://doi.org/10.30641/dejure.2019.V19.563-572>

⁵² Surya Pati, 'Realitas Talak Rujuk Di Luar Pengadilan: Studi Desa Banyu Urip Kecamatan Praya Barat Kabupaten Lombok Tengah NTB' (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2022) <https://digilib.uin-suka.ac.id/id/eprint/51815/>

⁵³ Noor Radhiah, 'Praktik Talak Di Luar Sidang Pengadilan (Studi Kasus Pada Masyarakat Desa Murung A Kecamatan Batu Benawa Kabupaten Hulu Sungai Tengah)' (Universitas Islam Negeri Antasari Banjarmasin, 2023) <https://idr.uin-antasari.ac.id/23260/>

⁵⁴ Nikman Nashirin, As'ad Badar, and Abdullah Sani, 'Problematika Talak Suami Kepada Istri Di Luar Pengadilan (Studi Kasus Talak Di Kecamatan Babalan)', *Journal Smart Law*, 1.2 (2023), 140–50 <http://jurnal.jsl.or.id/index.php/jsl/index>

procedures in the religious court, as well as the distance to the court, drives individuals to choose the informal-marriage divorce, as it is perceived as more straightforward, cost-effective, and time-efficient.⁵⁵

These findings indicate that divorce regulations in Indonesia still leave unresolved legal and practical concerns. The issue of talaq in Indonesia necessitates a reexamination to ensure that the law's intended objectives are met. The lack of state firmness regarding the enforcement of talaq regulations is one factor contributing to the persistence of legal dualism. Additionally, the lack of sanctions against individuals who violate the divorce provisions results in the continued practices of talaq outside the court and of triple talaq. Moreover, individual, social, and cultural factors within society support the perpetuation of practices of talaq that do not align with national regulations.

The Effectiveness of Talaq Regulations in India: Rules and Practices

Islamic family law in India has never been systematically codified, which stands in stark contrast to Hindu family law in India and Islamic family law in many Muslim-majority countries, both of which have seen much greater codification.⁵⁶ The Indian government enacted The Muslim Personal Law (Shariat) Application Act, 1937, which regulates the application of personal Muslim law for Muslims, particularly in matters of marriage and divorce (talaq).⁵⁷ For divorce, whether initiated by the husband or the wife, a petition must be submitted to the Family Court.⁵⁸ Despite being governed by law, similar to Indonesia, there are still many instances of arbitrary talaq by husbands in India. The practice of talaq occurring outside the court remains prevalent. Moreover, the practice of simultaneous triple talaq is discriminatory towards women. Many Indian women become victims of violence as a result of these triple talaq practices.⁵⁹

The discriminatory practice of talaq is exemplified in the case of Shayara Bano, which catalyzed the emergence of The Muslim Women (Protection of Rights on Marriage) Act 2019. In 2016, she was divorced on the grounds of triple talaq by her husband. She filed a petition and presented her case before the Supreme Court of India, arguing that the practice of triple talaq is unconstitutional. According to her, this practice violates the fundamental rights set forth in the Indian Constitution,

⁵⁵ Khairuddin Khairuddin, 'Alasan Perceraian Luar Pengadilan Dan Akibatnya Bagi Masyarakat Desa Sanggaberu Kecamatan Gunung Meriah Aceh Singkil', *Tahkim (Jurnal Peradaban Dan Hukum Islam)*, 5.1 (2022), 43–58 <https://doi.org/10.29313/tahkim.v5i1.9356>

⁵⁶ Justin Jones, 'Towards a Muslim Family Law Act? Debating Muslim Women's Rights and the Codification of Personal Laws in India', *Contemporary South Asia*, 28.1 (2020), 1–14 <https://doi.org/10.1080/09584935.2019.1684444>

⁵⁷ *The Muslim Personal Law (Shariat) Application Act, 1937*.

⁵⁸ *The Family Courts Act, 1984 Act No. 66 of 1984*.

⁵⁹ Hasibur Rahaman Molla, 'Triple Talaq: A Distress to Muslim Women in India', *Asian Journal of Research in Social Sciences and Humanities*, 7.8 (2017), 244–49 <https://doi.org/10.5958/2249-7315.2017.00420.8>

specifically Article 14 (equality before the law), Article 15(1) (prohibition of discrimination, including that based on gender), Article 21 (right to life), and Article 25 (freedom of religion). The majority of judges declared that simultaneous triple talaq is unconstitutional. This decision was followed by Muslim activists in India, who signed petitions to abolish triple talaq. They argued that Article 2 of The Muslim Personal Law (Shariat) Application Act 1937 conflicts with Article 14 of the Indian Constitution regarding the fundamental right to equality before the law. In addition, the implementation of triple talaq was regarded as discriminatory towards women.⁶⁰

The Bharatiya Muslim Mahila Andolan (BMMA), a prominent contemporary Muslim women's organization in India, expressed support for the Shayara Bano case. In 2016, in conjunction with the Shayara Bano case, the BMMA organizers filed a petition with the Supreme Court seeking the abolition of triple talaq. This resulted in the Supreme Court of India declaring the practice unconstitutional and legally invalid in 2017.⁶¹ Following this judicial triumph, the BMMA backed the government's efforts to formulate legislation based on the court's ruling.⁶² Despite the Lok Sabha (the Lower House) expeditiously passing the draft legislation on this matter expeditiously passing the draft legislation on this matter in 2017, it was not approved by the Rajya Sabha (the Upper House) until July 2019. Consequently, the Muslim Women (Protection of Rights on Marriage) Act was enacted, rendering the practice of triple talaq legally unacceptable and a criminal offense.⁶³

On July 31, 2019, the Indian government enacted the Muslim Women (Protection of Rights on Marriage) Act 2019. Article 2(c) of this legislation defines talaq as *talaq-e-biddat* or similar forms of instant divorce that cannot be revoked or uttered by a Muslim husband. In addition, Article 3 stipulates that any instance of talaq uttered by a Muslim husband to his wife—whether verbally, in writing, electronically, or by any other means—is null and void. If such talaq is performed, the husband may be liable to imprisonment of up to three years and may also incur a fine (Article 4). Moreover, to ensure the protection of women's rights after divorce, the husband is obliged to provide a maintenance allowance for his wife and any children for whom he is responsible, as determined by the court (Article 5). Also, custody of minor children shall be granted to the wife if her husband utters a divorce to her (Article 6).⁶⁴

⁶⁰ Vedansh Sharma, 'Triple Talaq and Its Current Status in India : A Critical Analysis', *Psychology and Education Journal*, 58.5 (2021), 4021–27
<http://psychologyandeducation.net/pae/index.php/pae/article/view/6185>

⁶¹ *Supreme Court of India Judgment WP(C) No.118 of 2016 Triple Talaq.*

⁶² Sagnik Dutta, 'Divorce, Kinship, and Errant Wives: Islamic Feminism in India, and the Everyday Life of Divorce and Maintenance', *Ethnicities*, 21.3 (2021), 454–76
<https://doi.org/10.1177/1468796821999904>

⁶³ Gupta, Gökariksel, and Smith.

⁶⁴ *The Muslim Women (Protection of Rights on Marriage) Act 2019.*

Essentially, this amendment to the regulation represents an effort to protect women's rights within marriage. The legislation indicates that the Indian government aims to regulate the arbitrary pronouncement of divorces by husbands, which can cause psychological and physical harm to women. Although triple talaq is permitted under *fiqh*, this law prohibits it and imposes penalties, including a maximum of three-year imprisonment and fines for offenders. This serves to illustrate an effort to criminalize the practice of simultaneous triple talaq. In addition to protecting women from arbitrary talaq, this law also grants rights to women and children post-divorce, such as maintenance allowances. This illustrates how legal mobilization and the perspectives of policymakers can result in substantial changes in Islamic law in India.⁶⁵

The introduction of this law represents an advancement for the women's movement in India. The Islamic feminist movement in India advocates for gender equality within Muslim family law.⁶⁶ However, the social and legal realities often do not align with the institutional logic of this feminist movement.⁶⁷ The enactment of this law provides a fresh perspective for reforming Islamic family law, prioritizing women's rights in India. In addition, India has unofficial sharia courts led by women, where women serve as *qāzī* (religious judges) to adjudicate family disputes within the Muslim community.⁶⁸ This is an extraordinary breakthrough that has not been seen even in Islamic countries. There is a pressing need for judicial reform alongside judicial activism, especially in light of legislative passivity regarding Islamic family law.⁶⁹ Despite the fact that India is not an Islamic state, its developments in family law offer protection for women and children.

In contrast, the introduction of this law signifies the sustained marginalization of the Muslim community and the Indian government's violations of the rights of certain religious communities. Some argue that this could exacerbate the social and legal challenges faced by women seeking divorce and further infringe upon the rights of an increasingly politically marginalized Muslim community.⁷⁰ Moreover, an exclusive focus on the issue of talaq is insufficient for achieving comprehensive gender justice. Instead, the interconnections of various factors, such as Hindutva,

⁶⁵ Narendra Subramanian, 'Legal Change and Gender Inequality: Changes in Muslim Family Law in India', *Law & Social Inquiry*, 33.03 (2008), 631–72 <https://doi.org/10.1111/j.1747-4469.2008.00117.x>

⁶⁶ Sylvia Vatuk, 'Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law', *Modern Asian Studies*, 42.2–3 (2008), 489–518 <https://doi.org/10.1017/S0026749X07003228>

⁶⁷ Dutta.

⁶⁸ Justin Jones, "'Where Only Women May Judge': Developing Gender-Just Islamic Laws in India's All-Female 'Sharī'Ah Courts'", *Islamic Law and Society*, 26.4 (2019), 437–66 <https://doi.org/10.1163/15685195-00264P04>

⁶⁹ Ridwanul Hoque and MD. Morshed Mahmud Khan, 'Judicial Activism and Islamic Family Law: A Socio-Legal Evaluation of Recent Trends in Bangladesh', *Islamic Law and Society*, 14.2 (2007), 204–39 <https://doi.org/10.1163/156851907781492511>

⁷⁰ Siddiqui.

communal violence, and the marginalization of the Muslim community, must be considered to fully understand the challenges faced by Muslim women in India.⁷¹ The aspect of gender equality does not play a strong role in these arguments, and the decision does not provide a clear roadmap for addressing other discriminatory aspects within the country's civil legal system.⁷² Other perspectives suggest the necessity for a distinct and more inclusive approach to reforming India's civil law.⁷³

Despite these debates, it is undeniable that India has made efforts to establish legal provisions that support women and children, particularly concerning divorce. Despite the prohibition of triple talaq, there remains confusion regarding the application of the new laws. This uncertainty affects the public's understanding of the divorce process. Additionally, the divorce laws for Muslims in India are not unified; differences in the laws applicable to various communities create confusion and injustice. Furthermore, existing laws are insufficient to protect women's rights, particularly concerning maintenance, child custody, and the division of property after divorce. Culturally, similar to the situation in Indonesia, there is a strong social stigma against women seeking divorce. Many communities still uphold patriarchal norms that disadvantage women, considering them unentitled to choose divorce even in detrimental situations. Moreover, many women are unaware of their legal rights, leaving them uncertain about how to protect themselves during the divorce process.

Despite the existence of diverse legal systems in Indonesia and India, notable discrepancies emerge in the handling of divorce, particularly those concerning women's rights and procedural justice. In Indonesia, the legal framework for divorce is influenced by Islamic law, while India operates under a complex system that includes personal laws for various religious communities. The primary legal instrument governing divorce in Indonesia is the Marriage Law of 1974, which integrates Islamic principles with civil law. This law provides a framework for divorce but lacks comprehensive procedural guidelines, leading to inconsistencies in its application across different jurisdictions. In contrast, divorce law in India is governed by several statutes, including the Hindu Marriage Act of 1955 and the Muslim Personal Law (Sharia) Application Act of 1937. In recent years, the Supreme Court of India has addressed issues such as "Talaq-e-Biddah," thereby reinforcing the necessity for a more uniform approach to divorce that protects women's rights.

⁷¹ Esita Sur, 'Triple Talaq Bill in India: Muslim Women as Political Subjects or Victims?', *Space and Culture, India*, 5.3 (2018), 5–12 <https://doi.org/10.20896/saci.v5i3.299>

⁷² Tanja Herklotz, 'Shayara Bano versus Union of India and Others. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice', *Verfassung in Recht Und Übersee*, 50.3 (2017), 300–311 <https://doi.org/10.5771/0506-7286-2017-3-300>

⁷³ Niraj Kumar and Akhilendra Pratap Singh, 'Invalidating Instant Triple Talaq: Is the Top-Down Approach of Reforming Personal Laws Prudent?', *Nujs Law Review*, 11.2 (2018), 189–211 <https://nujlawreview.org/2018/05/01/invalidating-instant-triple-talaq-is-the-top-down-approach-of-reforming-personal-laws-prudent/>

Talaq proceedings in Indonesia can be initiated without the wife's consent, although mediation by involving a third party is encouraged. The absence of formal procedural guidelines often results in arbitrary applications of the law by religious courts, leading to inconsistent outcomes. In contrast, the procedural requirements in India are more formalized. Under the Hindu Marriage Act, both parties must apply for divorce, and the court must review the application. This system offers a clearer framework for legal recourse and protection for women, although challenges remain to ensure fair treatment across different communities.

Gender bias is prevalent in Indonesian divorce law, where the husband's authority to file for divorce often disadvantages women. Cultural norms surrounding marriage and divorce exacerbate this issue, discouraging women from asserting their rights.⁷⁴ Although India also experiences gender bias, recent legal reforms aim to empower women. The Supreme Court's decision against arbitrary talaq reflects a commitment to gender equality, providing a legal avenue for women to challenge unfair practices.⁷⁵ However, societal stigma surrounding divorce still influences women's decisions to seek legal remedies.

In Indonesian society, divorce—particularly talaq—carries significant social stigma. Cultural expectations prioritize the preservation of marriage, creating barriers for individuals, especially women, to pursue formal divorce proceedings despite their legal rights. Similarly, while divorce can be stigmatized in Indian society, there is a growing acceptance of women's rights and autonomy in marital matters. Activism and legal reforms are gradually shifting cultural perceptions, encouraging fairer treatment of women in divorce proceedings.

In general, the legal frameworks, procedural fairness, gender equality, and cultural acceptance associated with divorce in Indonesia and India demonstrate significant contrasts. While Indonesia's legal structure presents challenges in consistency and gender bias, India's legal reforms show a commitment to protecting women's rights within a complex socio-cultural landscape. Further legal reforms that enhance procedural clarity, foster greater gender equality, and address the cultural stigmas surrounding divorce would be beneficial for both countries. These findings contribute to the broader discourse on family law reform and gender justice on a global stage.

⁷⁴ Rini Fitriani and others, 'Legal Protection for Wife and Child as Consequence of Head of Family's Criminal Imprisonment Enforcement', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2023, 77–88 <https://doi.org/10.24090/volksgeist.v6i1.8232>

⁷⁵ Fahad Al Aghbari and others, 'Rights of Women in the Establishment and Dissolution of Marriage in Oman: Between CEDAW and Sharia Perspective', *Legality: Jurnal Ilmiah Hukum*, 32.1 (2024), 33–50 <https://doi.org/10.22219/ljih.v32i1.31493>

Reconstruction of Family Law against Criminalization of Divorce Perpetrators in Indonesia

One of the objectives of reforming Islamic family law is to elevate the status and dignity of women and provide protection for children.⁷⁶ This endeavor to elevate women's status aligns with the fundamental objectives of Islamic law, which are to guarantee justice and equality for all individuals.⁷⁷ Similarly, protection for children is an essential requirement within Islamic teachings. The subordination and discrimination against women and children within families continue to be challenged despite facing opposition from various groups. The issue of divorce, which has historically been detrimental to women, is particularly significant. This topic was highlighted during the First Indonesian Women's Congress on December 22, 1928, demonstrating that the struggle for reform in family law has been ongoing since the colonial era, led by Indonesian women's organizations.⁷⁸ Nevertheless, the issues of gender discrimination against women within families remain unresolved.

Indonesia is relatively slow in reforming Islamic family law compared to other Muslim countries.⁷⁹ Since 1974, significant progress in family law reform has been limited. Currently, reforms in Indonesia still primarily take place through judicial means rather than purely legislative processes. Some judicial reviews of marriage laws have been conducted, such as those concerning the legal marriage age⁸⁰, but these reforms are restricted to only a few articles of the marriage law. Various efforts have been made to update Islamic family law to achieve equality and justice in households, particularly for women, but these efforts have not yielded significant results. For instance, attempts by some individuals to propose a Counter Legal Draft of the Compilation of Islamic Law (CLD KHI) have ultimately failed.⁸¹

⁷⁶ Rasdi Rasdi and others, 'Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice', *Lex Scientia Law Review*, 6.2 (2022), 479–518 <<https://doi.org/10.15294/lesrev.v6i2.58320>>; Arifki Budia Warman, 'Dinamika Perkembangan Hukum Keluarga Islam Di Indonesia', *Ijtihad*, 35.2 (2019), 11–28 <https://journals.fasya.uinib.org/index.php/ijtihad/article/view/14>

⁷⁷ Mohammad Fauzan Ni'ami and Bustamin, 'Maqāṣid Al-Syarī'Ah Dalam Tinjauan Pemikiran Ibnu 'Āsyūr Dan Jasser Auda', *Juris: Jurnal Ilmiah Syariah*, 20.1 (2021), 91–102 <https://doi.org/10.31958/juris.v20i1.3257>

⁷⁸ Susan Blackburn, *Kongres Perempuan Pertama Tinjauan Ulang* (Jakarta: Yayasan Obor Indonesia dan KITLV-Jakarta, 2007).

⁷⁹ Fatum Abubakar, 'Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)', *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum*, 4.2 (2019), 97–118 <https://doi.org/10.22515/alahkam.v4i2.1667>

⁸⁰ Muhammad Fauzinudin Faiz, Zezen Zainul Ali, and Muhammad Taufiq, 'Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation', *JURIS (Jurnal Ilmiah Syariah)*, 22.2 (2023), 223–34 <https://doi.org/10.31958/juris.v22i2.9097>

⁸¹ Ahmad Imam Mawardi and A. Kemal Riza, 'Why Did Kompilasi Hukum Islam Succeed While Its Counter Legal Draft Failed? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia', *Journal of Indonesian Islam*, 13.2 (2019), 421–53 <https://doi.org/10.15642/JIIS.2019.13.2.421-453>

While the CLD KHI is not perceived as adequately addressing gender equality, efforts for reform have been initiated, which is a positive development.⁸²

In comparison to Indonesia, India has made significant reforms in Islamic family law despite the fact that Muslims constitute a minority in that country. The reform of divorce laws, for example, is part of the Indian government's efforts to eliminate subordination and discrimination against women. This initiative began with individuals filing petitions to the courts challenging the constitutionality of the talaq practices they experienced. These petitions were supported by women's organizations advocating for equality and justice for women within households. The judges granted these petitions, declaring that triple talaq was unconstitutional. This was a victory not just for the petitioners and women's organizations in India but for all Indian women.

A similar pattern occurred in Indonesia when Machica Mochtar filed a judicial review regarding the legal status of her child from an unregistered marriage with the Constitutional Court. The court ruled in favor of Machica Mochtar, establishing that children born out of wedlock have civil rights with their biological fathers. Based on this decision, Article 43, Paragraph (1) of Law Number 1 of 1975 on Marriage must be interpreted to mean that children born outside of marriage have civil relationships not only with their mothers and their maternal families but also with their fathers, which can be proven through scientific and technological means.⁸³ This case indicates that reforms in family law aimed at protecting women and children have been initiated in Indonesia. However, unlike India, which enacted clear new regulations, Indonesia has only amended a few articles of its marriage law.

The reform of Islamic family law is performed since the existing legal instruments have been left behind (*het recht hing achter de feiten aan*) so that the reform can accommodate *justicia belen*, which is more just, useful, and legally certain. Conceptually, legal reform can be done through three components. First, Legal Substance. The legal substance that regulates Islamic family law is the Marriage Law, Government Regulation Number 9 of 1975, and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. The substance of the family law norms needs to be reformed because the material law of the Islamic family, the Marriage Law, does not regulate criminal provisions. Meanwhile, the implementing regulation, namely Article 45 of Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, regulates criminal provisions for administrative violations. It is obvious that the

⁸² Fuady Abdullah, Nova Anggraini Putri, and Youssof Salhein, 'Revisiting 'Iddah: A Critical Analysis of Gender Equality in Indonesian Feminist Islamic Legal Discourse', *Juris: Jurnal Ilmiah Syariah*, 22.2 (2023), 275–90 <https://doi.org/10.31958/juris.v22i2.10320>

⁸³ Abdullah Jarir, Ratno Lukito, and Moch. Nur Ichwan, 'Legal Reasoning on Paternity: Discursive Debate on Children Out of Wedlock in Indonesia', *Ahkam: Jurnal Ilmu Syariah*, 23.2 (2023), 449–72 <https://doi.org/10.15408/ajis.v23i2.27005>

two norms that are in one politics are dissonant in terms of criminal provisions, so it is necessary to carry out legal construction through the renewal of Islamic family law. The reform is carried out by means of an evolutionary approach⁸⁴, namely legal reform by adding or reducing articles in the sources of Islamic family law in Indonesia. This means updating by adding articles related to the regulation of talaq, which was originally a permissible act to become a prohibited act. Determining an act that was allowed to be done into an act that is prohibited in criminal law policy is known as criminalization. Thus, it is necessary to update Islamic family law on the Articles governing talaq. Furthermore, the addition of articles is also carried out on criminal provisions as a logical consequence of violations of the main article so that criminal sanctions can be imposed on certain talaq acts which are considered prohibited acts if the elements of the offense are fulfilled, such as the existence of conformity between the inner attitude (*mens rea*) and *actus reus*, the existence of *materiele wederrechtelijkheid* both in a positive and negative sense.⁸⁵ Therefore, for every legislation in which criminal provisions are regulated, then the regulation becomes a special regulation that is enforced based on the principle of *lex specialist derogate legi generali*.

The criminalization of such actions is permitted within criminal policy, provided that the consequences of the act of divorce have resulted in social disharmony within the community and that the act has received holistic and comprehensive public attention. Contextually, in Indonesia, following a divorce initiated by the husband against his former wife, there is frequent economic neglect that affects both the ex-wife and the children born from the marriage. While the husband may continue his life without issues, the repercussions of the divorce have prompted serious concern from both feminist groups and those advocating for gender equality.

Second, the legal structure is a significant factor to consider.⁸⁶ The reform of Islamic family law cannot be conducted partially; it must be integral. This means that in addition to materially adding articles regarding the criminalization of divorce, it is also necessary to update the articles related to the legal structure. The legal structure refers to specific officials who will be granted authority to enforce the law regarding violations of material laws in Islamic family matters. For example, it could involve designating certain civil servants with the authority to investigate and examine prohibited divorce actions, such as the Head of the Religious Affairs Office or other officials, as allowed by Article 1, Number 1 of Law

⁸⁴ Shinta Agustina, *Asas Lex Specialist Derogat Legi Generaly Dalam Penegakan Hukum Pidana* (Jakarta: Themis Books, 2015).

⁸⁵ Roni Efendi and others, 'Omerta And Its Implications For Eradication Of Criminal Acts Of Corruption: Integration Of Maqasid Sharia', *Islamika: Jurnal Ilmu-Ilmu Keislaman*, 23.2 (2023), 113–126 <https://doi.org/10.32939/islamika.v23i2.3126>

⁸⁶ Anis Widyawati and others, 'Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions', *Lex Scientia Law Review*, 6.2 (2022), 327–58 <https://doi.org/10.15294/lesrev.v6i2.58131>

No. 8 of 1981 concerning Criminal Procedure Law. Thus, the Marriage Law resulting from the reform of Islamic family law can be regarded as a special criminal law because it contains deviations from both the provisions of general criminal law (the Criminal Code) and procedural law, as it also regulates a specific legal structure for enforcing violations of material Islamic family law.⁸⁷

Third, the legal culture is of significant consequence. The construction of Islamic family law reform in the Marriage Law also encompasses legal culture. The term “legal culture” refers to the elements of society that are inseparable from the legal enforcement process within the legal system in Indonesia. The reform of Islamic family law from the legal culture perspective is necessary due to societal habits of engaging in divorce arbitrarily. Moreover, this aspect of reform can be tailored to the *volkgeist* of the community, as people will be more inclined to accept laws that resonate with their national spirit.

Indonesia needs to learn from India regarding the firmness in establishing family law regulations. Similar to Indonesia, the reform of Islamic family law in India began with individual petitions. However, these petitions did not end with court decisions; they continued with efforts to draft new laws related to those petitions. The Muslim Women (Protection of Rights on Marriage) Act 2019 is a product of such efforts. Indian women's organizations, such as the Bharatiya Muslim Mahila Andolan (BMMA), played a role in monitoring the drafting of this legislation. Additionally, India has special courts for women that address marital issues. This demonstrates a serious commitment to advocating for women's rights. Such efforts, akin to those in India, were undertaken in Indonesia before independence, but they have not yet yielded significant results for women's rights, particularly in the area of divorce, as seen in India.

Furthermore, in addition to significant reforms in family law that have been implemented in India, the country's courage in imposing sanctions on those who practice triple talaq is also worthy of emulation by Indonesia. India, a Hindu-majority country with no official Islamic status, has managed to establish regulations that impose penalties on its Muslim minority community for arbitrarily divorcing their wives. Similarly, other Islamic and Muslim countries have enacted sanctions for violations of family law. In contrast, Indonesia has yet to implement sanctions against violators of family law.⁸⁸ The issue in Indonesia is not only the lack of legal certainty for rule violators but also the inconsistency in how the law is

⁸⁷ Indriati Amarini and others, ‘Social Reintegration after the Implementation of Restorative Justice in the Indonesian Criminal Code’, *Jurnal Media Hukum*, 31.1 (2024), 115–33 <https://doi.org/10.18196/jmh.v31i1.20655>

⁸⁸ Faida Fidiani, ‘Penalties for Unregistered Marriage and Polygamy in Indonesia, Pakistan, and Tunisia’, *SAKINA: Journal of Family Studies*, 5.1 (2021), 1–14 <http://urj.uin-malang.ac.id/index.php/jfs/article/view/563/427>

applied, particularly in the judicial realm.⁸⁹ Furthermore, the protection of women's rights within the judicial system remains a notable concern.⁹⁰

Considering India, Indonesia currently needs to reform its family law, especially concerning divorce. As several studies have shown, there are still many practices of divorce that violate family law in Indonesia, such as extrajudicial talaq and triple talaq. Indonesia needs to establish new regulations regarding sanctions for those who practice extrajudicial talaq and triple talaq, similar to those in India. This is crucial given the growing non-compliance and distrust within society toward state authorities managing household issues.⁹¹ Such authorities need to be legitimized through legal sanctions. The imposition of penalties for extrajudicial talaq and triple talaq is essential to reinforce not only the laws but also the Islamic principles on which they are based. This is because, following both Indonesian legislation and Islamic doctrine, divorce should be strictly controlled.⁹²

The imposition of criminal sanctions against violators of family law in Indonesia has been planned in the Draft Law on Material Religious Court Law. These criminal sanctions are aimed at individuals who engage in illegal marriages (*nikah siri*), temporary marriages (*nikah mut'ah*), polygamy, adultery, issues concerning marriage guardians, and divorce that occurs outside the court. However, this bill has faced opposition from various groups.⁹³ Several studies criticize the application of criminal sanctions against illegal marriages, arguing that they do not constitute acts deserving of punishment.⁹⁴ However, in the case of violations related to talaq, the act of a husband arbitrarily pronouncing talaq on his wife is indeed a reprehensible act that qualifies as a criminal offense. This is due to the fact that it causes harm to women and children. Nevertheless, the enforcement of criminal sanctions against violators of talaq needs to consider more humane regulations⁹⁵

⁸⁹ Dodon Alfiander, 'Disparity in the Considerations of Judges in Deciding Divorce Disputes in Religious Courts and District Courts', *JURIS (Jurnal Ilmiah Syariah)*, 21.1 (2022), 109 <https://doi.org/10.31958/juris.v21i1.5716>

⁹⁰ Darmawan Darmawan and others, 'Relative Competence of the Sharia Court: Talaq Divorce Lawsuit and Protection of Women's Rights', *Samarah*, 7.1 (2023), 84–100 <https://doi.org/10.22373/sjhk.v7i1.16053>

⁹¹ Warman, Elimartati, and others.

⁹² Shokhib.

⁹³ Nahar Surur, 'Pemidanaan Nikah Sirri Dalam RUU HMPA (Pasal 143) Perspektif Maṣlāḥah Mursalah', *El-Ussrah*, 5.2 (2022), 398–408 <https://doi.org/10.22373/ujhk.v5i2.14970>

⁹⁴ Roni Efendi, 'Kriminalisasi Nikah Sirri Menurut Rancangan Undang-Undang Hukum Materiil Peradilan Agama Bidang Perkawinan', *Pagaruyuang Law Journal*, 2.2 (2019), 221–38 <https://doi.org/10.31869/plj.v2i2.1358>

⁹⁵ Ahmad Rajafi, Ressi Susanti, and Ahmad Elmawan M. Alhanif, 'Humanist Fiqh Developed by KH. Ahmad Rifa'i Arief Banten, Indonesia', *JURIS (Jurnal Ilmiah Syariah)*, 22.1 (2023), 27–37 <https://doi.org/10.31958/juris.v22i1.6921>

and local wisdom.⁹⁶ In other words, the application of criminal sanctions against extrajudicial talaq and triple talaq should prioritize humanitarian aspects and local wisdom present in Indonesia.⁹⁷

4. Conclusion

It is evident that significant reforms in family law, particularly those related to divorce, have yet to be enacted in Indonesia. Several Muslim countries, including India, whose majority of its people are Hindu, have made advancements in Islamic family law, primarily in imposing sanctions against violators of these regulations. In India, those who engage in triple talaq are sentenced to three-year imprisonment. In contrast, Indonesia lacks such regulatory sanctions. Criminal penalties for violators of family law in Indonesia were designed several years ago but continue to face mixed reactions. On one hand, many societal practices related to family life do not align with family law in Indonesia. For instance, extrajudicial talaq and triple talaq still occur frequently, placing women and children in disadvantageous positions. It is, therefore, evident that Indonesia needs to learn from other countries, particularly India, which has been bold and has demonstrated a willingness to implement criminal penalties for violators of triple talaq. To reinforce the authority of Indonesia's law on family and to discourage violations thereof, it would be advisable to implement criminal sanctions for those who engage in practices such as triple talaq and extrajudicial talaq. However, to avoid opposition to these sanctions, it is essential to consider more humane interpretations of Islamic jurisprudence and local wisdom in Indonesia.

References

- Abdullah, Fuady, Nova Anggraini Putri, and Yousof Salhein, 'Revisiting 'Iddah: A Critical Analysis of Gender Equality in Indonesian Feminist Islamic Legal Discourse', *Juris: Jurnal Ilmiah Syariah*, 22.2 (2023), 275–90 <https://doi.org/10.31958/juris.v22i2.10320>
- Abubakar, Fatum, 'Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)', *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum*, 4.2 (2019), 97–118 <https://doi.org/10.22515/alahkam.v4i2.1667>
- Aghbari, Fahad Al, Muhamad Sayuti Hassan, Saleh Al Mamari, and Nurhafilah Musa, 'Rights of Women in the Establishment and Dissolution of Marriage in Oman: Between CEDAW and Sharia Perspective', *Legality: Jurnal Ilmiah Hukum*, 32.1 (2024), 33–50 <https://doi.org/10.22219/ljih.v32i1.31493>

⁹⁶ Arifki Budia Warman, Zulkifli, and others, 'Strengthening Family Resilience Through Local Wisdom: Pulang Ka Bako Type of Marriage in Minangkabau', *Al-Istinbath: Jurnal Hukum Islam*, 8.1 (2023), 253–68 <https://doi.org/10.7454/ai.v34i2.3966.5>

⁹⁷ Hijriani Hijriani and Rizki Ramadani, 'From Criminal Law to Customary Law: Incest as a Sexual Crime', *Yuridika*, 37.2 (2022), 399–414 <https://doi.org/10.20473/ydk.v37i2.32830>

- Agustina, Shinta, *Asas Lex Specialist Derogat Legi Generaly Dalam Penegakan Hukum Pidana* (Jakarta: Themis Books, 2015)
- Ahmad, Nehaluddin, 'A Critical Appraisal of "triple Divorce" in Islamic Law', *International Journal of Law, Policy and the Family*, 23.1 (2009), 53–61 <https://doi.org/10.1093/lawfam/ebn019>
- Ahmad, Sabarudin, 'Menelisik Ketegasan Hukum Keluarga Islam Di Pakistan', *Al-Mashlahah*, 15.1 (2019), 87–97 <https://doi.org/10.24260/al-mashlahah.v15i1.1386>
- Alfiander, Dodon, 'Disparity in the Considerations of Judges in Deciding Divorce Disputes in Religious Courts and District Courts', *JURIS (Jurnal Ilmiah Syariah)*, 21.1 (2022), 109 <https://doi.org/10.31958/juris.v21i1.5716>
- Ali, Rukiah Muhammad, and Siti Maimunah Binti Mohd Rijal, 'Efektivitas Pelaksanaan Sanksi Talak Di Luar Mahkamah Rendah Syariah', *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 3.1 (2020), 75–95 <https://doi.org/10.22373/petita.v3i1.41>
- Amarini, Indriati, Gamalel Rifqi Samhudi, Safitri Mukarromah, Noorfajri Ismail, and Yusuf Saefudin, 'Social Reintegration after the Implementation of Restorative Justice in the Indonesian Criminal Code', *Jurnal Media Hukum*, 31.1 (2024), 115–33 <https://doi.org/10.18196/jmh.v31i1.20655>
- Azwir, Azwir, Pagar Pagar, and Muhammad Syukri Albani Nasution, 'The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts', *Al-Manahij: Jurnal Kajian Hukum Islam*, 16.2 (2022), 165–80 <https://doi.org/10.24090/mnh.v16i2.6389>
- Bimantara, Azza, 'Structural and Cultural Violence Behind Triple Talaq In Indian Muslim Community', in *International Conference and Workshop on Gender*, 2018, pp. 276–87 https://www.researchgate.net/publication/331860444_Structural_and_Cultural_Violence_behind_Triple_Talaq_in_Indian_Muslim_Community
- Bisyri, Mohammad Hasan, 'Perjuangan Ideologi Dalam Fatwa (Studi Terhadap Fatwa Tarjih Muhammadiyah)', *Jurnal Hukum Islam*, 14.2 (2016), 153–73 <https://doi.org/10.28918/jhi.v0i0.732>
- Blackburn, Susan, *Kongres Perempuan Pertama Tinjauan Ulang* (Jakarta: Yayasan Obor Indonesia dan KITLV-Jakarta, 2007)
- Chakrabarti, Anindita, K. C. Mujeebu Rahman, and Suchandra Ghosh, 'Of Marriage, Divorce and Criminalisation Reflection on the Triple Talaq Judgement in India', *Journal of Legal Anthropology*, 6.1 (2022), 24–48 <https://doi.org/10.3167/jla.2022.060103>
- Chaudhary, Shraddha, 'Criminalisation Without an Object: Critical Reflections on

- the Muslim Women (Protection of Rights on Marriage) Act, 2019', *Socio-Legal Review*, 17.2 (2021), 105–35 <https://doi.org/10.55496/DCJG7858>
- Darmawan, Darmawan, Suhaimi Suhaimi, Muhammad Natsir, T. Rasyidin, and Mustakim Mustakim, 'Relative Competence of the Sharia Court: Talaq Divorce Lawsuit and Protection of Women's Rights', *Samarah*, 7.1 (2023), 84–100 <https://doi.org/10.22373/sjhk.v7i1.16053>
- Djawas, Mursyid, Khairuddin Hasballah, Soraya Devi, Muntasir A. Kadir, and Yusfriadi Abda, 'The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law', *Juris: Jurnal Ilmiah Syariah*, 21.2 (2022), 207–19 <https://doi.org/10.31958/juris.v21i2.7495>
- Dutta, Sagnik, 'Divorce, Kinship, and Errant Wives: Islamic Feminism in India, and the Everyday Life of Divorce and Maintenance', *Ethnicities*, 21.3 (2021), 454–76 <https://doi.org/10.1177/1468796821999904>
- Efendi, Roni, 'Kriminalisasi Nikah Sirri Menurut Rancangan Undang-Undang Hukum Materiil Peradilan Agama Bidang Perkawinan', *Pagaruyuang Law Journal*, 2.2 (2019), 221–38 <https://doi.org/10.31869/plj.v2i2.1358>
- Efendi, Roni, Hebby Rahmatul Utamy, Dewi Putri, and Arifki Budia Warman, 'Omerta And Its Implications For Eradication Of Criminal Acts Of Corruption: Integration Of Maqasid Sharia', *Islamika: Jurnal Ilmu-Ilmu Keislaman*, 23.2 (2023), 113–126 <https://doi.org/10.32939/islamika.v23i2.3126>
- Faiz, Muhammad Fauzinudin, Zezen Zainul Ali, and Muhammad Taufiq, 'Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation', *JURIS (Jurnal Ilmiah Syariah)*, 22.2 (2023), 223–34 <https://doi.org/10.31958/juris.v22i2.9097>
- Fatwa Majelis Permusyawaratan Ulama Aceh Nomor 2 Tahun 2015 Tentang Talak*
- Fidiani, Faida, 'Penalties for Unregistered Marriage and Polygamy in Indonesia, Pakistan, and Tunisia', *SAKINA: Journal of Family Studies*, 5.1 (2021), 1–14 <http://urj.uin-malang.ac.id/index.php/jfs/article/view/563/427>
- Fitriani, Rini, Liza Agnesta Krisna, Muhammad Natsir, and Zulfiani Zulfiani, 'Legal Protection for Wife and Child as Consequence of Head of Family's Criminal Imprisonment Enforcement', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2023, 77–88 <https://doi.org/10.24090/volksgeist.v6i1.8232>
- Gupta, Pallavi, Banu Gökarıksel, and Sara Smith, 'The Politics of Saving Muslim Women in India: Gendered Geolegality, Security, and Territorialization', *Political Geography*, 83 July (2020), 102257 <https://doi.org/10.1016/j.polgeo.2020.102257>

- Hafidzi, Anwar, Bahran Bahran, Fuad Luthfi, Rusdiyah Rusdiyah, Hatta Mohamed Ali, and Ali Banaeian Esfahani, 'Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan', *Al-Ahkam: Jurnal Pemikiran Hukum Islam*, 32.2 (2022), 153–68 <https://doi.org/10.21580/ahkam.2022.32.2.12789>
- Hamid, Asrul, Titi Martini Harahap, Resi Atna Sari Siregar, Syaipuddin Ritonga, and Amiruddin, 'Sociological Analysis of the Concept of Divorce In Marriage Law in Indonesia Asrul', *JRSC: Journal of Religious, Social and Cultural*, 1.1 (2022), 42–51 <https://jurnal.stain-madina.ac.id/index.php/religi/article/view/1124>
- Hanapi, Agustin, Sarina Aini, and Cut Endang Puspa Sari, 'Bridging Fiqh and Positive Law: A New Paradigm for Child Legality and the Best Interest of the Child in Indonesia', *Juris: Jurnal Ilmiah Syariah*, 23.2 (2024), 293–308 <https://doi.org/10.31958/juris.v23i2.10712>
- Herklotz, Tanja, 'Shayara Bano versus Union of India and Others. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice', *Verfassung in Recht Und Übersee*, 50.3 (2017), 300–311 <https://doi.org/10.5771/0506-7286-2017-3-300>
- Hidayah, Nur Putri, Galih Wasis Wicaksono, Christian Sri Kusuma Aditya, and Yuda Munarko, 'Artificial Intelligence and Quality of Composition Verdicts in Indonesia: Lessons from New Zealand', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 101–20 <https://doi.org/10.53955/jhcls.v4i1.175>
- Hidayat, Ilham, Yaswirman Yaswirman, and Mardenis Mardenis, 'Problems Arising from Talak Divorce Outside the Court', *International Journal of Multicultural and Multireligious Understanding*, 6.10 (2019), 138–48 <https://doi.org/10.18415/ijmmu.v6i10.919>
- Hijriani, Hijriani, and Rizki Ramadani, 'From Criminal Law to Customary Law: Incest as a Sexual Crime', *Yuridika*, 37.2 (2022), 399–414 <https://doi.org/10.20473/ydk.v37i2.32830>
- Hoque, Ridwanul, and MD. Morshed Mahmud Khan, 'Judicial Activism and Islamic Family Law: A Socio-Legal Evaluation of Recent Trends in Bangladesh', *Islamic Law and Society*, 14.2 (2007), 204–39 <https://doi.org/10.1163/156851907781492511>
- Ijma' Ulama Indonesia 2012 Himpunan Keputusan Ijtima Ulama Komisi Fatwa Se-Indonesia IV*, 2012
- Jarir, Abdullah, Ratno Lukito, and Moch. Nur Ichwan, 'Legal Reasoning on Paternity: Discursive Debate on Children Out of Wedlock in Indonesia', *Ahkam: Jurnal Ilmu Syariah*, 23.2 (2023), 449–72

<https://doi.org/10.15408/ajis.v23i2.27005>

Jones, Justin, 'Towards a Muslim Family Law Act? Debating Muslim Women's Rights and the Codification of Personal Laws in India', *Contemporary South Asia*, 28.1 (2020), 1–14 <https://doi.org/10.1080/09584935.2019.1684444>

— — —, "'Where Only Women May Judge": Developing Gender-Just Islamic Laws in India's All-Female 'Shari'ah Courts'", *Islamic Law and Society*, 26.4 (2019), 437–66 <https://doi.org/10.1163/15685195-00264P04>

Khairuddin, Khairuddin, 'Alasan Perceraian Luar Pengadilan Dan Akibatnya Bagi Masyarakat Desa Sanggaberu Kecamatan Gunung Meriah Aceh Singkil', *Tahkim (Jurnal Peradaban Dan Hukum Islam)*, 5.1 (2022), 43–58 <https://doi.org/10.29313/tahkim.v5i1.9356>

Kumar, Niraj, and Akhilendra Pratap Singh, 'Invalidating Instant Triple Talaq: Is the Top-Down Approach of Reforming Personal Laws Prudent?', *Nujs Law Review*, 11.2 (2018), 189–211 <https://nujlawreview.org/2018/05/01/invalidating-instant-triple-talaq-is-the-top-down-approach-of-reforming-personal-laws-prudent/>

Lindner, Jannik, 'Indias Divorce Rate In India: Shocking Statistics Revealed and Analyzed', *Gitnux Report 2024*, 2024 <https://gitnux.org/divorce-rate-in-india-statistics/> [accessed 22 September 2024]

Mandal, Saptarshi, 'Out of Shah Bano's Shadow: Muslim Women's Rights and the Supreme Court's Triple Talaq Verdict', *Indian Law Review*, 2.1 (2018), 89–107 <https://doi.org/10.1080/24730580.2018.1510162>

Mawardi, Ahmad Imam, and A. Kemal Riza, 'WHY DID KOMPILASI HUKUM ISLAM SUCCEED WHILE ITS COUNTER LEGAL DRAFT FAILED? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia', *Journal of Indonesian Islam*, 13.2 (2019), 421–53 <https://doi.org/10.15642/JIIS.2019.13.2.421-453>

Molla, Hasibur Rahaman, 'Triple Talaq: A Distress to Muslim Women in India', *Asian Journal of Research in Social Sciences and Humanities*, 7.8 (2017), 244–49 <https://doi.org/10.5958/2249-7315.2017.00420.8>

Muhazir, 'DUALISME PERATURAN PERCERAIAN DI ACEH: Kontestasi Fatwa Dan Hukum Negara', *Al-Aḥwāl*, 13.2 (2020), 198–208 <https://doi.org/10.14421/ahwal.2020.13208>

— — —, 'Islam, Fatwa Dan Negara: Meretas Pluralisme Hukum Perceraian Di Aceh', *Al-Manahij: Jurnal Kajian Hukum Islam*, 15.2 (2021), 233–48 <https://doi.org/10.24090/mnh.v15i2.5150>

Nashirin, Nikman, As'ad Badar, and Abdullah Sani, 'Problematika Talak Suami

- Kepada Istri Di Luar Pengadilan (Studi Kasus Talak Di Kecamatan Babalan)', *Journal Smart Law*, 1.2 (2023), 140–50 <http://jurnal.jsl.or.id/index.php/jsl/index>
- Nelli, Jumni, Afrizal Mansur, Zulkifli Zulkifli, Maghfirah Maghfirah, Sofia Hardani, and Izzah Nur Aida, 'The Immorality of a Husband as the Cause of a Working Wife to File for Divorce Lawsuit in Indonesia', *JURIS (Jurnal Ilmiah Syariah)*, 22.1 (2023), 119–32 <https://doi.org/10.31958/juris.v22i1.7392>
- Nelmawarni, Nelmawarni, Martin Kustati, Ulfatmi Ulfatmi, Warnis Warnis, Hallen Hallen, Ikhwan Ikhwan, and others, 'Bakabuang Phenomenon in Minangkabau Society: A Covert Human Trafficking Action', *Kafa`ah: Journal of Gender Studies*, 11.2 (2021), 121–36 <https://doi.org/10.15548/jk.v11i2.476>
- Ni'ami, Mohammad Fauzan, and Bustamin, 'Maqāṣid Al-Syarī'Ah Dalam Tinjauan Pemikiran Ibnu 'Āsyūr Dan Jasser Auda', *Juris: Jurnal Ilmiah Syariah*, 20.1 (2021), 91–102 <https://doi.org/10.31958/juris.v20i1.3257>
- Nofiardi, and Fahmil Samiran, 'Living Under the Same Roof Before the Date of Separation: The Relevance of Maqāṣid Al-Sharī'ah and Minangkabau Custom in A New Direction for Families', *Juris: Jurnal Ilmiah Syariah*, 22.2 (2023), 305–16 <https://doi.org/10.31958/juris.v22i2.9014>
- Novriandi, Restu, 'Akibat Dan Sanksi Hukum Talak Di Luar Pengadilan (Studi Komparatif Undang-Undang Hukum Keluarga Indonesia Dan Pakistan)' (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2022) <https://repository.uinjkt.ac.id/dspace/handle/123456789/61195>
- Nur, Muhammad, Imam Jauhari, and Azhari Yahya, 'Perlindungan Hukum Terhadap Korban Perceraian Di Luar Pengadilan (Suatu Penelitian Di Kota Langsa Provinsi Aceh) (Legal Protection towards the Victim of Extrajudicial Divorce (A Study in Langsa City, Aceh Province))', *Jurnal Penelitian Hukum De Jure*, 19.4 (2019), 563–72 <https://doi.org/10.30641/dejure.2019.V19.563-572>
- Nuroniayah, Wardah, 'Cerai Lebe Sebagai Inisiatif Lokal Dalam Upaya Meminimalisir Praktek Perceraian Liar (Studi Kasus Di Desa Cangkring Kabupaten Indramayu)', *Al-Manahij: Jurnal Kajian Hukum Islam*, 14.1 (2020), 113–30 <https://doi.org/10.24090/mnh.v14i1.3739>
- Nursaidah, Nursaidah, Adi Nur Rohman, and Panti Rahayu, 'The Out of Court Divorce Model and Its Legal Implications: A Juridical Study in Babelan District Bekasi', *Syariah: Jurnal Hukum Dan Pemikiran*, 20.2 (2020), 159 <https://doi.org/10.18592/sjhp.v20i2.3945>
- Pati, Surya, 'Realitas Talak Rujuk Di Luar Pengadilan: Studi Desa Banyu Urip Kecamatan Praya Barat Kabupaten Lombok Tengah NTB' (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2022) <https://digilib.uin-suka.ac.id/id/eprint/51815/>

Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan

Purnamawati, Shinta Ayu, Nurini Aprilianda, Lucky Endrawati, and Faizin Sulistiyo, 'Child-Friendly Justice and Children's Rights from Criminal Cases; Islamic Law Notes', *Legality: Jurnal Ilmiah Hukum*, 32.1 (2024), 141–54
<https://doi.org/10.22219/ljih.v32i1.31681>

Radhiah, Noor, 'Praktik Talak Di Luar Sidang Pengadilan (Studi Kasus Pada Masyarakat Desa Murung A Kecamatan Batu Benawa Kabupaten Hulu Sungai Tengah)' (Universitas Islam Negeri Antasari Banjarmasin, 2023)
<<https://idr.uin-antasari.ac.id/23260/>>

Rajafi, Ahmad, 'Sanksi Pidana Pada Hukum Keluarga Di Indonesia', *Al-Manahij: Jurnal Kajian Hukum Islam*, 13.2 (2019), 295–305
<https://doi.org/10.24090/mnh.v13i2.3029>

Rajafi, Ahmad, Ressi Susanti, and Ahmad Elmawan M. Alhanif, 'Humanist Fiqh Developed by KH. Ahmad Rifa'i Arief Banten, Indonesia', *JURIS (Jurnal Ilmiah Syariah)*, 22.1 (2023), 27–37
<https://doi.org/10.31958/juris.v22i1.6921>

Rasdi, Rasdi, Pujiyono Pujiyono, Nur Rochaeti, and Rehulina Rehulina, 'Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice', *Lex Scientia Law Review*, 6.2 (2022), 479–518
<https://doi.org/10.15294/lesrev.v6i2.58320>

Rehman, Javaid, 'The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq', *International Journal of Law, Policy and the Family*, 21.1 (2007), 108–27
<https://doi.org/10.1093/lawfam/eb1023>

Rofiq, Nur, Ro'fah Setyowati, Meydora Cahya Nugrahenti, Wahyu Prabowo, Ahmad Asroni, Halisma Amili, and others, 'Judges Perspective on the Third Talak Imposed Outside of Court Session', *Diponegoro Law Review*, 08.01 (2023), 76–92
<https://doi.org/10.14710/dilrev.8.1.2023.76-92>

Saxena, Radhika, and Rajarshi Sen, 'The Instant Triple Talaq Judgment – Its Contents and Discontents', *Journal of Law and Social Change*, 25.1 (2021), 53–79
<https://scholarship.law.upenn.edu/jlasc/vol25/iss1/4>

Setiyawan, Deni, Hadi Tuasikal, and Hafidz Adhi Karana, 'The Phenomenon of Divorce during the Election Period in the Perspective of Islamic Law', *Jurnal Media Hukum*, 31.1 (2024), 150–66
<https://doi.org/10.18196/jmh.v31i1.21868>

Sharma, Vedansh, 'Triple Talaq and Its Current Status in India: A Critical Analysis', *Psychology and Education Journal*, 58.5 (2021), 4021–27
<http://psychologyandeducation.net/pae/index.php/pae/article/view/6185>

- Shokhib, Muhammad Yalis, 'Sanksi Hukum Terhadap Pelaku Talak Di Luar Pengadilan Agama', *Al-'Adalah: Jurnal Syariah Dan Hukum Islam*, 3.1 (2018), 58–88 <https://doi.org/10.31538/adlh.v3i1.406>
- Shrotriya, Eesha, and Shivani Chauhan, 'Instant Triple Talaq and the Muslim Women (Protection of Rights on Marriage) Act, 2019: Perspectives and Counter- Perspectives', *ILI Law Review*, Summer Issue, 2019, 163–76 <https://ili.ac.in/pdf/essc.pdf>
- Siddiqui, Sohaira Z, 'Triple Divorce and the Political Context of Islamic Law in India', *Journal of Islamic Law*, 2.1 (2021), 5–32 <https://doi.org/10.53484/jil.v2.siddiqui>
- Singh, Hemant, Vinod Kumar, Kunal Rohira, and Abhijay Chakraborty, 'Triple Talaq: The Practice In Conflict With Indian Constituional Mandates Analysed Through Judicial Lens', *Res Militaris*, 12.5 (2022), 1376–86 <https://resmilitaris.net/issue-content/triple-talaq-the-practice-in-conflict-with-indian-constituional-mandates-analysed-through-judicial-lens-2928>
- Sirait, Adi Syahputra, Nurhotia, Taufik Hidayat, and Risalan Basri Harahap, 'Assessing Criminal Penalties in Marriage Law: A Comparative Study of Policy Frameworks within Indonesian and Malaysian Legislation', *Al-Manahij: Jurnal Kajian Hukum Islam*, 18.2 (2024), 255–70 <https://doi.org/10.24090/mnh.v18i2.11208>
- Stilt, Kristen, Salma Waheedi, and Swathi Gandhavadi Griffin, 'The Ambitions of Muslim Family Law Reform', *Harvard Journal of Law and Gender*, 41 (2018), 302–42 https://hrp.law.harvard.edu/wp-content/uploads/2018/10/The-Ambitions-of-Muslim-Family-Law-Reform_Waheedi_2018.pdf
- Subramanian, Narendra, 'Legal Change and Gender Inequality: Changes in Muslim Family Law in India', *Law & Social Inquiry*, 33.03 (2008), 631–72 <https://doi.org/10.1111/j.1747-4469.2008.00117.x>
- Supreme Court of India Judgment WP(C) No.118 of 2016 Triple Talaq*
- Sur, Esita, 'Triple Talaq Bill in India: Muslim Women as Political Subjects or Victims?', *Space and Culture, India*, 5.3 (2018), 5–12 <https://doi.org/10.20896/saci.v5i3.299>
- Surur, Nahar, 'Pemidanaan Nikah Sirri Dalam RUU HMPA (Pasal 143) Perspektif Maślāḥah Mursalah', *El-Usrah*, 5.2 (2022), 398–408 <https://doi.org/10.22373/ujhk.v5i2.14970>
- The Family Courts Act, 1984 Act No. 66 of 1984*
- The Muslim Personal Law (Shariat) Application Act, 1937*
- The Muslim Women (Protection of Rights on Marriage) Act 2019*

Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

Vatuk, Sylvia, 'Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law', *Modern Asian Studies*, 42.2-3 (2008), 489-518 <https://doi.org/10.1017/S0026749X07003228>

Wahyudi, Firman, 'Ithbāt Ṭalāq: An Offer of Legal Solutions to Illegal Divorce in Indonesia', *Al-Ahkam*, 32.2 (2022), 211-32 <https://doi.org/10.21580/ahkam.2022.32.2.11720>

Warman, Arifki Budia, 'Dinamika Perkembangan Hukum Keluarga Islam Di Indonesia', *Ijtihad*, 35.2 (2019), 11-28 <https://journals.fasya.uinib.org/index.php/ijtihad/article/view/14>

Warman, Arifki Budia, Elimartati, Dodon Alfiander, Ashabul Fadhli, and Wardatun Nabilah, 'From Communal to Individual: Shifting Authorities of Family Dispute Resolution in Minangkabau Society', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.2 (2023), 161-84 <https://doi.org/10.18326/ijtihad.v23i2.161-184>

Warman, Arifki Budia, Wahyu Abdul Jafar, Musda Asmara, Arwansyah bin Kirin, and Sheikh Adnan Ahmed Usmani, 'Reforming Marriage Registration Policies in Malaysia and Indonesia', *Bestuur*, 11.1 (2023), 61-74 <https://doi.org/10.20961/bestuur.v11i1.66320>

Warman, Arifki Budia, Zulkifli, Yustiloviani, Wardatun Nabilah, and Riska Fauziah Hayati, 'Strengthening Family Resilience Through Local Wisdom: Pulang Ka Bako Type of Marriage in Minangkabau', *Al-Istinbath: Jurnal Hukum Islam*, 8.1 (2023), 253-68 <https://doi.org/10.7454/ai.v34i2.3966.5>

Widyawati, Anis, Pujiyono Pujiyono, Nur Rochaeti, Genjie Ompoy, and Nurul Natasha Binti Muhammad Zaki, 'Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions', *Lex Scientia Law Review*, 6.2 (2022), 327-58 <https://doi.org/10.15294/lesrev.v6i2.58131>

Yuhasnibar, and Risna Wati, 'The Law on the Tripple Talaq at Once in the View of Yusuf Al Qaradawi's in Contemporary Context: Analysis of Sadd Al-Žarī'ah Theory Yuhasnibar', *El-Usrah: Jurnal Hukum Keluarga*, 6.2 (2023), 381-98 https://doi.org/10.34354/ohpfjrn.46.3_77