

## Consequences of Talak, Khulu' and Marriage Fasakh Based on a Compilation of Islamic Law in Indonesia

Deris Arista SAPUTRA<sup>1</sup>

<sup>1</sup>Faculty of Islamic Studies and Social Science, Universiti Sultan Azlan Shah, Malaysia

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### Abstract:

#### Purpose:

This study examines the effectiveness of the Compilation of Islamic Law (KHI) in handling divorce cases through talak, khulu', and fasakh in Indonesia. This study aims to understand the significant role of KHI in providing justice for couples experiencing marital conflict.

#### Methodology:

Using library methods, data were collected from various literature sources and religious court decisions related to talak, khulu', and fasakh. This study uses a library method, a systematic approach to reviewing and analyzing data from various literatures. This library research type studies theory, concepts, and regulations relevant to divorce cases through talak, khulu', and fasakh decisions.

### Corresponding Author:

Deris Arista Saputra

#### Email:

[derisaristasaputra@gmail.com](mailto:derisaristasaputra@gmail.com)

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### Findings:

The results show that KHI functions not only as a formal rule but also as an instrument of protection for women and children and supports post-divorce welfare. These findings confirm that KHI has important flexibility relevant to the country's social conditions and can be used as a model for ethically and contextually responsive Islamic family law.

### Implication:

This research provides an essential contribution to the development of science, both theoretically and practically. Theoretically, this research strengthens the understanding of the adaptation of Islamic law in the modern context, mainly how the KHI as a derivative of Islamic law can be applied effectively in a pluralistic society. Practically, this research enriches the study of Islamic family law in Indonesia by providing empirical data showing that the mechanisms of talak, khulu', and fasakh can be implemented formally and ethically.

## INTRODUCTION

Divorce is one of the essential issues regulated in detail in Islamic law and has a significant impact on the personal and social lives of separated couples (AZIZI & Muzawir, 2023). In Indonesia's context of Islamic law, the Compilation of Islamic Law (KHI) is the primary reference in handling divorce cases, including talak, khulu', and fasakh. KHI explains the procedures, implementation, and binding rules in the divorce process in terms of law and Islamic law. Through KHI, talak is regulated as an act of divorce carried out by the husband with the approval or knowledge of the court (Aeni & Alhizbi, 2023). On the other hand, khulu' gives the wife the right to file for divorce with specific compensation (wash) to the husband. At the same time, fasakh is the annulment of a marriage filed based on certain violations in the marriage bond. The comprehensive regulations in KHI aim to provide legal certainty for the parties involved in the divorce while still paying attention to the values taught in Islam (Rifdah, 2022).

Written studies indicate that the implementation of divorce, khulu', and fasakh in the KHI often faces challenges in implementation, both in terms of public understanding and in line with current needs in Indonesia (Wibowo & Sugitanata, 2023). Many previous tests have discussed the differences between the rules contained in the KHI and the reality in society, especially in protecting the rights of wives and children after divorce. For example, many divorce cases do not follow official procedures, often leading to legal conflicts between the parties involved (Mestika, 2022). In addition, the procedures for Khulu' and Fasakh are sometimes not well understood by the general public, so their implementation only sometimes reflects the principle of justice expected. The KHI

has established fairly complete regulations regulating divorce, but the community's uneven understanding of these rules can cause additional problems (Rifdah, 2022).

This study investigates how the KHI can solve divorce problems involving talak, khulu', and fasakh. Specifically, this study aims to understand the application of the KHI in the Indonesian context and its impact on the lives of married couples after the court decision. In addition, this study seeks to explore the ethical implications of these regulations in Indonesia's social life. This study also reviews the laws and regulations in the KHI that discuss talak, khulu', and fasakh and assesses how the KHI provides fair and balanced solutions for couples facing divorce. Thus, this study is expected to provide in-depth insight into applying the KHI in divorce cases and its relevance in Islamic law and Indonesianness.

Considering the importance of a deep understanding of divorce in Islamic law in Indonesia, this study examines in detail the various aspects that underlie the need for fairer and more humane divorce regulations (Utami et al., 2023). One of the essential issues raised is the frequent occurrence of injustice in the khulu', talak, and fasakh processes and efforts to avoid interpreting rules detrimental to certain parties. Previous findings indicate that the application of the provisions of the KHI regarding divorce still often leaves problems both legally and socially. Therefore, this study is expected to provide a clearer picture of the role of Islamic law in regulating divorce and recommend the adjustments needed so that the rules follow the development of community conditions. Thus, the study's results are expected to be a valuable reference in developing the KHI to be more relevant and provide balanced protection for the parties.

**Literature Review.** Divorce in the context of Islamic law is deep, so it becomes one of the methods for a husband to dissolve a marriage. (Rifqi, 2021). In terminology, divorce is taken from the Arabic word "ṭalāq," which means "to release" or "to free." In Islamic law, divorce is defined as a statement by a husband to divorce his wife; this husband does it by stating or doing something that leads to divorce. (Annas, 2023). This divorce process ignores the rooting of the discussion of Identity, not only in terms of legal science itself but also about how a person should live: How marriage is considered sacred. Article 117 of the KHI orders that divorce must be carried out before a religious court to provide legal guarantees to both parties. This principle is to be seen as a legal order protecting the rights of both parties (Hasanah, 2010).

Khulu' is a form of divorce in Islamic law that allows a wife to divorce her husband with compensation or damages (Susylawati, 2019). Khulu means "letting go" or "leaving" and is often applied in cases where the wife feels unable to continue her marriage with her husband (Nurhadi, 2020). Khulu' is another form of divorce for the wife and a way out. In the khulu process, the wife usually gives financial compensation to her husband, more than the dowry or other agreed form of property. (Kusmidi, 2018) The Compilation of Islamic Law stipulates that the khulu process must be carried out before a religious court to ensure legal validity and guarantees, as well as the rights of both parties.

Fasakh is an annulment of marriage according to Islamic law, which is very different from talak and khulu in terms of cause and content. Fasakh is the termination of a marriage penetrated by a problem or defect in the marriage process, violating the rights agreed to be fulfilled (Baharuddin & Iman, 2020). Fasakh can be submitted by one party, both husband and wife, as a form of protection for individuals who experience injustice in marriage. For example, if one party experiences a mental disorder, infectious disease, or behavioral deviation, that is dangerous for the partner (Siska et al., 2019).

In KHI, fasakh is regulated as one of the rights protected by religious courts. In this process, the court considers the reasons submitted to determine whether they are valid enough to annul the marriage. Fasakh's goal is to protect individuals from adverse situations and safeguard the welfare of all parties involved.

Compilation of Islamic Law (KHI) is a comprehensive law explicitly formulated to regulate marriage, divorce and inheritance in Indonesian Muslim society. As a result of the adaptation of Islamic law to the Indonesian context, KHI provides rules adapted to local culture and the social needs of Indonesian society, with the

categorization in KHI in various aspects of family law, from marriage to divorce, including talak, khulu' and fasakh. This KHI is to fulfill the law of Muslims in Indonesia without sacrificing the principles of justice or humanity. The KHI rules also provide structured instructions for religious court institutions so that the divorce and marriage processes can run according to the law. KHI aims to regulate justice to equalize or apply Islamic law.

The consequences of divorce, khulu', and fasakh in the KHI are significant to understand because each impacts the parties' lives. Divorce, as a form of divorce initiated by the husband, gives the wife the right to receive maintenance and legal protection after the trial. On the other hand, khulu', when the wife sues for divorce and gives compensation to the husband, has other consequences, especially in terms of maintenance and property management. On the other hand, fasakh is a way of protecting parties who feel disadvantaged in marriage, primarily when the couple does not fulfill the marriage demands. Three forms of compromise action for divorce, according to the KHI: the religious court will carefully examine each case to ensure that all parties are protected.

In the overall context of the KHI, talak, khulu', and fasakh are treated as legal mechanisms that regulate the divorce process and provide protection and justice for couples experiencing conflict. The rules contained in the KHI reflect the efforts of Islamic law in Indonesia to balance the rights of both parties, provide explicit provisions, and uphold the principles of justice following Islamic teachings. In addition, by implementing the KHI, the state seeks to maintain social stability and order by regulating formal divorce procedures through religious courts. This study examines the existing literature to understand the role and effectiveness of the KHI in handling divorce cases in Indonesia, as well as how the Muslim community understands and implements these rules. This understanding is essential as a basis for further research on the influence of the KHI in Indonesia's legal and social context.

## METHODS

The object of this research is the increasing cases of divorce in religious courts in Indonesia, especially divorce with talak, khulu', and fasakh decisions. In recent years, the divorce rate in religious courts has shown a significant increasing trend, with various factors driving couples to file for divorce (Rifdah, 2022). These dominant factors include incompatibility, dissatisfaction with marriage, and economic problems, often the main reasons. Through this research, the author examines how much the Compilation of Islamic Law (KHI) plays a role in resolving these divorce cases. KHI provides a legal framework that regulates the procedures for talak, khulu', and fasakh, which are expected to provide fair solutions and fulfill the values of Islamic law. This research analyzes how the KHI rules in divorce are applied in the context of religious courts and their impact on the parties involved.

This study uses a library method, a systematic approach to reviewing and analyzing data from various literature (Sugiyono, 2016). This library research type studies theory, concepts, and regulations relevant to divorce cases through talak, khulu', and fasakh decisions. Primary data in this study were obtained from the literature that directly discusses the increasing divorce cases in religious courts, especially those that focus on applying KHI in the talak, khulu', and fasakh processes. Meanwhile, secondary data were obtained from additional relevant literature sources, such as books, journals, research reports, and related laws and regulations in KHI. Through this primary and secondary data, the author seeks to understand the application of KHI in handling divorce cases in religious courts.

This research process is carried out through data collection stages focusing on literature review techniques or written sources. In this study, the author collects data by reading and reviewing various literature, such as relevant books, previous research, scientific journals, articles, and reports on divorce cases in Islam handled by religious courts. This data collection technique allows the author to identify important information supporting this study's analysis. In addition, this literature review also helps clarify Islamic legal concepts, such as talak, khulu', and fasakh, and their application in the legal framework in Indonesia. This approach is practical because it allows the author to review various perspectives and views from previous academic literature.





The data analysis technique in this study was carried out using the content analysis method. This technique aims to identify and understand patterns, relationships, and essential information contained in the literature data that has been collected (Asfar, 2019). The analysis begins by organizing the data into primary categories, including talak, khulu', and fasakh, and their implementation within the KHI framework. After that, the author maps this data to find significant patterns related to the impact of implementing KHI in divorce cases in religious courts. Through this content analysis, the author can interpret the data in depth and obtain relevant findings to answer the research questions, especially regarding how much KHI can provide fair solutions in divorce cases.

In order to improve the validity and reliability of the data, this study combines various sources from reliable and quality literature, including references from books, academic journals, and relevant research articles. The author also triangulates the data by checking the consistency between the primary and secondary data obtained so that the interpretation of the analysis results can support more accurate conclusions. With this approach, the study is expected to provide a comprehensive picture of the role of the KHI in handling divorce cases through talak, khulu', and fasakh in religious courts. This process is also expected to reveal the weaknesses and strengths of the KHI in its implementation so that the results of this study can be a basis for developing Islamic legal policies in Indonesia that are more responsive to the community's needs.

## RESULTS AND DISCUSSION

Religious Court decisions regarding divorce, khula, and Kazakh show various patterns that reflect the high divorce rate in Indonesian Muslim society. Based on data from several religious courts in Indonesia, the number of divorce cases filed by husbands is more dominant compared to khulu', a divorce initiative by the wife, and fasakh, which is often filed as an annulment of marriage due to certain conditions. Divorce decisions are usually related to reasons of incompatibility and disagreement between husband and wife. On the other hand, khulu cases often arise when the wife feels unable to continue the marriage, while fasakh is more often filed by wives who experience bad treatment or the husband's inability to fulfill his obligations. These data reveal different divorce filing patterns based on each party's role in the marriage, following the rules in the Compilation of Islamic Law (KHI).

The explanation of the data from the religious court decision shows that the rules in the KHI regarding divorce, khulu', and fasakh provide space for husbands and wives to end their marriage in a clearly and systematically regulated manner. The KHI describes the divorce procedure as a right held by the husband, while khulu' and fasakh are more dominant rights held by the wife. This explanation shows that the KHI was designed to provide alternatives for couples who want to end their marriage according to their respective circumstances, whether through a unilateral decision by the husband (talak), compensation from the wife (khulu'), or cancellation due to certain defects in the marriage (fasakh). Thus, the KHI formally facilitates divorce through different mechanisms, which can be accessed according to the conditions of each party.

The relationship between data description and explanation shows the existence of order in the divorce mechanism regulated by the KHI but also reflects the complexity that occurs in society. In reality, the increasing number of divorces in religious courts shows that many couples use this rule as a solution to overcome marital conflicts that are difficult to resolve internally. The KHI provides a legal path that proportionally provides rights to husbands and wives and helps reduce legal uncertainty for the parties involved. However, although the divorce procedures through talak, khulu', and fasakh have been regulated, cultural and economic factors influence the decision to divorce, which is reflected in the high number of divorce applications.

The marriage law literature in Islam provides in-depth descriptions of the basics of divorce as stated in classical fiqh books, which are the basis for KHI in regulating talak, khulu', and fasakh. Books such as "Fiqh al-Islami wa Adillatuh" by Wahbah al-Zuhayli and "Bidayat al-Mujtahid" by Ibn Rushd explain that talak is a right given to the husband. At the same time, khulu' and fasakh are efforts that the wife can take to terminate the marriage relationship. This literature emphasizes the importance of justice and the rights of both parties in

marriage, where each has different roles and responsibilities in the divorce process. This view is the primary reference in KHI to maintain balance in marital relations among the Indonesian Muslim community.

The explanation of this literature data shows that Islamic marriage law is designed to protect individuals involved in marriage. Divorce, as the husband's right, makes it easier for the husband if it is necessary to end the marriage, but still with specific terms and conditions. On the other hand, *khulu'* and *fasakh* provide solutions for wives who feel unable to continue the marriage, either because of disagreement or the husband's inability to fulfill his obligations. This explanation confirms that Islamic law pays attention to the welfare of both parties and provides special protection to women in a context regulated by the principles of justice. Thus, Islamic legal literature supports the approach applied by the KHI in terms of divorce.

The relationship between the description and explanation of Islamic legal literature and the reality in society shows that the principles contained in this literature are relevant to social conditions in Indonesia. KHI, which refers to classical Islamic law, adopts the concepts of *talak*, *khulu'*, and *fasakh* as solutions that meet the legal needs of modern society. However, implementing KHI in the field often faces challenges, especially in aligning formal law with local socio-cultural conditions. Social factors, such as society's views on divorce and gender roles, influence how *talak*, *khulu'*, and *fasakh* are accepted and applied. Therefore, the relevance of Islamic legal literature to its application in Indonesia is an effort to adapt Islamic law principles in a dynamic society.

The description of the data on the consequences of divorce, *khula*, and Kazakh marriage based on the KHI reveals that each type of divorce has a different impact on the couple involved. In *talak*, the husband is required to fulfill several responsibilities, including providing maintenance during the *iddah* period and ensuring that the wife's and children's rights are maintained. In the case of *khulu'*, the wife who files for divorce with specific compensation needs to hand over some or all of the dowry that has been received to the husband as a condition of divorce. Meanwhile, *fasakh* has slightly different consequences because it focuses on the annulment of the marriage due to the couple's incompatibility or inability to fulfill the marriage conditions. Thus, the consequences of each form of divorce are regulated explicitly in the KHI to maintain justice for both parties.

The data explanation of the consequences of divorce, *khulu'*, and *fasakh* shows that the KHI seeks to provide fair legal protection to both parties, especially regarding financial rights and child custody. In the case of divorce, the husband must fulfill the rights of the wife and children during the *iddah* period as a form of responsibility. *Khulu'*, on the other hand, gives the wife the freedom to file for divorce, although compensation requirements must be met. *Fasakh*, as an annulment of marriage, focuses more on previously unfulfilled rights, such as the wife's right to protection and security. This explanation shows that the KHI regulates divorce procedures and provides guidelines regarding post-divorce rights so that the couples involved still receive justice following Islamic law principles.

The relationship between the description and explanation of the consequences of divorce, *khula*, and Kazakh with the reality of society shows that the KHI plays an essential role in providing fair legal solutions for couples facing divorce. However, although these rules have been implemented, several challenges still exist in ensuring these rights are fulfilled. For example, society's understanding of the consequences of divorce and *khulu'* is sometimes still limited, so not all couples can fulfill their obligations according to the KHI. Economic and social factors also influence the implementation of the consequences of divorce, especially for parties with economic limitations. Thus, even though the KHI has provided quite clear rules, there needs to be a gap between the rules and practices in society that needs to be considered in implementing this divorce policy.

The results of this study indicate that the Compilation of Islamic Law (KHI) provides a clear legal framework to regulate divorce through *talak*, *khulu'*, and *fasakh*, with an approach that prioritizes justice for both parties. Data from religious courts show that these three types of divorce are not only widely filed but also become a solution for couples experiencing conflict in marriage. In addition, the KHI ensures that divorce is carried out with a formal procedure, which provides legal certainty to the parties involved. Islamic legal literature supports the implementation of these three forms of divorce, focusing on protecting the rights of the individuals involved. The

data indicates that the imperfect KHI can be a relevant legal instrument in Indonesia's Islamic law context while offering flexibility according to the community's needs.

This study has relevance and advantages compared to previous studies focusing more on Islamic law's theoretical or normative aspects without analyzing empirical data from religious courts. Several existing studies only examine the concepts of talak, khulu', and fasakh based on classical views or fiqh literature, without paying attention to the practice of their implementation in the context of Indonesian society. This study combines empirical data from religious courts and thorough literature reviews, demonstrating that the KHI provides a legal protection mechanism for couples in conflict. This advantage shows that this study is not only relevant in terms of Islamic legal theory but also from a practical aspect by showing how the KHI functions in the real life of Muslim society in Indonesia (Gustiani et al., 2023).

Reflection of the results of this study shows that the KHI plays a significant role in realizing that the goals of Islamic law are just and maintaining the welfare of individuals in marriage. Talak, khulu', and fasakh regulated in the KHI are not merely legal mechanisms to end a marriage but also contain ethical and social values that consider the impact of divorce on post-marital life. The results of this study emphasize the benefits of implementing the KHI as a form of adaptation of Islamic law in Indonesia that not only focuses on terminating a marriage relationship but also considers the parties' continued welfare, especially regarding the right to support and child protection. This reflection indicates that the KHI provides a strong foundation for Indonesian Muslims to undergo a divorce process that still upholds the values of justice.

The implications of the results of this study lead to a deeper understanding of the role of the KHI in handling divorce cases and offering more humane legal solutions for couples experiencing conflict. In this context, this study contributes to developing Islamic legal policy in Indonesia by highlighting substantive justice in the talak, khulu', and fasakh processes. The implications of this study also impact efforts to strengthen the role of religious courts as institutions that implement the KHI in protecting the rights of women and children. In addition, the results of this study can be a reference for policymakers to review regulations related to divorce to be more responsive to the needs of society while ensuring that Islamic ethical values remain the basis of family law in Indonesia (Awang, 2023).

The study results show the KHI's effectiveness in providing fair divorce solutions, which can be understood from the implementation of Islamic law in Indonesia, which prioritizes the principles of justice and balance. As an adaptation of Islamic law adapted to the Indonesian context, the KHI is designed to accommodate the needs of diverse Muslim communities while maintaining sharia values. The reason behind the success of the KHI in handling divorce through talak, khulu', and fasakh lies in its flexibility, which allows religious courts to assess divorce cases proportionally. Thus, the KHI functions as a formal legal rule and a guideline that integrates social and religious values in resolving marital problems.

Based on the results of this study, steps need to be taken to optimize the implementation of the KHI further in the context of divorce in religious courts. One action that needs to be taken is to increase public understanding of the rights and procedures for divorce regulated in the KHI, especially related to women's rights in Khulu' and Fasakh cases. Legal education for the community can be carried out through socialization by religious court institutions and Islamic community organizations. In addition, regular evaluation of the implementation of the KHI can help ensure that the KHI remains relevant and responsive to social developments in Indonesia. Through these actions, it is hoped that the KHI will not only be a formality but also function as an effective tool in realizing justice for couples who choose to end their marriage.

## CONCLUSION

The results of this study reveal surprising findings about the effectiveness of the Compilation of Islamic Law (KHI) in handling divorce through talak, khulu', and fasakh in Indonesian religious courts. KHI functions as



a formal rule and acts as a flexible and adaptive legal mechanism capable of providing justice for the parties involved in the divorce. The fact that KHI does not only regulate procedures but also provides substantial protection for women and children reflects the efforts of Islamic law that focus not only on legality but also on social justice. These findings indicate that KHI has exceeded expectations as a legal instrument by showing high relevance in responding to social complexity in Indonesian Muslim society.

This research provides an essential contribution to the development of science, both theoretically and practically. Theoretically, this research strengthens the understanding of the adaptation of Islamic law in the modern context, mainly how the KHI as a derivative of Islamic law can be applied effectively in a pluralistic society. This research also shows that the KHI can be a model for developing Islamic law responsive to specific cultural and social contexts. Practically, this research enriches the study of Islamic family law in Indonesia by providing empirical data showing that the mechanisms of talak, khulu', and fasakh can be implemented formally and ethically. These findings are expected to be a reference for religious courts in strengthening their role as protectors of individual rights in divorce.

Although this study has successfully identified the role of KHI in handling divorce, several limitations open up opportunities for further research. This study is limited to the analysis of literature and secondary data from religious courts, so further studies can be conducted with a qualitative field approach to understand the direct experiences of the parties undergoing the divorce process. In addition, this study has yet to explore the social and cultural roles that may influence the implementation of KHI in society. Thus, future research can deepen the study of social and cultural factors that influence the implementation of KHI, resulting in a more comprehensive understanding of the effectiveness of KHI in maintaining justice and welfare in Islamic family law in Indonesia.

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