



## Islamic Family Law and Women's Rights in Indonesia: Between Normativity, Reform, and Social Realities

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### Abstract

This study examines the dynamics of Islamic Family Law in Indonesia concerning women's rights through a socio-legal analysis emphasizing the interaction between Islamic legal norms, state reform, and social realities. The research aims to identify the extent to which normative frameworks such as the Compilation of Islamic Law (KHI) continue to preserve patriarchal structures and to assess the effectiveness of legal reforms implemented through the 2019 Marriage Law amendment and progressive judicial *ijtihad* within the Religious Courts. The study employs a qualitative socio-legal methodology that integrates doctrinal analysis of primary legal texts (KHI and Marriage Law) with a review of academic literature, NGO reports, and empirical data related to judicial and social practices. The findings reveal a triadic tension among normativity, reform, and social realities. While the KHI still institutionalizes gender-biased provisions—such as the *wali mujbir* concept and the asymmetry of divorce rights—there is an emerging reformist trajectory through the standardization of marriage age and the progressive judicial interpretation that promotes women's rights in divorce cases. Nevertheless, practices like *nikah siri* (unregistered marriage) and child marriage persist, reflecting a gap between legal norms and implementation. The study implies that legal reform must be complemented by social empowerment and legal literacy initiatives to ensure that gender justice in Islamic family law becomes not only a codified norm but a lived reality in Indonesian society.

**Keywords:** Islamic Family Law, Women's Rights, Compilation of Islamic Law, Legal Reform, Religious Courts, Indonesia.

### Abstrak

Penelitian ini membahas dinamika hukum keluarga Islam di Indonesia dalam kaitannya dengan hak-hak perempuan, melalui pendekatan analisis sosio-yuridis yang menekankan interaksi antara norma hukum Islam, reformasi negara, dan realitas sosial masyarakat. Tujuan penelitian ini adalah untuk mengidentifikasi sejauh mana

kerangka hukum normatif seperti Kompilasi Hukum Islam (KHI) masih mempertahankan pola patriarkal, serta menilai efektivitas reformasi hukum yang dilakukan melalui amandemen Undang-Undang Perkawinan Tahun 2019 dan praktik ijtihad progresif di peradilan agama. Metode yang digunakan adalah penelitian kualitatif dengan pendekatan sosio-legal yang menggabungkan analisis doktrinal terhadap teks hukum primer (KHI dan UU Perkawinan) dengan telaah literatur akademik, laporan LSM, dan data empiris terkait praktik peradilan dan sosial. Hasil penelitian menunjukkan adanya ketegangan triadik antara normativitas, reformasi hukum, dan realitas sosial. KHI masih mengandung ketentuan yang bias gender, seperti konsep wali mujbir dan asimetri hak talak, namun di sisi lain, muncul tren reformasi melalui peningkatan usia nikah dan ijtihad hakim agama yang memberikan hak lebih adil bagi perempuan dalam perkara perceraian. Meski demikian, praktik seperti nikah siri dan perkawinan anak masih marak, mencerminkan kesenjangan antara hukum dan implementasinya. Implikasi penelitian ini menegaskan pentingnya reformasi hukum yang disertai dengan pemberdayaan sosial dan literasi hukum masyarakat, agar keadilan gender dalam hukum keluarga Islam tidak hanya menjadi norma, tetapi juga realitas yang hidup dalam masyarakat.

**Kata kunci:** Hukum Keluarga Islam, Hak Perempuan, Kompilasi Hukum Islam, Reformasi Hukum, Peradilan Agama, Indonesia.

## Introduction

The legal system of the Republic of Indonesia presents a compelling subject for socio-legal analysis, particularly in the domain of family law. As the world's most populous Muslim-majority country, Indonesia has developed a unique legal framework that is a dynamic hybrid, fusing classical Islamic jurisprudence (*fiqh*), national statutes, and local customary law (*adat*).<sup>1</sup> This report is a critical socio-legal study that aims to move beyond a static analysis of legal texts and explore the continuous negotiation between law, the state, and society. The focus is specifically on the impact of these legal traditions on women's rights within the framework of Islamic family law. The report's significance lies in its departure from a conventional doctrinal approach to investigate the intricate and often tense interactions between legal traditions and lived experiences.

This research is structured around a triadic framework, positing that the state of women's rights in Indonesia is a product of ongoing negotiation among three key forces. The first force is Normativity, which encompasses the foundational principles of classical *fiqh* and

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<sup>1</sup> Jan Michiel Otto, "10 Sharia and National Law in Indonesia," *Sharia Incorporated*, 2010, 433.

their codification in state-sanctioned legal instruments like the *Kompilasi Hukum Islam* (KHI) of 1991.<sup>2</sup>

The second force is Reform, representing the top-down, state-driven legislative and judicial efforts to modernize family law in alignment with constitutional guarantees of equality and global human rights discourse.<sup>3</sup>

The third force is Social Realities, which refers to the diverse, often resilient, and sometimes contradictory practices of Muslim communities on the ground, which can either align with or actively resist formal legal frameworks.<sup>4</sup> The report demonstrates how the tension and interplay between these three forces shape the trajectory of women's legal and social standing in Indonesia.

## Methods

The research employs a qualitative socio-legal methodology. It combines a doctrinal analysis of primary legal texts, such as the KHI and the Marriage Law, with a critical assessment of secondary scholarly literature, NGO reports, and empirical reflections. The study's theoretical contribution lies in demonstrating that IFL in Indonesia is not a static body of rules but a "living legal system".<sup>5</sup> It continuously adapts to human rights discourse while striving to retain religious legitimacy, providing a valuable model for analyzing legal change in other Muslim-majority contexts.<sup>6</sup>

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<sup>2</sup> "The Republic Of Indonesia The Compilation Of Islamic Laws," n.d., <https://muslimfamilylawindex.com/wp-content/uploads/2022/12/The-Compilation-of-Islamic-Laws-No.-1-1991.pdf>.

<sup>3</sup> "Summary of Law of the Republic of Indonesia Number 16 Year 2019 Regarding the Amendment to Law Number 1 Year 1974 Regarding Marriage - Governmental Affairs/Organization - Legal Centric," accessed August 25, 2025, <https://legalcentric.com/content/view/144241>.

<sup>4</sup> "Indonesia," Girls Not Brides, August 26, 2022, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/indonesia/>.

<sup>5</sup> Fiqi Halwaini, "Women's Rights in the Qur'an: A Semiotic Analysis of the Practice of Family Law in Indonesia," *USRATY: Journal of Islamic Family Law* 3, no. 1 (2025): 50–62.

<sup>6</sup> Fuad Riyadi et al., "Constitutional Ijtihad and the Reform of Islamic Family Law: A Comparative Analysis of Indonesia and Egypt in Advancing SDG 16," *Profetika: Jurnal Studi Islam* 26, no. 02 (2025): 353–70.

## Results and Discussion

### The Normative Foundations: Critiquing the Patriarchal Vestiges in KHI

#### Marriage and Guardianship: The Persistence of Male Authority

The *Kompilasi Hukum Islam* (KHI) serves as the primary reference for Islamic family law in Indonesia, but a close examination of its provisions reveals the persistence of traditional *fiqh* concepts that vest significant authority in men. This is particularly evident in the rules concerning marriage and guardianship. The KHI retains the emphasis on a male guardian (*wali*) as a pillar of marriage, a requirement for a woman to be legally wed.<sup>7</sup> A particularly contentious concept is *wali mujbir* (compelling guardian), which grants a father or grandfather the right to marry off an underage, virgin daughter without her explicit consent.<sup>15</sup> This is not merely a legal rule but reflects a deeply entrenched ideological bias rooted in patriarchal assumptions that a woman is "irrational, emotional, weak" and thus "unable to make her own decisions".<sup>8</sup> This institutionalized subordination suggests that the normative framework is not solely a product of Islamic theology but is filtered through pre-modern, male-centric socio-cultural biases.<sup>9</sup>

The existence of such concepts creates a fundamental "disjunction between *fiqh*-based legal norms and social dynamics". The rigidity of the *wali* hierarchy in law leads to real-world conflicts and even fraudulent practices, such as "declaring the guardian deceased" to secure the appointment of a judicial guardian (*wali al-Hākim*).<sup>10</sup> These phenomena highlight a foundational conflict between the formal legal

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<sup>7</sup> "Kompilasi Hukum Islam | PDF | Marriage | Wife," Scribd, accessed August 25, 2025, <https://www.scribd.com/document/526653760/Kompilasi-Hukum-Islam>.

<sup>8</sup> Musda Asmara, "Concept Of Wali Mujbir In Marriage (Legal Criticism Of Counter Legal Draft Compilation Of Islamic Law)," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 8, no. 2 (2021): 189, <https://doi.org/10.29300/mzn.v8i2.5767>.

<sup>9</sup> Ahmad Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia," *West Science Islamic Studies* 3, no. 03 (2025): 226–32, <https://doi.org/10.58812/wsiss.v3i03.2066>.

<sup>10</sup> Muhammad Sirojudin Sidiq et al., "Wali Al-Nikāḥ Hierarchies in Theory and Practice: Disputes, Authority, and Social Reality in Indonesian Muslim Communities," *Fikri: Jurnal Kajian Agama, Sosial Dan Budaya* 10, no. 1 (2025): 397–411.

norms and the social realities they are meant to govern. This analysis establishes the first leg of our triadic tension: a formal legal system that institutionalizes patriarchal norms, a condition that is a primary target of reformist and feminist critiques.

### **Divorce Rights: The Enduring Asymmetry of *Ṭalāq* and *Khulu‘***

The KHI formalizes a significant power imbalance in divorce proceedings that reflects traditional gender roles. A husband has a unilateral right to pronounce *ṭalāq* (repudiation), a formal declaration of divorce. In sharp contrast, a wife must seek a judicial divorce through a formal petition, such as *khulu‘* (divorce initiated by the wife in exchange for a consideration) or *fasakh* (annulment).<sup>11</sup> This procedural difference creates a fundamental gender asymmetry, wherein men retain a unilateral power that women do not possess.

The procedural asymmetry in divorce is compounded by a notable legal gap. The KHI does not explicitly regulate a wife's rights to maintenance (*iddah* and *mut'ah*) when she initiates the divorce (*cerai gugat*). This lack of explicit regulation creates an inequality in the application of marriage law principles and is perceived as disturbing to a woman's sense of justice.<sup>12</sup> This gap is a primary cause of women's vulnerability post-divorce and necessitates a proactive response from the judiciary to ensure a more equitable outcome. This critique of divorce laws, along with the issues of guardianship and inheritance, forms a central theme of Islamic feminist discourse in Indonesia. Proponents of this view argue that these interpretations are rooted in socio-cultural biases rather than core Islamic principles and advocate for re-opening the door of *ijtihad* (independent reasoning) to reclaim the egalitarian spirit of Islam.<sup>13</sup>

### **Inheritance Law: Negotiating Between Traditional Rules and Modern Justice**

Indonesia's legal landscape is pluralistic, with Islamic, Western, and customary laws coexisting, which can lead to legal uncertainty and

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<sup>11</sup> "The Republic Of Indonesia The Compilation Of Islamic Laws."

<sup>12</sup> Sanusi Sanusi et al., "Judges' Ijtihad on Women's Rights after Divorce and Its Contribution to Family Law Reform in Indonesia," *SMART: Journal of Sharia, Traditon, and Modernity*, 2023, 1–15.

<sup>13</sup> Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia."

disputes over inheritance.<sup>14</sup> The KHI generally follows the classical ‘*asaba*’ rule, whereby daughters inherit half the share of sons.<sup>18</sup> The traditional rationale for this distribution is that men are obligated to provide for their families financially, while women are not.<sup>15</sup> However, the report’s analysis indicates a strong and active movement to reinterpret this rule in light of contemporary values. Scholars, drawing on the higher objectives of Islamic law (*maqāṣid al-sharī’ah*), argue for interpretations that prioritize justice and equality over a literal, rigid application of the rules.<sup>16</sup>

This intellectual and legal struggle over inheritance rules demonstrates that the normative framework is not a fixed construct but a site of continuous contestation and evolution. The struggle mirrors the debates on marriage and divorce, all of which point to the same fundamental tension: whether to adhere to a literal, patriarchal interpretation of classical texts or to engage in a dynamic *ijtihad* that prioritizes the spirit and higher objectives of Islamic law. This tension is central to the normative-reformist conflict that the report explores.

Table 1. Key Provisions of KHI (1991) and the Marriage Law (1974 & 2019) Pertaining to Women's Rights

Legal Provision	Law No. 1 of 1974	KHI (1991)	Law No. 16 of 2019 (Amendment)	Analysis of Change
<b>Marriage Age</b>	Minimum age of 19 for men, 16 for women.	Minimum age of 19 for men, 16 for women.	Standardized minimum age to 19 for both men and women.	A major reform to combat child marriage and

<sup>14</sup> Muhammad Tsaqib Idary et al., “Plurality of Inheritance Legal System for Indonesian Muslims: A Sociological Review,” *TATHO: International Journal of Islamic Thought and Sciences*, November 29, 2024, 252–62, <https://doi.org/10.70512/tatho.v1i4.55>.

<sup>15</sup> Scribd, “Kompilasi Hukum Islam | PDF | Marriage | Wife.”

<sup>16</sup> Halwaini, “Women’s Rights in the Qur’an: A Semiotic Analysis of the Practice of Family Law in Indonesia.”

				promote gender parity.
<b>Polygamy</b>	Permitted with strict conditions and court permission.	Regulated, requiring permission from a religious court and consent of the first wife.	Conditions for polygamy were not directly altered, but the legal age change makes it more difficult for underage unions to be legalized.	The legal framework for polygamy remains largely unchanged.
<b>Divorce</b>	Defines grounds for divorce; no specific mention of the procedural power imbalance.	Men have unilateral <i>ṭalāq</i> ; women must file for judicial divorce ( <i>khulu'</i> , <i>fasakh</i> ).	No direct change to the procedural asymmetry in the legal text.	The gender imbalance in divorce procedures remains a legal norm.
<b>Inheritance</b>	Does not provide specific inheritance rules for Muslims.	Follows traditional ' <i>asaba</i> rule (daughters receive half the share of sons).	No legislative changes. Reinterpretations by judges and scholars are the main agents of change.	The law remains traditional, but judicial <i>ijtihād</i> offers a path for progressive application.

### The Reformist Trajectory: State-Driven Legal Innovations and Their Efficacy

## **Legislative Reforms: The Landmark 2019 Marriage Law Amendment**

The enactment of Law No. 16 of 2019, which amended the 1974 Marriage Law, stands as a landmark legislative reform in Indonesia. This law significantly raised the minimum age of marriage for women from 16 to 19 years, standardizing it with the age for men.<sup>17</sup> This legislative action was a direct result of a Constitutional Court decision that found the previous law to be discriminatory and a violation of children's constitutional rights. This decision was heavily influenced by Indonesia's commitments under international human rights treaties, such as the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the country ratified in 1984.<sup>18</sup>

The Constitutional Court's decision to reverse its previous ruling and find the law unconstitutional represents a powerful form of "constitutional *ijtihad*".<sup>19</sup> By choosing to focus on the "lived experiences" of individuals and human rights principles over traditional religious arguments<sup>20</sup>, the Court demonstrated a strategic shift in judicial reasoning. This shows how the state, through its most powerful legal institutions, can act as a progressive force for reform, even in the face of conservative pressure.<sup>21</sup> The fact that the court provided a three-year deadline for the legislature to amend the law—failing which the age would automatically be set to 18, consistent with the 2002 Law on Child Protection—is a strong-arm tactic that underscores the judiciary's commitment to legal reform. This legislative victory not only raises the

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<sup>17</sup> "Summary of Law of the Republic of Indonesia Number 16 Year 2019 Regarding the Amendment to Law Number 1 Year 1974 Regarding Marriage - Governmental Affairs/Organization - Legal Centric."

<sup>18</sup> Dina Afrianty, "Child Marriage: Constitutional Court Finally Ditches Religious Arguments," *Indonesia at Melbourne*, n.d., accessed August 25, 2025, <https://indonesiatmelbourne.unimelb.edu.au/child-marriage-constitutional-court-finally-ditches-religious-arguments/>.

<sup>19</sup> Riyadi et al., "Constitutional Ijtihad and the Reform of Islamic Family Law: A Comparative Analysis of Indonesia and Egypt in Advancing SDG 16."

<sup>20</sup> Afrianty, "Child Marriage."

<sup>21</sup> "Women's Rights in Indonesia," ANU Indonesia Institute, accessed August 25, 2025, <https://indonesiainstitute.anu.edu.au/content-centre/article/opinion/womens-rights-indonesia>.

age of marriage for girls but also ensures gender equality by standardizing the age for both sexes.<sup>22</sup>

### **Judicial Reforms: The Progressive Role of Religious Court Judges**

Indonesia is a frontrunner among Muslim-majority countries in appointing female judges to its religious courts, a practice that began as early as the 1960s and was fully institutionalized in 1989.<sup>23</sup> These judges, both male and female, are increasingly using their legal reasoning (*ijtihad*) to deliver progressive rulings that go beyond the KHI's explicit provisions. For instance, judges have used their ex officio authority to grant women rights, such as *iddah* and *mut'ah* maintenance, in contested divorce cases (*cerai gugat*), a right not explicitly regulated in the KHI. They justify this by reinterpreting the concept of *nusyuz* (disobedience) to apply to both parties and by invoking the principles of *mubadalah* (interdependence) and *mashlahat* (public benefit).<sup>24</sup>

This judicial activism is a direct response to the legal gaps and gendered asymmetry of the KHI. It demonstrates that the law is not static but a "living legal system"<sup>25</sup> that adapts in real-time. This shows how judicial discretion can act as a crucial mechanism for reform when legislative processes are slow or resistant to change. While the presence of female judges is a positive step, some analyses suggest they have not fully utilized their legal skills to benefit women.<sup>26</sup> This apparent contradiction suggests a more nuanced reality: while the presence of female judges is important, the key to progressive outcomes lies in the theoretical frameworks they employ (e.g., *mubadalah*) rather than just their gender. This section highlights how the "reform" leg of our framework is not limited to Parliament but extends to the courts, which

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<sup>22</sup> "UNICEF Welcomes Recent Amendment of Indonesia's Marriage Act," accessed August 25, 2025, <https://www.unicef.org/press-releases/unicef-welcomes-recent-amendment-indonesias-marriage-act>.

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

<sup>24</sup> Sanusi et al., "Judges' Ijtihad on Women's Rights after Divorce and Its Contribution to Family Law Reform in Indonesia."

<sup>25</sup> Halwaini, "Women's Rights in the Qur'an: A Semiotic Analysis of the Practice of Family Law in Indonesia."

<sup>26</sup> Nurlaelawati and Salim, "Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia."

act as a vital bridge between patriarchal norms and modern socio-legal demands.

Table 2. Summary of Judicial *Ijtihād* on Women's Rights in Divorce Cases

Area of Judicial <i>Ijtihād</i>	Traditional KHI Provision	Progressive Judicial <i>Ijtihād</i>	Rationale and Legal Basis
<b>Maintenance in Contested Divorce</b>	Women's rights to <i>iddah</i> and <i>mut'ah</i> maintenance are not explicitly regulated when the wife files for divorce ( <i>cerai gugat</i> ).	Judges use <i>ex officio</i> rights to grant maintenance to the wife in contested divorce cases.	The principle of <i>mubadalah</i> (interdependence) dictates that divorce should not penalize either party, regardless of who files. Supported by Supreme Court Circular Letter No. 3/2017.
<b>Concept of Nusyuz</b>	Traditionally, <i>nusyuz</i> (disobedience) applied only to the wife and could be used to deny her rights.	The concept is reinterpreted to apply to both men and women, allowing judges to impose maintenance on husbands.	This new interpretation aligns with the principle of justice and serves to protect the rights of women, even when they initiate the divorce.
<b>Legal Gaps and Justice</b>	The lack of explicit regulation creates an inequality and	Judges' decisions are based on the principle of <i>mashlahat</i> (public	The judiciary fills legal gaps by ensuring that a wife who files for

	disturbs a woman's sense of justice.	benefit), which holds that the law's purpose is to bring benefit to humanity.	divorce receives similar rights to those of a wife who is divorced by her husband, a necessary step toward legal reform.
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**The Social Realities: Persistent Gaps and Resilient Resistance**  
**The Persistence of Child Marriage: A Failure of Implementation**

Despite the landmark 2019 legal reform, child marriage remains a significant issue in Indonesia. The data indicates that 16% of girls marry before the age of 18. Over a decade, the national rate has seen only a slight decrease of 3.5 percentage points, with the highest prevalence in rural areas and specific provinces.<sup>27</sup> The drivers of this phenomenon are complex and include poverty, low educational attainment, entrenched gender norms, and religious justifications. A key finding is that Religious Courts were more likely to grant marriage dispensations than District Courts.<sup>28</sup>

The persistence of child marriage exemplifies the profound disconnect between the "reform" leg and the "reality" leg of the triadic framework. A landmark legal reform is rendered ineffective by entrenched socio-economic, cultural, and religious factors. The problem is not merely poverty-driven, as child marriage also occurs in provinces with relatively low poverty levels.<sup>29</sup> Instead, it is rooted in a "general assumption that girls do not need to pursue higher education because they will eventually become housewives".<sup>30</sup> This demonstrates the deep-seated nature of gender inequality and social norms. The greater propensity of Religious Courts to grant dispensations also

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<sup>27</sup> "Prevention of Child Marriage Acceleration That Cannot Wait," PUSKAPA, 2020, <https://www.unicef.org/indonesia/sites/unicef.org/indonesia/files/2020-06/Prevention-of-Child-Marriage-Report-2020.pdf>.  
<sup>28</sup> Girls Not Brides, "Indonesia."  
<sup>29</sup> "Prevention of Child Marriage Acceleration That Cannot Wait."  
<sup>30</sup> Girls Not Brides, "Indonesia."

shows a tension between the judiciary's progressive potential, as seen in divorce cases, and its conservative tendencies in other areas, complicating the role of the judiciary as a consistent agent of reform.

Table 3. Statistical Snapshot of Child Marriage in Indonesia

Statistic	Details and Source
<b>Prevalence (2018)</b>	1 in 9 girls aged 20-24 was married before age 18. This amounts to an estimated 1.2 million women, placing Indonesia in the top 10 globally for the absolute number of child marriages.
<b>Trends (2008-2018)</b>	The rate of child marriage decreased by only 3.5 percentage points over a decade.
<b>Geographic Disparity</b>	The decrease in child marriage has been more significant in rural areas (5.76 percentage points) than in urban areas (less than 1 percentage point).
<b>Associated Factors</b>	Child marriage is linked to low educational attainment, poverty, and entrenched gender norms. In 2020, 25% of women aged 20-24 who married as children had no education or only pre-primary education.

### **Unregistered Marriages (*Nikah Siri*) and the Circumvention of Law**

The practice of unregistered marriages (*Nikah Siri*), which are not recorded by state institutions, persists due to a confluence of social, economic, and administrative factors, including financial constraints,

complicated bureaucratic procedures, and a lack of legal knowledge.<sup>31</sup> This practice is often used as a "shortcut to legalize" polygamous intentions without the required permission of the first wife. This social reality leaves women and their children without legal protection, complicating their ability to obtain official documents such as birth certificates and inheritance rights.

The practice of *Nikah Siri* is a form of active social resistance to state-enforced legal regulations. It demonstrates how communities use traditional religious validation to circumvent what they perceive as burdensome or restrictive state law.<sup>32</sup> This is a powerful illustration of the "reality" leg of our framework resisting the "reform" leg.

However, a fascinating counter-trend also emerges from the data: the fastest-growing category of cases in Religious Courts is the legalization of these marriages (*itsbat nikah*).<sup>33</sup> Women are bringing these cases to court to obtain marriage certificates, primarily to secure birth certificates for their children that include both parents' names. This demonstrates a strategic use of the legal system to retroactively secure rights that were denied by the initial act of legal circumvention. This shows that social realities are not just resisting law; they are also creatively engaging with it to secure a sense of legal protection.

### **Access to Justice: From Barriers to Empowerment**

While the practice of *Nikah Siri* highlights the challenges women face, it also underscores the importance of access to justice. Women face significant barriers in accessing justice in religious courts, including financial problems, legal illiteracy, and a lack of access to legal resources.<sup>34</sup> However, there have been significant state-driven improvements. The Supreme Court has introduced a fee waiver system,

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<sup>31</sup> Solihan Makruf et al., "Legal Sociological Perspective on Marriage Under the Hand (Case Study Understanding of the Cipadung Community, Bandung City)," *Journal of Law, Politic and Humanities* 5, no. 3 (n.d.), <https://doi.org/10.38035/jlph.v5i3>.

<sup>32</sup> Zetria Erma and Taufika Hidayati, *The Practice of Siri Marriage by Police Members Judging From the Regulation of the Chief of the Police of the Republic of Indonesia Number 6 of 2018*, 11, no. 2 (2022).

<sup>33</sup> "12 Years of Innovation in Women's Access to the Family Courts of Indonesia | Federal Circuit and Family Court of Australia," accessed August 25, 2025, <https://www.fcfoa.gov.au/international/reports/12-years-womens-access-fcoi>.

<sup>34</sup> Muhammad Isna Wahyudi, "Women Dealing with The Law in Religious Courts," *AHKAM: Jurnal Ilmu Syariah* 18, no. 2 (2018), <https://doi.org/10.15408/ajis.v18i2.7491>.

circuit courts, and free legal advisory services, doubling the budget for these programs between 2015 and 2016. This resulted in a massive increase in the number of clients assisted, to almost 69,000 through circuit courts and 195,000 through legal advisory posts in 2016.<sup>35</sup>

The data clearly shows a direct cause-and-effect relationship: targeted, nationally-funded institutional reforms can effectively lower the barriers to justice and lead to a massive increase in women's legal empowerment. This provides a powerful counter-narrative to the idea that the "reform" leg is ineffective. This section of the report bridges the gap between institutional reforms and social realities. It demonstrates that when reforms are practical, accessible, and well-funded, they can overcome social barriers and lead to tangible improvements in women's lives. It shows that the "reform" and "reality" legs are not always in tension; they can, in fact, work in a symbiotic relationship to create a more equitable legal system.

### **The Triadic Tension: Bridging the Gap and Charting the Future A Critical Reflection on the Norm-Reform-Reality Disjuncture**

The findings of this report demonstrate that the three elements of the triadic framework—normativity, reform, and social realities—are in a constant state of flux and negotiation. The normative framework, while rooted in tradition, is not monolithic; it is being actively reinterpreted by judges and feminist scholars.<sup>36</sup> The reformist state, while a powerful agent of change, is simultaneously a source of bureaucratic friction and patriarchal norms. And social realities, far from being passive, actively resist, circumvent, or even creatively engage with the legal system.<sup>37</sup>

The KHI, while a progressive codification in its time, continues to institutionalize patriarchal concepts of guardianship, divorce, and inheritance, creating a foundation for gender inequality.<sup>38</sup> In response, the reformist state has engaged in both top-down legislative change,

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<sup>35</sup> "12 Years of Innovation in Women's Access to the Family Courts of Indonesia | Federal Circuit and Family Court of Australia."

<sup>36</sup> Sanusi et al., "Judges' Ijtihad on Women's Rights after Divorce and Its Contribution to Family Law Reform in Indonesia."

<sup>37</sup> Makruf et al., "Legal Sociological Perspective on Marriage Under the Hand (Case Study Understanding of the Cipadung Community, Bandung City)."

<sup>38</sup> Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia."

such as raising the marriage age, and bottom-up judicial activism, which has progressively redefined concepts like *nusyuz* and granted women greater rights after divorce.<sup>39</sup> Yet, these legal changes are often undermined by persistent social realities, such as the prevalence of child marriage and *Nikah Siri*, which are driven by complex socio-economic and cultural factors.<sup>40</sup> The disconnect between law and lived experience shows that legal reform is not a silver bullet for societal change. However, as demonstrated by the success of the Supreme Court's free legal aid programs, when reforms are designed to be accessible and directly address social barriers, they can lead to tangible improvements in women's lives.<sup>41</sup>

### **The Future of Indonesian IFL: Pathways to a More Equitable System**

Charting a path forward for Indonesian Islamic family law requires a holistic, multi-pronged approach that moves beyond symbolic legal reforms. To bridge the gap between normativity, reform, and reality, recommendations should focus on a synergistic strategy.

First, legislative and institutional reform must continue to be pursued. This includes revising legal texts, such as the KHI, to align them more fully with constitutional and human rights principles, particularly in areas like inheritance and household leadership where traditional patriarchal norms are codified.<sup>42</sup>

Second, judicial empowerment is crucial. The capacity of the judiciary must be strengthened, and progressive legal reasoning (*ijtihad*) must be institutionalized through training and policy to ensure that judges consistently apply principles of justice and public benefit in their rulings.<sup>43</sup> This includes encouraging and supporting the use of *mubadalah* and *mashlahat* in a wider range of cases.

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<sup>39</sup> Afrianty, "Child Marriage."

<sup>40</sup> Girls Not Brides, "Indonesia."

<sup>41</sup> "12 Years of Innovation in Women's Access to the Family Courts of Indonesia | Federal Circuit and Family Court of Australia."

<sup>42</sup> "Indonesia - Women, Business and the Law," World Bank Group, 2023, <https://wbl.worldbank.org/content/dam/documents/wbl/2023/snapshots/Indonesia.pdf>.

<sup>43</sup> Sanusi et al., "Judges' Ijtihad on Women's Rights after Divorce and Its Contribution to Family Law Reform in Indonesia."

Finally, socio-cultural interventions are essential to address the root causes of practices that undermine legal reform. This involves investing in community-based legal literacy programs to educate women about their rights, as well as economic empowerment initiatives to reduce the poverty-driven factors behind practices like child marriage and *Nikah Siri*. The success of the Supreme Court's budget increase for free legal aid and circuit courts serves as a model for such interventions.<sup>44</sup>

The report concludes that Indonesia's Islamic family law system, while imperfect, is a unique laboratory of legal evolution. Its hybrid nature, far from being a weakness, provides the very space for a dynamic and continuous negotiation between tradition and modernity. By strategically leveraging legislative, judicial, and social forces, Indonesia can continue to advance gender justice, offering valuable lessons for other Muslim-majority contexts seeking to reform their legal systems.<sup>45</sup>

## Conclusion

This report has provided a comprehensive socio-legal analysis of women's rights in Indonesia, using a novel triadic framework that examined the interplay of normative Islamic law, state-driven reforms, and lived social realities. The analysis revealed that the normative legal framework, particularly the KHI, retains patriarchal vestiges in its provisions on guardianship, divorce, and inheritance. These norms are, however, being challenged and reshaped by a robust reformist trajectory. The state, through landmark legislative amendments such as the 2019 Marriage Law and through the progressive judicial *ijtihad* of its religious courts, has demonstrated a significant capacity to effect change. Despite these advances, persistent social realities, including the prevalence of child marriage and *Nikah Siri*, highlight a profound disconnect between legal norms and their implementation on the ground. These practices are not mere administrative oversights; they

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<sup>44</sup> "12 Years of Innovation in Women's Access to the Family Courts of Indonesia | Federal Circuit and Family Court of Australia."

<sup>45</sup> Riyadi et al., "Constitutional Ijtihad and the Reform of Islamic Family Law: A Comparative Analysis of Indonesia and Egypt in Advancing SDG 16."

represent a form of active social resistance or circumvention of the law, driven by complex socio-economic and cultural factors.

The theoretical contribution of this study lies in its use of the triadic framework to conceptualize Indonesia's Islamic family law as a "living legal system." This framework moves beyond a static view of law to one that accounts for the constant negotiation and evolution among legal texts, state institutions, and community practices. It underscores the agency of women who, despite facing barriers, creatively engage with the legal system to secure their rights. The analysis highlights the dynamism of the judiciary and the crucial role of legal culture in determining the effectiveness of law.

The findings carry significant practical implications for policymakers, religious scholars, and civil society organizations. Meaningful change requires a multi-pronged strategy that addresses not only the law on the books but also the barriers to its realization. Policymakers must strengthen legal literacy, judicial access, and community-based education to ensure that women's rights are not only codified but also realized in everyday life. The success of targeted institutional reforms, such as increased funding for legal aid services, demonstrates that practical interventions can have a powerful and tangible impact. The report concludes with a final statement on the need for continued collaboration between all stakeholders to ensure that the promise of gender justice in Indonesia's legal system is not just a codified ideal but a lived reality for all women.

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