



Sexuality and Religious Court Authority: Interpreting Homosexuality in the *Khul'* Divorce Case in Singkawang, Indonesia

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Abstract

Homosexuality, defined as same-sex relationships among men, is not explicitly recognized as a legal ground for divorce under Indonesian marriage law. This study examines how judges interpret homosexuality in divorce proceedings, focusing on a *khul'* case filed by a wife in the Religious Court of Singkawang, West Kalimantan, Indonesia. The case exposes a normative gap between formal legal provisions and the socio-religious realities encountered by Muslim women seeking legal protection. Employing a socio-legal approach and qualitative content analysis of Decision No. 134/Pdt.G/2025/PA.Skw as primary data, the research explores judicial reasoning within the frameworks of discretion and interpretive practice that connect statutory law, Islamic legal principles, and social context. The findings reveal that the judges intentionally characterized homosexuality as “deviant behavior” constituting ongoing marital discord (*shiqāq*). This reasoning integrates juridical references to statutory law and judicial precedents, theological arguments derived from Sūrat al-Rūm verse 21, and several *qawā'id fiqhiyyah* (Islamic legal maxims) emphasizing harm elimination, alongside moral and social considerations that underscore divorce as a means to prevent greater harm. This study advances a theoretical framework of interpretive strategies that bridge normative gaps and illuminate how Islamic family law is adjudicated within the evolving socio-legal landscape of contemporary nation-states.

Keywords

Religious Court;
Homosexuality;
Divorce Case; *Khul'*;
Singkawang-
Indonesia

Introduction

Islamic jurisprudence (*fiqh*) is frequently characterized as positioning women in subordinate roles within the institution of marriage; however, judicial practices in Indonesia reveal a notable paradox.¹ The majority of divorce cases filed in Religious Courts are initiated by wives through the *khul'* mechanism. Empirical studies conducted over the past two decades consistently demonstrate that *khul'* petitions outnumber *talāq* applications submitted by husbands, indicating a significant transformation in women's legal agency—from passive recipients of legal norms to active and empowered participants in the legal process.² This transformation is closely associated with

¹ Stijn Cornelis Van Huis, “*Khul'* Over the Longue Durée: The Decline of Traditional *Fiqh*-Based Divorce Mechanisms in Indonesian Legal Practice,” *Islamic Law and Society* 26, nos. 1–2 (January 2019): 58–82.

² Putri Apria Ningish, Murniati Mukhlisin, and Jumni Nelli, “Family Financial Management in Realizing Sakinah Family,” in *Wealth Management and Investment in Islamic Settings: Opportunities and Challenges*, ed. Toseef Azid, Murniati Mukhlisin, and Othman Altwijry (Singapore: Springer Nature, 2022), 151–64.



increased awareness of women's rights,³ influenced both by global discourses on gender equality and by progressive reinterpretations of Islamic family law in contemporary contexts.⁴ Nonetheless, despite this juridical empowerment, women's capacity to exercise agency in initiating divorce remains constrained by cultural resistance, social stigma, and moral expectations that link divorce to a failure to maintain domestic harmony. These dynamics highlight the persistent tension between the institutional enhancement of women's legal status and the enduring influence of patriarchal moral frameworks that continue to shape the lived experiences of Muslim communities in Indonesia.⁵

A case that exemplifies this complexity is a decision rendered by the Singkawang Religious Court, wherein the panel of judges granted a wife's petition for divorce on the grounds of irreconcilable discord following the revelation that her husband had engaged in a same-sex relationship. In its legal reasoning, the court underscored that such homosexual conduct had engendered fundamental disharmony within the marriage, violated the wife's marital rights, and contravened the objectives of marriage as delineated in Article 1 of Law No. 1 of 1974 concerning Marriage.⁶ The significance of this case resides in the fact that homosexuality is not explicitly recognized as a legal ground for divorce under Indonesian positive law.⁷ Nevertheless, the judges construed the behavior as constituting "marital discord (*shiqāq*)" and as a moral transgression deemed intolerable within the framework of Islamic marital ethics. This judicial practice illustrates how judges employ interpretive strategies to address normative gaps by integrating legal texts, religious values, and social legitimacy.

Previous research on divorce cases adjudicated by Indonesia's Religious Courts has delineated a diverse typology of legal grounds for marital dissolution. These grounds can be broadly categorized into three principal groups: structural factors, such as economic hardship and financial neglect;⁸ relational factors, including domestic conflict, violence, and infidelity;⁹ and moral or behavioral factors, which encompass drug abuse, gambling, illness, and sexual conduct considered inconsistent with religious norms.¹⁰ Among these categories, moral grounds present the greatest

³ See: Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts," *Islamic Law and Society* 20, no. 3 (2013): 242–71; Rachel Rinaldo, Eva F. Nisa, and Nina Nurmila, "Divorce Narratives and Class Inequalities in Indonesia," *Journal of Family Issues* 45, no. 5 (May 2024): 1195–216.

⁴ Atun Wardatun and Bianca J. Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna* 24, no. 2 (December 2020): 266–95.

⁵ See: Mohamad Abdun Nasir, "Islamic Law and Paradox of Domination and Resistance," *Asian Journal of Social Science* 44, nos. 1–2 (2016): 78–103; Ellis Lindini Putri et al., "Power Relations and Structural Inequality in Late-Life Divorce: A Socio-Legal Analysis of the Palembang Islamic Court Decisions in 2022," *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 1 (2025): 25–46.

⁶ LS Vs. ZO, 134/Pdt.G/2025/PA.Skw (Singkawang Islamic Court June 3, 2025), 10.

⁷ "Compilation of Islamic Law," 1991, Article 116 letter (f).

⁸ See: Muhamad Arifin Badri, Anas Burhanuddin, and Ghufuran Jauhar, "Factors Influencing the Increase in Khulu's Divorce: A Case at The Jember Religious Court (2021–2023)," *Al-Adalah* 21, no. 1 (June 2024): 53–76; Rosdalina Bukido et al., "Divorce Among Female Muslim Civil Servants: Legal Perspectives in Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 25, no. 1 (June 2025): 85–116; Kholidah et al., "Violation of Women's Rights on Divorce: Study on Religious Court Decision," *Relacoes Internacionais No Mundo Atual* 4, no. 42 (2023): 291–309.

⁹ See: Bani Syarif Maula and Vivi Ariyanti, "Justice Negotiations for Women: Divorce Cases Due to Domestic Violence in Religious Courts," *Jurnal Hukum Islam* 20, no. 1 (June 2022): 155–80; Martina Purna Nisa, "Critical Review of Domestic Violence as Reason for Divorce (Comparison of Divorce Laws in Indonesia, Malaysia and the Maldives)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 2021): 1–26.

¹⁰ See: Soraya Devy, Amrullah Amrullah, and Utari Zulfiana, "Divorce Petition Against Drug User Husband: Case Study of Kuala Simpang Syar'iyah Court Decision, Aceh Tamiang," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (December 2023): 281–97; Jumni Nelli et al., "The Immorality of a Husband as the Cause of a Working Wife to

legal challenges, as they lack explicit regulation within statutory law. Consequently, judges are required to interpret moral and religious categories in a manner that aligns with the formal legal framework. Within this context, divorce on the basis of homosexual conduct is situated within the category of “deviant behavior,” which is judicially construed as a source of *shiqāq*—irreconcilable marital discord between spouses. This article contends that judges in the Religious Courts utilize the construction of “deviant behavior” not only to justify the granting of divorce but also to preserve coherence between moral-religious reasoning and the formal structure of Indonesian positive law.

Literature Review

The legal framework governing divorce among Muslims in Indonesia is primarily established by Law No. 1 of 1974 on Marriage and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI). Although these state laws comprehensively regulate marital relations, neither explicitly defines divorce. Instead, the definition is found in Article 207 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), which describes divorce as the dissolution of marriage by judicial decision upon the petition of one party based on legally prescribed grounds. While the 1974 Marriage Law does not formally define divorce, in practice, divorce may only be affected through the Religious Courts, as reaffirmed by the KHI.¹¹ This procedural requirement indicates that divorce is recognized as a valid legal act only when pronounced by a competent judicial authority. Such a provision not only ensures legal certainty but also offers institutional protection for the rights of both spouses,¹² thereby reinforcing the state’s role in regulating personal status matters within an Islamic legal framework.

Indonesia’s legal framework governing divorce is delineated in Article 39 of Law No. 1 of 1974 on Marriage, Article 19 of Government Regulation No. 9 of 1975 concerning the Implementation of the Marriage Law, and Article 116 of the Compilation of Islamic Law (KHI). These statutes specify the grounds for marital dissolution, which include adultery, habitual intoxication, gambling, and other forms of moral misconduct; abandonment of a spouse for a continuous period of two years without consent; imprisonment for a term of five years or longer; severe physical abuse or cruelty; physical disability or illness that impedes the fulfillment of marital obligations; persistent conflict and discord; breach of a *ta’liq talāq* agreement; and religious conversion or apostasy. This regulatory framework embodies a restrictive approach to divorce,¹³ permitting separation only after all efforts at mediation and reconciliation have been exhausted.¹⁴ The enumerated grounds apply equally to divorces initiated by husbands (*talāq*) and those initiated by wives (*khul’* or judicial divorce petitions from wives). Notably, the provision addressing “continuous dispute and discord” (*shiqāq*) affords judges a degree of interpretive discretion, enabling them to consider contemporary

File for Divorce Lawsuit in Indonesia,” *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (June 2023): 119–32; Ihdi Karim Makinara, Jamhuri Ungel, and Fitrah Arrazi, “Physical Handicap as a Reason for Divorce: Case Study at the Sharia Court, Banda Aceh, Indonesia,” *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (December 2023): 318–34.

¹¹ See: “Marriage Act Aw No. 1 of 1974,” Article 39 paragraph (1); “Compilation of Islamic Law,” Article 115.

¹² 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, no. 2 (December 2020): 159–74.

¹³ Kate O’Shaughnessy, “Divorce and Shame,” in *Gender, State and Social Power in Contemporary Indonesia* (Routledge, 2009).

¹⁴ Balawyn Jones and Amira Aftab, “Inside Indonesia’s Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation,” *Oxford Journal of Law and Religion* 12, no. 2 (June 2023): 217–31.



circumstances not explicitly articulated in statutory law,¹⁵ such as cases involving homosexual conduct.

In Islamic jurisprudence (*fiqh*), divorce is regarded as a legally permissible act (*ḥalāl*), albeit one that is disfavored by God.¹⁶ Classical jurists typically categorize divorce into three types: *ṭalāq* (divorce initiated by the husband), *khul'* (divorce initiated by the wife through financial compensation), and *fasakh* (judicial dissolution granted by a judge).¹⁷ According to Wahbah al-Zuhaylī, mechanisms other than *ṭalāq*—particularly *khul'* and *fasakh*—function as legal protections for women. *Khul'* enables a wife to terminate the marriage by offering compensation to her husband, while *fasakh* authorizes a judge to annul the marriage on legitimate Sharia grounds, such as the husband's failure to provide maintenance, serious illness, acts of violence, or prolonged marital discord.¹⁸ These mechanisms highlight the role of Islamic law in acknowledging women's agency and protecting them from harm (*muḍarat*) within the marital relationship.¹⁹

Classical Muslim jurists have also examined the issue of divorce on the grounds of physical or psychological defects (*'uyūb*). They generally concur that serious defects in the husband—such as castration or impotence—constitute valid grounds for *fasakh* (judicial dissolution), as these conditions impede the fundamental objectives of marriage, namely sexual relations and procreation. The Ḥanafite school recognizes only three defects—castration, impotence, and penile amputation—whereas the Malikite school expands this list to thirteen, including contagious diseases and mental disorders. The Shafi'ite and Hanbalite schools adopt an intermediate stance, acknowledging a broader range of defects than the Hanafite but fewer than the Malikite. Despite these doctrinal differences, all four Sunni schools agree that *fasakh* on the basis of defects is not automatically enforceable; rather, it requires judicial intervention due to its *ijtihādī* (interpretive) nature.²⁰ Although homosexuality is not explicitly cited in classical *fiqh* literature as grounds for divorce, jurists unanimously consider homosexual acts to be prohibited (*ḥarām*) because they contravene the *maqāṣid al-sharī'ah*—the higher objectives of marriage and Islamic law.²¹

This study seeks to advance existing literature by examining how judicial reasoning reflects the dynamic interplay among state law, Islamic legal principles, and evolving social norms. Whereas previous research has predominantly concentrated on procedural issues or gendered access to justice, the present study conceptualizes judicial interpretation as an epistemic practice, demonstrating how judges actively construct legal meaning to reconcile normative tensions in divorce adjudication. Through an analysis of judicial reasoning in specific *khul'* cases, this research aims to reveal how religious courts operationalize Islamic family law not merely as a textual application of doctrine but as a living legal discourse that continuously adapts to contemporary moral, social, and cultural realities within Indonesia's plural legal framework.

¹⁵ Abd Karim Faiz et al., "Between State Law and Islamic Law: The Practice of Divorce Outside the Situbondo Religious Courts, Indonesia," *Journal of Islamic Law* 3, no. 2 (2022): 176–92.

¹⁶ Mohamad Sar'an et al., "Implementation of Harmonious Family in the Concept of Proportionality of Obligations and Rights of Husband and Wife Relations: A Perspective on the Compilation of Islamic Law," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 695–712.

¹⁷ Wahbah al-Zuhaylī, *Al-Fiqh al-Islamī wa Adillatuh* (Damaskus: Dār al-Fikr, 1989), 7:347–48.

¹⁸ Al-Zuhaylī, *Al-Fiqh al-Islamī wa Adillatuh*, 7:480 and 510.

¹⁹ See: Maula and Ariyanti, "Justice Negotiations for Women," 155–80; M. Ikhwan et al., "Deciding To Be a Widow or Stay with A Husband: The Experience of Muslim Women Filing for Divorce in the Aceh Sharia Court," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 10, no. 1 (June 2025): 80–99.

²⁰ Al-Zuhaylī, *Al-Fiqh al-Islamī wa Adillatuh*, 7:515–25.

²¹ Siska Lis Sulistiani, "Hukum Homoseksual Perspektif Maqashid Syari'ah," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 (2019): 267–82.

Method

This study employs a library-based qualitative research design utilizing a socio-legal approach. The primary data consist of Decision No. 134/Pdt.G/2025/PA.Skw issued by the Singkawang Religious Court, with the identities of the litigants anonymized to maintain ethical confidentiality. Secondary sources encompass statutory regulations, classical *fiqh* literature, and a range of national and international scholarly materials, including journal articles, books, book chapters, and empirical reports concerning divorce practices in Indonesia's Religious Courts. Data collection was conducted through document analysis and subsequently examined via qualitative content analysis, which involved the identification, coding, and categorization of judicial arguments. This methodology facilitates an in-depth examination of legal reasoning as both a normative and social practice, elucidating how judges translate abstract legal norms into concrete decisions. To enhance the analytical framework, Aharon Barak's theory of interpretation is applied to explore the extent of judicial discretion and the hermeneutic strategies employed by religious judges in constructing divorce rulings related to homosexual behavior—an issue that remains legally unaddressed within Indonesia's democratic legal system.²² Methodologically, this approach conceptualizes judicial interpretation as a dynamic process of norm creation that integrates textual authority, religious ethics, and socio-cultural legitimacy.

Results

Husband's Homosexual Behavior: Case Description and Religious Court Decision

This case originates from the Singkawang Religious Court under Decision No. 134/Pdt.G/2025/PA.Skw.²³ The petition was submitted by LS, a 29-year-old Muslim woman holding a bachelor's degree and currently a homemaker, against her husband, ZO, a 29-year-old Muslim man with a senior high school education employed by a state-owned electricity company (PLN). The couple was married on November 7, 2021, as documented in the Marriage Certificate issued by the Office of Religious Affairs (Kantor Urusan Agama, KUA) of West Singkawang District. Throughout nearly four years of marriage, the couple remained childless. On May 6, 2025, the wife filed for divorce, contending that the marriage had irretrievably broken down and was no longer sustainable. This case has garnered both public and academic interest due to the primary ground for divorce being the husband's homosexual conduct—an issue not explicitly recognized as a legal basis for divorce under Indonesian positive law.

Initially, the marriage between LS and ZO appeared to be harmonious. However, by late 2024, their marital relationship had significantly deteriorated. LS reported increasingly frequent arguments, a loss of emotional communication, and a decline in attention from her husband. The conflict culminated when LS discovered evidence that ZO was involved in a same-sex relationship. This revelation caused severe psychological distress, breached the principle of mutual trust, and was considered incompatible with the objectives of marriage as defined under both Islamic and national law. Since November 2024, LS has resided at her parents' home in Singkawang, while ZO has remained in Pontianak. The couple has lived separately for over six months without meaningful communication. Attempts at family mediation were unsuccessful, leading LS to formally file a divorce petition with the Singkawang Religious Court.²⁴

²² Aharon Barak, *The Judge in a Democracy* (Princeton Univ. Press, 2008), 122–54.

²³ *LS Vs. ZO*, 1.

²⁴ *LS Vs. ZO*, 2–3.



The panel of judges at the Singkawang Religious Court adjudicated the case in absentia (*verstek*) due to the defendant, ZO, failing to appear despite having been duly and properly summoned. Nonetheless, the judges proceeded with the evidentiary examination, relying on the marriage certificate and the testimonies of two witnesses from the petitioner's family.²⁵ Based on this evidence, the panel determined that recurrent conflicts had occurred, that the spouses had been living separately since November 2024, and that ZO had engaged in a homosexual relationship. Importantly, the judges did not recognize homosexuality as an independent legal category; rather, they framed it within the context of "continuous disputes and irreconcilable conflict."²⁶ The court reasoned that prolonged quarrels and separation of residence constituted legitimate grounds for divorce. Drawing upon normative, juridical, and moral considerations, the panel ultimately granted the wife's petition and declared a revocable divorce (*talāq bayn ṣughra*) against ZO.²⁷

The decision was issued on June 3, 2025, during an open court session and was subsequently published electronically. The judicial panel consisted of Suraida, S.H.I., as the Presiding Judge; Dara Eka Vhonna, S.Sy., M.H., and Ahmad Ma'ruf Maghfur, S.H.I., M.H., as Associate Judges; with Zainol Hadi, S.H., serving as the Court Clerk. The hearing was attended solely by LS via an online platform, whereas ZO was absent without valid justification. In its ruling, the panel not only granted the divorce petition but also ordered the petitioner to bear all court costs amounting to Rp 234,000.²⁸ Beyond resolving a domestic dispute, this decision exemplifies how Indonesia's Religious Courts engage with contemporary social and moral issues—such as homosexuality—by incorporating them into existing normative frameworks through judicial discretion.²⁹ The ruling thereby illustrates the adaptive capacity of Islamic judicial practice to address modern complexities while maintaining adherence to legal and religious legitimacy.

Legal Reasoning of Religious Judges in Divorce Cases Involving Homosexuality

In Decision No. 134/Pdt.G/2025/PA.Skw, the panel of judges at the Singkawang Religious Court based its ruling not solely on formal evidence but through an integration of three distinct layers of legal reasoning. The first layer, juridical reasoning, relied on statutory provisions, procedural law, and Supreme Court jurisprudence. The second layer, theological reasoning, was founded on Qur'ānic verses and three *qawā'id fiqhiyyah* (Islamic legal maxims). The third layer, moral-social reasoning, emphasized the principles of *maṣlaḥah* (public interest) and the prevention of *mafsadah* (harm).³⁰ This multifaceted approach illustrates that judges operate within a framework of legal pluralism, exercising judicial discretion to reconcile the normative boundaries among state law, Islamic legal doctrine, and the moral-social values inherent in local communities.

From a juridical standpoint, the panel of judges identified at least four principal foundations underpinning their decision.³¹ First, the ruling was grounded in Article 39(2) of Law No. 1 of 1974 concerning Marriage, Article 19(f) of Government Regulation No. 9 of 1975, and Article 116(f) of

²⁵ "Supreme Court Circular Letter No. 3 of 2015 on the Implementation of the Formulations from the 2015 Supreme Court Chamber Plenary Meeting as Guidelines for the Execution of Duties by the Courts," December 29, 2015.

²⁶ "Marriage Act Aw No. 1 of 1974," Article 39 paragraph (2).

²⁷ *LS Vs. ZO*, 14–5.

²⁸ *LS Vs. ZO*, 15–6.

²⁹ Muhammad Lutfi Hakim, "Between Hibah and Waṣiat Wājibah for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (2024): 147–66.

³⁰ *LS Vs. ZO*, 10–4.

³¹ *LS Vs. ZO*, 10–2.

the Compilation of Islamic Law (KHI), all of which consistently recognize “continuous disputes and quarrels” as a legitimate basis for divorce. Second, the panel referenced Supreme Court Circular No. 3 of 2023, which refines Circular No. 1 of 2022, stipulating that divorce on the grounds of persistent conflict may be granted if the spouses have lived separately for a minimum of six months and there is no prospect of reconciliation, except in cases involving domestic violence. Third, with respect to evidentiary requirements, the judges invoked Article 76(1) of Law No. 7 of 1989 in conjunction with Article 22(2) of Government Regulation No. 9 of 1975 and Article 134 of the KHI, which mandate testimony from family members or close relatives. Fourth, juridical legitimacy was further reinforced by three Supreme Court precedents (Decision Nos. 273 K/AG/1998; 1354 K/Pdt/2000; and 534 K/Pdt/1996), all of which affirm that prolonged disputes, separation, and the loss of intent to continue the marriage constitute valid grounds for divorce without the necessity of establishing fault. Thus, the husband’s homosexual behavior was not regarded as an independent legal basis but rather as a causal fact substantiating the normative ground of continuous disputes and quarrels.

Subsequently, the theological argumentation provided the religious legitimacy for the verdict. The panel of religious judges cited a verse from *Sūrat al-Rūm* (30:21), which underscores that the purpose of marriage is to establish tranquility (*sakīnah*), affection (*mawaddah*), and mercy (*rahmah*). The respondent’s engagement in a same-sex relationship was considered to contravene these theological principles, thereby negating the spiritual essence of the marriage. This reasoning was further supported by three *qawā’id fiqhiyyah* (Islamic legal maxims): (1) *al-ḍarar yuzāl* (harm must be eliminated); (2) *dar’ al-mafāsīd muqaddam ‘alā jalb al-maṣāliḥ* (preventing harm takes precedence over obtaining benefit); and (3) *al-ḍarar al-ashadd yuzāl bi al-ḍarar al-akhaf* (greater harm should be removed by lesser harm). Although the judges did not specify the particular *fiqh* texts referenced,³² these three legal maxims are widely recognized among religious court judges. Through the application of these *qawā’id fiqhiyyah*, the panel justified the divorce as a necessary measure to avert greater harm to the wife and to preserve social stability.

Ultimately, the moral–social argument functioned as a reinforcing foundation in the judicial reasoning. The panel of religious judges emphasized that sustaining a marriage that had irreparably deteriorated would only perpetuate *mafsadah* (harm) for both the plaintiff and the defendant. The insistence of LS on divorce and refusal to reconcile was regarded as clear evidence of the dissolution of emotional and spiritual bonds. The judges affirmed that marital harmony cannot be maintained unilaterally and that enduring persistent discord would only exacerbate the harm.³³ The judicial discretion became apparent: although homosexuality is not explicitly addressed in positive law, the judges incorporated it as a factual basis within the legally, theologically, and morally recognized framework of prolonged conflict. This decision exemplifies a multilayered model of judicial reasoning that concurrently legitimizes the divorce. This model highlights the role of religious court judges as actors who not only enforce legal statutes but also uphold religious and social legitimacy, reflecting the dynamic of legal pluralism within Indonesia’s Islamic judiciary.³⁴

³² *LS Vs. ZO*, 13–4.

³³ *LS Vs. ZO*, 14.

³⁴ See: Hakim, “Between Hibah and Waṣīat Wājibah for Non-Muslims,” 147–66; Muhammad Lutfi Hakim and Khoiruddin Nasution, “Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era,” *Oxford Journal of Law and Religion* 11, nos. 2–3 (2023): 288–313.



Discussion

The panel of judges at the Singkawang Religious Court, in divorce case No. 134/Pdt.G/2025/PA.Skw, deliberately characterized the husband's homosexual behavior as a form of deviant conduct, identifying it as the underlying cause of *shiqāq* (marital discord) between the spouses.³⁵ This interpretive approach allowed the judges to address a normative gap—given that homosexuality is not explicitly recognized as grounds for divorce under Law No. 1 of 1974 or the Kompilasi Hukum Islam (KHI)—by framing it within the legally permissible category of continuous disputes and conflicts.³⁶ Consequently, this judicial practice exemplifies the role of religious court judges not only as interpreters of the law but also as creative agents who synthesize legal texts, religious principles, and social legitimacy to administer substantive justice.³⁷

In reaching this decision, the judges of the religious court employed an integrated approach that combined juridical, theological, and moral-social arguments.³⁸ From a juridical standpoint, their reasoning was grounded in Article 39(2) of Law No. 1 of 1974, Article 19(f) of Government Regulation No. 9 of 1975, and Article 116(f) of the Compilation of Islamic Law (KHI), further supported by Supreme Court Circular No. 3 of 2023 and three Supreme Court precedents. Homosexuality was not considered an independent ground for divorce but rather a factual basis fulfilling the criterion of continuous disputes. The theological dimension was evident in the citation of Surat al-Rūm (30:21) and three *qawā'id fiqhiyyah* principles concerning the prevention of harm, emphasizing that such deviant behavior undermines the objectives of *sakīnah*, *mawaddah*, and *rahmah* within marriage. Concurrently, the moral-social rationale highlighted that sustaining a dysfunctional household would perpetuate *mafsadah* (harm), especially when the wife declined reconciliation. The judges' exercise of judicial discretion in synthesizing these three dimensions exemplifies a distinctive form of legal pluralism, wherein state law, religious norms, and social legitimacy are collectively articulated to establish a valid basis for divorce.³⁹

A comparable argumentative approach in addressing contemporary grounds for divorce not explicitly regulated by state law is evident in several studies. Ulfiana, Listyorini, and Majeed, in their examination of the Religious Court of Yogyakarta, found that although the six-month separation requirement outlined in Supreme Court Circular No. 1 of 2022 had not been fully satisfied, the religious judges nevertheless granted the divorce petition by interpreting ongoing disputes and the lack of prospects for reconciliation as sufficient evidence of a broken marriage.⁴⁰ Similarly, Jones

³⁵ *LS Vs. ZO*, 11.

³⁶ See: "Marriage Act Aw No. 1 of 1974," Article 39 paragraph (1); "Compilation of Islamic Law," Article 115.

³⁷ See: Muhammad Zubair Abbasi, "Judicial Ijtihād as a Tool for Legal Reform: Extending Women's Right to Divorce under Islamic Law in Pakistan," *Islamic Law and Society* 24, no. 4 (October 2017): 384–411; Masrukhin and Meliana Damayanti, "Hukum Progresif Penanganan Hak Nafkah Anak dalam Kasus Perceraian di Pengadilan Agama (Studi di Pengadilan Agama Karesidenan Surakarta)," *Al-Ahkam Jurnal Ilmu Syari'ah dan Hukum* 5, no. 1 (September 2020): 25–36.

³⁸ *LS Vs. ZO*, 10–4. See: SM Fahmi Azhar et al., "Reinterpreting Rā'inā: A Ma'nā Cum Maghazā Approach to Surah al-Baqarah [2]:104 and Its Relevance for Contemporary Communication Ethics," *Basmala: Journal of Qur'an and Hadith* 1, no. 1 (2025): 28–45.

³⁹ See: Mulida Hayati and Nuraliah Ali, "Ex-Officio Rights in Talak Divorce: Study on Judges' Considerations in the Compliance of Ex-Wife's Rights," *Mazahib* 21, no. 1 (July 2022): 93–116; Nurul Ilmi Idrus, "Marriage, Divorce and Reconciliation: State Law, Islam and Local Practice," in *Gender Relations in an Indonesian Society* (Brill, 2016), 209–60; Paul Schiff Berman, "Ruth Bader Ginsburg and a Jurisprudence of Legal Pluralism," *George Washington Law Review* 90, no. 6 (2022): 1427–57.

⁴⁰ Ana Ulfiana, Indah Listyorini, and Muhamamd Yasir Majeed, "Judges' Considerations in Divorce Cases Due to Broken Marriage: An Analysis of Contemporary Islamic Family Law," *Al-Mawarid Jurnal Syariah dan Hukum (JSYH)* 7, no. 1 (March 2025): 135–52.

and Aftab observed that religious court judges frequently integrate positive legal norms with moral-religious values to justify divorce in cases of domestic violence, even when the regulations do not specify the types of violence involved.⁴¹ This illustrates a flexible pattern of judicial reasoning akin to the Singkawang ruling—specifically, the use of the “continuous dispute” category to accommodate factual grounds beyond the explicit statutory provisions. Collectively, these patterns demonstrate that judicial practice in Indonesia consistently employs interpretive strategies to bridge normative gaps, uphold the coherence of positive law, and sustain both religious and social legitimacy.⁴²

This article contends that religious court judges in Indonesia actively exercise interpretive discretion to address contemporary grounds for divorce that are not explicitly regulated—such as homosexuality—by interpreting them as deviant behavior that constitutes *shiqāq* (irreconcilable conflict). This practice illustrates how the Islamic judiciary operates within a framework of legal pluralism characterized by creativity and pragmatism, rather than mere adherence to normative rules.⁴³ The judges do not simply apply written laws; instead, they simultaneously construct normative, religious, and social legitimacy.⁴⁴ Accordingly, this article contributes to the fields of Islamic legal and socio-legal studies by highlighting the role of religious judges as interpretive agents who fill normative gaps through meaning-making, while also fostering scholarly debate concerning the recognition of deviant sexual behavior as a legitimate ground for divorce in contemporary Muslim family law.

Conclusion

This study reveals that the panel of judges at the Singkawang Religious Court, in Decision No. 134/Pdt.G/2025/PA.Skw, intentionally interpreted the husband’s homosexual conduct as a form of deviant behavior that constituted the cause of ongoing discord (*shiqāq*). Although homosexuality itself was not recognized as an independent legal ground for divorce—given its absence from both Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI)—it was instead categorized under “continuous disputes and quarrels.” This interpretation was substantiated through a tripartite argumentation framework: (1) juridical, by referencing statutory provisions, Supreme Court Circular Letters, and jurisprudence; (2) theological, by invoking Qur’anic verse al-Rūm 21 and *qawā’id fiqhīyyah* related to harm prevention; and (3) moral-social, by underscoring the necessity of divorce to avert greater *mafsadah* when reconciliation proves unfeasible. Consequently, religious judges not only apply legal texts in a formal manner but also exhibit interpretive ingenuity to address normative lacunae.

The findings of this study indicate that judicial discretion plays a pivotal role in broadening the

⁴¹ Jones and Aftab, “Inside Indonesia’s Religious Courts,” 217–31.

⁴² See: Hakim, “Between Hibah and Waṣīat Wājibah for Non-Muslims,” 147–66; Zakiul Fuady Muhammad Daud and Raihanah Azahari, “The Wajibah Will: Alternative Wealth Transition for Individuals Who Are Prevented from Attaining Their Inheritance,” *International Journal of Ethics and Systems* 38, no. 1 (2019): 1–19; Hakim and Nasution, “Accommodating Non-Muslim Rights,” 288–313.

⁴³ Berman, “Ruth Bader Ginsburg and a Jurisprudence of Legal Pluralism,” 1427–57.

⁴⁴ See: M. Anwar Nawawi et al., “Harmonization of Islam and Human Rights: Judges’ Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (September 2022): 117–34; Ahmad Izzuddin, Ahmad Rofiq, and Abu Hapsin, “Revitalizing Divorce Ethical Values in Verstek Decisions in Religious Courts/Revitalisasi Nilai Etika Perceraian dalam Putusan Verstek di Pengadilan Agama,” *De Jure: Jurnal Hukum dan Syar’iah* 13, no. 1 (July 2021): 80–96; Ahmad Haris, Edy Lisdiyono, and Setiyowati, “The Reconstruction of Religious Court Decision Execution on the Fulfilment of Children’s Rights Post-Divorce in Indonesia,” *Revista de Gestão Social e Ambiental* 18, no. 7 (April 2024): e5564.



interpretation of legal grounds for divorce, thereby ensuring their continued relevance to contemporary social developments, including matters not explicitly addressed in statutory law. Nevertheless, this research is subject to certain limitations, as it is based on a single first-instance court decision; consequently, caution is warranted when generalizing these results to the wider practices of religious courts throughout Indonesia. Future studies may benefit from conducting comparative analyses of analogous cases across various religious courts or exploring the Supreme Court's interpretation of homosexuality within the context of divorce. Such investigations are essential for comprehending the extent to which the interpretive practices of religious judges influence the formation of jurisprudential consensus and contribute to the progressive development of contemporary Islamic family law in Indonesia.

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